

No. 2023-8047

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

Date: 6/27/2023

Subject Considered:

Hanover Insurance Company
PO Box 15144
Worcester, Massachusetts 01615-0144

Consent Order
DWC Enforcement File No. 31630

General remarks and official action taken:

This is a consent order with Hanover 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 not selected to be tiered in any of the Performance Based Oversight (PBO) assessments.

DWC Audit No. IBA-23-112

3. On [REDACTED] DWC initiated DWC Audit No. IBA-23-112 to determine whether Respondent complied with the Texas Labor Code and related rules on the timely payment of death benefits and timely submission of claim data to DWC.
4. The audit examined death benefit payments that Respondent reported issuing between [REDACTED] and [REDACTED]. DWC identified two initial death benefit claims for audit to determine Respondent's compliance.
5. The audit focused on the accuracy of Respondent's payment of death benefits, as well as timely submitting claim data to DWC. The electronic data interchange (EDI) portion of the audit focused on timely reporting death benefit terminations.

Failure to Timely Pay Accurate Death Benefits

6. Respondent failed to timely pay accurate death benefits for 50% of examined payments (1 out of 2).
7. Specifically, Respondent underpaid death benefits to beneficiaries for 469 weeks. On [REDACTED] Respondent issued a lump sum payment of [REDACTED], including interest, to the underpaid beneficiaries.

Failure to Timely Report Claim Data to DWC

8. Respondent changed the frequency of death benefits payments from the standard weekly period to a monthly period on [REDACTED].
9. However, Respondent failed to submit a DWC Form-031, *Application for Division Approval of Change in Payment Period*, when it changed the frequency of the death benefits payments from a weekly basis to a monthly basis.

Assessment of Sanction

1. Failure to provide death benefits in a timely and cost-effective manner is harmful to injured employees, their beneficiaries, and the Texas workers' compensation system.

2. Agreements to pay death benefits monthly, rather than weekly, requires Commission approval to provide an opportunity to ensure the accuracy of the death benefits paid to beneficiaries who are less likely than injured employees to question the accuracy of the benefits they are receiving.

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 or their beneficiaries;
 - the history of compliance with EDI 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 or their beneficiaries; the history of compliance with EDI requirements; to the extent reasonable, the economic benefit resulting from the prohibited act; and other matters that justice may require, including the heightened awareness of the legal duty to comply with the Act and DWC rules.

5. DWC considered the following mitigating factors pursuant to Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e): corrective training, procedural changes to the claims handling process, and internal compliance reviews. Specifically, Respondent discovered the error while conducting a payment reconciliation, and on [REDACTED] Respondent reimbursed the beneficiary for the underpaid benefits plus interest.
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, 402.00114, 402.00116, 402.00128, 409.021, 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 §§ 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.

6. 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 Accurate Death Benefits

7. Pursuant to Tex. Lab. Code § 408.061(d), a weekly death benefit may not exceed 100% of the state average weekly wage rounded to the nearest whole dollar.
8. Pursuant to Tex. Lab. Code § 408.181(a) and (b), an insurance carrier must pay accurate death benefits to a legal beneficiary. The amount of a death benefit is equal to 75% of the employee's average weekly wage.
9. Pursuant to Tex. Lab. Code § 409.021 and 28 Tex. Admin. Code §§ 124.3 and 124.7, an insurance carrier is required to initiate payment of death benefits no later than the 15th day after it receives written notice of the injury or the seventh day after the accrual date. It must also notify DWC in writing of its initiation of income or death benefit payments in the manner DWC rules prescribe.
10. Pursuant to 28 Tex. Admin. Code § 124.2(e)(4)-(6), the insurance carrier must notify DWC and the claimant of any changes, resumptions, or terminations involving death benefits.
11. Pursuant to 28 Tex. Admin. Code § 132.17(f), an insurance carrier must initiate payment of death benefits to eligible claimants. If the insurance carrier believes a claimant is not eligible, it must file a notice of dispute of eligibility in the form and manner DWC prescribes.
12. Respondent violated Tex. Lab. Code §§ 408.181; 409.021; 415.002(a)(16), (20), and (22); and 28 Tex. Admin. Code §§ 124.3; 124.7; and 132.17 each time Respondent failed to timely pay accurate death benefits.


Failure to Timely Report Claim Data to DWC

13. Pursuant to 28 Tex. Admin. Code § 132.16, an application to change the frequency of death benefit payments must be submitted to the Commission with written agreement for approval in the form, format, and manner required by the Commission.

14. Respondent violated Tex. Lab. Code § 415.002(a)(20) and 28 Tex. Admin. Code § 132.16 when Respondent failed to apply to the Commission for approval to change the frequency of death benefit payments.


Order

It is ordered that Hanover Insurance Company must pay an administrative penalty of \$17,500 within 30 days from the date of this order. Hanover 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:



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