

COMPLIANCE AUDIT REPORT

STATE OF MAINE
WORKERS' COMPENSATION BOARD



Cottingham & Butler Claims Services, Inc.
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Office of Monitoring, Audit & Enforcement

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CONTENTS

SUMMARY	1
◆ Timeliness of benefit payments	2
◆ Accuracy of indemnity payments	3
◆ Accuracy of medical payments.....	4
◆ Other significant issues.....	5
PENALTIES	6
◆ Penalties payable to providers and/or injured employees	6
Title 39-A M.R.S.A. Section 205(3)	6
◆ Penalties payable to injured employees and the Workers' Compensation Board Administrative Fund.....	7
Title 39-A M.R.S.A. Section 324(2)(A)	7
◆ Penalties payable to the State General Fund.....	8
Title 39-A M.R.S.A. Section 359(2)	8
Title 39-A M.R.S.A. Section 360(2)	8
COMPLIANCE TABLES.....	9
◆ Timeliness of Benefit Payments	9
A. Initial Payment of Indemnity Benefits.....	9
B. Subsequent Payment of Indemnity Benefits.....	9
C. Medical Payments	9
D. Payment of Approved Agreements, Orders, Decisions	9
◆ Accuracy of Indemnity Payments	10
E. Average Weekly Wage	10
F. Weekly Compensation Rate	10
G. Partial Benefits	10
H. Amount Paid.....	10
◆ Accuracy of Medical Payments.....	11
I. Amount Paid.....	11

SUMMARY

Cottingham & Butler Claims Services, Inc. (CBCS) is a third-party administrator (TPA) that handles Maine workers' compensation claims for several insurers and self-insured employers.

The Audit Division of the Maine Workers' Compensation Board (Board) examined twelve (12) claim files where indemnity benefits were paid for the period under examination (2017-2018) as well as sixty (60) medical payments for the period under examination (2017-2018) 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 CBCS's 2017-2018 Maine workers' compensation claims. The medical payment sample was drawn from a listing of all of CBCS's 2017-2018 medical payments for those claims in the sample.

CBCS handles its Maine workers' compensation claims solely in Dubuque, Iowa.

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 March 31, 2019. 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 31, 2019 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:
 - Ten (10) initial indemnity payments were made timely.
 - CBCS's compliance rate for initial indemnity payments is 77%, which is below the Board's performance benchmark of 87%.
 - Three (3) initial indemnity payments were made late.
- Subsequent Indemnity Payments:
 - One hundred fifty-two (152) subsequent indemnity payments were made timely.
 - Twenty-seven (27) 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."
 - Forty-four (44) medical payments were made timely.
 - Sixteen (16) 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).
 - Zero (0) provisional orders were paid timely.
 - Two (2) provisional orders were paid late in violation of Section 324(1) and subject to penalty under Section 324(2).

In response to notice of these problem areas, CBCS 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 twelve (12) claims.
- Average Weekly Wage:
 - Twelve (12) AWWs were correct.
- Weekly Compensation Rate:
 - Twelve (12) WCRs were correct.
- Partial Benefits Calculation Method:
 - The method used to calculate partial benefits was correct for three (3) claims.
 - The method used to calculate partial benefits was incorrect for two (2) claims.
- Amount Paid:
 - Three (3) claims were compensated correctly.
 - Four (4) claims were underpaid (\$165.99 aggregately).
 - Since March 31, 2019, CBCS paid the amounts due.
 - Five (5) claims were overpaid (\$1,533.68 aggregately).
 - Collectively, the aforementioned errors resulted in a net overpayment of \$1,367.69 to injured workers.

In response to notice of these problem areas, CBCS 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 eleven (11) claims.
- Amount Paid:
 - Medical payments sampled for eight (8) claims were correct.
 - Medical payments sampled for three (3) claims were incorrect.

In response to notice of these problem areas, CBCS has taken steps to improve future compliance by providing additional staff training regarding those actions necessary to ensure accurate payments.

◆ **Other significant issues**

- 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 three (3) 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 four (4) claims.
- 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 five (5) claims.
- Box 19b (Return Date) of the WCB-4, Discontinuance or Modification of Compensation must accurately reflect the date the incapacity ended. See 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 three (3) 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 one (1) claim.

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.”

◆ **Penalties payable to injured employees and the Workers’ Compensation Board Administrative Fund**

Title 39-A M.R.S.A. Section 324(2)(A)

“Except as otherwise provided by Section 205, if an employer or insurance carrier fails to pay compensation as provided in this section, the Board may assess against the employer or insurance carrier a forfeiture of up to \$200 for each day of noncompliance.”

Violations subject to penalty under Section 324(2) were found on the following claims:

CLAIM	PENALTY JUSTIFICATION	PENALTY EXPOSURE
Steven Greenleaf vs. Hartt Transportation Systems, Inc. Date of Injury: 7/12/18 Date ER Notified of Incapacity: 12/20/18 Claim #TRK18177174 Board #18016891	Incapacity benefits were paid 1/3/19, which was 14 days after the date of the corresponding provisional order mailed 12/20/18.	\$800.00*
Michael Pelletier vs. Lily Transportation Corp. Date of Injury: 5/1/17 Date ER Notified of Incapacity: 5/19/17 Claim #LIL17142610 Board #17012174	Incapacity benefits were paid 11/1/18, which was 14 days after the date of the corresponding provisional order mailed 10/18/18.	\$800.00*
Total		\$1,600.00

*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.

◆ **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), CBCS must take corrective measures to address the following inadequacies:

- Failure to pay or timely pay benefits
- 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) and/or 359(2), CBCS must take corrective measures to address the following inadequacies:

- Failure to pay or timely pay benefits
- Failure to pay benefits accurately

COMPLIANCE TABLES

◆ Timeliness of Benefit Payments

A. Initial Payment of Indemnity Benefits

			2017-2018	
			Number	Percent
Check Issued Within:				
0-14	Days	Compliant	10	77%
15-44	Days		2	16%
45+	Days		1	7%
Total			13	100%

B. Subsequent Payment of Indemnity Benefits

			2017-2018	
			Number	Percent
Check Issued Within:				
0-7	Days	Compliant	152	85%
8-37	Days		27	15%
Total			179	100%

C. Medical Payments

			2017-2018	
			Number	Percent
Check Issued Within:				
0-30	Days	Compliant	44	73%
31+	Days		16	27%
Total			60	100%

D. Payment of Approved Agreements, Orders, Decisions

			2017-2018	
			Number	Percent
Check Issued Within:				
0-10	Days	Compliant	0	0%
10 +	Days		2	100%
Total			2	100%

◆ Accuracy of Indemnity Payments

E. Average Weekly Wage

		2017-2018	
		Number	Percent
Calculated:			
Correct	Compliant	12	100%
Incorrect		0	0%
Total		12	100%

F. Weekly Compensation Rate

		2017-2018	
		Number	Percent
Calculated:			
Correct	Compliant	12	100%
Incorrect		0	0%
Total		12	100%

G. Partial Benefits

		2017-2018	
		Number	Percent
Calculated:			
Correct	Compliant	3	60%
Incorrect		2	40%
Total		5	100%

H. Amount Paid

		2017-2018	
		Number	Percent
Calculated:			
Correct	Compliant	3	25%
Underpaid		4	33%
Overpaid		5	42%
Total		12	100%

◆ **Accuracy of Medical Payments**

I. Amount Paid

		2017-2018	
		Number	Percent
Calculated:			
Correct	Compliant	8	73%
Incorrect		3	27%
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Total		11	100%
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