

COMPLIANCE AUDIT REPORT

STATE OF MAINE
WORKERS' COMPENSATION BOARD



American International Group, Inc.
Engagement Date: January 20, 2017
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Office of Monitoring, Audit & Enforcement

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SUMMARY

The American International group of affiliated companies (collectively AIG) provide a wide variety of business insurance products including workers' compensation.

In February 2007, AIG voluntarily entered into a Corrective Action Plan (CAP) at the request of the Office of Monitoring, Audit, and Enforcement of the Maine Workers' Compensation Board (Board) to address specific issues raised in the 2005 Compliance Audit Report. This CAP was lifted on April 13, 2011 as AIG had subsequently entered into a Consent Agreement with the Superintendent of the Maine Bureau of Insurance (Superintendent) dated October 28, 2010 (amended June 11, 2013). In addition, AIG agreed to implement Corrective Action Procedures as approved by the Superintendent.

In October 2010 (amended June 2013), AIG entered into an agreement with the Superintendent and the Office of the Maine Attorney General for the purpose of bringing to a halt, without resort to an adjudicatory proceeding, violations of 39-A M.R.S.A. certified to the Superintendent by the Board pursuant to Title 39-A M.R.S.A. Section 359(2) and confirmed in a targeted market conduct examination report as well as a 2009 Compliance Audit Report. The current audit is also a result of this agreement.

The Audit Division of the Board examined sixty (60) claim files where indemnity benefits were paid for the period under examination (2015-2016) as well as sixty (60) medical payments for the period under examination (2015-2016) to determine compliance with statutory and regulatory requirements in the following areas:

- Timeliness of benefit payments
- Accuracy of benefit payments

The claim sample was drawn from a listing of all of AIG's 2015-2016 Maine workers' compensation claims. The medical payment sample was drawn from a listing of all of AIG's 2015-2016 medical payments for those claims in the sample.

Three (3) "Complaint for Audit" forms that named AIG as the claims administrator were filed with the Audit Division since the last audit, but all issues raised by those documents were addressed and resolved by AIG prior to this audit engagement. Therefore, those three (3) complaints were not included in this audit.

AIG handles its Maine workers' compensation claims solely in Alpharetta, Georgia. AIG also utilizes the services of William Gourde, Branch Manager, Cannon Cochran Management Services, Inc. as its claims agent within the State, although none of the claims under review were adjusted by Mr. Gourde.

The audit work was conducted as a desk audit.

The compliance tables found on pages 9 through 11 of this report are representative of Board findings as of December 31, 2016. Since that time, the Audit Division has received additional information, missing form filings, form corrections, indemnity payments and adjustments.

Following is a discussion of the aforementioned compliance tables and of the steps taken since December 31, 2016 to rectify identified noncompliance issues. This discussion also includes other significant issues identified by the audit.

◆ **Timeliness of benefit payments**

- Title 39-A M.R.S.A. Section 205(2) provides the time requirements for indemnity payments.
- When there is not an ongoing dispute, failure to pay weekly compensation benefits or accrued weekly benefits within 30 days after becoming due and payable is a violation of Title 39-A M.R.S.A. Section 205(2) and subject to penalty under Section 205(3).
- Initial Indemnity Payments:
 - Fifty-six (56) initial indemnity payments were made timely and two (2) claims received “salary continuation” from their respective employers.
 - AIG’s compliance rate for initial indemnity payments (timely payments and “salary continuation” collectively) is 89%, which is above the Board’s performance benchmark of 87%.
 - Seven (7) initial indemnity payments were made late.
- Subsequent Indemnity Payments:
 - Six hundred fifty-three (653) subsequent indemnity payments were made timely.
 - Seventeen (17) subsequent indemnity payments were made late.
 - One (1) late subsequent indemnity payment was made later than 30 days after it became due and payable in violation of Section 205(2) and subject to penalty under Section 205(3).
- Board Rules and Regulations Chapter 5 states in part, “The employer/insurer shall pay the health care provider's charge or the maximum allowable payment under this fee schedule, whichever is less, within 30 days of receipt of a bill unless the bill or previous bills from the same provider or the underlying injury has been controverted or denied. If an employer/insurer controverts whether a health care provider’s bill is reasonable and proper under § 206 of the Act, the employer/insurer shall send a copy of the notice of controversy to the health care provider.”
 - Fifty-nine (59) medical payments were made timely.
 - One (1) medical payment was made late.
- Title 39-A M.R.S.A. Section 324(1) provides the requirements for compensation payments per an approved agreement, order or decision. Board Rules and Regulations Chapter 8, Section 18.2 provides the requirements for compensation payments per a Consent Between Employer and Employee (WCB-4A).
 - One (1) Lump Sum Settlement, one (1) provisional order and two (2) Consents Between Employer and Employee were paid timely.

