

COMPLIANCE AUDIT REPORT

STATE OF MAINE
WORKERS' COMPENSATION BOARD



Hanover Insurance Group
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Office of Monitoring, Audit & Enforcement

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SUMMARY

Hanover Insurance Group (Hanover) provides a wide variety of business insurance products including workers' compensation.

The Audit Division of the Maine Workers' Compensation Board (Board) examined twenty (20) claim files where indemnity benefits were paid for the period under examination (2015-2016) as well as sixty-one (61) medical payments for the period under examination (2015-2016) to determine compliance with statutory and regulatory requirements in the following areas:

- Form filing
- Timeliness of benefit payments
- Accuracy of benefit payments

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

Hanover handles its Maine workers' compensation claims primarily in Portland, Maine and Worcester, Massachusetts.

The audit work was conducted as a desk audit.

The compliance tables found on pages 14 through 18 of this report are representative of Board findings as of March 15, 2017. 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 March 15, 2017 to rectify identified noncompliance issues. This discussion also includes other significant issues identified by the audit.

◆ **Form filing**

- Title 39-A M.R.S.A. and the Board Rules and Regulations provide the requirements for reports to the Board:

<i>WCB-1, First Report of Occupational Injury or Disease</i>	<i>39-A M.R.S.A. Section 303, Rules & Regs, Ch 8 Section 13, Rules & Regs, Ch 3 Section 4</i>
<i>WCB-2, Wage Statement</i>	<i>39-A M.R.S.A. Section 303</i>
<i>WCB-2B, Fringe Benefits Worksheet</i>	<i>39-A M.R.S.A. Section 303</i>
<i>WCB-3, Memorandum of Payment (MOP)</i>	<i>Rules & Regs, Ch 1 Section 1.1, Rules & Regs, Ch 1 Section 1.3, 39-A M.R.S.A. Section 205(7), Rules & Regs, Ch 8 Section 12</i>
<i>WCB-4, Discontinuance or Modification of Compensation</i>	<i>Rules & Regs, Ch 8 Section 11, Rules & Regs, Ch 8 Section 12</i>
<i>WCB-4A, Consent Between Employer and Employee</i>	<i>Rules & Regs, Ch 8 Section 18</i>
<i>WCB-8, (21 Day) Certificate of Discontinuance or Reduction of Compensation</i>	<i>39-A M.R.S.A. Section 205(9)</i>
<i>WCB-9, Notice of Controversy (NOC)</i>	<i>Rules & Regs, Ch 1 Section 1.1, Rules & Regs, Ch 3 Section 4</i>
<i>WCB-11, Statement of Compensation Paid</i>	<i>Rules & Regs, Ch 8 Section 1, Rules & Regs, Ch 8 Section 12</i>

- Failure to file any Board form within established time frames is a violation of Title 39-A M.R.S.A. Section 360(1) (A) or (B).
- First Report of Occupational Injury or Disease (WCB-1):
 - Fifteen (15) First Report of Occupational Injury or Disease forms were filed in accordance with the above requirements.
 - Hanover’s compliance rate for First Report of Occupational Injury or Disease filings is 75%, which is below the Board’s performance benchmark of 85%.
 - Five (5) First Report of Occupational Injury or Disease forms were filed late.
- Wage Statement (WCB-2) and Fringe Benefits Worksheet (WCB-2B):
 - Fifteen (15) Wage Statements and sixteen (16) Fringe Benefits Worksheets were filed in accordance with the above requirements.
 - Five (5) Wage Statements and four (4) Fringe Benefits Worksheets were filed late.

- Memorandum of Payment (WCB-3 or WCB-4A) and Notice of Controversy (WCB-9):
 - Eighteen (18) Memorandum of Payment forms and three (3) Notice of Controversy (“lost time”) forms were filed in accordance with the above requirements.
 - Five (5) Consent Between Employer and Employee (WCB-4A) forms were filed in lieu of a WCB-3.
 - Hanover’s compliance rate for Memorandum of Payment filings is 88%, which is above the Board’s performance benchmark of 85%.
 - Hanover’s compliance rate for Notice of Controversy filings is 75%, which is below the Board’s performance benchmark of 90%.
 - Three (3) Memorandum of Payment forms and one (1) Notice of Controversy (“lost time”) form were filed late.
- Discontinuance or Modification of Compensation (WCB-4 or WCB-4A):
 - Seventeen (17) Discontinuance or Modification of Compensation forms were filed in accordance with the above requirements.
 - Five (5) Consent Between Employer and Employee (WCB-4A) forms were filed in lieu of a WCB-4.
 - Seven (7) Discontinuance or Modification of Compensation forms were filed late.
 - One (1) Discontinuance or Modification of Compensation form was required, but not filed.
 - Since March 15, 2017, Hanover submitted that one (1) Discontinuance or Modification of Compensation form.
- Statement of Compensation Paid (WCB-11):
 - Twenty-six (26) Statement of Compensation Paid forms were filed in accordance with the above requirements.
 - One (1) Statement of Compensation Paid form was filed late.

