

COMPLIANCE AUDIT REPORT

STATE OF MAINE WORKERS' COMPENSATION BOARD



Sedgwick Claims Management Services, Inc.
Engagement Date: June 5, 2023
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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.

The Audit Division of the Maine Workers' Compensation Board (Board) examined forty (40) claim files where indemnity benefits were paid for the period under examination (2022) as well as sixty (60) medical payments for the period under examination (2022) 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 2022 Maine workers' compensation claims. The medical payment sample was drawn from a listing of all of Sedgwick's 2022 medical payments for those claims in the sample.

Three (3) "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 three (3) complaints were not included in this audit.

Sedgwick maintained one (1) office in South Portland, Maine until its closure in July 2022, providing its employees an opportunity to telework on a full-time basis. Thus, all Maine workers' compensation claims related to this audit were either handled in that office and/or by adjusters who telework.

The compliance tables found on pages 9 through 11 of this report are representative of Board findings as of June 5, 2023. 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 June 5, 2023 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:
 - Eighteen (18) initial indemnity payments were made timely, and nineteen (19) claims received “salary continuation” from their respective employers.
 - Sedgwick’s compliance rate for initial indemnity payments (timely payments and “salary continuation” collectively) is 93%, which is above the Board’s performance benchmark of 87%.
 - Three (3) initial indemnity payments were made late.
- Subsequent Indemnity Payments:
 - One hundred sixty-two (162) subsequent indemnity payments were made timely.
 - Fourteen (14) subsequent indemnity payments were made late.
 - One (1) late subsequent 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).
- 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) Consent Between Employer and Employee was 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 forty (40) claims.
- Average Weekly Wage:
 - Thirty-four (34) AWWs were correct.
 - Six (6) AWWs were incorrect.
- Weekly Compensation Rate:
 - Thirty-five (35) WCRs were correct.
 - Five (5) WCRs were incorrect.
- Partial Benefits Calculation Method:
 - The method used to calculate partial benefits was correct for nineteen (19) claims.
 - The method used to calculate partial benefits was incorrect for one (1) claim.
- Amount Paid:
 - Thirteen (13) claims were compensated correctly, and eighteen (18) claims received “salary continuation” from their respective employers.
 - Six (6) claims were underpaid (\$7,593.90 aggregately).
 - Since June 5, 2023, Sedgwick paid the amounts due.
 - Three (3) claims were overpaid (\$2,807.36 aggregately).
 - Collectively, the aforementioned errors resulted in a net underpayment of \$4,786.54 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 (60) medical payments was reviewed among fifteen (15) claims.
- Amount Paid:
 - Eleven (11) medical payments sampled were correct.
 - Forty-nine (49) medical payments sampled were incorrect*.

**As they are not maintained in-house, the majority of incorrect medical payments was due to Sedgwick's inability to access exclusive contracts between providers and PPO networks, which were necessary to substantiate reduction amounts. Although these cases are considered underpayments for audit purposes, since verification of compliance with agreements was not possible, no payments to providers were requested.*

◆ **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 information in Box 2b and/or dates in Box 43 were reported on the WCB-1, Employer’s First Report of Occupational Injury or Disease (FROI) forms that were filed for nine (9) claims. Consequently, these errors resulted in incorrect dates being reported in Box 22 of the WCB-3, Memorandum of Payment (MOP) forms for those same claims (see “Box 22” below).
- Boxes 21a and 21b of the WCB-4D, Discontinuance of Compensation must accurately reflect the date the incapacity began (Box 21a) and/or ended (Box 21b). See the Board’s Forms and Petitions Manual.
 - Incorrect dates were reported in Box 21a and/or 21b of the WCB-4D, Discontinuance of Compensation forms filed for seven (7) claims.
- Box 22 (First Day Of Compensability After Waiting Period Is Met) of the 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.
 - Including the nine (9) claims noted under “Box 2b” above, 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 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 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 five (5) claims.
- Box 24 (Date Check Mailed) of the 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 twenty-three (23) claims.
- Additional payments and/or adjustments were made since the “Final” WCB-11 Statement of Compensation Paid was filed for four (4) claims.

