

No. 2019 6165

OFFICIAL ORDER
of the
TEXAS COMMISSIONER OF WORKERS' COMPENSATION

Date: NOV 26 2019

Subject Considered:

INSURANCE COMPANY OF THE WEST
P.O. Box 509039
San Diego, California 92150-9039

CONSENT ORDER
TDI-DWC ENFORCEMENT FILE NO. 21084

General remarks and official action taken:

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

WAIVER

Insurance Company of the West acknowledges that the Texas Labor Code and other applicable laws provide certain rights. Insurance Company of the West 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. Insurance Company of the West 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. Insurance Company of the West was classified as "average" tier in the 2018 Performance Based Oversight (PBO) assessment. Insurance Company of the West was not selected to be tiered in the 2007, 2009, 2010, 2012, 2014, or 2016 PBO assessments.

DWC AUDIT MBP-19-107

3. On January 9, 2019, the Texas Department of Insurance, Division of Workers' Compensation (DWC) initiated an audit to determine whether Insurance Company of the West 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 DWC.

4. The audit examined initial medical bills submitted to DWC between September 1, 2018, and November 30, 2018. 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. Insurance Company of the West failed to timely process 11% of the initial medical bills within 45 days of receipt (11 out of 100).
7. Specifically, Insurance Company of the West issued payments to health care providers between one and five days late in five instances, between six and 15 days late in two instances, and between 16 and 30 days late in four instances.

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

8. Insurance Company of the West failed to accurately report the Rendering Line Provider NPI Number for 1% of the bills examined (1 out of 100).
9. Insurance Company of the West failed to accurately report the Referring Provider State License Number for 4% (4 out of 100).
10. Insurance Company of the West failed to accurately report the Referring Provider Last/Group Name for 24% of the bills examined (24 out of 100).
11. Insurance Company of the West failed to accurately report the Referring Provider State License Number for 18% (18 out of 100).
12. Insurance Company of the West failed to accurately report the Date Bill Received for 3% of the bills examined (3 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 history and extent of previous administrative violations, as the insurance carrier does not have a history of previous violations; the demonstrated good faith of the violator, including actions taken to rectify the consequences of the prohibited act, as all late medical bill payments belong to one claim, which was the insurance carrier's first catastrophic claim in the state of Texas; and the insurance carrier has instituted new training practices with its third-party billing vendor intended to accurately and timely report all EDI data.
18. Insurance Company of the West acknowledges that DWC and Insurance Company of the West 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).

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. Insurance Company of the West 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. Insurance Company of the West violated TEX. LAB. CODE § 415.002(a)(20) each time it failed to timely or accurately submit medical EDI records to DWC.

ORDER

Insurance Company of the West is ORDERED to pay an administrative penalty of \$13,500 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.

C Brown

Cassie Brown *CB*
Commissioner of Workers' Compensation

Approved as to Form and Content:

A Norman

Amy Norman
Staff Attorney, DWC Enforcement
Texas Department of Insurance

