

No. 2023-8177

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

Date: 8/31/2023

Subject Considered:

American Zurich Insurance Company
1299 Zurich Way
Schaumburg, Illinois 60196-5870

Consent Order
DWC Enforcement File Nos. 32424 and 32460

General remarks and official action taken:

This is a consent order with American Zurich Insurance Company (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. 32424

3. On [REDACTED] a designated doctor (DD) performed a DD examination for an injured employee.
4. On [REDACTED] Respondent received a properly completed medical bill from the DD in the amount of [REDACTED]. Respondent was required to act on the bill not later than the 45th day after receipt of the request, or by [REDACTED].
5. Respondent received a Request for Reconsideration from the DD on [REDACTED] [REDACTED] which contained proof of first submission on [REDACTED].
6. On [REDACTED] Respondent paid [REDACTED] to the DD, 106 days late.
7. On [REDACTED] Respondent paid [REDACTED] in interest to the DD, 21 days late.

File No. 32460

8. On [REDACTED] a health care provider (HCP) performed medical services for an injured employee.
9. On [REDACTED] Respondent received a properly completed medical bill from the HCP in the amount of [REDACTED]. Respondent was required to act on the bill not later than the 45th day after receipt of the request, or by [REDACTED].
10. On [REDACTED] Respondent issued an explanation of benefits to the HCP denying payment, which was 11 days late.
11. On [REDACTED] Respondent paid \$ [REDACTED] to the HCP.
12. On [REDACTED] Respondent paid [REDACTED] in interest.

Assessment of Sanction

1. Prompt payment of medical bills is imperative to DWC's goal of ensuring that injured employees have access to prompt, high-quality medical care. Failure to promptly pay medical bills harms medical providers economically, increases disputes and exhausts administrative resources in the workers' compensation system. It is a serious violation to fail to timely act on a medical bill involving designated doctor services, which do not require preauthorization and which serve an essential function in the Texas workers' compensation system. Untimely payment can have a chilling effect on a designated doctors' participation in the system.
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; to the extent reasonable, the economic benefit resulting from the prohibited act; and

the penalty necessary to deter future violations; Further, one of the late medical bill payment was more than 100 days late and involved DD services, which do not require preauthorization and are essential to the Texas workers' compensation system.

4. DWC considers the following factors mitigating, pursuant to Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e): Respondent's demonstration of good faith, including actions it took to rectify the consequences of the prohibited act. Specifically, while Respondent's internal process delayed the receipt of the medical bill, when it was received by the appropriate department, it was paid within 2 days. Respondent also paid interest on the second medical bill, which was not required.
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, 402.00114, 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.

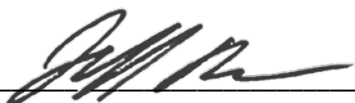
Failure to Timely Pay Interest for Medical Benefits

9. Pursuant to Tex. Lab. Code § 413.019(a) and 28 Tex. Admin. Code §§ 133.240(l) and 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. The interest payment shall be paid at the same time as the medical bill payment.
10. Respondent violated Tex. Lab. Code §§ 413.019(a), 415.002(a)(20) and (22); and 28 Tex. Admin. Code §§ 133.240(l) and 134.130(a) 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

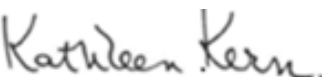
It is ordered that American Zurich Insurance Company must pay an administrative penalty of \$2,700 within 30 days from the date the Commissioner signs the order.

After receiving an invoice, American Zurich Insurance Company must pay the administrative penalty by electronic transfer using the State Invoice Payment Service, 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:



Kathleen Kern
Staff Attorney, Enforcement
Compliance and Investigations
TDI, Division of Workers' Compensation

Unsworn Declaration

STATE OF IL §
§
COUNTY OF Cook §

Pursuant to the Tex. Civ. Prac. and Rem. Code § 132.001(a), (b), and (d), my name is Joseph Ragonese. I hold the position of Vice President and am the authorized representative of American Zurich Insurance Company. My business address is:

1299 Zurich Way, Schaumburg, Cook, IL, 60196.
(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.

Joseph Ragonese
Declarant

Executed on August 28, 2023.