

No. 2019 6099

OFFICIAL ORDER
of the
TEXAS COMMISSIONER OF WORKERS' COMPENSATION

Date: SEP 30 2019

Subject Considered:

LIBERTY MUTUAL INSURANCE COMPANY
175 Berkeley Street
Boston, Massachusetts 02116-5066

CONSENT ORDER
TDI-DWC ENFORCEMENT FILE NO. 21517

General remarks and official action taken:

The commissioner of workers' compensation (commissioner) considers whether disciplinary action should be taken against Liberty Mutual Insurance Company (Liberty Mutual).

WAIVER

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

FINDINGS OF FACT

The commissioner makes the following findings of fact:

1. Liberty Mutual 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 types of insurance including workers' compensation/employers' liability insurance in the state of Texas.
2. Liberty Mutual was classified as "average" tier in the 2007, 2009, 2010, 2012, and 2014 Performance Based Oversight (PBO) assessments. Liberty Mutual was not selected to be tiered in the 2016 or 2018 PBO assessments.

DWC AUDIT MBP-19-110

3. On [REDACTED] DWC initiated an audit to determine whether Liberty Mutual was complying with the Texas Labor Code and related rules regarding timely payment of initial medical bills, and the timely and accurate reporting of medical records to the Texas Department of Insurance, Division of Workers' Compensation (DWC).

4. The audit examined initial medical bills submitted to DWC between [REDACTED] and [REDACTED]. DWC identified 100 bills for audit. The 100 bills were reviewed to determine compliance.
5. The audit focused on timeliness of medical bill processing and Electronic Data Interchange (EDI) reporting. The EDI audit focused on timeliness of reporting the medical bill payment data and the accuracy of seven data elements (Rendering Line Provider NPI Number, Rendering Line Provider State License Number, Referring Provider Last/Group Name, Referring Provider State License Number, Billing Provider FEIN, Date Bill Received, and Date Paid or Denied).

FAILURE TO TIMELY PAY MEDICAL BILLS

6. Liberty Mutual failed to timely process 6% of the initial medical bills within 45 days of receipt (6 out of 100).
7. Specifically, Liberty Mutual issued payments to health care providers between one and five days late in four instances, and between six and 15 days late in two instances.

FAILURE TO TIMELY OR ACCURATELY SUBMIT EDI MEDICAL BILL PAYMENT INFORMATION TO DWC

8. Liberty Mutual failed to accurately report the Rendering Line Provider NPI Numbers for 1% of the bills examined (1 out of 100).
9. Liberty Mutual failed to accurately report the Referring Provider State License Numbers for 15% of the bills examined (15 out of 100).
10. Liberty Mutual failed to accurately report the Referring Provider Last/Group Names for 8% of the bills examined (8 out of 100).
11. Liberty Mutual failed to accurately report the Referring Provider State License Numbers for 9% of the bills examined (9 out of 100).
12. Liberty Mutual failed to accurately report the Dates of Bill Receipt for 2% of the bills examined (2 out of 100).

ASSESSMENT OF SANCTION

13. Prompt payment of medical bills is imperative to DWC's goal of ensuring that injured employees have access to prompt, high-quality medical care.
14. DWC relies on the medical bill payment information submitted by the insurance carriers for a variety of purposes, including, but not limited to, providing required information and reports to the legislature; ensuring that health care providers and insurance carriers comply with DWC's medical policies and fee guidelines; creating medical fee guidelines, adopting

- treatment and return-to-work guidelines; and detecting patterns and practices in medical charges, payments, and protocols.
15. In assessing the sanction for this case, DWC appropriately and fully considered the following factors set forth 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 demonstrated good faith of the violator, including actions taken to rectify the consequences of the prohibited act;
 - the penalty necessary to deter future violations;
 - whether the administrative violation has negative impact on the delivery of benefits to an injured employee;
 - the history of compliance with EDI requirements;
 - other matters that justice may require, including but not limited to:
 - PBO assessments;
 - the promptness and earnestness of 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; and
 - to the extent reasonable, the economic benefit resulting from the prohibited act.
16. In assessing the sanction for this case, DWC found the following factors set forth 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 penalty necessary to deter future violations; and other matters that justice may require including whether the administrative violation has negative impact on the delivery of benefits to an injured employee.
17. In assessing the sanction for this case, DWC found the following factors set forth in TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e) to be mitigating: the demonstrated good faith of the violator, including actions taken to rectify the consequences of the prohibited act, as the company has transitioned to a new bill review vendor.
18. Liberty Mutual acknowledges that DWC and Liberty Mutual have communicated regarding the relevant statutes and rules violated; the facts establishing that the administrative violation occurred; and the appropriateness of the proposed sanction, including how DWC considered the factors under TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e).

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CONCLUSIONS OF LAW

The commissioner makes the following 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, 414.003, and 414.004.
2. The commissioner has authority to informally dispose of this matter as set forth under TEX. GOV'T CODE § 2001.056, TEX. LAB. CODE § 402.00128(b)(7), and 28 TEX. ADMIN. CODE § 180.26(h).
3. Pursuant to TEX. LAB. CODE § 415.021, the commissioner may assess an administrative penalty against a person who commits an administrative violation.
4. 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.
5. 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 the Texas Workers' Compensation Act.
6. Pursuant to TEX. LAB. CODE § 408.027 and 28 TEX. ADMIN. CODE § 133.240, insurance carriers are required to timely process and take final action on a properly completed medical bill within 45 days of receipt of the bill.
7. Liberty Mutual violated TEX. LAB. CODE §§ 415.002(a)(20) and 415.002(a)(22) each time it failed to pay, reduce, deny, or determine to audit a properly completed medical bill within 45 days of receipt of the bill.
8. Pursuant to 28 TEX. ADMIN. CODE § 134.804(d), insurance carriers are responsible for the timely and accurate submission of medical EDI records.
9. Liberty Mutual violated TEX. LAB. CODE § 415.002(a)(20) each time it failed to timely or accurately submit medical EDI records to DWC.

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ORDER

Liberty Mutual Insurance Company is ORDERED to pay an administrative penalty of \$10,000 within 30 days from the date of this Order.

The administrative penalty must be paid by company check, cashier's check, or money order made payable to the "State of Texas." Mail the administrative penalty to the Texas Department of Insurance, Attn: DWC Enforcement, MC 9999, P.O. Box 149104, Austin, Texas, 78714-9104.

Cassie Brown
Commissioner of Workers' Compensation

Approved as to Form and Content:

Amy Norman
Staff Attorney, DWC Enforcement
Texas Department of Insurance

