

COMPLIANCE AUDIT REPORT

STATE OF MAINE
WORKERS' COMPENSATION BOARD



Sedgwick Claims Management Services, Inc.
Engagement Date: March 23, 2017
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Office of Monitoring, Audit & Enforcement

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SUMMARY

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

In September 2008, Sedgwick voluntarily entered into a Corrective Action Plan (CAP) at the request of the Office of Monitoring, Audit, and Enforcement of the Maine Workers' Compensation Board (Board) to address specific issues raised in a 2007 Compliance Audit Report. This CAP was lifted in January 2010.

In September 2012, Sedgwick entered into an agreement with the Superintendent of the Maine Bureau of Insurance (Superintendent) and the Office of the Maine Attorney General for the purpose of bringing to a halt, without resort to an adjudicatory proceeding, violations of 39-A M.R.S.A. certified to the Superintendent by the Board pursuant to Title 39-A M.R.S.A. Section 359(2) and confirmed in a 2010 targeted market conduct examination report as well as a 2011 Compliance Audit Report. Self-audit and "look-back" reviews were conducted as stipulations of this agreement. Sedgwick was returned to the regular audit cycle in May of 2017.

The Audit Division of the Board examined sixty (60) claim files where indemnity benefits were paid for the period under examination (2016) as well as sixty (60) medical payments for the period under examination (2016) 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 Sedgwick's 2016 Maine workers' compensation claims. The medical payment sample was drawn from a listing of all of Sedgwick's 2016 medical payments for those claims in the sample.

Five (5) "Complaint for Audit" forms that named Sedgwick as the claims administrator were filed with the Audit Division since the last audit, but all issues raised by those documents were addressed and resolved by Sedgwick prior to this audit engagement. Therefore, those five (5) complaints were not included in this audit.

Sedgwick handles its Maine workers' compensation claims primarily in South Portland, Maine.

The audit work was conducted as a desk audit.

The compliance tables found on pages 10 through 12 of this report are representative of Board findings as of March 23, 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 23, 2017 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:
 - Sixty-one (61) initial indemnity payments were made timely.
 - Sedgwick’s compliance rate for initial indemnity payments is 94%, which is above the Board’s performance benchmark of 87%.
 - Four (4) initial indemnity payments were made late.
 - One (1) late initial indemnity payment was made later than 30 days after it became due and payable, in violation of Section 205(2) and subject to penalty under Section 205(3).
- Subsequent Indemnity Payments:
 - Five hundred seventy-nine (579) subsequent indemnity payments were made timely.
 - Twenty-one (21) subsequent indemnity payments were made late.
 - Three (3) late subsequent indemnity payments 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.”
 - Fifty-nine (59) medical payments were made timely.
 - One (1) medical payment was 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) provisional order, one (1) mediation agreement, one (1) Consent Decree and two (2) Consents Between Employer and Employee were paid timely.

◆ **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 sixty (60) claims.
- Average Weekly Wage:
 - Forty-nine (49) AWWs were correct.
 - Eleven (11) AWWs were incorrect.
- Weekly Compensation Rate:
 - Fifty-one (51) WCRs were correct.
 - Nine (9) WCRs were incorrect.
- Partial Benefits Calculation Method:
 - The method used to calculate partial benefits was correct for fifteen (15) claims.
 - The method used to calculate partial benefits was incorrect for thirteen (13) claims.
- Amount Paid:
 - Thirty-one (31) claims were compensated correctly.
 - Eighteen (18) claims were underpaid (\$13,954.68 aggregately).
 - Since March 23, 2017, Sedgwick paid \$8,488.32 of the amounts due.
 - Eleven (11) claims were overpaid (\$1,979.75 aggregately).
 - Collectively, the aforementioned errors resulted in a net underpayment of \$11,974.93 to injured workers.

In response to notice of non-payment of the waiting period, Sedgwick has taken steps to improve future compliance by reviewing all claims with dates of injury from 1/1/16 on-going to ensure the 7-day waiting periods have been paid, enhancing its tracking of the waiting period in its “Time Tracking” screen, conducting internal audits on “incoming Maine lost time claims since 2016” and adding a specific waiting period question to its “2018 regulatory audits.”

◆ **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 thirty-one (31) claims.
- Amount Paid:
 - Medical payments sampled for twenty-five (25) claims were correct.
 - Medical payments sampled for six (6) claims were incorrect.

◆ **Other significant issues**

- Box 19b (to (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 five (5) claims.
- 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 twenty (20) 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 (FROI). 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 eighteen (18) 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 six (6) 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.”

