

No. 2024-8905

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

Date: 10/9/2024

Subject Considered:

LM Insurance Corporation
PO Box 259015
Plano, Texas 75025-9015

Consent Order
DWC Enforcement File No. 34307

General remarks and official action taken:

This is a consent order with LM Insurance Corporation, (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 multiple lines of insurance in Texas, including workers' compensation/employers' liability insurance.
2. Respondent was classified as "average" tier in the 2022, 2020, and 2018 Performance Based Oversight (PBO) assessments.

Failure to Pay a Medical Benefit by Check or Other Readily Negotiable Instrument

3. On [REDACTED], a health care provider (HCP) provided medical services to an injured employee.
4. On [REDACTED], Respondent received properly completed medical bills for \$ [REDACTED] from the HCP.
5. Respondent was required to act on the bills within 45 days of receiving it. The deadline to act was [REDACTED].
6. Respondent issued two virtual credit card payments totaling \$ [REDACTED] to the HCP on [REDACTED], which would have been 42 days late for a proper payment method.
7. Respondent was required to make all medical benefit payments by check or other readily negotiable instrument. The virtual credit card is not a negotiable instrument.
8. Respondent later issued a check in the amount of \$ [REDACTED], which included interest, on [REDACTED], which was 860 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 and receive prompt, high-quality medical care.
2. 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;
 - 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.
3. 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 amount at issue and the lateness of the payments; Respondent's extensive disciplinary history regarding late medical bill payments and history of compliance with electronic data interchange requirements; the economic benefit to Respondent over two years; and Respondent's size and experience in the Texas workers' compensation system.
 4. DWC is aware of no mitigating factors pursuant to Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e).
 5. 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).
 6. 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, 402.00114, 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) and (22), an insurance carrier or its representative commits an administrative violation each time it violates a DWC statute or rule.

Failure to Timely Pay a Medical Benefit by Check or Other Readily Negotiable Instrument

6. 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.
7. Pursuant to 28 Tex. Admin. Code. § 124.5(a), the insurance carrier shall make all payments other than income or death benefits by check or other readily negotiable instrument,¹ or electronic transfer by mutual agreement to an account designated in writing by the payee.
8. Pursuant to 28 Tex. Admin. Code. § 124.6(a), electronic transfer payments may be made by access card, which means any card or other payment method that may be used by a claimant to initiate an electric fund transfer *from an insurance carrier's bank account*. The term "access card" does not include funds that are not linked to an insurance carrier's bank account.
9. Respondent violated Tex. Lab. Code § 408.027 and 28 Tex. Admin. Code §§ 124.5(a) and 133.240 when it failed to timely issue a check or other readily negotiable instrument to the HCP for services rendered.

¹ See Texas Business and Commerce Code § 9.102(47) defining an instrument as a negotiable instrument or any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in ordinary course of business is transferred by delivery with any necessary indorsement or assignment. The term does not include. . . (ii) letters of credit, (iii) writings that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card.

Order

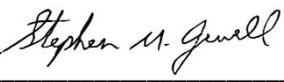
It is ordered that LM Insurance Corporation must pay an administrative penalty of \$5,500 within 30 days from the date the Commissioner signs the order.

After receiving an invoice, LM Insurance Corporation 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:



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