In response to notice of these problem areas, AIG has taken steps to improve future compliance by “implementing significant training for both employers and adjusters” to ensure timely payments.

◆ **Accuracy of indemnity payments**

- Title 39-A M.R.S.A. Section 102(4) and Board Rules and Regulations Chapter 1, Section 5 provide the requirements for calculating average weekly wages (AWWs). Title 39-A M.R.S.A. Section 102(1) and Board Rules and Regulations Chapter 8, Section 9 provides the requirements for determining weekly compensation rates (WCRs). Title 39-A M.R.S.A. Sections 212, 213, and 215 provide the requirements for compensation for total incapacity, partial incapacity, and death benefits.
- The accuracy of indemnity payments was reviewed for sixty (60) claims.
- Average Weekly Wage:
 - Forty-one (41) AWWs were correct.
 - Nineteen (19) AWWs were incorrect.
- Weekly Compensation Rate:
 - Forty-one (41) WCRs were correct.
 - Nineteen (19) WCRs were incorrect.
- Partial Benefits Calculation Method:
 - The method used to calculate partial benefits was correct for six (6) claims.
 - The method used to calculate partial benefits was incorrect for seven (7) claims.
- Amount Paid:
 - Twenty-four (24) claims were compensated correctly.
 - Eighteen (18) claims were underpaid (\$22,794.00 aggregately).
 - Since December 31, 2016, AIG paid the amounts due on seventeen (17) claims and resolved the underpayment issue by Lump Sum Settlement on one (1) claim.
 - Eighteen (18) claims were overpaid (\$5,908.35 aggregately).
 - Collectively, the aforementioned errors resulted in a net underpayment of \$16,885.65 to injured workers.

In response to notice of these problem areas, AIG has taken steps to improve future compliance by “implementing significant training for both employers and adjusters” to ensure accurate payments.

◆ **Accuracy of medical payments**

- Title 39-A M.R.S.A. Section 209-A and Board Rules and Regulations Chapter 5, provide the fee setting requirements for medical and ancillary services and products rendered by individual health care practitioners and health care facilities.
- The accuracy of medical payments was reviewed for thirty (30) claims.
- Amount Paid:
 - Medical payments sampled for twenty-one (21) claims were correct.
 - Medical payments sampled for nine (9) claims were incorrect.

◆ **Other significant issues**

- Box 2b (Was Employee Paid for ½ Day or More on Day of Injury?) of the First Report of Occupational Injury or Disease (FROI) must accurately reflect whether the employee was paid for ½ day or more on the day of injury. Board Rules and Regulations Chapter 8, Section 3 states, “When an employee is paid 1/2 day or more wages on the date of injury, the date of injury will not be considered a day of incapacity.”
 - Incorrect dates were reported in Box 2b of the FROIs that were filed for eight (8) claims.
- Box 19b (To (Return Date)) of the WCB-4, Discontinuance or Modification of Compensation must accurately reflect the date the incapacity ended. See also the Board’s Forms and Petitions Manual.
 - Incorrect dates were reported in Box 19b of the WCB-4, Discontinuance or Modification of Compensation forms that were filed for five (5) claims.
- Box 22 (First Day Of Compensability After Waiting Period Is Met) of the WCB-3, Memorandum of Payment (MOP) must accurately reflect the date of the first compensable day that follows the completion of the 7-day waiting period. See the Board’s Forms and Petitions Manual.
 - Incorrect dates were reported in Box 22 of the MOPs that were filed for ten (10) claims.
- Boxes 23a (Date of Incapacity) and 23b (Date Employer Notified) of the WCB-3, Memorandum of Payment (MOP) must accurately reflect the date of incapacity and date that the employer was notified of the incapacity. Note: the Date of Incapacity reported in Box 23a and the Date Employer Notified in Box 23b must equal the Date of Incapacity (DN56) and Date Employer Notified (DN281) reported in Box 43 of the WCB-1, Employer’s First Report of Occupational Injury or Disease (First Report). See the Board’s Forms and Petitions Manual.
 - Incorrect dates were reported in Boxes 23a and/or 23b of the MOPs and/or Boxes 43a and/or 43b of the FROIs that were filed for eight (8) claims.
- The Maine Workers’ Compensation Act provides no vehicle for the unilateral recovery of benefit overpayment(s). See Board decision *Pritchard v. S.D. Warren Co.* and Law Court decision *Bureau vs. Staffing Network*. Recoveries under Section 324 and Section 360(2) fall under Board jurisdiction.
 - Evidence of improperly-recovered benefits was found in two (2) claims.
- The WCB-2, Wage Statement must include the employee’s gross earnings corresponding to the applicable employer’s payroll week ending dates. In turn, the WCB-2B, Fringe Benefits Worksheet must identify “the cost of the fringe benefits paid by the employer as of the date of injury.” Thus, in both cases, initial filings of these forms require accurate employer payroll information at the time of submission. See the Board’s Forms and Petitions Manual.
 - Initial filings of the WCB-2, Wage Statement were submitted as “provisional” and/or the WCB-2B, Fringe Benefits Worksheet indicated information was “Requested/Pending” for twelve (12) claims.

