

# COMPLIANCE AUDIT REPORT

STATE OF MAINE  
WORKERS' COMPENSATION BOARD



**Brotherhood Mutual Insurance Company**  
Engagement Date: February 18, 2020  
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**Office of Monitoring, Audit & Enforcement**

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## SUMMARY

Brotherhood Mutual Insurance Company (Brotherhood) provides a wide variety of business insurance products including workers' compensation.

The Audit Division of the Maine Workers' Compensation Board (Board) examined two (2) claim files where indemnity benefits were paid for the period under examination 2017-2019 as well as thirty-one (31) medical payments for the period under examination 2017-2019 to determine compliance with statutory and regulatory requirements in the following areas:

- Form filing
- Timeliness of benefit payments
- Accuracy of benefit payments

The claim sample was drawn from a listing of all of Brotherhood's 2017-2019 Maine workers' compensation claims. The medical payment sample was drawn from a listing of all of Brotherhood's 2017-2019 medical payments for those claims in the sample.

Brotherhood handles its Maine workers' compensation claims solely in Fort Wayne, Indiana.

The audit work was conducted as a desk audit.

The compliance tables found on pages 11 through 15 of this report are representative of Board findings as of February 18, 2020. 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 February 18, 2020 to rectify identified noncompliance issues. This discussion also includes other significant issues identified by the audit.

◆ **Form filing**

- Title 39-A M.R.S.A. and the Board Rules and Regulations provide the requirements for reports to the Board:

<i>WCB-1, First Report of Occupational Injury or Disease</i>	<i>39-A M.R.S.A. Section 303, Rules &amp; Regs, Ch 8 Section 13, Rules &amp; Regs, Ch 3 Section 4</i>
<i>WCB-2, Wage Statement</i>	<i>39-A M.R.S.A. Section 303</i>
<i>WCB-2B, Fringe Benefits Worksheet</i>	<i>39-A M.R.S.A. Section 303</i>
<i>WCB-3, Memorandum of Payment (MOP)</i>	<i>Rules &amp; Regs, Ch 1 Section 1.1, Rules &amp; Regs, Ch 1 Section 1.3, 39-A M.R.S.A. Section 205(7), Rules &amp; Regs, Ch 8 Section 12</i>
<i>WCB-4, Discontinuance or Modification of Compensation</i>	<i>Rules &amp; Regs, Ch 8 Section 11, Rules &amp; Regs, Ch 8 Section 12</i>
<i>WCB-4A, Consent Between Employer and Employee</i>	<i>Rules &amp; Regs, Ch 8 Section 18</i>
<i>WCB-8, (21 Day) Certificate of Discontinuance or Reduction of Compensation</i>	<i>39-A M.R.S.A. Section 205(9)</i>
<i>WCB-9, Notice of Controversy (NOC)</i>	<i>Rules &amp; Regs, Ch 1 Section 1.1, Rules &amp; Regs, Ch 3 Section 4</i>
<i>WCB-11, Statement of Compensation Paid</i>	<i>Rules &amp; Regs, Ch 8 Section 1, Rules &amp; Regs, Ch 8 Section 12</i>

- Failure to file any Board form within established time frames is a violation of Title 39-A M.R.S.A. Section 360(1) (A) or (B).
- First Report of Occupational Injury or Disease (WCB-1):
  - Zero (0) First Report of Occupational Injury or Disease forms were filed in accordance with the above requirements.
    - Brotherhood’s compliance rate for First Report of Occupational Injury or Disease filings is 0%, which is below the Board’s performance benchmark of 85%.
  - Two (2) First Report of Occupational Injury or Disease forms were filed late.
- Wage Statement (WCB-2) and Fringe Benefits Worksheet (WCB-2B):
  - Two (2) Wage Statements and two (2) Fringe Benefits Worksheets were filed in accordance with the above requirement.
- Memorandum of Payment (WCB-3 or WCB-4A) and Notice of Controversy (WCB-9):
  - Two (2) Memorandum of Payment forms and one (1) Notice of Controversy (“lost time”) form were filed in accordance with the above requirements.
    - Brotherhood’s compliance rate for Memorandum of Payment filings is 100%, which is above the Board’s performance benchmark of 85%.

- Brotherhood's compliance rate for Notice of Controversy filings is 100%, which is above the Board's performance benchmark of 90%.
- Discontinuance or Modification of Compensation (WCB-4 or WCB-4A):
  - Three (3) Discontinuance or Modification of Compensation forms were filed in accordance with the above requirements.
- Statement of Compensation Paid (WCB-11):
  - Three (3) Statement of Compensation Paid forms were filed in accordance with the above requirements.

*In response to notice of this problem area, Brotherhood has taken steps to improve future compliance by providing additional staff training and requiring supervisory review of forms to be filed.*

◆ **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:
  - Two (2) initial indemnity payments were made timely.
    - Brotherhood's compliance rate for initial indemnity payments is 100%, which is above the Board's performance benchmark of 87%.
- Subsequent Indemnity Payments:
  - Two (2) subsequent indemnity payments were made timely.
  - Three (3) 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."
  - Thirty-one (31) medical payments were made timely.

