

No. **2024-8528**

**Official Order
of the
Texas Commissioner of Workers' Compensation**

Date: 2/13/2024

Subject Considered:

Indemnity Insurance Company of North America
115 Wild Basin Road, Suite 207
West Lake Hills, Texas 78746

Consent Order

DWC Enforcement File Nos. 32553, 32563, 32661, 32756, 32757, 32758, 32831, 33072,
and 33148

General remarks and official action taken:

This is a consent order with Indemnity Insurance Company of North America (Respondent). The commissioner of the Texas Department of Insurance, Division of Workers' Compensation (DWC) considers whether DWC should take disciplinary action against Respondent.

Waiver

Respondent acknowledges that the Texas Labor Code and other applicable laws provide certain rights. Respondent waives all of these rights, and any other procedural rights that apply, in consideration of the entry of this consent order.

Findings of Fact

1. Respondent holds a certificate of authority issued by the Texas Department of Insurance to transact the business of insurance pursuant to Tex. Ins. Code §§ 801.051-801.053 and is licensed to write workers' compensation/employers' liability insurance in Texas.
2. Respondent was classified as "average" tier in the 2018, 2020, and 2022 Performance Based Oversight (PBO) assessments.

Failure to Timely Act on a Medical Bill*File No. 32553*

3. On [REDACTED], a health care provider (HCP) provided medical services to an injured employee. The HCP contends but could provide no evidence that it submitted a bill to Respondent on [REDACTED]. On [REDACTED], Respondent received a completed medical bill for \$ [REDACTED] from the health care provider.
4. Respondent was required to act on the bill within 45 days of receiving it. The deadline to act was [REDACTED]. However, Respondent failed to act.
5. On [REDACTED], Respondent denied payment of the medical bill, which was 491 days late.

File No. 32756

6. On [REDACTED], a Designated Doctor (DD) provided medical services to an injured employee. On [REDACTED], Respondent received a completed medical bill for \$ [REDACTED] from the DD.
7. Respondent was required to act on the bill within 45 days of receiving it. The deadline to act was [REDACTED].
8. On [REDACTED], Respondent denied the medical bill, which was 67 days late.
9. On [REDACTED], Respondent paid \$ [REDACTED] to the DD.

File No. 32757

10. On [REDACTED], a DD provided medical services to an injured employee. On [REDACTED], Respondent received a completed medical bill for \$ [REDACTED] from the DD.
11. Respondent was required to act on the bill within 45 days of receiving it. The deadline to act was [REDACTED].
12. On [REDACTED], Respondent paid \$ [REDACTED] to the DD, which was 95 days late.

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13. On [REDACTED], Respondent paid \$ [REDACTED] in interest to the DD, which was 100 days late.

File No. 33072

14. On [REDACTED], a DD provided medical services to an injured employee. On [REDACTED] Respondent received the DD's completed medical bill for \$ [REDACTED].
15. Respondent was required to act on the bill within 45 days of receiving it. The deadline to act was [REDACTED].
16. On [REDACTED], Respondent paid \$ [REDACTED] to the DD, which was 64 days late.
17. On [REDACTED], Respondent paid \$ [REDACTED] in interest, which was eight days late.

Failure to Timely Respond to a Request for Reimbursement of Pharmaceutical Expenses.

File No. 32563

18. On [REDACTED], Respondent received an injured employee's request for reimbursement of \$ [REDACTED] in out-of-pocket pharmaceutical expenses for medical services delivered between [REDACTED], and [REDACTED].
19. Respondent was required to respond by the 45th day from receipt of the request, or by [REDACTED].
20. Respondent reimbursed the injured employee \$ [REDACTED] on [REDACTED], which was 93 days late.
21. On [REDACTED], Respondent received a request for reimbursement of \$ [REDACTED] in pharmaceutical expenses incurred between [REDACTED], and [REDACTED].
22. Respondent was required to respond by the 45th day from receipt of the request, or by [REDACTED].
23. Respondent reimbursed the injured employee \$ [REDACTED] on [REDACTED], which was 37 days late.