PENALTIES

◆ Penalties payable to providers and/or injured employees

Title 39-A M.R.S.A. Section 205(3)

“When there is not an ongoing dispute, if weekly compensation benefits or accrued weekly benefits are not paid within thirty (30) days after becoming due and payable, \$50 per day must be added and paid to the worker for each day over thirty (30) days in which the benefits are not paid. Not more than \$1,500 in total may be added pursuant to this subsection. For purposes of ratemaking, daily charges paid under this subsection do not constitute elements of loss.”

Delays of “other” indemnity payments, subject to penalty under Section 205(3), were found on the following claims:

CLAIM	PENALTY JUSTIFICATION	PENALTY EXPOSURE
Shawn Clark vs. Time Warner Cable, Inc. Date of Injury: 10/26/15 Date ER Notified of Incapacity: 11/3/15 Claim #555-192648-001 Board #15023686	Provisional payments were made weeks ending 8/20/16, 8/27/16, 10/15/16 & 10/22/16 as well as 10/23/16 & 10/24/16. Payment of accrued benefits has not yet been made.	\$1,500.00*
Ericson Estes vs. Time Warner Cable, Inc. Date of Injury: 3/3/15 Date ER Notified of Incapacity: 1/5/16 Claim #555-172246-001 Board #15005807	Payment for the 7-day waiting period was made 11/16/17, which was 667 days after compensation became due and payable (1/19/16).	\$1,500.00
Lawrence Gassman vs. NGL Energy Operating, LLC Date of Injury: 5/18/15 Date ER Notified of Incapacity: 5/19/15 Claim #454-999477-001 Board #15009756	Payment for part of the 7-day waiting period has not yet been made. A provisional payment was made week ending 2/13/16. Payment of accrued benefits has not yet been made.	\$1,500.00**

CLAIM	PENALTY JUSTIFICATION	PENALTY EXPOSURE
Nicole Keith vs. Trueblue, Inc. Date of Injury: 12/1/15 Date ER Notified of Incapacity: 12/2/15 Claim #555-195526-001 Board #15026137	Payment for the 7-day waiting period was made 7/18/17, which was 575 days after compensation became due and payable (12/21/15). The claimant's benefits were improperly discontinued on 12/15/15. Payment of accrued benefits has not yet been made.	\$1,500.00*
George Maroon vs. HP Hood, LLC Date of Injury: 5/18/16 Date ER Notified of Incapacity: 6/22/16 Claim #555-208034-001 Board #16010167	The claimant's benefits were improperly discontinued on 7/27/16. Payment of accrued benefits was made 10/20/17, which was 436 days after compensation became due and payable (8/10/16).	\$1,500.00
Terry Smith vs. Trinet Group, Inc. Date of Injury: 8/3/16 Date ER Notified of Incapacity: 8/5/16 Claim #555-214378-001 Board #16017430	A provisional WCR was used to pay this claim. Payment of accrued benefits was made 10/21/17, which was 312 days after compensation became due and payable (12/13/16).	\$1,500.00
Dustin Steeves vs. Time Warner Cable, Inc. Date of Injury: 9/29/16 Date ER Notified of Incapacity: 10/4/16 Claim #555-218795-001 Board #16021980	Payment for the 7-day waiting period was made 11/16/17, which was 394 days after compensation became due and payable (10/18/16).	\$1,500.00
Joan Wheeler vs. Time Warner Cable, Inc. Date of Injury: 6/24/15 Date ER Notified of Incapacity: 7/5/15 Claim #555-181577-001 Board #15013199	The claimant's benefits were improperly discontinued on 7/13/15. Payment of accrued benefits was made 10/26/17, which was 822 days after compensation became due and payable (7/27/15).	\$1,500.00
Total Penalties to Injured Employees for Delays of "Other" Indemnity Payments		\$11,900.00

* This claim has been settled by Lump Sum and the Audit Division is not pursuing penalties (on behalf of the corresponding employee) arising from the violation cited.