In response to notice of these problem areas, Hanover has taken steps to improve future compliance by providing additional staff training and working with employers on importance of timely reporting.

◆ **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:
 - Twenty (20) initial indemnity payments were made timely and three (3) claims received “salary continuation” from their respective employers.
 - Hanover’s compliance rate for initial indemnity payments (timely payments and “salary continuation” collectively) is 88%, which is above the Board’s performance benchmark of 87%.
 - Three (3) initial indemnity payments were made late.
 - One (1) late initial indemnity payment was made later than 30 days after they became due and payable, in violation of Section 205(2) and subject to penalty under Section 205(3).
- Subsequent Indemnity Payments:
 - Two hundred seventy-four (274) subsequent indemnity payments were made timely.
 - Thirty-one (31) subsequent indemnity payments were made late.
- 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-five (55) medical payments were made timely.
 - Six (6) medical payments were 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).
 - Five (5) Consents Between Employer and Employee were paid timely.

In response to notice of these problem areas, Hanover has taken steps to improve future compliance by providing additional staff training regarding those actions necessary 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 twenty (20) claims.
- Average Weekly Wage:
 - Nineteen (19) AWWs were correct.
 - One (1) AWW was incorrect.
- Weekly Compensation Rate:
 - Nineteen (19) WCRs were correct.
 - One (1) WCR was incorrect.
- Partial Benefits Calculation Method:
 - The method used to calculate partial benefits was correct for four (4) claims.
 - The method used to calculate partial benefits was incorrect for two (2) claims.
- Amount Paid:
 - Nine (9) claims were compensated correctly.
 - Seven (7) claims were underpaid (\$8,738.28 aggregately).
 - Since March 15, 2017, Hanover paid the amounts due.
 - Four (4) claims were overpaid (\$966.82 aggregately).
 - Collectively, the aforementioned errors resulted in a net underpayment of \$7,771.46 to injured workers.

In response to notice of these problem areas, Hanover has taken steps to improve future compliance by providing additional staff training regarding those actions necessary 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 eighteen (18) claims.
- Amount Paid:
 - Medical payments sampled for thirteen (13) claims were correct.
 - Medical payments sampled for five (5) claims were incorrect.

◆ **Other significant issues**

- Box 24 (Date Check Mailed) of the WCB-3, Memorandum of Payment (MOP) must accurately reflect the date that the initial indemnity payment (for the incapacity addressed by the MOP) is sent to the employee. See the Board's Forms and Petitions Manual.
 - Incorrect dates were reported in Box 24 of the MOPs that were filed for four (4) claims.
- Box 25 (Average Weekly Wage) of the WCB-3, Memorandum of Payment (MOP) must accurately reflect the average weekly wage (AWW) from Box 22 of the WCB-2, Wage Statement. If the initial AWW is estimated, a provisional AWW and WCR must be entered and indicated as such. Once known, Box 25 and Box 26 of the MOP are to be revised to reflect the correct AWW and WCR. See the Board's Forms and Petitions Manual.
- The term "Provisional" or "Prov" rather than an AWW and/or WCR was reported in Box 25 and/or 26 of the initial MOPs that were filed for ten (10) 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
Debra Dow vs. John M Eagleson Jr Institute Date of Injury: 4/8/15 Date ER Notified of Incapacity: 3/24/16 Claim # 03-965702 Board # 15028793	The claimant’s benefits were improperly discontinued effective 4/11/16. Payment of accrued benefits was made 11/3/17, which was 557 days after compensation became due and payable (4/25/16).	\$1,500.00
Jamie Guevara vs. Princeton Properties Date of Injury: 12/21/15 Date ER Notified of Incapacity: 12/22/15 Claim # 83-000657 Board # 15027188	Payment for the 7-day waiting period was made 11/9/17, which was 671 days after compensation became due and payable (1/8/16). The claimant’s benefits were improperly discontinued effective 1/6/16. Payment of accrued benefits was made 11/9/17, which was 659 days after compensation became due and payable (1/20/16).	\$1,500.00
Jennifer Lanica vs. Lady Grace Stores, Inc. Date of Injury: 3/12/16 Date ER Notified of Incapacity: 3/14/16 Claim # 83-003404 Board # 16005574	The claimant was totally incapacitated from 4/11/16 through 4/13/16. Payment for that incapacity was made 11/6/17, which was 558 days after compensation became due and payable (4/27/16).	\$1,500.00
Peter Mace vs. Saunders Mfg. Co., Inc. Date of Injury: 5/9/16 Date ER Notified of Incapacity: 5/10/16 Claim # 83-005409 Board # 16009348	Payment for the 7-day waiting period was made 11/6/17, which was 431 days after compensation became due and payable (9/1/16).	\$1,500.00
Total Penalties to Injured Employees for Delays of “Other” Indemnity Payments		\$6,000.00

