

No. 2020-6330

OFFICIAL ORDER
of the
TEXAS COMMISSIONER OF WORKERS' COMPENSATION

Date: 04-29-2020

Subject Considered:

NEW HAMPSHIRE INSURANCE COMPANY
175 Water Street, 18th Floor
New York City, New York 10038

CONSENT ORDER
TDI-DWC ENFORCEMENT FILE NO. 23586

General remarks and official action taken:

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

WAIVER

New Hampshire acknowledges that the Texas Labor Code and other applicable laws provide certain rights. New Hampshire 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. New Hampshire 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 insurance in the state of Texas.
2. New Hampshire was classified as "poor" tier in the 2007 Performance Based Oversight (PBO) assessment. New Hampshire was classified as "average" tier in the 2009, 2010, 2012, 2014, 2016, and 2018 PBO assessments.

FAILURE TO TIMELY NOTIFY OF DECISION FOR PREAUTHORIZATION

3. On [REDACTED], New Hampshire received a request for preauthorization from the health care provider for [REDACTED] to be provided to the injured employee. The requested services required preauthorization per 28 TEX. ADMIN. CODE § 134.600.
4. New Hampshire was required to contact the requester with the decision to approve or deny the request within three working days of receipt of the request.
5. On [REDACTED], New Hampshire informed the requestor the preauthorization request was invalid and to resubmit the request with a physician signature; an item not required under 28 TEX. ADMIN. CODE § 134.600(f). New Hampshire did not either approve the request, issue an adverse determination on a request, or deny a request under subsection (g) of this section within three working days of receipt of the preauthorization request, which in this case was [REDACTED].
6. New Hampshire issued an approval to the health care provider on [REDACTED], 238 days late.

ASSESSMENT OF SANCTION

7. Failure to either timely approve or issue an adverse determination on each preauthorization request based solely on the medical necessity of the health care required to treat the injury increases the likelihood of disputes and, ultimately, interferes with injured employees' ability to obtain access to prompt, high-quality medical care and services that facilitate the injured employee's return to work as soon as it is considered safe by the employee's health care provider.
8. In assessing the sanction for this case, the Division of Workers' Compensation (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.
- 9. 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 history and extent of previous administrative violations; the penalty necessary to deter future violations; and whether the administrative violation has a negative impact on the delivery of benefits to an injured employee.
- 10. 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, because the preauthorization request in this matter was identical to one denied in March of 2018 and the insurance carrier did not understand initially that this was a new request.
- 11. New Hampshire acknowledges that DWC and New Hampshire 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).
- 12. New Hampshire 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:

1. The commissioner has jurisdiction over this matter pursuant to TEX. LAB. CODE §§ 402.001, 402.00111, 402.00114, 402.00116, and 402.00128.
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 § 415.002(a)(20), an insurance carrier or its representative commits an administrative violation each time it violates a DWC rule.
4. 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.
5. Pursuant to 28 TEX. ADMIN. CODE § 134.600(f), a healthcare provider shall submit a request for preauthorization for medical services. The preauthorization request shall include (1)

name of the injured employee; (2) specific health care listed in subsection (p) or (q) of this section; (3) number of specific health care treatments and the specific period of time requested to complete the treatments; (4) information to substantiate the medical necessity of the health care requested; (5) accessible telephone and facsimile numbers and may designate an electronic transmission address for use by the insurance carrier; (6) name of the requestor and requestor's professional license number or national provider identifier, or injured employee's name if the injured employee is requesting preauthorization; (7) name, professional license number or national provider identifier of the health care provider who will render the health care if different than paragraph (6) of this subsection and if known; (8) facility name, and the facility's national provider identifier if the proposed health care is to be rendered in a facility; and (9) estimated date of proposed health care.

6. Pursuant to 28 TEX. ADMIN. CODE § 134.600(h), an insurance carrier shall either approve or issue an adverse determination on each request based solely on the medical necessity of the health care required to treat the injury.
7. Pursuant to 28 TEX. ADMIN. CODE § 134.600(i), an insurance carrier shall contact the requestor with the decision to approve the request; issue an adverse determination on a request; or deny a request under subsection (g) of this section within three working days of receipt of a request for preauthorization.
8. Pursuant to 28 TEX. ADMIN. CODE § 134.600(k), the failure to comply with this section constitutes an administrative violation.
9. Per TEX. LAB. CODE § 415.002(a)(20), New Hampshire committed an administrative violation when it failed to comply with a DWC rule under 28 TEX. ADMIN. CODE § 134.600(k).

ORDER

New Hampshire Insurance Company is ORDERED to pay an administrative penalty of \$9,000 within 30 days from the date of this consent 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
Compliance & Investigations
Division of Workers' Compensation
Texas Department of Insurance

