

No. 2025-9266

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

**Date:** 4/22/2025

**Subject Considered:**

Berkshire Hathaway Homestate Insurance Company  
1314 Douglas Street, Suite 1300  
Omaha, Nebraska 68102-1944

Consent Order  
DWC Enforcement File No. 36497

**General remarks and official action taken:**

This is a consent order with Berkshire Hathaway Homestate 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 "poor" tier in the 2024 and 2022 Performance Based Oversight (PBO) assessments. Respondent was classified as "average" tier in the 2020 PBO assessment.

Failure to Pay Accrued Impairment Income Benefits Based on a Certifying Doctor Report

4. On [REDACTED], Respondent received a DWC Form-69, *Report of Medical Evaluation*, from the injured employee's certifying doctor (CD) in connection with a CD examination.
5. The CD determined that the injured employee reached maximum medical improvement (MMI) on [REDACTED], with a [REDACTED] % impairment rating (IR).
6. Respondent was required to pay accrued impairment income benefits (IIBs) no later than five days after receiving the CD report. The deadline to contest MMI and IR and deny benefits was [REDACTED].
7. Respondent did not contest MMI and IR by [REDACTED]. Therefore, IIBs were due to the injured employee.
8. On [REDACTED], Respondent paid \$ [REDACTED] in IIBs 37 days late.
9. Respondent did not pay interest with the late IIBs payment.
10. On [REDACTED], Respondent contested MMI and IR in a request for a designated doctor (DD) examination.
11. On [REDACTED], the DD examined the injured employee and determined the injured employee had not reached MMI, but was expected to reach MMI by [REDACTED].
12. On [REDACTED], Respondent paid \$ [REDACTED] in IIBs for the benefit period of [REDACTED] to [REDACTED]. The payment occurred 92 days after Respondent contested MMI and IR.
13. Also on [REDACTED], Respondent paid interest for the [REDACTED], IIBs payment 118 days late.

**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. 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:
  - a. the violation was serious because Respondent paid \$ [REDACTED] in benefits between 37 and 92 days late for an employee with a [REDACTED] % IR;
  - b. Respondent's recent history of violations involving late benefits, including two recent actions involving failure to timely pay after a certifying report;
  - c. Respondent's poor PBO scores;
  - d. the penalty necessary to deter future violations; and
  - e. the negative impact on the delivery of at least \$ [REDACTED] in benefits to an injured employee.
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 it communicated with DWC about the relevant statutes and rules it violated; the facts establish that the administrative violation occurred;

and 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 415.021.
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 Pay Accrued IIBs Based on a CD Report

7. 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.

8. Pursuant to Tex. Lab. Code § 408.121(b), an insurance carrier must pay IIBs no later than five days after the insurance carrier receives the doctor's report certifying MMI.
9. Pursuant to 28 Tex. Admin. Code § 130.2(a)(1), a treating doctor who finds that the employee has permanent impairment but who is not authorized to assign IR, shall make a referral to a doctor who is authorized to do so on behalf of the treating doctor. However, this evaluation shall be considered to be the report of the treating doctor.
10. Pursuant to 28 Tex. Admin. Code § 130.8, an insurance carrier must pay benefits in accordance with the treating doctor's medical evaluation report no later than five days after receiving the treating doctor's medical evaluation report when MMI is not disputed.
11. Respondent violated Tex. Lab. Code §§ 408.121(b), 409.023 and 415.002(a)(16), (20), and (22) and 28 Tex. Admin. Code § 130.8 by failing to timely pay accrued income benefits within five days of receiving the CD report.

Failure to Timely Pay Interest with Indemnity Benefits

12. Pursuant to Tex. Lab. Code § 408.064 and 28 Tex. Admin. Code § 126.12(b), accrued but unpaid income benefits and interest shall be paid in a lump sum.
13. Respondent violated Tex. Lab. Code §§ 408.064 and 415.002(a)(20) and (22) and 28 Tex. Admin. Code § 126.12(b) each time Respondent failed to timely pay interest with accrued but unpaid income benefits.

**Order**

It is ordered that Berkshire Hathaway Homestate Insurance Company must pay an administrative penalty of \$8,000 within 30 days from the date the Commissioner signs the order.

After receiving an invoice, Berkshire Hathaway Homestate 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.

  
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Jeff Nelson  
Commissioner  
TDI, Division of Workers' Compensation

Approved Form and Content:

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