Failure to Timely Pay Attorney's Fees Ordered by DWC

File No. 32661

- 24. On [REDACTED], and [REDACTED], DWC ordered Respondent to pay attorney fees in connection with legal services provided to an injured employee. DWC ordered Respondent to pay attorney fees in the amount of 25% of each income benefit payment to the injured employee.
- 25. Between [REDACTED], and [REDACTED], Respondent issued multiple payments to the injured employee (IE) for unpaid income benefits. Respondent failed to timely pay attorney fees in an amount equal to 25 percent of the income benefits paid to the injured employee as follows:

	Benefits Paid to IE	Attorney Fee Owed	Date Due	Date Paid	Days Late
a.	\$ [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	48
b.	\$ [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	41

- 26. In total, Respondent paid \$ [REDACTED] in attorney's fees late.

Failure to Timely Pay or Dispute Temporary Income Benefits (TIBs)

File No. 32758

- 27. Respondent was required to pay TIBs to the injured employee from [REDACTED], through [REDACTED]. The TIBs payments were due seven days after the first day of the pay period, which was [REDACTED]. Respondent paid \$ [REDACTED] in TIBs on [REDACTED], which was two days late.

File No. 32831

- 28. On [REDACTED], Respondent received notice of an employee workplace injury.
- 29. The injured employee's first day of disability began on [REDACTED]. The eighth day of disability accrued on [REDACTED].

30. Respondent was required to initiate or dispute TIBs either 15 days after it received written notice of the injury or seven days after the accrual date, whichever is later. In this case, the latest date was [REDACTED].

31. On [REDACTED], Respondent initiated \$ [REDACTED] in TIBs, which was 22 days late.

32. On [REDACTED], Respondent paid interest 34 days late.

33. Respondent was required to pay TIBs to the injured employee from [REDACTED], through [REDACTED]. The TIBs payments were due seven days after the first day of the pay period. Respondent failed to timely pay \$ [REDACTED] in TIBs, as follows:

	Payment Period	Date Due	Date Paid	Days Late
a.	[REDACTED]	[REDACTED]	[REDACTED]	18
b.	[REDACTED]	[REDACTED]	[REDACTED]	10
c.	[REDACTED]	[REDACTED]	[REDACTED]	4

34. On [REDACTED], Respondent paid interest, which was 34 days late.

Failure to Timely Act on a Request for Reconsideration

File No. 33148

35. On [REDACTED], Respondent received a complete request for reconsideration of a medical bill from a health care provider for medical services rendered to the injured employee on [REDACTED].

36. Respondent was required to act on the request for reconsideration not later than the 30th day of receipt of the request, or by [REDACTED].

37. Respondent acted on the request for reconsideration by paying \$ [REDACTED] on [REDACTED] [REDACTED] which was 201 days late.

38. On [REDACTED], Respondent paid \$ [REDACTED] in interest, which was 40 days late.

Assessment of Sanction

1. Prompt payment of medical bills is imperative to DWC's goal of ensuring that injured employees have access to prompt, high-quality medical care. Failure to promptly pay medical bills harms medical providers economically, increases disputes and exhausts administrative resources in the workers' compensation system. It is a serious violation to fail to timely act on a medical bill involving designated doctor services, which do not require preauthorization and which serve an essential function in the Texas workers' compensation system. Untimely payment can have a chilling effect on a designated doctors' participation in the system.
2. Prompt reimbursement of pharmaceutical expenses is imperative to DWC's goal of ensuring that injured employees have access to prompt, high-quality medical care.
3. Failure to timely pay attorney fees ordered by DWC hinders the division's goal of providing a fair and accessible dispute resolution process and is harmful to the Texas workers' compensation system.
4. Failure to provide income benefits in a timely and cost-effective manner is harmful to injured employees and the Texas workers' compensation system.
5. Failure to take timely action on requests for reconsideration needlessly delays the medical fee dispute resolution process, and hinders the division's goal of ensuring timely, appropriate, and high-quality medical care supporting restoration of the injured employee's physical condition and earning capacity.
6. In assessing the sanction for this case, DWC fully considered the following factors in Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e):
 - the seriousness of the violation, including the nature, circumstances, consequences, extent, and gravity of the prohibited act;
 - the history and extent of previous administrative violations;
 - the violator's demonstration of good faith, including actions it took to rectify the consequences of the prohibited act;
 - the penalty necessary to deter future violations;
 - whether the administrative violation had a negative impact on the delivery of benefits to an injured employee;
 - the history of compliance with electronic data interchange requirements;

