

COMPLIANCE AUDIT REPORT

**STATE OF MAINE
WORKERS' COMPENSATION BOARD**



**Maine Municipal Association
Engagement Date: July 26, 2021
Issue Date: June 30, 2022**

Office of Monitoring, Audit & Enforcement

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SUMMARY

Maine Municipal Association (MMA) 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 twenty-six (26) claim files where indemnity benefits were paid for the period under examination (2020) as well as sixty-one (61) 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 MMA's 2020 Maine workers' compensation claims. The medical payment sample was drawn from a listing of all of MMA's 2020 medical payments for those claims in the sample.

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

The on-site audit work was conducted in MMA's Augusta office November 15 and November 16, 2021.

The compliance tables found on pages 8 through 10 of this report are representative of Board findings as of July 26, 2021. Since that time, the Audit Division has received additional information, 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 26, 2021 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-three (23) initial indemnity payments were made timely, and one (1) claim received “salary continuation” from its respective employers.
 - MMA’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%.
 - Three (3) initial indemnity payments were made late.
- Subsequent Indemnity Payments:
 - Two hundred forty-two (242) subsequent indemnity payments were made timely.
 - Nine (9) 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.”
 - Sixty-one (61) medical bills were paid timely.

In response to notice of these problem areas, MMA 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-six (26) claims.
- Average Weekly Wage:
 - Twenty-five (25) AWWs were correct.
 - One(1) AWW was incorrect.
- Weekly Compensation Rate:
 - Twenty-five (25) WCRs were correct.
 - One (1) WCR was incorrect.
- Partial Benefits Calculation Method:
 - The method used to calculate partial benefits was correct for seven (7) claims.
 - The method used to calculate partial benefits was incorrect for six (6) claims.
- Amount Paid:
 - Seventeen (17) claims were compensated correctly.
 - Three (3) claims were underpaid (\$469.38 aggregately).
 - Since July 26, 2021 MMA paid \$469.38 of the amount due.
 - Four (4) claims were overpaid (\$193.45 aggregately).
 - Collectively, the aforementioned errors resulted in a net underpayment of \$275.93 to injured workers.

◆ **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-one (61) medical payments was reviewed among twenty-one (21) claims.
- Amount Paid:
 - Fifty-nine (59) medical payments sampled were correct.
 - Two (2) medical payments sampled were incorrect.

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

◆ Other significant issues

- Box 2b (Was Employee Paid for ½ Day or More on Day of Injury?) 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 date was reported in Box 2b of the FROI that was filed for one (1) claim.
- 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 date was reported in Boxes 23a and 23b of the MOP that was filed for one (1) claim.
- 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 date was reported in Box 24 of the MOP that was filed for one (1) claim.
- Section 213 provides the requirements for partial incapacity benefits. Partial benefits must be calculated at a rate of 80% of the difference between the employee’s pre-injury (after-tax) AWW and their post-injury (after-tax) weekly (based on payroll, i.e. Saturday through Friday) actual wages (not based on M-1). See Board Rules and Regulations Chapter 8, Section 8.
 - It appears that post-injury wages were not reviewed to assess a potential obligation to pay partial benefits when one (1) employee returned to work on “modified duty”.

◆ 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
Orrin Parker vs. Town of Union Date of Injury: 1/19/20 Date ER Notified of Incapacity: 7/7/20 Claim #220W0526 Board #20012477	Benefits were not increased from max benefit level to claimant’s own rate effective 1/1/20 until 11/10/21, which was 679 days after compensation became due and payable.	\$1,500.00
Craig Voisine vs. Town of Scarborough Date of Injury: 3/5/20 Date ER Notified of Incapacity: 3/6/20 Claim #220W1022 Board #20004894	Failed to include concurrent wages when determining AWW and corresponding WCR. Payment of accrued benefits has not yet been made.	\$1,500.00
Total Penalties to Injured Employees for Delays of “Other” Indemnity Payments		\$3,000.00

◆ 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), MMA 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 359(2) and/or 360(2), MMA 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

			2020	
			Number	Percent
Check Issued Within:				
0-14	Days	Compliant	24	89%
15-44	Days		3	11%
Total			27	100%

B. Subsequent Payment of Indemnity Benefits

			2020	
			Number	Percent
Check Issued Within:				
0-7	Days	Compliant	242	96%
8-37	Days		9	4%
Total			251	100%

C. Medical Payments

			2020	
			Number	Percent
Check Issued Within:				
0-30	Days	Compliant	61	100%
Total			61	100%

Accuracy of Indemnity Payments

D. Average Weekly Wage

		2020	
		Number	Percent
Calculated:			
Correct	Compliant	25	96%
Incorrect		1	4%
Total		26	100%

E. Weekly Compensation Rate

		2020	
		Number	Percent
Calculated:			
Correct	Compliant	25	96%
Incorrect		1	4%
Total		26	100%

F. Partial Benefits

		2020	
		Number	Percent
Calculated:			
Correct	Compliant	7	54%
Incorrect		6	46%
Total		13	100%

G. Amount Paid

		2020	
		Number	Percent
Calculated:			
Correct	Compliant	19	73%
Underpaid		3	12%
Overpaid		4	15%
Total		26	100%

◆ **Accuracy of Medical Payments**

H. Amount Paid

		2020	
		Number	Percent
Calculated:			
Correct	Compliant	59	97%
Incorrect		2	3%
Total		61	100%