

No. 2023-8362

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

Date: 11/30/2023

Subject Considered:

Ace American Insurance Company
115 Wild Basin Road, Suite 207
West Lake Hills, Texas 78746-3347

Consent Order
DWC Enforcement File Nos. 32692 & 32693

General remarks and official action taken:

This is a consent order with Ace American 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 multiple lines of insurance in Texas, including workers' compensation/employers' liability insurance.
2. Respondent was classified as "average" tier in the 2007, 2009, 2010, 2012, 2014, 2016, 2018, 2020, and 2022 Performance Based Oversight (PBO) assessments.

File No. 32692

Failure to Timely Act on a Medical Bill

3. On [REDACTED], a Designated Doctor (DD), provided medical services to an injured employee. On [REDACTED], Respondent received a completed medical bill for \$ [REDACTED] from the DD.
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 paid a reduced amount of \$ [REDACTED] to the DD after bill review, which was 80 days late.

File No. 32693

Failure to Timely Pay Accrued Temporary Income Benefits

6. Respondent was required to pay temporary income benefits (TIBs) to an injured employee from [REDACTED], through [REDACTED]. The TIBs payments were due seven days after the first day of the pay period. Respondent failed to timely pay TIBs, as follows:

	Payment Period	Date Due	Date Paid	Days Late
a.	[REDACTED]	[REDACTED]	[REDACTED]	27
b.	[REDACTED]	[REDACTED]	[REDACTED]	20
c.	[REDACTED]	[REDACTED]	[REDACTED]	13
d.	[REDACTED]	[REDACTED]	[REDACTED]	6
e.	[REDACTED]	[REDACTED]	[REDACTED]	8
f.	[REDACTED]	[REDACTED]	[REDACTED]	1
g.	[REDACTED]	[REDACTED]	[REDACTED]	15
h.	[REDACTED]	[REDACTED]	[REDACTED]	8
i.	[REDACTED]	[REDACTED]	[REDACTED]	1
j.	[REDACTED]	[REDACTED]	[REDACTED]	8
k.	[REDACTED]	[REDACTED]	[REDACTED]	1
l.	[REDACTED]	[REDACTED]	[REDACTED]	5
m.	[REDACTED]	[REDACTED]	[REDACTED]	5

7. Respondent paid \$ [REDACTED] in late TIBs.

Assessment of Sanction

1. Failure to provide income benefits in a timely and cost-effective manner is harmful to injured employees and the Texas workers' compensation system.
2. 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.
3. 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.

4. 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; and the history and compliance with electronic data interchange requirements. Further, the conduct includes a violation involving late medical bill payments for DD services, which do not require preauthorization and are essential to the Texas workers' compensation system.
5. DWC is aware of no mitigating factors pursuant to Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e).
6. 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).
7. 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 Accrued Temporary Income Benefits

9. 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.
10. Pursuant to 28 Tex. Admin. Code § 124.7, an insurance carrier is required to initiate payment of TIBs no later than the seventh day after the accrual date.
11. Respondent violated Tex. Lab. Code §§ 409.023; 415.002(a)(16), (20), and (22); and 28 Tex. Admin. Code § 124.7 each time Respondent failed to timely pay accrued TIBs.

Order


It is ordered that Ace American Insurance Company must pay an administrative penalty of \$17,500 within 30 days from the date the Commissioner signs the order.

After receiving an invoice, Ace American 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:



Connor Ambrosini
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 AVP, NA Claims Compliance Manager and am the authorized representative of Ace American Insurance Company. My business address is:

1 Beaver Valley Road, Wilmington, New Castle, Delaware, 19803.
(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 October 13, 2023.