

# **COMPLIANCE AUDIT REPORT**

**STATE OF MAINE  
WORKERS' COMPENSATION BOARD**



**FutureComp/USI Insurance Solutions, LLC.**  
**Engagement Date: February 8, 2019**  
**Issue Date: February 3, 2020**

**Office of Monitoring, Audit & Enforcement**

John C. Rohde  
Executive Director

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## SUMMARY

FutureComp/USI Insurance Solutions, LLC. (FutureComp) is a third-party administrator (TPA) that handles Maine workers' compensation claims for Maine Merchants Association Workers' Compensation Trust, Central Maine Medical Center, and Hanover Insurance Company.

The Audit Division of the Maine Workers' Compensation Board (Board) examined thirty (30) 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 FutureComp's 2017-2018 Maine workers' compensation claims. The medical payment sample was drawn from a listing of all of FutureComp's 2017-2018 medical payments for those claims in the sample.

FutureComp handles its Maine workers' compensation claims solely in Augusta, Maine and Bedford, New Hampshire.

The audit work was conducted as a desk audit.

The Detailed Claims Information provided as an appendix of this report is representative of Board findings as of February 8, 2019. Since that time, the Audit Division has received additional information, missing form filings and form corrections.

Following is a discussion of the aforementioned Detailed Claims Information. This discussion also includes other significant issues identified by the audit.

The compliance tables found on pages 11 through 13 of this report are representative of Board findings as of February 8, 2019. Since that time, the Audit Division has received additional information, form corrections, indemnity payments and adjustments.

Following is a discussion of the aforementioned compliance tables and of the steps taken since February 8, 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:
  - Twenty-seven (27) initial indemnity payments were made timely.
    - FutureComp's compliance rate for initial indemnity payments is 82%, which is below the Board's performance benchmark of 87%.
  - Six (6) initial indemnity payments were made late.
- Subsequent Indemnity Payments:
  - Two hundred thirty (230) subsequent indemnity payments were made timely.
  - Twenty-six (26) 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-eight (58) medical payments were made timely.
  - Two (2) 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).
  - One (1) Lump Sum Settlement, two (2) mediation agreements, one (1) Consent Decree and one (1) Decree were paid timely.

*In response to notice of these problem areas, FutureComp 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 thirty (30) claims.
- Average Weekly Wage:
  - Twenty-six (26) AWWs were correct.
  - Four (4) AWWs were incorrect.
- Weekly Compensation Rate:
  - Twenty-six (26) WCRs were correct.
  - Four (4) WCRs were 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 fifteen (15) claims.
- Amount Paid:
  - Eleven (11) claims were compensated correctly.
  - Nine (9) claims were underpaid (\$3,715.45 aggregately).
    - Since February 8, 2019, FutureComp paid the amounts due.
  - Ten (10) claims were overpaid (\$1,390.84 aggregately).
  - Collectively, the aforementioned errors resulted in a net underpayment of \$2,324.61 to injured workers.

*In response to notice of these problem areas, FutureComp 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 were reviewed for fifteen (15) claims.
- Amount Paid:
  - Medical payments sampled for twelve (12) claims were correct.
  - Medical payments sampled for three (3) claims were incorrect.