A delay of an initial indemnity payment, subject to penalty under Section 205(3), was found on the following claim:

CLAIM	PENALTY JUSTIFICATION	PENALTY EXPOSURE
Thomas Doyer vs. Mid-States Packaging, Inc. Date of Injury: 11/13/16 Date ER Notified of Incapacity: 11/14/16 Claim #B728100473000101 Board #16029248	No NOC was filed, and the initial indemnity payment was made 2/8/17, which was 72 days after compensation became due and payable (11/28/16).	\$1,500.00
Total Penalties to Injured Employees for Delays of Initial Indemnity Payments		\$1,500.00

Delays of “other” indemnity payments, subject to penalty under Section 205(3), were found on the following claims:

CLAIM	PENALTY JUSTIFICATION	PENALTY EXPOSURE
Reed Branscombe vs. Lowe’s Companies, Inc. Date of Injury: 6/5/16 Date ER Notified of Incapacity: 6/6/16 Claim #30165954235-0001 Board #16011175	The claimant’s benefits were improperly discontinued on 7/4/16. Payment of accrued benefits was made 11/6/17, which was 476 days after compensation became due and payable (7/18/16).	\$1,500.00
Sherry Carrier vs. BJ’s Wholesale Club, Inc. Date of Injury: 4/5/16 Date ER Notified of Incapacity: 4/6/16 Claim #30165619092-0001 Board #16006821	Payment for the 7-day waiting period was made 9/21/16, which was 137 days after compensation became due and payable (5/7/16).	\$1,500.00
Randall Doiron vs. Catalyst Paper Operations, Inc. Date of Injury: 12/8/16 Date ER Notified of Incapacity: 12/8/16 Claim #30166995551-0001 Board #16027097	The claimant was totally incapacitated from 3/6/17 through 3/12/17. Payment for two (2) days of that incapacity was made 11/8/17, which was 227 days after compensation became due and payable (3/26/17).	\$1,500.00

CLAIM	PENALTY JUSTIFICATION	PENALTY EXPOSURE
Steve Letourneau vs. Pepsico Date of Injury: 6/26/16 Date ER Notified of Incapacity: 6/27/16 Claim #20160602058-0001 Board #16013489	Payment for the 7-day waiting period was made 11/8/17, which was 466 days after compensation became due and payable (7/30/16).	\$1,500.00
David MacFarlane vs. Verso Paper Holdings Date of Injury: 11/23/16 Date ER Notified of Incapacity: 1/9/17 Claim #30166899639-0001 Board #16029120	Payment for the 7-day waiting period was made 3/24/17, which was 60 days after compensation became due and payable (1/23/17).	\$1,500.00
Joel Mower vs. Lowe’s Companies, Inc. Date of Injury: 9/27/16 Date ER Notified of Incapacity: 10/5/16 Claim #30166605202-0001 Board #16021424	The claimant was totally incapacitated from 11/5/16 through 11/14/16. Payment for that incapacity was made 11/9/17, which was 346 days after compensation became due and payable (11/28/16).	\$1,500.00
Martin Richards vs. Pepsico Date of Injury: 1/26/16 Date ER Notified of Incapacity: 1/26/16 Claim #20160101956-0001 Board #16003545	Payment for the 7-day waiting period was made 11/15/17, which was 599 days after compensation became due and payable (3/26/16).	\$1,500.00
Total Penalties to Injured Employees for Delays of “Other” Indemnity Payments		\$10,500.00

◆ **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.”

To avoid future penalty referral(s) under Section 359(2) by the Board, Sedgwick must take corrective measures to address the following inadequacy:

- 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), Sedgwick must take corrective measures to address the following inadequacy:

- Failure to pay benefits accurately

COMPLIANCE TABLES

◆ Timeliness of Benefit Payments

A. Initial Payment of Indemnity Benefits

			2016	
			Number	Percent
Check Issued Within:				
0-14	Days	Compliant	61	94%
15-44	Days		3	5%
45+	Days		1	1%
Total			65	100%

B. Subsequent Payment of Indemnity Benefits

			2016	
			Number	Percent
Check Issued Within:				
0-7	Days	Compliant	579	96%
8-37	Days		18	3%
38+	Days		3	1%
Total			600	100%

C. Medical Payments

			2016	
			Number	Percent
Check Issued Within:				
0-30	Days	Compliant	59	98%
31+	Days		1	2%
Total			60	100%

D. Payment of Approved Agreements, Orders, Decisions

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

◆ Accuracy of Indemnity Payments

E. Average Weekly Wage

		2016	
		Number	Percent
Calculated:			
Correct	Compliant	49	82%
Incorrect		11	18%
Total		60	100%

F. Weekly Compensation Rate

		2016	
		Number	Percent
Calculated:			
Correct	Compliant	51	85%
Incorrect		9	15%
Total		60	100%

G. Partial Benefits

		2016	
		Number	Percent
Calculated:			
Correct	Compliant	15	54%
Incorrect		13	46%
Total		28	100%

H. Amount Paid

		2016	
		Number	Percent
Calculated:			
Correct	Compliant	31	52%
Underpaid		18	30%
Overpaid		11	18%
Total		60	100%

◆ **Accuracy of Medical Payments**

I. Amount Paid

		2016	
		Number	Percent
Calculated:			
Correct	Compliant	25	81%
Incorrect		6	19%
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Total		31	100%
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