

No. 2020-6306

Confidential Information Redacted
Texas Labor Code §§402.083 & 402.092

OFFICIAL ORDER
of the
TEXAS COMMISSIONER OF WORKERS' COMPENSATION

Date: 04-01-2020

Subject Considered:

GREAT MIDWEST INSURANCE COMPANY
800 Gessner Road Suite 600
Houston, Texas 77024-4538

CONSENT ORDER
TDI-DWC ENFORCEMENT FILE NOS. 20904, 22127, and 21520

General remarks and official action taken:

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

WAIVER

Great Midwest acknowledges that the Texas Labor Code and other applicable laws provide certain rights. Great Midwest 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. Great Midwest 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 Texas.
2. Great Midwest was classified as "average" tier in the 2012, 2014, and 2016 Performance Based Oversight (PBO) assessments. Great Midwest was classified as "poor" tier in the 2018 PBO assessment.

FAILURE TO TIMELY PAY SUPPLEMENTAL INCOME BENEFITS

3. Great Midwest received the Notice of Entitlement to Supplemental Income Benefits (SIBs) for the 11th quarter on [REDACTED]. Great Midwest was required to request a benefit review conference (BRC) if disputing entitlement to the 11th quarter of SIBs by the 10th day after receiving the Application for Supplemental Benefits, or by [REDACTED].

4. Great Midwest requested the BRC on [REDACTED], but was denied due to lack of documentation. Great Midwest was required to pay the injured employee the first month of the 11th quarter of SIBs.
5. Great Midwest issued payment of \$ [REDACTED] seven days late on [REDACTED].

FAILURE TO TIMELY INITIATE OR DISPUTE TEMPORARY INCOME BENEFITS

6. The first day of disability was on [REDACTED], the eighth day accrued on [REDACTED], and Great Midwest received first notice of the injury on [REDACTED].
7. The due date to initiate or dispute temporary income benefits (TIBs) is the later of 15 days after the insurance carrier's receipt of the written notice of the injury or seven days after the accrual date, which in this case was on [REDACTED].
8. Great Midwest issued the initial TIBs payment of \$ [REDACTED], 29 working days late on [REDACTED].

DWC AUDIT NO. MBP-19-106

9. On [REDACTED], the Texas Department of Insurance, Division of Workers' Compensation (DWC) initiated DWC Audit No. MBP-19-106 to determine whether Great Midwest was complying with the Texas Labor Code and related rules regarding the timely payment of medical bills and the timely and accurate submission of initial payment information to DWC.
10. The audit examined medical bill payments reported to have been issued between [REDACTED], and [REDACTED] 2018. DWC identified 100 bills for audit.
11. The audit focused on timeliness of payment of initial medical bills and Electronic Data Interchange (EDI) reporting. The EDI audit focused on timeliness of reporting initial bill payments and the accuracy of seven data elements reported to DWC (Rendering Line Provider NPI Number, Rendering Line Provider State License Number, Referring Provider Last/Group Name, Referring Provider State License Number, Billing Provider FEIN, Date Bill Received, and Date Bill Paid or Denied).

FAILURE TO TIMELY PAY MEDICAL BILLS

12. Great Midwest failed to timely pay or dispute medical bills for 8% of payments examined (8 out of 100).
13. Specifically, Great Midwest issued payments to health care providers less than six days late in two instances, between seven and 15 days late in two instances, between 16 and 30 days late in two instances, and over 30 days late in two instances (51 and 53 days late).

**FAILURE TO SUBMIT TIMELY AND ACCURATE INFORMATION REGARDING
THE PAYMENT OR DISPUTE OF MEDICAL BILLS TO DWC**

14. Great Midwest failed to timely report the Rendering Line Provider NPI Number to DWC for 6% of payments examined (6 out of 100).
15. Great Midwest failed to accurately report the Rendering Line Provider State License Number for 47% of payments examined (47 out of 100).
16. Great Midwest failed to accurately report the Referring Provider Last/Group Name for 12% of payments examined (12 out of 100).
17. Great Midwest failed to accurately report the Referring Provider State License Number for 22% of payments examined (22 out of 100).
18. Great Midwest failed to accurately report the Billing Provider FEIN for 1% of payments examined (1 out of 100).
19. Great Midwest failed to accurately report the Date Bill Received for 6% of payments examined (6 out of 100).
20. Great Midwest failed to accurately report the Date Bill Paid or Denied for 12% of payments examined (12 out of 100).