*In response to notice of these problem areas, FutureComp 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 nine (9) 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 seven (7) claims.
- Box 19a (From Date) and 19b (To Return Date) of the WCB-4, Discontinuance or Modification of Compensation must accurately reflect the date the incapacity began or, respectively. See also the Board's Forms and Petitions Manual.
- Incorrect dates were reported in Box 19a and/or 19b of the WCB-4, Discontinuance or Modification of Compensation forms that were filed for eight (8) claims.
- Additional payments were made since the "Final" WCB-11 Statement of Compensation Paid was filed 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
Michele Bailey vs. CMMC Date of Injury: 6/1/18 Date ER Notified of Incapacity: 8/8/18 Claim # 6742553 Board # 18018214	The claimant was totally incapacitated on 7/26/18. Payment for that incapacity was made 10/7/19, which was 394 days after compensation became due and payable (9/7/18).  A provisional payment was made to pay benefits week ending 10/13/18. Payment of accrued benefits was made 10/7/19, which was 345 days after compensation became due and payable (10/27/18).	\$1,500.00
Christina Campbell vs. CMMC Date of Injury: 10/13/17 Date ER Notified of Incapacity: 10/13/17 Claim # 6537849 Board # 17022985	Payment for part of the 7-day waiting period was made 10/7/19, which was 342 days after compensation became due and payable (10/29/18).	\$1,500.00
Connor Farago vs. CMMC Date of Injury: 12/10/18 Date ER Notified of Incapacity: 12/10/18 Claim # 6807778 Board # 18029049	A provisional payment was made to pay benefits week ending 12/22/18. Payment of accrued benefits was made 10/7/19 and 11/8/19, which was 275 and 307 days respectively after compensation became due and payable (1/5/19).	\$1,500.00
Eric Fecteau vs. CMMC Date of Injury: 4/14/17 Date ER Notified of Incapacity: 9/1/17 Claim # 6498649 Board # 17019444	The claimant’s benefits were improperly discontinued effective 9/18/17. Payment of accrued benefits was made 10/7/19, which was 735 days after compensation became due and payable (10/2/17).	\$1,500.00
Nick Sroka vs. Pine Tree Rental Date of Injury: 2/7/17 Date ER Notified of Incapacity: 2/20/17 Claim # 6437125 Board # 17003757	Payment for part of the 7-day waiting period was made 10/7/19, which was 944 days after the claim became due and payable (3/7/17).	\$1,500.00
<b>Total Penalties to Injured Employees for Delays of “Other” Indemnity Payments</b>		<b>\$7,500.00</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 will be taken at this time.

To avoid future penalty referral(s) under Section 359(2) and/or 360(2), FutureComp 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), FutureComp 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	<b>Compliant</b>	27	82%
15-44	Days		6	18%
Total			33	100%

#### B. Subsequent Payment of Indemnity Benefits

			2017-2018	
			Number	Percent
Check Issued Within:				
0-7	Days	<b>Compliant</b>	230	90%
8-37	Days		26	10%
Total			256	100%

#### C. Medical Payments

			2017-2018	
			Number	Percent
Check Issued Within:				
0-30	Days	<b>Compliant</b>	58	97%
31+	Days		2	3%
Total			60	100%

#### D. Payment of Approved Agreements, Orders, Decisions

			2017-2018	
			Number	Percent
Check Issued Within:				
0-10	Days	<b>Compliant</b>	5	100%
Total			5	100%

♦ **Accuracy of Indemnity Payments**

**E. Average Weekly Wage**

		<b>2017-2018</b>	
		Number	Percent
Calculated:			
Correct	<b>Compliant</b>	26	87%
Incorrect		4	13%
Total		30	100%

**F. Weekly Compensation Rate**

		<b>2017-2018</b>	
		Number	Percent
Calculated:			
Correct	<b>Compliant</b>	26	87%
Incorrect		4	13%
Total		30	100%

**G. Partial Benefits**

		<b>2017-2018</b>	
		Number	Percent
Calculated:			
Correct	<b>Compliant</b>	4	21%
Incorrect		15	79%
Total		19	100%

**H. Amount Paid**

		<b>2017-2018</b>	
		Number	Percent
Calculated:			
Correct	<b>Compliant</b>	11	37%
Underpaid		9	30%
Overpaid		10	33%
Total		30	100%

♦ **Accuracy of Medical Payments**

**I. Amount Paid**

		<b>2017-2018</b>	
		Number	Percent
Calculated:			
Correct	<b>Compliant</b>	12	80%
Incorrect		3	20%
Total		15	100%