

No. **2022-7589**

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

**Date: 11/2/2022**

**Subject Considered:**

City of Odessa  
P.O. Box 4353  
Odessa, Texas 79760-4353

Consent Order  
DWC Enforcement File Nos. 25643 and 25913

**General remarks and official action taken:**

This is a consent order with City of Odessa (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 is a self-insured government entity that provides workers' compensation benefits to its employees in accordance with Tex. Lab. Code Ch. 504.
2. Respondent was not selected to be tiered in the 2007, 2009, 2010, 2012, 2014, 2016, 2018, or 2020 Performance Based Oversight (PBO) assessments.

DWC Audit No. IBA-20-106

*File No. 25643*

3. On [REDACTED] DWC initiated DWC Audit No. IBA-20-106 to determine whether Respondent complied with the Texas Labor Code and related rules on the timely payment of lifetime income benefits (LIBs) and death benefits, as well as timely submitting claim data to DWC.
4. The audit examined death benefit payments that Respondent reported issuing between [REDACTED] and [REDACTED] DWC identified three initial death benefit claims for audit to determine Respondent's compliance.
5. The audit focused on the accuracy of Respondent's payment of death benefits, as well as timely submitting claim data to DWC.

*Failure to Timely Pay Accurate Death Benefits*

6. Respondent failed to timely pay accurate death benefits for 33% of examined payments (one out of three).
7. Specifically, Respondent paid beneficiaries over 34 weeks late in one instance.

DWC Audit No. MBP-20-106

*File No. 25913*

8. On [REDACTED] DWC initiated DWC Audit No. MBP-20-106 to determine whether Respondent complied with the Texas Labor Code and related rules on the timely processing of initial medical bills and the timely and accurate reporting of EDI medical bill payment data to DWC.
9. The audit examined initial medical bills submitted to DWC between [REDACTED] and [REDACTED] DWC identified 100 bills for audit, which were reviewed to determine Respondent's compliance.
10. 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*

11. Respondent failed to timely process 8% of the initial medical bills within 45 days of receiving the bill (eight out of 100).
12. Specifically, Respondent paid health care providers between one and five days late in five instances and between six and 15 days late in three instances.

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

13. Respondent failed to accurately report the Rendering Line Provider State License Number for 5% of the examined bills (five out of 100).
14. Respondent failed to accurately report the Referring Provider Last/Group Name for 4% of the examined bills (four out of 100).
15. Respondent failed to accurately report the Referring Provider State License Number for 4% of the examined bills (four out of 100).
16. Respondent failed to accurately report the Date Bill Received for 9% of the examined bills (nine out of 100).
17. Respondent failed to accurately report the Date Bill Paid or Denied for 2% of the examined payments (two out of 100).
18. Respondent failed to timely report the Date Bill Paid or Denied for 8% of the examined payments (eight out of 100).

**Assessment of Sanction**

1. Failure to provide death benefits in a timely and cost-effective manner is harmful to injured employees, beneficiaries, and the Texas workers' compensation system.

2. 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.
3. 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.
4. 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.
5. 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 or their beneficiaries;
  - 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.

6. 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; the penalty necessary to deter future violations; whether the administrative violation had a negative impact on the delivery of benefits to an injured employee or their beneficiaries; the history of compliance with EDI requirements; and other matters that justice may require, including the size of the company or practice.
7. DWC found the following mitigating factors pursuant to Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e): In File No. 25643, Respondent has had minimal death benefit cases historically, and in response to the audit results put in place a training program and calendaring system so that Respondent can self-audit death benefits cases in the future. Further, the benefits in the case at issue were paid to the Subsequent Injury Fund (SIF) and not owed to a beneficiary.
8. 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).
9. 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 Accurate Death Benefits*

7. Pursuant to Tex. Lab. Code § 408.061(d), a weekly death benefit may not exceed 100% of the state average weekly wage rounded to the nearest whole dollar.
8. Pursuant to Tex. Lab. Code §§ 408.081, 409.023, and 415.002(a)(16), an insurance carrier must pay benefits weekly, as and when the benefits accrue, without order from the commissioner.
9. Pursuant to Tex. Lab. Code § 408.181(a) and (b), an insurance carrier must pay accurate death benefits to a legal beneficiary. The amount of a death benefit is equal to 75% of the employee's average weekly wage.
10. Pursuant to 28 Tex. Admin. Code § 124.2(e)(4)-(6), the insurance carrier must notify DWC and the claimant of any changes, resumptions, or terminations involving death benefits.
11. 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 death benefits no later than the 15th day after it receives written notice of the injury or the seventh day after the accrual date. It must also notify DWC in writing of its initiation of income or death benefit payments in the form and manner required by DWC rules.
12. Pursuant to 28 Tex. Admin. Code § 132.17(f), an insurance carrier must initiate payment of death benefits to eligible claimants. If the insurance carrier believes a

claimant is not eligible, it must file a notice of dispute of eligibility in the form and manner required by DWC rules.

13. Respondent violated Tex. Lab. Code §§ 415.002(a)(16), (20), and (22) by failing to timely and accurately pay death benefits.

*Failure to Timely Pay Medical Bills*


14. 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.
15. Respondent violated Tex. Lab. Code §§ 415.002(a)(20) and 415.002(a)(22) each time it failed to timely process a properly completed medical bill within 45 days of receiving the bill.

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


16. Pursuant to 28 Tex. Admin. Code § 134.804(d), insurance carriers are responsible for timely and accurately submitting medical EDI records to DWC.
17. Respondent violated Tex. Lab. Code § 415.002(a)(20) by failing to submit timely and accurate medical EDI records to DWC.

**Order**

It is ordered that City of Odessa must pay an administrative penalty of \$7,500 within 30 days from the date of this order. City of Odessa 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.

  
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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 \_\_\_\_\_ §  
§  
COUNTY OF \_\_\_\_\_ §

Pursuant to the Tex. Civ. Prac. and Rem. Code § 132.001(a), (b), and (d), my name is DAVID SCHERZY. I hold the position of ADJUSTOR and am the authorized representative of City of Odessa. My business address is:

3910 KENWOOD DR, ODESSA, ECTOR TX, 79762

(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.

*David Scherzy*

Declarant

Executed on 10/13, 2022.