

MAE News

Special Edition - Audit Issues

Newsletter from the Office of Monitoring, Audit and Enforcement
Maine Workers' Compensation Board

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Advanced Wage Calculations and Standard Training Workshops Slated for Spring of '06

Board Auditor, Marlene Swift, will be conducting **Advanced AWW and Partial Payments Calculations** workshops at the Board's Portland Regional Office on **February 17, 2006 and April 14, 2006**. These seminars will address both AWW calculation and partial payments (TP) calculations. If you would like to attend either of these sessions, please e-mail Marlene at Marlene.Swift@Maine.Gov.

Also, if you would like to attend our **Standard Introductory Training on April 13th 2005**, please contact Anne Poulin at (207) 287-7067 or e-mail her at Anne.Poulin@Maine.Gov.

If you can't come to Maine or if sending your claims staff to Maine hinders operations, customized training is available at insurer expense at your location. Contact Anne Poulin for more details.

Easy Problems to Avoid in Your Audit

Four Part Distribution

The first Audit Cycle revealed that some employers and insurers weren't complying with the "four part" filing requirement on all Board forms. Please note, you must comply with the distribution requirements as outlined on each of the Board forms and we will be looking at this as a compliance issue in our audits. This applies whether or not those forms are filed electronically with the Board.

Medical Bills

Don't wait for a medical bill to be filed with you "certified" before taking action! The Board Rules and Regulations (Chapter 5, Section 7.2) require the employer/insurer to pay the health care provider's charge or the maximum allowable payment under the 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. This means that medical bills do not have to be filed with you certified to be considered for payment or denial.

Is an "EOB" OK to Use to Deny a Medical Bill?

Our audit results have shown that some claims administrators use explanation of benefits forms (EOBs) to contest whether a medical bill is reasonable and proper. The Board Rules and Regulations (Chapter 5, Section 7.2 and Chapter 8, Section 2) require that a NOC be filed.

Important Reminders - Section 205

Section 205(3) states, "When there is not an ongoing dispute, if weekly compensation benefits or accrued weekly benefits are not paid within 30 days after becoming due and payable, \$50 per day must be added and paid to the worker for each day over 30 days in which the benefits are not paid. Not more than \$1,500 in total may be added pursuant to this subsection." In addition to delays of initial or subsequent indemnity payments, Section 205 violations commonly occur as a result of improper discontinuances, unpaid 7 day waiting periods, not counting the number of days of lost time correctly, and not paying benefits retrospectively once the wage and/or rate are established.

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Section 205(4) states: "When there is no ongoing dispute, if medical bills are not paid within 30 days after the carrier has received notice of nonpayment by certified mail, \$50 or the amount of the bill due, whichever is less, must be added and paid to the Workers' Compensation Board Administrative Fund for each day over 30 days in which the medical bills are not paid. Not more than \$1,500 in total may be added pursuant to this subsection."

Do I Discontinue with a WCB-4 or WCB-8? The 4 or 8: That is the Question!

Struggling with how to discontinue or reduce indemnity benefits? Section 205(9) outlines the requirements for the discontinuance or reduction of payments. The law court has also issued decisions regarding this issue. Grant v. CMP (2003 ME 1996) is one of those decisions and is an important one to be familiar with. We found a lot of violations in the first Audit Cycle as a result of filing a NOC to discontinue benefits. We also found violations as a result of filing a WCB-4 when the employee hadn't returned to work for the original employer, or as a result of an improper (21 Day) Certificate of Discontinuance or Reduction of Compensation. **The Audit Division cannot stress strongly enough that you must properly discontinue and/or reduce benefits under the Maine Act.**

Important Reminders - Section 324

Important to Pay Those Approved Agreements Timely and Accurately

Don't forget to pay *everything* awarded within 10 days of **any approved agreement** (Record of Mediation, Hearing Officer's decree, Consent Decree, etc.). In the first Audit Cycle we found a lot of Section 324 violations that came about as a result of unpaid interest, mileage or medical bills. Section 324(1) states: "...The employer or insurance carrier shall make compensation payments within 10 days after the receipt of notice of an *approved agreement* for payment of compensation or within 10 days after any order or decision of the board awarding compensation..." Section 324(2) states, "Except as otherwise provided by section 205, if an employer or insurance carrier fails to pay compensation as provided in this section, the board shall assess against the employer or insurance carrier a forfeiture of up to \$200 for each day of noncompliance."

