

No. 2023-7975

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

Date: 5/17/2023

Subject Considered:

Indemnity Insurance Company of North America
115 Wild Basin Road, Suite 207
West Lake Hills, Texas 78746-3347

Consent Order
DWC Enforcement File Nos. 31555, 31556, 31558, and 31585

General remarks and official action taken:

This is a consent order with Indemnity Insurance Company of North America (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 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. Respondent was classified as "average" tier in the 2007, 2009, 2010, 2012, 2014, 2016, 2018, 2020, and 2022 Performance Based Oversight (PBO) assessments.

Failure to Timely Act on a Medical Bill

File No. 31555

3. On [REDACTED] a health care provider provided medical services to an injured employee. On [REDACTED] Respondent received a completed medical bill in the amount of [REDACTED] from the health care provider.
4. Respondent was required to act on the bill within 45 days of receiving it. The deadline to act was [REDACTED]
5. On [REDACTED] Respondent received the medical bill again. This time the medical bill was labeled as a request for reconsideration.
6. On [REDACTED] Respondent denied the medical bill 232 days late, stating the medical bill was not submitted within 95 days of the date of service.
7. On [REDACTED] Respondent paid [REDACTED]
8. On [REDACTED] Respondent paid interest 18 days late.

File No. 31556

9. On [REDACTED] a certifying doctor (CD) performed an examination of an injured employee. On [REDACTED] Respondent received a completed medical bill in the amount of [REDACTED] from the CD.
10. Respondent was required to act on the bill within 45 days of receiving it. The deadline to act was [REDACTED]
11. On [REDACTED] Respondent paid [REDACTED] to the CD, which was 463 days late.
12. On [REDACTED] Respondent paid interest two days late.

File No. 31558

13. On [REDACTED] a DD performed a DD examination of an injured employee. On [REDACTED] Respondent received a completed medical bill in the amount of [REDACTED] from the DD.
14. Respondent was required to act on the bill within 45 days of receiving it. The deadline to act was [REDACTED]
15. On [REDACTED] Respondent received the medical bill again. The second medical bill was labeled as a request for reconsideration.
16. On [REDACTED] Respondent denied the medical bill 232 days late, stating the medical bill was not submitted within 95 days of the date of service.
17. On [REDACTED] Respondent paid [REDACTED] to the DD.

File No. 31585

18. On [REDACTED] a DD performed a DD examination of an injured employee. On [REDACTED] Respondent received a completed medical bill in the amount of [REDACTED] from the DD.
19. Respondent was required to act on the bill within 45 days of receiving it. The deadline to act was [REDACTED]
20. On [REDACTED] Respondent received the medical bill again. The second medical bill was labeled as a request for reconsideration.
21. On [REDACTED] Respondent denied the medical bill 289 days late, stating the medical bill was not submitted within 95 days of the service.
22. On [REDACTED] Respondent paid [REDACTED] to the DD.
23. On [REDACTED] Respondent paid interest 120 days late.

Assessment of Sanction

1. Failure to pay health benefits in a timely and cost-effective manner is harmful to injured employees and the Texas workers' compensation system. Prompt payment of medical bills is imperative to DWC's goal of ensuring that injured employees have access to prompt, high-quality medical care.
2. 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 electronic data interchange 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.
3. 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; to the extent reasonable, the economic benefit resulting from the prohibited act; and other matters that justice may require, including, but not limited to the size of the company or practice and evidence of heightened awareness of the legal duty to comply with the Texas Workers' Compensation Act and DWC rules. Specifically, Respondent has engaged in a pattern of practice of

failing to respond to medical bills in an egregiously untimely manner for DD and CD exams, which are an essential function of the Texas workers' compensation system.

4. DWC is aware of no mitigating factors pursuant to Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e).
5. 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).
6. 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, 402.00111, 402.00114, 402.00116, 402.00128, 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 Act on a Medical Bill


7. Pursuant to Tex. Lab. Code § 408.027 and 28 Tex. Admin. Code § 133.240, an insurance carrier is required to timely process and take final action on a completed medical bill within 45 days of receiving the bill.
8. Respondent violated Tex. Lab. Code §§ 408.027; 415.002(a)(20) and(22); and 28 Tex. Admin. Code § 133.240 each time Respondent failed to pay, reduce, deny, or determine to audit a completed medical bill within 45 days of receiving the bill.

Failure to Timely Pay Interest for Medical Benefits

9. Pursuant to Tex. Lab. Code § 413.019(a) and 28 Tex. Admin. Code § 134.130(a), an insurance carrier must pay interest on medical bills paid on or after the 60th day after the insurance carrier originally received the complete medical bill.
10. Respondent violated Tex. Lab. Code §§ 413.019(a), 415.002(a)(20) and (22) by failing to pay interest on medical bills paid on or after the 60th day after the insurance carrier originally received the complete medical bill.


Order

It is ordered that Indemnity Insurance Company of North America must pay an administrative penalty of \$10,500 within 30 days from the date of this order. Indemnity Insurance Company of North America 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, PO Box 12030, Austin, Texas 78711-2030.



Jeff Nelson
Commissioner
TDI, Division of Workers' Compensation

Approved Form and Content:



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

Unsworn Declaration

STATE OF Delaware §
§
COUNTY OF New Castle §

Pursuant to the Tex. Civ. Prac. and Rem. Code § 132.001(a), (b), and (d), my name is Daniel S. Hawthorne. I hold the position of North American Compliance Manager and am the authorized representative of Indemnity Insurance Company of North America. My business address is:

1 Beaver Valley Road, Wilmington, New Castle, Delaware, 19382.
(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.

Daniel S. Hawthorne
Declarant

Executed on May 15, 2023.