ASSESSMENT OF SANCTION

21. Failure to provide appropriate income benefits in a manner that is timely and cost-effective is harmful to injured employees and to the Texas workers' compensation system.
22. Prompt payment of medical bills is imperative to DWC's goal of ensuring that injured employees have access to prompt, high-quality medical care.
23. DWC relies on claims information submitted by the insurance carriers for a variety of purposes including, but not limited to, providing required information and reports to the legislature, ensuring that insurance carriers comply with the Texas Labor Code and DWC rules, and detecting patterns and practices in actions taken on claims.
24. In assessing the sanction for this case, 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 EDI 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.
25. 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; the history and extent of previous administrative violations; the penalty necessary to deter future violations; whether the administrative violation has negative impact on the delivery of benefits to an injured employee; and other matters that justice may require, including but not limited to, being ranked "poor" tier in the 2018 PBO assessment.
26. 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 history of compliance with EDI requirements.
27. Great Midwest acknowledges that it has communicated with DWC 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).
28. Great Midwest 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, 402.00128, 414.002, and 414.003.
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 § 415.021, the commissioner may assess an administrative penalty against a person who commits an administrative violation.

4. 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.
5. 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.
6. Pursuant to TEX. LAB. CODE § 408.147 and 28 TEX. ADMIN. CODE § 130.108, an insurance carrier is required to request a BRC by the 10th day after the date the insurance carrier received the injured employee's application for SIBs.
7. Great Midwest violated TEX. LAB. CODE §§ 415.002(a)(20), 415.002(a)(22), and 408.147, and 28 TEX. ADMIN. CODE § 130.108 when it failed to timely pay SIBs.
8. Pursuant to TEX. LAB. CODE §§ 408.081, 408.082, and 409.021, and 28 TEX. ADMIN. CODE §§ 124.3 and 124.7, insurance carriers are required to initiate payment of TIBs not later than the 15th day after the date on which the insurance carrier receives written notice of the injury, or the seventh day after the accrual date, unless the insurance carrier has notified DWC and the injured employee in writing of its refusal to pay.
9. Great Midwest violated TEX. LAB. CODE §§ 415.002(a)(20), 415.002(a)(22), and 409.021, and 28 TEX. ADMIN. CODE § 124.3 when it failed to timely initiate or dispute TIBs.
10. Pursuant to TEX. LAB. CODE § 408.027, the insurance carrier must pay, reduce, deny, or determine to audit the health care provider's claim not later than the 45th day after the date of receipt by the insurance carrier of the provider's claim.
11. Pursuant to 28 TEX. ADMIN. CODE § 133.240, an insurance carrier shall take final action after receipt of a complete medical bill not later than the 45th day after the date the insurance carrier received a complete medical bill.
12. Pursuant to 28 TEX. ADMIN. CODE § 134.804(d), insurance carriers are responsible for the timely and accurate submission of medical EDI records.
13. Great Midwest violated TEX. LAB. CODE §§ 415.002(a)(20), 415.002(a)(22), and 408.027(b), and 28 TEX. ADMIN. CODE § 133.240 each time it failed to timely initiate payment of a medical bill.
14. Pursuant to 28 TEX. ADMIN. CODE § 124.2(a) and (b), insurance carriers are required to notify DWC and the injured employee of actions taken on, or events occurring in a claim as specified by rule in the form and manner prescribed by DWC. Inherent in this duty is the requirement that insurance carriers report this information accurately.
15. Great Midwest violated TEX. LAB. CODE § 415.002(a)(20) and 28 TEX. ADMIN. CODE § 124.2(a) and (b) each time it failed to accurately notify DWC of actions taken on, or events occurring in a claim as specified by rule in the form and manner prescribed by DWC.

COMMISSIONER'S ORDER
Great Midwest Insurance Company
TDI-DWC Enforcement File Nos. 20904, 22127, and 21520
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ORDER

Great Midwest Insurance Company is ORDERED to pay an administrative penalty of \$21,000 within 30 days from the date of this 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:



Toya Lutz
Staff Attorney, DWC Enforcement
Texas Department of Insurance

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AFFIDAVIT

STATE OF Arizona §
COUNTY OF Maricopa §

Before me, the undersigned authority, personally appeared the affiant, who being by me duly sworn, deposed as follows:

" My name is Michael Baker. I am of sound mind, capable of making this statement, and have personal knowledge of these facts which are true and correct.

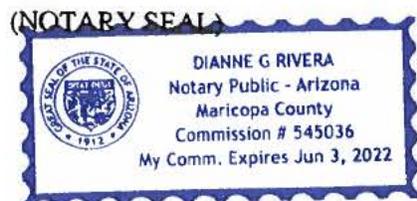
I hold the office of SVP Claims, and am the authorized representative of Great Midwest Insurance Company. I am duly authorized by said organization to execute this statement.

Great Midwest Insurance Company waives rights provided by the Texas Labor Code and other applicable laws, and acknowledges the jurisdiction of the Texas commissioner of workers' compensation.

Great Midwest Insurance Company is voluntarily entering into this consent order. Great Midwest Insurance Company consents to the issuance and service of this consent order."

Michael Baker
Affiant

SWORN TO AND SUBSCRIBED before me on February 10, 2019, 2020



Dianne G Rivera
Signature of Notary Public
Dianne G. Rivera
Printed Name

My Commission Expires: June 3, 2022

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