- to the extent reasonable, the economic benefit resulting from the prohibited act; and
 - other matters that justice may require, including, but not limited to:
 - PBO assessments;
 - prompt and earnest actions to prevent future violations;
 - self-report of the violation;
 - the size of the company or practice;
 - the effect of a sanction on the availability of health care; and
 - evidence of heightened awareness of the legal duty to comply with the Texas Workers' Compensation Act and DWC rules.
7. DWC found the following factors in Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e) to be aggravating: the seriousness of the violation, including the nature, circumstances, consequences, extent, and gravity of the prohibited act; the history and extent of previous administrative violations; the penalty necessary to deter future violations; whether the administrative violation had a negative impact on the delivery of benefits to an injured employee; to the extent reasonable, the economic benefit resulting from the prohibited act; and other matters that justice may require, including the size of the company or practice and evidence of heightened awareness of the legal duty to comply with the Texas Workers' Compensation Act and DWC rules. Further, two of the late medical bill payments involved DD services, which do not require preauthorization and are essential to the Texas workers' compensation system.
8. DWC is aware of no mitigating factors pursuant to Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e).
9. Respondent acknowledges communicating with DWC about the relevant statute and rule violations alleged; that the facts establish that the administrative violation(s) occurred; and that the proposed sanction is appropriate, including the factors DWC considered under Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e).
10. Respondent acknowledges that, in assessing the sanction, DWC considered the factors in Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e).

Conclusions of Law

1. The commissioner has jurisdiction over this matter pursuant to Tex. Lab. Code §§ 402.001, 402.00111, 402.00114, 402.00116, 402.00128, 414.002, and 414.003.
2. The commissioner has the authority to dispose of this case informally pursuant to Tex. Gov't Code § 2001.056, Tex. Lab. Code §§ 401.021 and 402.00128(b)(6)-(7), and 28 Tex. Admin. Code § 180.26(h) and (i).
3. Respondent has knowingly and voluntarily waived all procedural rights to which it may have been entitled regarding the entry of this order, including, but not limited to, issuance and service of notice of intent to institute disciplinary action, notice of hearing, a public hearing, a proposal for decision, a rehearing by the commissioner, and judicial review.
4. Pursuant to Tex. Lab. Code § 415.021, the commissioner may assess an administrative penalty against a person who commits an administrative violation.
5. Pursuant to Tex. Lab. Code § 415.002(a)(20), an insurance carrier or its representative commits an administrative violation each time it violates a DWC rule.
6. Pursuant to Tex. Lab. Code § 415.002(a)(22), an insurance carrier or its representative commits an administrative violation each time it fails to comply with a provision of the Texas Workers' Compensation Act.

Failure to Timely Act on a Medical Bill

File No. 32553, 32756, 32757, and 33072

7. Pursuant to Tex. Lab. Code § 408.027 and 28 Tex. Admin. Code § 133.240, an insurance carrier is required to timely process and take final action on a completed medical bill within 45 days of receiving the bill.
8. Respondent violated Tex. Lab. Code §§ 408.027; 415.002(a)(20) and (22); and 28 Tex. Admin. Code § 133.240 by failing to pay, reduce, deny, or determine to audit a completed medical bill within 45 days of receiving the bill.

Failure to Timely Respond to a Request for Reimbursement of Pharmaceutical Expenses*File No. 32563*

9. Pursuant to 28 Tex. Admin. Code § 134.504, an insurance carrier shall make appropriate payment to the injured employee or notify the injured employee of a reduction or denial of the payment within 45 days of receipt of the request for reimbursement for prescription drugs or over-the-counter alternatives to prescription drugs prescribed from the injured employee.
10. Respondent violated Tex. Lab. Code § 415.002(a)(20) and 28 Tex. Admin. Code § 134.504 by failing to timely act on a request for reimbursement.

Failure to Timely Pay Attorney's Fees Ordered by DWC*File No. 32661*

11. Pursuant to Tex. Lab. Code §§ 415.021(a) and 415.0035(e), an insurance carrier commits an administrative violation if it violates, fails to comply with, or refuses to comply with a DWC order.
12. Pursuant to 28 Tex. Admin. Code § 152.1(c), insurance carriers are required to pay attorney fees ordered by DWC. The insurance carrier must begin payment out of the approved income benefits by mailing a check to the attorney within seven days after receiving the order. As the insurance carrier pays income benefits, it must pay attorney fees until the fees are completely paid or income benefits cease.
13. Respondent violated Tex. Lab. Code §§ 415.002(a)(20) and (22); 415.021(a); 415.0035(e); and 28 Tex. Admin. Code § 152.1(c) by failing to timely comply with a DWC order to pay attorney fees.