Some employers/insurers have concluded that interest is due only when paying an approved agreement late or that medical bills submitted on non-standard claim forms do not have to be paid within 10 days. The Board Rules and Regulations, Chapter 8, Section 7 states, "Interest on awards of compensation must be calculated by the employer and paid to the employee pursuant to 39-A M.R.S.A. §205(6). Interest must be paid to the employee even if there is no express language in the decision of the mediator or hearing officer ordering such payment." Penalties may also apply in cases where medical bills are on non-standard claim forms but are submitted in accordance with Board Rules and Regulations, Chapter 5, Section 9.1 in that the bill specifies the date and type of service, the appropriate procedure code, the condition treated, and the charges for each service.

Workers' Comp. in Maine – General Maintenance

WCB-2A Forms – Schedules of Dependents

Hard to get WCB-2A forms from injured employees? When that happens, we recommend that the adjuster complete the form (based on any known filing status and dependent information) and file it with the Board within the required time limit. If the filing status and dependent information is unknown, we recommend a filing of "single with no dependents". Upon receipt of the employee's version of the form, a copy should be forwarded to the Board along with any corresponding corrections (if applicable). **The newly established weekly compensation rate is effective from the employee's date of injury.**

Remember: Today's "Medical Only" Claims may be Tomorrow's Lost Time Claims

Are you tracking lost time for your "medical only" claims? Please note that where an employee loses a day or more from work due to medical appointments, employers/insurers are required to file a First Report (WCB-1) with the Board within seven days from the employer's notice or knowledge of the incapacity (Section 303). The definition of a day for purposes of filing a First Report of Occupational Injury or Illness (WCB-1) under §303 is the number of hours or wages in an employee's regular workday (see the Board Rules and Regulations Chapter 3, Section 1).

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Rule 1.1 Violations – Mandatory MOPs for Denying Indemnity Claims Late

Did you know that a late-filed NOC requires you to pay from the date of incapacity and ongoing, until you issue the “mandatory” payment required by Rules and Regulations Chapter 1, Section 1.2? A recent Law Court decision, *Bridgeman v. S.D. Warren Co.*, confirmed the validity of Rule 1.1. This makes it imperative that you issue that payment as soon as possible (preferably, at the same time that the late-filed NOC is filed).

Did You Know? A Petition or Record of Mediation Can Serve as Notice of a Claim.

A petition or record of mediation may serve as notice of a claim for compensation (indemnity), which must be addressed in accordance with Rule 1.1 (File either a MOP or NOC within 14 days, etc.) If you wish to deny that claim for compensation, you *must* file a NOC (*see Bridgeman v. S.D. Warren Co.*).

Calculating “Partial Partials”

There seems to be a lot of confusion about how to calculate benefits for those weeks where employees are partially incapacitated for *part* of a week. (This includes scenarios where the employee is either fully incapacitated, or has full work capacity during the remainder of the workweek.)

Please remember to consider *all* wages earned (from the employer that you represent) during the (payroll) week, and calculate partial benefits accordingly. If the payroll week includes days of “total” incapacity, you can take an offset for the “total” benefits that you pay for that week.

Using “Contract of Hire” for Wage Statements and Average Weekly Wage?

The Audit Division does not recommend using the “Contract of Hire” method of calculating a claimant’s average weekly wage. Please note that when the methods set out in paragraph A, B or C of Section 102(4) cannot reasonably and fairly be applied to arrive at the average weekly wage, you must refer to Section 102(4)(D) of the Act.

Got a tough wage question? Questions on calculating partials?