*In response to notice of these problem areas, Brotherhood 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 two (2) claims.
- Average Weekly Wage:
  - Two (2) AWWs were correct.
- Weekly Compensation Rate:
  - Two (2) WCRs were correct.
- Partial Benefits Calculation Method:
  - The method used to calculate partial benefits was incorrect for one (1) claim.
- Amount Paid:
  - One (1) claim was compensated correctly.
  - One (1) claim was overpaid (\$0.17).
  - Collectively, the aforementioned errors resulted in a net overpayment of \$0.17 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 medical payments was reviewed for one (1) claim.
- Amount Paid:
  - Medical payments sampled for one (1) claim were correct.



◆ **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.”
  - An incorrect date was reported in Box 2b of the FROI that was filed for one (1) claim:
- 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.
  - An incorrect date was reported in Box 22 of the MOP that was filed for one (1) claim:

## PENALTIES

### ◆ 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), Brotherhood must take corrective measures to address the following inadequacies:

- Failure to file or timely file forms with the Board

**Title 39-A M.R.S.A. Section 360(1)(B)**

“The Board may assess a civil penalty not to exceed \$100 for each violation on any person: Who fails to file or complete such a report or form within the time limits specified in this Act or rules adopted under this Act.”

Violations subject to penalty under Section 360(1)(B) were found on the following claims:

<b>Employee</b>	<b>Date of Injury</b>	<b>Forms Filed Late</b>	<b>Penalty Exposure</b>
	9/6/19	WCB-1, Employer’s First Report of Occupational Injury or Disease	\$100.00
	1/26/17	WCB-1, Employer’s First Report of Occupational Injury or Disease	\$100.00
<b>Total</b>			<b>\$200.00</b>

**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), Brotherhood must take corrective measures to address the following inadequacies:

- Failure to file or timely file forms with the Board

# COMPLIANCE TABLES

◆ **Form Filing**

**A. First Report of Occupational Injury or Disease (WCB-1)**

		<b>2017-2019</b>	
		Number	Percent
Received at the Board:			
Filed	<b>Compliant</b>	0	0%
Late		2	100%
Total		2	100%

**B. Wage Statement (WCB-2)**

		<b>2017-2019</b>	
		Number	Percent
Received at the Board:			
Filed	<b>Compliant</b>	2	100%
Total		2	100%

**C. Fringe Benefits Worksheet (WCB-2B)**

		<b>2017-2019</b>	
		Number	Percent
Received at the Board:			
Filed	<b>Compliant</b>	2	100%
Total		2	100%

**D. Memorandum of Payment (WCB-3 or WCB-4A)**

		<b>2017-2019</b>	
		Number	Percent
Received at the Board:			
Filed	<b>Compliant</b>	2	100%
Total		2	100%

**E. Discontinuance or Modification of Compensation (WCB-4 or WCB-4A)**

		<b>2017-2019</b>	
		Number	Percent
Received at the Board:			
Filed	<b>Compliant</b>	3	100%
Total		3	100%

**F. Notice of Controversy (WCB-9)**

		<b>2017-2019</b>	
		Number	Percent
Received at the Board:			
Filed	<b>Compliant</b>	1	100%
Total		<u>1</u>	<u>100%</u>

**G. Statement of Compensation Paid (WCB-11)**

		<b>2017-2019</b>	
		Number	Percent
Received at the Board:			
Filed	<b>Compliant</b>	3	100%
Total		<u>3</u>	<u>100%</u>

◆ **Timeliness of Benefit Payments**

**H. Initial Payment of Indemnity Benefits**

			<b>2017-2019</b>	
			Number	Percent
Check Issued Within:				
0-14	Days	<b>Compliant</b>	2	100%
Total			2	100%

**I. Subsequent Payment of Indemnity Benefits**

			<b>2017-2019</b>	
			Number	Percent
Check Issued Within:				
0-7	Days	<b>Compliant</b>	2	40%
8-37	Days		3	60%
Total			5	100%

**J. Medical Payments**

			<b>2017-2019</b>	
			Number	Percent
Check Issued Within:				
0-30	Days	<b>Compliant</b>	31	100%
Total			31	100%

◆ Accuracy of Indemnity Payments

K. Average Weekly Wage

		2017-2019	
		Number	Percent
Calculated:			
Correct	<b>Compliant</b>	2	100%
Total		2	100%

L. Weekly Compensation Rate

		2017-2019	
		Number	Percent
Calculated:			
Correct	<b>Compliant</b>	2	100%
Total		2	100%

M. Partial Benefits

		2017-2019	
		Number	Percent
Calculated:			
Correct	<b>Compliant</b>	0	0%
Incorrect		1	100%
Total		1	100%

N. Amount Paid

		2017-2019	
		Number	Percent
Calculated:			
Correct	<b>Compliant</b>	1	50%
Overpaid		1	50%
Total		2	100%



◆ Accuracy of Medical Payments

O. Amount Paid

		<b>2017-2019</b>	
		Number	Percent
Calculated:			
Correct	<b>Compliant</b>	1	100%
Total		<u>1</u>	<u>100%</u>