MAE audit guidelines:

Questions arise on a regular basis concerning how our MAE program audits certain situations. In an effort to address these inquiries, Board staff met with and discussed concerns with members of the insurance and self-insured communities. The following are audit guidelines as of October 19, 2018. They may be updated if the need arises. These guidelines are used by the MAE program; they are not judicially enforceable.

- A 21 day letter is unnecessary when discontinuing benefits for an employee who is incarcerated. You may use a WCB-4 discontinuance, check the "other" box and indicate incarceration as the reason for the filing.
- In the event of an internally inconsistent M-1 (regular duty release checked with restrictions listed) reach out to the medical provider to clarify the M-1. The employer/insurance company may continue to pursue a release without restrictions or show the restrictions are not inconsistent with the employee's job duties (i.e. documentation of job description from employer, discussion with employee). If able to document the restrictions are not inconsistent with the employment, the M-1 may be used as a regular duty release (to discontinue benefits with a WCB-4, close file, etc...). Rationale must be carefully and thoroughly documented.
- One week of earnings equal to or exceeding the established AWW is sufficient to file a WCB-4 discontinuance when employee returns to the employer of injury.
- An employer's internal document, signed by the employee and confirming no lost wages due to the injury, will be accepted as evidence no claim for indemnity benefits is being made.
    - A WCB-4A consent form will also be accepted, regardless of whether a 21-day letter was previously filed if payments have been made.
- Vacation pay is not considered regular earnings. Holiday pay is considered regular earnings.
- The employee's weekly compensation is subject to offset for sick time pay.
- For a provisional average weekly wage employers/insurers should be as accurate as possible. The Board's revised Rules allow for the adjusting of an average weekly wage one time within the first 90 days after an initial payment.
- MAE's practice is not to fine for an overpayment, but an overpayment is an incorrect payment and will be reported as such.
- If there is knowledge of an injury that *could* be work-related, filing NOC may be advisable, but may not be necessary if no claim is asserted.
- Clear and specific terms in a mediation agreement, or decree will *not* be questioned by MAE, nor will MAE question issues that could have been addressed in such an agreement or decree, but were not. Broad language used to cover indemnity objections to the time of the agreement is permitted (i.e. "this payment resolves any and all claims for lost time benefits, interest and penalties through the date of this agreement").
- The Rules require when using a WCB-4A that the payer indicate the percentage of benefits being paid the employee based on what is owed. This could be varying percentages. This Rule requirement is frequently overlooked.

- If an employee is concurrently employed as a firefighter (professional or volunteer), it is the job where he/she was injured which controls the waiting period.
- MAE does not consider restrictions unrelated to the work injury.
- An audit may be challenged with items not in the claim or audit file.
- Fixed partial rates are preferred. The employer/insurance company may modify to a fixed rate based on actual stabilized earnings, even if wages tend to vary. If there are rotational or swing shifts which may result in a pattern of alternating higher and lower earning weeks, a fixed rate may still be used, so long as there is a well-documented, rational basis for the rate. Initial MOPs may be at a fixed rate so long as a fair and reasonable basis for the fixed rate is documented.
- If an employee on restrictions goes on vacation and therefore meets the waiting period, a pay decision is required.
- MAE will not rely upon any single ALJ decision for setting a compliance standard.
- If an employee has worked less than 12 weeks and earnings are consistent, comparables are not needed; use §102(4) method D *only* if A, B, and C do not apply. AWW must be "representative" and supported with documentation, but fair and reasonable AWWs will be accepted even when other methods could also have been fairly used.