- Section 213 provides the requirements for partial incapacity benefits. Partial benefits must be calculated at a rate of $\frac{2}{3}$ 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 nineteen (19) employees were receiving salary continuation from their respective employers.

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 a subsequent indemnity payment, subject to penalty under Section 205(3), was found on the following claim:

CLAIM	PENALTY JUSTIFICATION	PENALTY EXPOSURE
Mark Turek vs. QBE Americas, Inc. Date of Injury: 12/4/22 Date ER Notified of Incapacity: 12/5/22 Claim #4A221244TW5-0001 Board #22026979	The subsequent indemnity payment was made 4/7/23, which was 107 days after the previous indemnity payment (12/21/22).	\$1,500.00
Total Penalties to Injured Employees for Delays of Subsequent 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
Jennifer Bernier vs. Triton Water Holdings, Inc. Date of Injury: 7/12/22 Date ER Notified of Incapacity: 7/19/22 Claim #4A2207WJCLJ-0001 Board #22015992	A mandatory payment was required for the period 7/19/22 through 8/5/22. Payment for two (2) days of that incapacity (8/4/22 and 8/5/22) was made 12/15/23, which was 483 days after compensation became due and payable (8/19/22).	\$1,500.00
Mary Jackson vs. New Albertson’s, Inc. Date of Injury: 3/6/22 Date ER Notified of Incapacity: 3/10/22 Claim #W8123845-0001 Board #22005590	Payment for the 7-day waiting period was made 12/14/23, which was 614 days after compensation became due and payable (4/9/22).	\$1,500.00
Caden R Temple vs. Tradesmen International, Inc. Date of Injury: 4/14/22 Date ER Notified of Incapacity: 4/25/22 Claim #4A2204TD32W-0001 Board #22008929	Provisional payments were used to pay the period 6/6/22 through 9/3/22. Payment of accrued benefits was made 1/30/24, which was 500 days after compensation became due and payable (9/17/22).	\$1,500.00
Total Penalties to Injured Employees for Delays of “Other” Indemnity Payments		\$4,500.00

♦ 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.”

- 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

			2022	
			Number	Percent
Check Issued Within:				
0-14	Days	Compliant	37	93%
15-44	Days		3	7%
Total			40	100%

B. Subsequent Payment of Indemnity Benefits

			2022	
			Number	Percent
Check Issued Within:				
0-7	Days	Compliant	162	92%
8-37	Days		13	7%
38+	Days		1	1%
Total			176	100%

C. Medical Payments

			2022	
			Number	Percent
Check Issued Within:				
0-30	Days	Compliant	58	97%
31+	Days		2	3%
Total			60	100%

D. Payment of Approved Agreements, Orders, Decisions

			2022	
			Number	Percent
Check Issued Within:				
0-10	Days	Compliant	1	100%
Total			1	100%

◆ **Accuracy of Indemnity Payments**

E. Average Weekly Wage

		2022	
		Number	Percent
Calculated:			
Correct	Compliant	34	85%
Incorrect		6	15%
Total		40	100%

F. Weekly Compensation Rate

		2022	
		Number	Percent
Calculated:			
Correct	Compliant	35	88%
Incorrect		5	12%
Total		40	100%

G. Partial Benefits

		2022	
		Number	Percent
Calculated:			
Correct	Compliant	19	95%
Incorrect		1	5%
Total		20	100%

H. Amount Paid

		2022	
		Number	Percent
Calculated:			
Correct	Compliant	31	78%
Underpaid		6	15%
Overpaid		3	7%
Total		40	100%

◆ **Accuracy of Medical Payments**

I. Amount Paid

		2022	
		Number	Percent
Calculated:			
Correct	Compliant	11	18%
Incorrect		49	82%
Total		60	100%