

No. 2020-6309

OFFICIAL ORDER
of the
TEXAS COMMISSIONER OF WORKERS' COMPENSATION

Date: 4-3-2020

Subject Considered:

CONTINENTAL WESTERN INSURANCE COMPANY
P.O. Box 1594
Des Moines, Iowa 50306-1594

CONSENT ORDER
TDI-DWC ENFORCEMENT FILE NO. 20273

General remarks and official action taken:

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

WAIVER

Continental Western acknowledges that the Texas Labor Code and other applicable laws provide certain rights. Continental Western 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. Continental Western 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, including workers' compensation/employers' liability.
2. Continental Western 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-19-103

3. On [REDACTED], the Texas Department of Insurance, Division of Workers' Compensation (DWC) initiated DWC Audit No. MBP-19-103 to determine whether Continental Western was complying with the Texas Labor Code and related rules regarding the timely payment of medical bills and the timely and accurate submission of initial payment information to DWC.
4. The audit examined medical bill payments or denials reported to have been issued between [REDACTED], and [REDACTED]. DWC identified 100 bills for audit. Four

bills failed to meet selection criteria and were dropped from the audit sample. The remaining 96 payments were reviewed to determine Continental Western's compliance.

5. The audit focused on timeliness of payment of initial medical bills and Electronic Data Interchange (EDI) reporting. The EDI audit focused on timeliness of reporting initial bill payments and the accuracy of seven data elements reported to DWC (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 Bill Paid or Denied).

FAILURE TO TIMELY PAY OR DISPUTE MEDICAL BILLS

6. Continental Western failed to timely pay or dispute medical bills for 15% of payments examined (14 out of 96).
7. Specifically, Continental Western failed to timely deny or issue payments to health care providers between six and 15 days late in three instances, between 16 and 30 days late in five instances, and over 30 days late in four instances (32, 39, 39, and 81 days late).

FAILURE TO SUBMIT TIMELY AND ACCURATE INFORMATION REGARDING THE PAYMENT OR DISPUTE OF MEDICAL BILLS TO DWC

8. Continental Western failed to timely report the Rendering Line Provider NPI Number to DWC for 5% of payments examined (5 out of 96).
9. Continental Western failed to accurately report the Rendering Line Provider State License Number for 5% of payments examined (5 out of 96).
10. Continental Western failed to accurately report the Referring Provider Last/Group Name for 9% of payments examined (9 out of 96).
11. Continental Western failed to accurately report Date Bill Received for 42% of payments examined (40 out of 96).
12. Continental Western failed to accurately report Date Bill Paid or Denied for 3% of payments examined (3 out of 96).

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 claims 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 insurance carriers comply with the Texas Labor Code and DWC rules, and detecting patterns and practices in actions taken on claims.

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 electronic data interchange 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 penalty necessary to deter future violations and 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 and other matters that justice may require, including but not limited to the promptness and earnestness of actions to prevent future violations.
18. Continental Western acknowledges that it has communicated with DWC 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).
19. Continental Western acknowledges that, in assessing the sanction, DWC considered the factors set forth in 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:

Confidential Information Redacted
 Texas Labor Code §§402.083 & 402.092

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, and 414.003.
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 a provision of the Texas Workers' Compensation Act.
6. Pursuant to TEX. LAB. CODE § 408.027(b), the insurance carrier must pay, reduce, deny, or determine to audit the health care provider's claim not later than the 45th day after the date of receipt by the insurance carrier of the provider's claim.
7. Pursuant to 28 TEX. ADMIN. CODE § 133.240(a), an insurance carrier shall take final action after receipt of a complete medical bill not later than the 45th day after the date the insurance carrier received a complete medical 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. Continental Western violated TEX. LAB. CODE §§ 415.002(a)(20), 415.002(a)(22), and 408.027(b), and 28 TEX. ADMIN. CODE §§ 133.240(a) each time it failed to timely initiate payment of a medical bill.
10. 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 on, or events occurring in a claim as specified by rule in the form and manner prescribed by DWC. Inherent in this duty is the requirement that insurance carriers report this information accurately.
11. Continental Western violated TEX. LAB. CODE § 415.002(a)(20) and 28 TEX. ADMIN. CODE §§ 124.2(a) and (b) and 134.804(d) each time it failed to accurately notify DWC of actions taken on, or events occurring in a claim as specified by rule in the form and manner prescribed by DWC.

ORDER

Confidential Information Redacted
Texas Labor Code §§402.083 & 402.092

COMMISSIONER'S ORDER
Continental Western Insurance Company
TDI-DWC Enforcement File No. 20273
Page 5 of 6

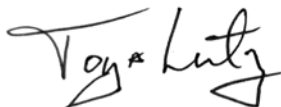
Continental Western Insurance Company is ORDERED to pay an administrative penalty of \$4,550 within 30 days from the date of this Order.

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:



Toya Lutz
Staff Attorney, DWC Enforcement
Texas Department of Insurance

Confidential Information Redacted
Texas Labor Code §§402.083 & 402.092

COMMISSIONER'S ORDER
Continental Western Insurance Company
TDI-DWC Enforcement File No. 20273
Page 6 of 6

AFFIDAVIT

STATE OF Texas §
 §
COUNTY OF Dallas §

Before me, the undersigned authority, personally appeared the affiant, who being by me duly sworn, deposed as follows:

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

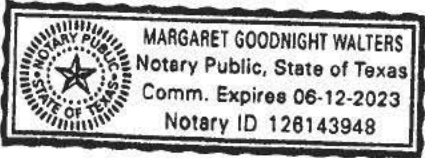
I hold the office of Sr. VP-Claims, and am the authorized representative of Continental Western Insurance Company. I am duly authorized by said organization to execute this statement.

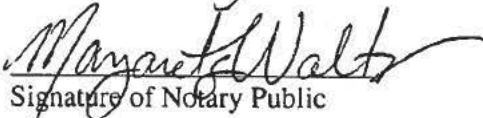
Continental Western Insurance Company waives rights provided by the Texas Labor Code and other applicable laws, and acknowledges the jurisdiction of the Texas commissioner of workers' compensation.

Continental Western Insurance Company is voluntarily entering into this consent order. Continental Western Insurance Company consents to the issuance and service of this consent order."


Affiant

SWORN TO AND SUBSCRIBED before me on February 11, 2020
(NOTARY SEAL)




Signature of Notary Public

Margaret G. Walters
Printed Name of Notary Public

6/12/2023
Commission Expires

Confidential Information Redacted
Texas Labor Code §§402.083 & 402.092