

No. 2024-8765

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

Date: 8/7/2024

Subject Considered:

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

Consent Order
DWC Enforcement File Nos. 33894, 34414, 34432, & 34561

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 2018, 2020, and 2022 Performance Based Oversight (PBO) assessments.

Failure to Timely Pay or Deny a Request for Reimbursement of Travel Expenses

File No. 34432

3. On [REDACTED], and [REDACTED], Respondent received a request for reimbursement of travel expenses incurred on [REDACTED], and [REDACTED].
4. Respondent was required to respond by the 45th day from receipt, or by [REDACTED], and [REDACTED], respectively.
5. On [REDACTED], Respondent reimbursed \$ [REDACTED] to the injured employee which was 233 and 135 days late, respectively.

Failure to Timely Act on a Medical Bill

File No. 33894

6. 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.
7. Respondent was required to act on the bill within 45 days of receiving it. The deadline to act was [REDACTED].
8. On [REDACTED], Respondent paid \$ [REDACTED] to the DD, which was 270 days late.
9. On [REDACTED], Respondent paid \$ [REDACTED] in interest, which was four days late.

Failure to Timely Pay Attorney Fees Ordered by DWC

File No. 34561

10. On [REDACTED], DWC ordered Respondent to pay attorney fees in connection with legal services provided to an injured employee. DWC ordered Respondent to pay attorney fees at a rate of 25% of each income benefit payment to the employee.
11. Between [REDACTED], and [REDACTED], Respondent issued multiple payments to the injured employee (IE) for unpaid income benefits. Respondent failed to timely

pay attorney fees at a rate of 25% of the income benefits paid to the injured employee as follows:

	Benefits Paid to IE	Attorney Fee Owed	Date Due	Date Paid	Days Late
a.	██████████	██████████	██████████	██████████	16
b.	██████████	██████████	██████████	██████████	9

12. In total, Respondent paid \$██████████ in attorney fees late.

Failure to Timely Comply with a DWC Order to Advance Payment of Income Benefits

File No. 34414

- 13. On ██████████, Respondent received a DWC Order to advance payment of \$██████████ in income benefits.
- 14. Respondent was required to comply with the DWC Order and pay the income benefits in advance within seven days of receipt of the DWC Order, or by ██████████
- 15. On ██████████, Respondent paid an advance of \$██████████ in benefits two days late.

Assessment of Sanction

- 1. Failing to timely respond to a reimbursement request increases the likelihood of disputes and impedes efforts to resolve them promptly and fairly. Further, failure to timely act on a reimbursement request is economically harmful and circumvents the Texas workers' compensation system and the roles of its system participants.
- 2. Failure to timely pay attorney fees ordered by DWC hinders the division's goal of providing a fair and accessible dispute resolution process and is harmful to the Texas workers' compensation system.
- 3. 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.

4. Compliance with DWC orders is imperative to minimize disputes and resolve them promptly and fairly.
5. 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 a reasonable extent, 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.
6. 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; to the extent reasonable, the economic benefit resulting from the prohibited act; and other matters that justice may require, including 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. Further, the late medical bill payment involved DD services, which do not require preauthorization and are essential to the Texas workers' compensation system.

7. DWC is aware of no mitigating factors pursuant to Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e).
8. 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).
9. 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) and (22), an insurance carrier or its representative commits an administrative violation each time it violates a DWC rule, or a provision of the Texas Workers' Compensation Act.

Failure to Timely Pay or Deny a Request for Reimbursement of Travel Expenses

File No. 34432

6. Pursuant to 28 Tex. Admin. Code § 134.110, an insurance carrier shall pay or deny an injured employee's properly completed request for reimbursement within 45 days of receipt. If the insurance carrier does not reimburse the full amount requested, partial payment or denial of payment shall include a plain language explanation of the reason for the reduction or denial.
7. Respondent violated Tex. Lab. Code § 415.002(a)(20) and 28 Tex. Admin. Code § 134.110 by failing to timely act on a request for reimbursement.

Failure to Timely Pay Attorney's Fees Ordered by DWC

File No. 34561

8. Pursuant to Tex. Lab. Code §§ 415.021(a) and 415.0035(e), an insurance carrier commits an administrative violation if it violates, fails to comply with, or refuses to comply with a DWC order.
9. Pursuant to 28 Tex. Admin. Code § 152.1(c), insurance carriers are required to pay attorney fees ordered by DWC. The insurance carrier must begin payment out of the approved income benefits by mailing a check to the attorney within seven days after receiving the order. As the insurance carrier pays income benefits, it must pay attorney fees until the fees are completely paid or income benefits cease.
10. Respondent violated Tex. Lab. Code §§ 415.002(a)(20) and (22); 415.021(a); 415.0035(e); and 28 Tex. Admin. Code § 152.1(c) by failing to timely comply with a DWC order to pay attorney fees.

Failure to Timely Act on a Medical Bill

File No. 33894

11. 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.

12. Respondent violated Tex. Lab. Code §§ 408.027; 415.002(a)(20) and (22); and 28 Tex. Admin. Code § 133.240 by failing to pay, reduce, deny, or determine to audit a completed medical bill within 45 days of receiving the bill.

Failure to Timely Pay Interest on a Late Medical Bill Payment

File No. 33894

13. 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 bill. The interest payment shall be paid at the same time as the medical bill payment.
14. 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.

Failure to Timely Comply with a DWC Order to Advance Payment of Income Benefits


File No. 34414

15. Pursuant to Tex. Lab. Code §§ 415.0035(e) and 415.021(a), an insurance carrier commits an administrative violation if it violates, fails to comply with, or refuses to comply with a DWC order.
16. Pursuant to Tex. Lab. Code § 408.085 and 28 Tex. Admin. Code § 126.4, DWC shall notify the insurance carrier and the injured employee in writing when an advance is ordered. The insurance carrier must pay an advance ordered by DWC within seven days of the receipt of notice from DWC by the insurance carrier's Austin representative.
17. Respondent violated Tex. Lab. Code §§ 410.085, 415.002(a)(20) and (22), 415.0035(e), and 415.021 and 28 Tex. Admin. Code § 126.4 when it failed to timely comply with a DWC order for advance of benefits.

Order


It is ordered that Indemnity Insurance Company of North America must pay an administrative penalty of \$3,100 within 30 days from the date the Commissioner signs the order.

After receiving an invoice, Indemnity Insurance Company of North America 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:



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 VP Claims, Q&A and Compliance 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 July 12, 2024.