

No. **2021-6893**

Confidential Information Redacted
Texas Labor Code §§402.083 and 402.092

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

Date: 7/1/2021

Subject Considered:

Amtrust Insurance Company of Kansas Incorporated
P.O. Box 650767
Dallas, Texas 75265-0767

Consent Order
DWC Enforcement File No. 25916

General remarks and official action taken:

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

Waiver

Amtrust Insurance acknowledges that the Texas Labor Code and other applicable laws provide certain rights. Amtrust Insurance 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. Amtrust Insurance 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. Amtrust Insurance was not selected to be tiered in the 2007, 2009, 2010, 2012, 2014, 2016, or 2018 Performance Based Oversight (PBO) assessments.

DWC Audit No. MBP-20-104

3. On [REDACTED], DWC initiated DWC Audit No. MBP-20-104 to determine whether Amtrust Insurance complied with the Texas Labor Code and related rules on the timely processing of initial medical bills and the timely and accurate reporting of electronic data interchange (EDI) medical bill payment data to DWC.
4. The audit examined initial medical bills submitted to DWC between [REDACTED], [REDACTED], and [REDACTED]. DWC identified 100 bills for audit. A total of two bills failed to meet selection criteria and were dropped from the audit sample. The remaining 98 bills were reviewed to determine Amtrust Insurance's compliance.
5. The audit focused on the timely and accurate processing of initial medical bills and EDI reporting. The EDI portion of the audit focused on the timely and accurate reporting of medical bill payment data and seven data elements reported to DWC (Rendering Line Provider National Provider Identifier Number (NPI), Rendering Line Provider State License Number, Referring Provider Last/Group Name, Referring Provider State License Number, Billing Provider Federal Employer Identification Number, Date Bill Received, and Date Bill Paid or Denied).

Failure to Timely Pay Medical Bills

6. Amtrust Insurance failed to timely process 13% of the initial medical bills within 45 days of receiving the bill (13 out of 98).
7. Specifically, Amtrust Insurance issued payments to health care providers less than six days late in four instances, between six and 15 days late in two instances, between 16 and 30 days late in four instances, and over 30 days late in three instances.

Failure to Timely or Accurately Report EDI Medical Bill Payment Data to DWC

8. Amtrust Insurance failed to timely report the Rendering Line Provider NPI for 2% of the examined bills (two out of 98).

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9. Amtrust Insurance failed to accurately report the Rendering Line Provider State License Number for 9% of the examined bills (nine out of 98).
10. Amtrust Insurance failed to accurately report the Referring Provider Last/Group Name for 6% of the examined bills (six out of 98).
11. Amtrust Insurance failed to accurately report the Referring Provider State License Number for 7% of the examined bills (seven out of 98).
12. Amtrust Insurance failed to accurately report the Date Bill Received for 8% of the examined bills (eight out of 98).
13. Amtrust Insurance failed to accurately report the Date Bill Paid or Denied for 9% of the examined payments (nine out of 98).

Assessment of Sanction

1. Prompt processing and payment of medical bills is imperative to DWC's goal of ensuring that injured employees have access to prompt, high-quality medical care.
2. DWC relies on medical bill payment information insurance carriers submit for many 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.
3. DWC relies on claims information insurance carriers submit for many purposes, including, but not limited to, providing required information and reports to the Legislature, ensuring that insurance carriers comply with the Texas Labor Code and DWC rules, and detecting patterns and practices in actions taken on claims.
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: 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; whether the administrative violation had a negative impact on the delivery of benefits to an injured employee; and other matters that justice may require, including the size of the company or practice.
6. DWC found the following factors in TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e) to be mitigating: other matters that justice may require, including, but not limited to, prompt and earnest actions to prevent future violations.
7. Amtrust Insurance acknowledges it communicated with DWC about the relevant statutes and rules it violated; the facts establish that the administrative violation occurred; and 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. Amtrust Insurance 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, and 414.002.
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)(7), and 28 TEX. ADMIN. CODE § 180.26(h).
3. Amtrust Insurance 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.
7. 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 receiving the bill.
8. Amtrust Insurance violated TEX. LAB. CODE § 415.002(a)(20) and (22) each time it failed to timely process a properly completed medical bill within 45 days of receiving the bill.
9. Pursuant to 28 TEX. ADMIN. CODE § 134.804(d), insurance carriers are responsible for timely and accurately submitting medical EDI records to DWC.
10. Amtrust Insurance violated TEX. LAB. CODE § 415.002(a)(20) each time it failed to submit timely and accurate medical EDI records to DWC.

Order

It is ordered that Amtrust Insurance Company of Kansas Incorporated must pay an administrative penalty of \$17,500 within 30 days from the date of this order. Amtrust Insurance Company of Kansas Incorporated must pay the administrative penalty by 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.



Cassie Brown
Commissioner of Workers' Compensation

Approved Form and Content:



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

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Affidavit

STATE OF OH §

COUNTY OF Cuyahoga §

Before me, the undersigned authority, personally appeared Barry W. Moses
who being by me duly sworn, deposed as follows:

"My name is Barry W. Moses. I am of sound mind, capable of making this statement, and have personal knowledge of these facts which are true and correct.

I hold the office of VP, Sr. Regulatory Counsel & Asst. Secretary and am the authorized representative of AmTrust Insurance Company of Kansas Incorporated. I am duly authorized by the organization to execute this statement.

Amtrust Insurance Company of Kansas Incorporated has knowingly and voluntarily entered into this consent order and agrees with and consents to the issuance and service of this consent order."

[Signature]
Affiant

SWORN TO AND SUBSCRIBED before me on May 25th, 2021.

(NOTARY SEAL)



TIFFANY HUNTER
NOTARY PUBLIC
STATE OF OHIO
My Commission Expires
December 22, 2021

[Signature]
Signature of Notary Public

Tiffany Hunter
Printed Name of Notary Public

12/22/21
Commission Expiration

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