Title 39-A M.R.S.A. Section 205(4)

“When there is no ongoing dispute, if bills for medical or health care services are not paid within 30 days after the carrier has received notice of nonpayment by certified mail from the provider of the medical or health care services or, if the bill was paid by the employee, from the employee who paid for the medical or health care services, \$50 or the amount of the bill due, whichever is less, must be added and paid to the provider of the medical or health care services or, if the bill was paid by the employee, to the employee who paid for the medical or health care services for each day over 30 days in which the bills for medical or health care services are not paid. Not more than \$1,500 in total may be added pursuant to this subsection.”

A delay of a medical payment, subject to penalty under Section 205(4), was found on the following claim:

CLAIM	PENALTY JUSTIFICATION	PENALTY EXPOSURE
Brendan Stackhouse vs. Fern’s Body Shop, Inc. Date of Injury: 9/17/15 Date ER Notified of Incapacity: 9/22/15 Claim # 03-970415 Board # 15020092 Provider: St. Mary’s Regional Medical Ctr	Payment was made 6/20/16, which was 108 days after the carrier received notice of non-payment by certified mail (3/4/16).	\$1,500.00*
Total Penalties to Providers or Injured Employees for Delays of Medical Payments		\$1,500.00

* The Provider’s petition for payment of medical and related services was dismissed by an administrative law judge after the outstanding amount was paid. St. Mary’s Regional Medical Ctr and Fern’s Body Shop, Inc. agreed to a reduced penalty amount of \$750.00 that was paid to St. Mary’s Regional Medical Ctr on 7/5/16.

◆ 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.”

- No action will be taken at this time.

To avoid future penalty referral(s) under Section 359(2) and/or 360(2), Hanover must take corrective measures to address the following inadequacies:

- Failure to timely file forms with the Board
- Failure to pay or timely pay benefits
- Failure to pay benefits accurately

Title 39-A M.R.S.A. Section 360(1)(B)

“The Board may assess a civil penalty not to exceed \$100 for each violation on any person: Who fails to file or complete such a report or form within the time limits specified in this Act or rules adopted under this Act.”

Violations subject to penalty under Section 360(1)(B) were found on the following claims:

Employee	Date of Injury	Forms Filed Late	Penalty Exposure
	1/31/15	WCB-1, Employer's First Report of Occupational Injury or Disease	\$100.00*
		WCB-2, Wage Statement	\$100.00
		WCB-2B, Fringe Benefits Worksheet	\$100.00
		WCB-9, Notice of Controversy	\$100.00
	8/20/15	WCB-1, Employer's First Report of Occupational Injury or Disease	\$100.00
	9/30/16	WCB-2, Wage Statement	\$100.00
	12/21/15	WCB-2, Wage Statement	\$100.00
		WCB-3, Memorandum of Payment	\$100.00
		WCB-4, Discontinuance or Modification of Compensation	\$100.00
	7/28/16	WCB-4, Discontinuance or Modification of Compensation	\$100.00
	9/12/15	WCB-4, Discontinuance or Modification of Compensation	\$100.00
	3/25/16	WCB-11, Statement of Compensation Paid	\$100.00
	12/10/15	WCB-1, Employer's First Report of Occupational Injury or Disease	\$100.00
		WCB-2, Wage Statement	\$100.00
		WCB-2B, Fringe Benefits Worksheet	\$100.00
		WCB-3, Memorandum of Payment	\$100.00
	3/12/16	WCB-1, Employer's First Report of Occupational Injury or Disease	\$100.00
		WCB-4, Discontinuance or Modification of Compensation	\$100.00
	5/9/16	WCB-2B, Fringe Benefits Worksheet	\$100.00
		WCB-4, Discontinuance or Modification of Compensation	\$100.00
	3/26/15	WCB-1, Employer's First Report of Occupational Injury or Disease	\$100.00*
		WCB-2, Wage Statement	\$100.00
		WCB-2B, Fringe Benefits Worksheet	\$100.00
		WCB-3, Memorandum of Payment	\$100.00
		WCB-4, Discontinuance or Modification of Compensation (2)	\$200.00
	6/21/16	WCB-4, Discontinuance or Modification of Compensation	\$100.00
TOTAL			\$2,700.00

