

# **COMPLIANCE AUDIT REPORT**

## **STATE OF MAINE WORKERS' COMPENSATION BOARD**



**Cross Insurance TPA, Inc.**  
**Engagement Date: May 24, 2022**  
**Issue Date: March 16, 2023**

**Office of Monitoring, Audit & Enforcement**

John C. Rohde  
Executive Director

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## SUMMARY

Cross Insurance TPA, Inc. (Cross) 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 (2020-2021) as well as sixty (60) medical payments for the period under examination (2020-2021) 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 Cross' 2020-2021 Maine workers' compensation claims. The medical payment sample was drawn from a listing of all of Cross' 2020-2021 medical payments for those claims in the sample.

Cross maintains one (1) office in New Gloucester, Maine; though all its Maine workers' compensation claims are handled by lost time adjusters who telework from various locations throughout Maine and New Hampshire.

The audit work was conducted as a desk audit.

The compliance tables found on pages 8 through 10 of this report are representative of Board findings as of May 24, 2022. 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 May 24, 2022, 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:
  - Thirty-one (31) initial indemnity payments were made timely, and twelve (12) were “salary continuation” from respective employers.
  - Cross’ 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 thirty-two (132) 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.”
  - Sixty (60) medical payments were made timely.
- 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 Decree, one (1) mediation agreement and one (1) Consent 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 forty (40) claims.
- Average Weekly Wage:
  - Thirty-five (35) AWWs were correct.
  - Five (5) 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 twenty (20) claims.
  - The method used to calculate partial benefits was incorrect for ten (10) claims.
- Amount Paid:
  - Twelve (12) claims were compensated correctly, and one (1) claim received “salary continuation” from its respective employer.
  - Sixteen (16) claims were underpaid totaling \$7,009.49. Of those, one (1) claim (Phelan) remains in dispute before an Administrative Law Judge (ALJ). Part of this dispute includes the calculation of the claimant’s average weekly wage, which is also the basis for the audit finding. For this reason, the Office of Audit has agreed to waive payment of the finding amount of \$1,617.02 (of which Cross rebuts) and accept the ALJ’s final decision as resolution to this issue. However, until such resolution, the results of the audit stand.
    - Since May 24, 2022, Cross paid \$5,321.60 of the amounts due.
  - Eleven (11) claims were overpaid (\$2,016.02 aggregately).
  - Collectively, the aforementioned errors resulted in a net underpayment of \$4,993.47 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 fourteen (14) claims.
- Amount Paid:
  - Sixty (60) medical payments sampled were correct.

## ◆ Other significant issues

- 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 five (5) 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 three (3) 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 five (5) employees returned to work on "salary continuation".

## 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.”

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

| CLAIM  | PENALTY JUSTIFICATION   | PENALTY EXPOSURE  |
|--|---|-------------------|
| Christine Lint vs. Mercy Hospital<br>Date of Injury: 8/31/20<br>Date ER Notified of Incapacity: 9/1/20<br>Claim # WC-2020-2952<br>Board # 20016267 | Payment for part of the 7-day waiting period was made 10/27/22, which was 772 days after compensation became due and payable (9/15/20). | \$1,500.00        |
| <b>Total Penalties to Injured Employees for Delays of “Other” Indemnity Payments</b>   |   | <b>\$1,500.00</b> |



## ◆ 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 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

|                      |      |                  | 2020-2021 |         |
|----------------------|------|------------------|-----------|---------|
|                      |      |                  | Number    | Percent |
| Check Issued Within: |      |                  |           |         |
| 0-14                 | Days | <b>Compliant</b> | 43        | 93%     |
| 15-44                | Days |                  | 3         | 7%      |
| Total                |      |                  | 46        | 100%    |

### B. Subsequent Payment of Indemnity Benefits

|                      |      |                  | 2020-2021 |         |
|----------------------|------|------------------|-----------|---------|
|                      |      |                  | Number    | Percent |
| Check Issued Within: |      |                  |           |         |
| 0-7                  | Days | <b>Compliant</b> | 132       | 98%     |
| 8-37                 | Days |                  | 3         | 2%      |
| Total                |      |                  | 135       | 100%    |

### C. Medical Payments

|                      |      |                  | 2020-2021 |         |
|----------------------|------|------------------|-----------|---------|
|                      |      |                  | Number    | Percent |
| Check Issued Within: |      |                  |           |         |
| 0-30                 | Days | <b>Compliant</b> | 60        | 100%    |
| Total                |      |                  | 60        | 100%    |

### D. Payment of Approved Agreements, Orders, Decisions

|                      |      |                  | 2020-2021 |         |
|----------------------|------|------------------|-----------|---------|
|                      |      |                  | Number    | Percent |
| Check Issued Within: |      |                  |           |         |
| 0-10                 | Days | <b>Compliant</b> | 3         | 100%    |
| Total                |      |                  | 3         | 100%    |

◆ **Accuracy of Indemnity Payments**

**E. Average Weekly Wage**

|             |                  | <b>2020-2021</b> |         |
|-------------|------------------|------------------|---------|
|             |                  | Number           | Percent |
| Calculated: |                  |                  |         |
| Correct     | <b>Compliant</b> | 35               | 88%     |
| Incorrect   |                  | 5                | 12%     |
| Total       |                  | 40               | 100%    |

**F. Weekly Compensation Rate**

|             |                  | <b>2020-2021</b> |         |
|-------------|------------------|------------------|---------|
|             |                  | Number           | Percent |
| Calculated: |                  |                  |         |
| Correct     | <b>Compliant</b> | 35               | 88%     |
| Incorrect   |                  | 5                | 12%     |
| Total       |                  | 40               | 100%    |

**G. Partial Benefits**

|             |                  | <b>2020-2021</b> |         |
|-------------|------------------|------------------|---------|
|             |                  | Number           | Percent |
| Calculated: |                  |                  |         |
| Correct     | <b>Compliant</b> | 20               | 67%     |
| Incorrect   |                  | 10               | 33%     |
| Total       |                  | 30               | 100%    |

**H. Amount Paid**

|             |                  | <b>2020-2021</b> |         |
|-------------|------------------|------------------|---------|
|             |                  | Number           | Percent |
| Calculated: |                  |                  |         |
| Correct     | <b>Compliant</b> | 13               | 33%     |
| Underpaid   |                  | 16               | 40%     |
| Overpaid    |                  | 11               | 27%     |
| Total       |                  | 40               | 100%    |

◆ **Accuracy of Medical Payments**

**I. Amount Paid**

|             |                  | <b>2020-2021</b> |         |
|-------------|------------------|------------------|---------|
|             |                  | Number           | Percent |
| Calculated: |                  |                  |         |
| Correct     | <b>Compliant</b> | 60               | 100%    |
| Total       |                  | 60               | 100%    |