Failure to Timely Pay or Dispute TIBs*File Nos. 32758 and 32831*

14. Pursuant to Tex. Lab. Code §§ 408.081; 409.023; and 415.002(a)(16), an insurance carrier must pay benefits weekly, as and when the benefits accrue, without order from the commissioner.

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15. Pursuant to Tex. Lab. Code §§ 408.081; 408.082; 409.021; and 28 Tex. Admin. Code §§ 124.3 and 124.7, an insurance carrier is required to initiate payment of TIBs no later than the 15th day after it receives written notice of the injury or the seventh day after the accrual date, unless the insurance carrier notifies DWC and the injured employee in writing of its refusal to pay.
16. Respondent violated Tex. Lab. Code §§ 409.021; 415.002(a)(16), (20), and (22); and 28 Tex. Admin. Code §§ 124.3 and 124.7 by failing to timely pay initial TIBs.

Failure to Timely Pay Interest for Indemnity Benefits

File No. 32831

17. Pursuant to Tex. Lab. Code § 408.064 and 28 Tex. Admin. Code § 126.12(b), accrued but unpaid income benefits and interest shall be paid in a lump sum.
18. Respondent violated Tex. Lab. Code § 415.002(a)(20) and (22) and 28 Tex. Admin. Code § 126.12(b) each time Respondent failed to timely pay interest with accrued but unpaid income benefits.

Failure to Timely Act on a Request for Reconsideration

File No. 33148

19. Pursuant to 28 Tex. Admin. Code § 133.250(g), an insurance carrier shall take final action after receipt of a request for reconsideration of a medical bill not later than the 30th day after the date the insurance carrier received the request.
20. Respondent violated Tex. Lab. Code § 415.002(a)(20) and 28 Tex. Admin. Code § 133.250(g) when Respondent failed to act on the request for consideration within 30 days of receipt of the request.

Failure to Timely Pay Interest for Medical Benefits

File Nos. 32757, 33072, and 33148

21. Pursuant to Tex. Lab. Code § 413.019(a) and 28 Tex. Admin. Code §§ 133.240(l) and 134.130(a), an insurance carrier must pay interest on medical bills paid on or after

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the 60th day after the insurance carrier originally received the complete medical bill. The interest payment shall be paid at the same time as the medical bill payment.

22. Respondent violated Tex. Lab. Code §§ 413.019(a), 415.002(a)(20) and (22); and 28 Tex. Admin. Code §§ 133.240(l) and 134.130(a) by failing to pay interest on medical bills paid on or after the 60th day after the insurance carrier originally received the complete medical bill.

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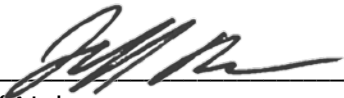
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Order


It is ordered that Indemnity Insurance Company of North America must pay an administrative penalty of \$19,750 within 30 days from the date the Commissioner signs the order.

After receiving an invoice, Indemnity Insurance Company of North America must pay the administrative penalty by electronic transfer using the State Invoice Payment Service, company check, cashier's check, or money order and make it payable to the "State of Texas." Mail the administrative penalty to the Texas Department of Insurance, Attn: DWC Enforcement Section, MC AO-9999, PO Box 12030, Austin, Texas 78711-2030.



Jeff Nelson
Commissioner
TDI, Division of Workers' Compensation

Approved Form and Content:



Tyrus Housh
Staff Attorney, Enforcement
Compliance and Investigations
TDI, Division of Workers' Compensation

Unsworn Declaration

STATE OF Delaware §
§
COUNTY OF New Castle §

Pursuant to the Tex. Civ. Prac. and Rem. Code § 132.001(a), (b), and (d), my name is Daniel S. Hawthorne. I hold the position of AVP, NA Claims Compliance Manager and am the authorized representative of Indemnity Insurance Company of North America. My business address is:

1 Beaver Valley Road, Wilmington, New Castle, Delaware, 19803.
(Street) (City) (County) (State) (ZIP Code)

I am executing this declaration as part of my assigned duties and responsibilities. I declare under penalty of perjury that the facts stated in this document are true and correct.

Daniel S. Hawthorne
Declarant

Executed on January 4, 2024.