**This claim was significantly overpaid and, therefore, payment of compensation due was not pursued by the Audit Division. However, penalties for the violations cited have been assessed.

◆ **Penalties payable to the State General Fund**

Title 39-A M.R.S.A. Section 359(2)

“In addition to any other penalty assessment permitted under this Act, the Board may assess civil penalties not to exceed \$25,000 upon finding, after hearing, that an employer, insurer or 3rd-party administrator for an employer has engaged in a pattern of questionable claims-handling techniques or repeated unreasonably contested claims. The Board shall certify its findings to the Superintendent of Insurance, who shall take appropriate action so as to bring any such practices to a halt. This certification by the Board is exempt from the provisions of the Maine Administrative Procedure Act. The amount of any penalty assessed pursuant to this subsection must be directly related to the severity of the pattern of questionable claims-handling techniques or repeated unreasonably contested claims. All penalties collected pursuant to this subsection shall inure to the benefit of the General Fund. An insurance carrier’s payment of any penalty assessed under this section may not be considered an element of loss for the purpose of establishing rates for workers' compensation insurance.”

- AIG is currently under review by the Maine Bureau of Insurance pursuant to a Consent Agreement executed on October 28, 2010 (amended on June 11, 2013) between AIG, the Superintendent of Insurance and the Attorney General’s Office, thus no action will be taken by the Board at this time, and the final Audit Report will be submitted to the Superintendent for review.

To avoid future penalty referral(s) under Section 359(2) by the Board, AIG must take corrective measures to address the following inadequacy:

- Failure to pay benefits accurately

Title 39-A M.R.S.A. Section 360(2)

“The Board may assess, after hearing, a civil penalty in an amount not to exceed \$1,000 for an individual and \$10,000 for a corporation, partnership or other legal entity for any willful violation of this Act, fraud or intentional misrepresentation. The Board may also require that person to repay any compensation received through a violation of this Act, fraud or intentional misrepresentation or to pay any compensation withheld through a violation of this Act, fraud or misrepresentation, with interest at the rate of 10% per year.”

- No action will be taken at this time.

To avoid future penalty referral(s) under Section 360(2), AIG must take corrective measures to address the following inadequacy:

- Failure to pay benefits accurately

COMPLIANCE TABLES

◆ Timeliness of Benefit Payments

A. Initial Payment of Indemnity Benefits

			2015-2016	
			Number	Percent
Check Issued Within:				
0-14	Days	Compliant	58	89%
15-44	Days		7	11%
Total			65	100%

B. Subsequent Payment of Indemnity Benefits

			2015-2016	
			Number	Percent
Check Issued Within:				
0-7	Days	Compliant	653	97%
8-37	Days		16	2%
38+	Days		1	1%
Total			670	100%

C. Medical Payments

			2015-2016	
			Number	Percent
Check Issued Within:				
0-30	Days	Compliant	59	98%
31+	Days		1	2%
Total			60	100%

D. Payment of Approved Agreements, Orders, Decisions

			2015-2016	
			Number	Percent
Check Issued Within:				
0-10	Days	Compliant	4	100%
Total			4	100%

◆ Accuracy of Indemnity Payments

E. Average Weekly Wage

		2015-2016	
		Number	Percent
Calculated:			
Correct	Compliant	41	68%
Incorrect		19	32%
Total		60	100%

F. Weekly Compensation Rate

		2015-2016	
		Number	Percent
Calculated:			
Correct	Compliant	41	68%
Incorrect		19	32%
Total		60	100%

G. Partial Benefits

		2015-2016	
		Number	Percent
Calculated:			
Correct	Compliant	6	46%
Incorrect		7	54%
Total		13	100%

H. Amount Paid

		2015-2016	
		Number	Percent
Calculated:			
Correct	Compliant	24	40%
Underpaid		18	30%
Overpaid		18	30%
Total		60	100%

◆ **Accuracy of Medical Payments**

I. Amount Paid

		2015-2016	
		Number	Percent
Calculated:			
Correct	Compliant	21	70%
Incorrect		9	30%
Total		30	100%