* Paid AIU.

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) and/or 359(2), Hanover must take corrective measures to address the following inadequacies:

- Failure to timely file forms with the Board
- Failure to pay or timely pay benefits
- Failure to pay benefits accurately

COMPLIANCE TABLES

◆ Form Filing

A. First Report of Occupational Injury or Disease (WCB-1)

		2015-2016	
		Number	Percent
Received at the Board:			
Filed	Compliant	15	75%
Late		5	25%
Total		20	100%

B. Wage Statement (WCB-2)

		2015-2016	
		Number	Percent
Received at the Board:			
Filed	Compliant	15	75%
Late		5	25%
Total		20	100%

C. Fringe Benefits Worksheet (WCB-2B)

		2015-2016	
		Number	Percent
Received at the Board:			
Filed	Compliant	16	80%
Late		4	20%
Total		20	100%

D. Memorandum of Payment (WCB-3 or WCB-4A)

		2015-2016	
		Number	Percent
Received at the Board:			
Filed	Compliant	23	88%
Late		3	12%
Total		26	100%

E. Discontinuance or Modification of Compensation (WCB-4 or WCB-4A)

		2015-2016	
		Number	Percent
Received at the Board:			
Filed	Compliant	22	74%
Late		7	23%
Not Filed		1	3%
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Total		30	100%

F. Notice of Controversy (WCB-9)

		2015-2016	
		Number	Percent
Received at the Board:			
Filed	Compliant	3	75%
Late		1	25%
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Total		4	100%

G. Statement of Compensation Paid (WCB-11)

		2015-2016	
		Number	Percent
Received at the Board:			
Filed	Compliant	26	96%
Late		1	4%
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Total		27	100%

◆ **Timeliness of Benefit Payments**

H. Initial Payment of Indemnity Benefits

			2015-2016	
			Number	Percent
Check Issued Within:				
0-14	Days	Compliant	23	88%
15-44	Days		2	8%
45+	Days		1	4%
Total			26	100%

I. Subsequent Payment of Indemnity Benefits

			2015-2016	
			Number	Percent
Check Issued Within:				
0-7	Days	Compliant	274	90%
8-37	Days		31	10%
Total			305	100%

J. Medical Payments

			2015-2016	
			Number	Percent
Check Issued Within:				
0-30	Days	Compliant	55	90%
31+	Days		6	10%
Total			61	100%

K. Payment of Approved Agreements, Orders, Decisions

			2015-2016	
			Number	Percent
Check Issued Within:				
0-10	Days	Compliant	5	100%
Total			5	100%

◆ Accuracy of Indemnity Payments

L. Average Weekly Wage

		2015-2016	
		Number	Percent
Calculated:			
Correct	Compliant	19	95%
Incorrect		1	5%
Total		20	100%

M. Weekly Compensation Rate

		2015-2016	
		Number	Percent
Calculated:			
Correct	Compliant	19	95%
Incorrect		1	5%
Total		20	100%

N. Partial Benefits

		2015-2016	
		Number	Percent
Calculated:			
Correct	Compliant	4	67%
Incorrect		2	33%
Total		6	100%

O. Amount Paid

		2015-2016	
		Number	Percent
Calculated:			
Correct	Compliant	9	45%
Underpaid		7	35%
Overpaid		4	20%
Total		20	100%

◆ Accuracy of Medical Payments

P. Amount Paid

		2015-2016	
		Number	Percent
Calculated:			
Correct	Compliant	13	72%
Incorrect		5	28%
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Total		18	100%
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