

No. 2025-9318

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

Date: 5/29/2025

Subject Considered:

Accident Fund Insurance Company of America
PO Box 40790
Lansing, Michigan 48901-7990

Consent Order
DWC Enforcement File No. 36906

General remarks and official action taken:

This is a consent order with Accident Fund Insurance Company of 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 multiple lines of insurance in Texas, including workers' compensation/employers' liability insurance.
2. Respondent was classified as "average" tier in the 2020, 2022, and 2024 Performance Based Oversight (PBO) assessments.

DWC Audit No. IP-25-101

3. On [REDACTED], DWC initiated DWC Audit No. IP-25-101 to determine whether Respondent complied with the Texas Labor Code and related rules on the timely payment of initial temporary income benefits (TIBs) and timely and accurate submission of initial payment information to DWC.
4. The audit examined TIBs payments that Respondent reported issuing between [REDACTED], and [REDACTED]. DWC identified 24 initial TIBs payments for audit. A total of three initial TIBs payments failed to meet selection criteria and were dropped from the audit sample. The remaining 21 payments were reviewed to determine Respondent's compliance.
5. The audit focused on the timely payment of initial TIBs and electronic data interchange (EDI) reporting. The EDI portion of the audit focused on the timely reporting of initial TIBs payments and accuracy of six data elements reported to DWC (First Date of Disability, Date of First Written Notice, TIBs Accrual Date, TIBs Start Date, TIBs Through Date, and Initial TIBs Payment Date).

Failure to Timely Pay Initial TIBs

6. Respondent failed to timely initiate 33.3% of examined TIBs payments (7 out of 21).
7. Specifically, Respondent paid injured employees less than six days late in three instances, between six and 15 days late in three instances, and between 16 and 30 days late in one instance.

Failure to Timely or Accurately Report EDI Data to DWC

8. Respondent failed to timely report initial TIBs payments for 61.9% of examined payments (13 out of 21).
9. Respondent failed to accurately report the First Date of Disability for 19.05% of examined payments (4 out of 21).
10. Respondent failed to accurately report the Date of First Written Notice for 9.5% of examined payments (2 out of 21).

11. Respondent failed to accurately report the initial TIBs Accrual Date for 23.8% of examined payments (5 out of 21).
12. Respondent failed to accurately report the initial TIBs Start Date for 9.5% of examined payments (2 out of 21).
13. Respondent failed to accurately report the initial TIBs Through Date for 9.5% of examined payments (2 out of 21).
14. Respondent failed to accurately report the Initial TIBs Payment Date for 9.5% of examined payments (2 out of 21).

Assessment of Sanction

1. Failure to provide income benefits in a timely and cost-effective manner is harmful to injured employees and the Texas workers' compensation system.
2. Timely submission of information and documents to DWC is imperative for the implementation and enforcement of the Texas Workers' Compensation Act.
3. DWC relies on the claims information insurance carriers submit for many purposes, including protecting injured employees, providing required information and reports to the Legislature, ensuring compliance with the Texas Labor Code and DWC rules, and detecting patterns and practices in claim handling that provoke improvements in the Texas workers' compensation system.
4. 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 EDI 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.

5. DWC found the following factors in Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e) to be aggravating:
- a. the seriousness of the violation, including the 33.3% noncompliance rate for TIBs delivery up to 25 days late;
 - b. Respondent's pattern of similar administrative violations, including three consent orders for previous TIBs audits, and four consent orders for other late TIBs violations;
 - c. the penalty necessary to deter future violations;
 - d. the negative impact on the delivery of benefits to injured employees; and
 - e. Respondent's history of non-compliance with EDI requirements (below):

Case No.	Year	Initial Pay Noncompliance Rate	EDI Non-compliance Rates					
			Timely Report TIBs Data	Date of Disability	First Written Notice Date	Initial TIBs Start Date	Initial TIBs Through Date	Initial TIBs Payment Date
6643	2014	26.47%	17.65%	29.41	20.59%	2.94%	8.82%	11.76%
13249	2018	23%	3%	6%	3%	—	3%	—
16634	2018	45%	37%	21%	14%	11%	16%	16%
36906	2025	33%	61.9%	19%	9.5%	9.5%	9.5%	9.5%

- f. Respondent's status as the 24th largest workers compensation insurance carrier in Texas that has a heightened awareness of the legal duty to comply with the Texas Workers' Compensation Act and DWC rules.

6. As a matter of justice, DWC considered as mitigating the fact that this matter results from a DWC audit and not a system participant complaint pursuant to Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e).
7. 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).
8. 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, 409.021, 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 Pay Initial TIBs

7. Pursuant to Tex. Lab. Code § 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.
8. Respondent violated Tex. Lab. Code §§ 409.021; 415.002(a)(20) and (22); and 28 Tex. Admin. Code §§ 124.3 and 124.7 each time Respondent failed to timely initiate payment of TIBs.

Failure to Timely or Accurately Report EDI Data to DWC

9. Pursuant to 28 Tex. Admin. Code §§ 124.2(a) and (b), insurance carriers are required to notify DWC and the injured employee of actions taken or events occurring in a claim, as specified by rule in the form and manner DWC prescribes. Inherent in this duty is the requirement that insurance carriers report this information accurately.
10. Respondent violated Tex. Lab. Code § 415.002(a)(20) and 28 Tex. Admin. Code §§ 124.2(a) and (b) each time Respondent failed to timely or accurately notify DWC and the injured employee of actions Respondent took or events that occurred in a claim, as specified by rule in the form and manner DWC prescribed.

Order

It is ordered that Accident Fund Insurance Company of America must pay a \$7,500 administrative penalty within 30 days from the date the Commissioner signs the order.

After receiving an invoice, Accident Fund Insurance Company of 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, P.O. Box 12030, Austin, Texas 78711-2030.



Jeff Nelson
Commissioner
TDI, Division of Workers' Compensation

Approved Form and Content:



Connor Ambrosini
Staff Attorney, Enforcement
Compliance and Investigations
TDI, Division of Workers' Compensation

Unsworn Declaration

STATE OF Michigan §
§
COUNTY OF Ingham §

Pursuant to the Tex. Civ. Prac. and Rem. Code § 132.001(a), (b), and (d), my name is Joe Wrozek. I hold the position of Compliance Advisor and am the authorized representative of Accident Fund Insurance Company of America. My business address is:

200 N. Grand Ave., Lansing, Ingham, MI, 48901.
(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.



Declarant

Executed on May 15, 2025.