Call Marlene Swift @ the MWCB (207) 287-7014

or e-mail: Marlene.Swift@Maine.Gov

Comp 101 - Accuracy of Benefit Payments

- See Section 102(4) and Rule 1.5 for the requirements for calculating average weekly wages (AWWs). Section 102(1) provides the requirements for determining weekly benefit rates (WBRs).
- 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 earnings (see Rule 8.8).
- The Maximum Benefit Level (Section 211) is adjusted for inflation annually on July 1st each year. All claims subject to the Maximum Benefit Level are entitled to this adjustment if their own “80-percent net rate” is equal to or greater than the new Maximum Benefit Level. (If the new Maximum Benefit Level is greater than their own “80-percent net rate”, they are entitled to their “80-percent net rate” on July 1st.)
- If a NOC has been filed later than 14 days after the employer’s notice or knowledge of a claim for compensation, “...the employee must be paid total benefits, with credit for earnings and other statutory offsets, from the date of incapacity in accordance with 39-A M.R.S.A. Section 205(2) and in compliance with 39-A M.R.S.A. Section 204. The requirement for payment of benefits under this subsection automatically ceases upon the filing of a Notice of Controversy *and* the payment of any accrued benefits.” (Rule 1.1, Section 2).
- “Interest on awards of compensation must be calculated by the employer and paid to the employee pursuant to Section 205(6). Interest must be paid to the employee even if there is not express language in the decision of the mediator or hearing officer ordering such payment. Interest must be calculated using the formulae and Table contained in Appendix I.” (Rule 8.7) (*see Jasch v. The Anchorage Inn.*).

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[Beyond the Basics](#)

If You Are Processing Claims Outside of Maine, Please Be Aware That:

“An insurance carrier may not be qualified to issue a workers’ compensation insurance policy covering any employees working in this State unless it has and *continuously* maintains an employee or claims agent within this State empowered to investigate claims arising under this chapter; sign agreements for the payment of compensation as provided by this chapter; and *issue drafts or checks* in payment of obligations arising under this chapter in amounts of at least \$1,000” (see Section 102.14) (*emphasis added*).

Record Retention Regulations to Be Aware Of

- Insurers (which includes self-insurers for purposes of this section) must keep a permanent record of the amount and date of each loss paid (39-A M.R.S.A. Section 355(14)(B))
- Insurers and self-insurers must keep medical claim records for no less than 3 years from the date of injury or reported illness (24-A M.R.S.A. Section 2384-C(9))
- Domestic insurers must retain records until completion of an examination by the Bureau of Insurance or 6 years after the file was closed, whichever occurs first (24-A M.R.S.A. Section 3410(1)(B))
- Individual self-insurers must maintain claim records for a minimum of 6 years after the date the claim is closed (Bureau of Insurance Rule Ch. 250, Section II(I)) and
- Group self-insurers must maintain claim records for a minimum of 6 years after the date the claim is closed (Bureau of Insurance Rule Ch. 250, Section III(I)(2))

Payment Regulations to Be Aware Of

- Payment of any penalty, forfeiture or sanction assessed under the Maine Workers’ Compensation Act may not be considered an element of loss for purpose of establishing rates for workers’ compensation insurance (see Section 205.3, Section 324.2.B, Section 360.5).
- The Maine Workers’ Compensation Act provides no vehicle for the unilateral recovery of benefit overpayment(s) (see WCB decision *Pritchard v. S.D. Warren Co.* and law court decision *Bureau v. Staffing Network*). **In short...you can’t collect for overpayments under the Maine Act.**
- The Unclaimed Property Act covers situations where the claimant cannot be located. In such cases, the insurer is required to hold the check for the required dormancy period, fulfill due diligence in attempting to locate the claimant, and keep documentation of those efforts. If the payment remains unclaimed after the required dormancy period, the insurer is required by Maine law to turn the payment over to the State Treasurer who will hold it, publish it as unclaimed property and hope the claimant collects.

[What If I Just Don’t Adjust That Many Maine Claims?](#)

The MAE Program has designed step by step training guides, a forms manual, a self-audit checklist and other handy dandy tools to help you process Maine Workers’ Compensation Claims timely and accurately. These manuals and materials provide you with detailed instructions for form filing and the compliance requirements associated with them.

If our next training session can’t come soon enough or you need to get some new staff up to speed, we can provide you with these materials at a minimal cost and can even provide customized training for your staff if you prefer.

For Training Materials, Forms Manuals or even Law Books, contact Anne Poulin at (207) 287-7067 or e-mail her at Anne.Poulin@Maine.Gov. Also, check out our website at <http://www.maine.gov/wcb/>.