

# **COMPLIANCE AUDIT REPORT**

**STATE OF MAINE  
WORKERS' COMPENSATION BOARD**



**Maine School Management Association  
Engagement Date: July 30, 2021  
Issue Date: April 4, 2022**

**Office of Monitoring, Audit & Enforcement**

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Executive Director

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## SUMMARY

Maine School Management Association (MSMA) is the administrator of workers' compensation coverage for a group of self-insured employers.

The Audit Division of the Maine Workers' Compensation Board (Board) examined twenty-four (24) claim files where indemnity benefits were paid for the period under examination (2020) as well as sixty (60) medical payments for the period under examination (2020) 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 MSMA's 2020 Maine workers' compensation claims. The medical payment sample was drawn from a listing of all of MSMA's 2020 medical payments for those claims in the sample.

MSMA handles its Maine workers' compensation claims solely in Augusta, Maine.

The on-site audit work was conducted in MSMA's Augusta office November 8 through November 9, 2021.

The compliance tables found on pages 7 through 9 of this report are representative of Board findings as of July 30, 2021. Since that time, the Audit Division has received additional information, missing form filings, form corrections, indemnity payments and adjustments. Based on this information, the Detailed Claims Information provided as an appendix of this report is representative of Board findings as of the issuance of this report.

Following is a discussion of the aforementioned compliance tables and of the steps taken since July 30, 2021 to rectify identified noncompliance issues. There were no 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:
  - Twenty-seven (27) initial indemnity payments were made timely.
    - MSMA's compliance rate for initial indemnity payments is 93%, which is above the Board's performance benchmark of 87%.
  - Two (2) initial indemnity payments were made late.
- Subsequent Indemnity Payments:
  - Three hundred seven (307) subsequent indemnity payments were made timely.
  - Five (5) subsequent indemnity payments were made late.
    - Two (2) late subsequent indemnity payment were 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).
- 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."
- Sixty (60) medical payments were made timely.

*In response to notice of these problem areas, MSMA 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-four (24) claims.
- Average Weekly Wage:
  - Twenty-three (23) AWWs were correct.
  - One (1) AWW was incorrect.
- Weekly Compensation Rate:
  - Twenty-three (23) WCRs were correct.
  - One (1) WCR was incorrect.
- Partial Benefits Calculation Method:
  - The method used to calculate partial benefits was correct for ten (10) claims.
  - The method used to calculate partial benefits was incorrect for two (2) claims.
- Amount Paid:
  - Twenty (20) claims were compensated correctly.
  - Two (2) claims were underpaid (\$1,650.77 aggregately).
    - Since July 30, 2021, MSMA paid \$24.34 of the amounts due.
  - Two (2) claims were overpaid (\$867.76 aggregately).
  - Collectively, the aforementioned errors resulted in a net underpayment of \$783.01 to injured workers.

*In response to notice of these problem areas, MSMA 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 sixty (60) medical payments was reviewed among twenty-four (24) claims.
- Amount Paid:
  - Sixty (60) medical payments sampled were correct.

## 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 subsequent indemnity payments, subject to penalty under Section 205(3), were found on the following claims:

CLAIM	PENALTY JUSTIFICATION	PENALTY EXPOSURE
David Bowden vs Brooklin School Dept. Date of Injury: 3/5/2020 Date ER Notified of Incapacity: 3/6/2020 Claim # 2011981 Board # 20004612	The subsequent indemnity payment was made 4/30/20, which was 35 days after compensation became due and payable (3/26/20).	\$250.00
Kimberly Gurney vs. MSAD 09 Date of Injury: 2/4/2020 Date ER Notified of Incapacity: 2/5/2020 Claim # 2011857 Board # 20002881	The subsequent indemnity payment was made 9/17/20, which was 168 days after compensation became due and payable (4/2/20).	\$1,500.00
<b>Total Penalties to Injured Employees for Delays of Subsequent Indemnity Payments</b>		<b>\$1,750.00</b>

## ◆ 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 3<sup>rd</sup>-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 taken.

### **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 taken.



# COMPLIANCE TABLES

## Timeliness of Benefit Payments

### A. Initial Payment of Indemnity Benefits

			2020	
			Number	Percent
Check Issued Within:				
0-14	Days	<b>Compliant</b>	27	93%
15-44	Days		2	7%
Total			29	100%

### B. Subsequent Payment of Indemnity Benefits

			2020	
			Number	Percent
Check Issued Within:				
0-7	Days	<b>Compliant</b>	307	98%
8-37	Days		3	1%
38+	Days		2	1%
Total			312	100%

### C. Medical Payments

			2020	
			Number	Percent
Check Issued Within:				
0-30	Days	<b>Compliant</b>	60	100%
Total			60	100%

◆ **Accuracy of Indemnity Payments**

**D. Average Weekly Wage**

		<b>2020</b>	
		Number	Percent
Calculated:			
Correct	<b>Compliant</b>	23	96%
Incorrect		1	4%
Total		24	100%

**E. Weekly Compensation Rate**

		<b>2020</b>	
		Number	Percent
Calculated:			
Correct	<b>Compliant</b>	23	96%
Incorrect		1	4%
Total		24	100%

**F. Partial Benefits**

		<b>2020</b>	
		Number	Percent
Calculated:			
Correct	<b>Compliant</b>	10	83%
Incorrect		2	17%
Total		12	100%

**G. Amount Paid**

		<b>2020</b>	
		Number	Percent
Calculated:			
Correct	<b>Compliant</b>	20	84%
Underpaid		2	8%
Overpaid		2	8%
Total		24	100%

◆ **Accuracy of Medical Payments**

**H. Amount Paid**

		<b>2020</b>	
		Number	Percent
Calculated:			
Correct	<b>Compliant</b>	60	100%
Total		60	100%