

Fall 2007

MAE News: Newsletter from the Office of Monitoring, Audit and Enforcement, Fall 2007

Maine Workers' Compensation Board

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MAE News

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

Fall 2007

Volume 3, Number 3



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Maine Workers' Compensation Board Issues New Performance Benchmarks for Claims Administration

On Tuesday August 14th, 2007, the Maine Workers' Compensation Board of Directors voted four to one to implement on January 1, 2008 new performance benchmarks on Initial Indemnity Payments, Initial Memoranda of Payment Filing and Initial Indemnity Notice of Controversy Filing. The Office of Monitoring Audit and Enforcement proposed a second meeting with members of the workers' compensation insurance community to gather information regarding a First Report of Injury Filing Benchmark and the Board's EDI system.

The enacted Benchmarks are as follows:

	New Benchmark Effective 1/1/2008	Old Benchmark
Initial Indemnity Payments	87%	80%
Initial Memoranda of Payment Filing	85%	75%
Initial Indemnity Notice of Controversy	90%	N/A

The above benchmarks were developed after an August 10, 2007 meeting with members of the workers' compensation insurance community that included the following entities: Bath Iron Works, Maine Employers' Mutual Insurance Company, Maine Municipal Association, Maine Health Care Association, Maine Motor Transport Association, Cannon Cochran Management Services, Inc., and Hanover Insurance.

A second meeting was held on September 14, 2007 with the above entities regarding the First Report of Injury EDI filing system. The participants at that meeting did not identify any major problems with the Board's EDI system. The proposed First Report Filing benchmark will be scheduled with the Board of Directors.

2006 Annual Compliance Report is Approved and Ready for Distribution...How Did You Do?

The 2006 Annual Compliance Report has been approved by the Board. This report shows continued improved compliance performance by many entities. The report will be available in mid November in paper form or, if you prefer to read it "on-line", it will be available on the Board's website.

Additional Training Session Scheduled

MAE staff will offer training sessions at the Portland Regional Office on Tuesday January 29, 2008 "Introductory Compliance" and Wednesday January 30, 2008 "Advanced Compliance". Call or e-mail Anne Poulin for reservations and more information (207-287-7067 Anne.Poulin@maine.gov).

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Changes to Maine Workers' Compensation Act of 1992 Law Summaries

LD 41 An Act Regarding Final Agency Action Subject to Appeal Pursuant to the Maine Workers' Compensation Act of 1992

Enacted Law Summary

Public Law 2007, Chapter 78 clarifies that decisions issued by the Workers' Compensation Board pursuant to the Maine Revised Statutes, Title 39-A, section 360 are final agency action subject to appeal to the Superior Court whether or not a penalty is imposed.

RESOLVE 53 EMERGENCY

Resolve, Directing the Workers' Compensation Board To Consider Adoption of the "Guides to the Evaluation of Permanent Impairment," 5th Edition, in Assessing Workers' Compensation Injuries

LD 1329

Enacted law summary

Resolve 2005, chapter 53 directs the Workers' Compensation Board to consider adoption of the 5th edition of "Guides to the Evaluation of Permanent Impairment" as impairment guidelines and to report to the Joint Standing Committee on Labor by January 15, 2006 its determination of whether the 5th edition should be adopted and, if so, whether it has been adopted by board rule. The resolve also grants the committee authority to report out legislation to the Second Regular Session of the 122nd Legislature related to the board's report.

LD 136 An Act Regarding the Enforcement of Penalties under the Maine Workers' Compensation Act of 1992

Enacted Law Summary

Public Law 2007, Chapter 26 repeals and replaces a section of Title 39-A relating to penalties. The new section retains all of the language of the existing section which provides that:

1. penalties are payable to the Workers' Compensation Board Administrative Fund;
2. fund amounts attributable to penalties that are not required to support the activities of the board shall be transferred to the General Fund.

The bill adds language which provides that:

1. all penalties are enforceable by the Superior Court;
2. the Attorney General shall prosecute any action necessary to recover penalties or the board may retain private counsel for that purpose; and
3. if a person fails to pay a penalty and enforcement by the Superior Court is necessary, that person shall pay court costs, including reasonable attorney's fees, and, if the failure to pay was without due cause, double the penalty.

LD 302 An Act To Encourage Parties To Agree to the Selection of Independent Medical Examiners in Workers' Compensation Cases

Enacted law summary

Public Law 2005, chapter 24 encourages parties in a workers' compensation case to agree to the selection of independent medical examiners by establishing that, whether or not the parties have agreed to the selection of an independent medical examiner, the examiner's findings must be adopted unless there is clear and convincing evidence to the contrary in the record that does not support the medical findings. The law also allows a physician who has examined an employee at the request of an insurance company, employer or employee during the previous 52 weeks to serve as an independent medical examiner if agreed upon by the parties to the workers' compensation claim.

**Changes to Maine Workers' Compensation Act of 1992
Law Summaries (cont.)**

LD 322 An Act To Amend the Process for Review of Hearing Officer Decisions by the Workers' Compensation Board

Enacted law summary

Public Law 2005, chapter 25 extends the time within which a hearing officer may request review of a decision by the full Workers' Compensation Board to allow for the filing of motions to find the facts specially and state separately the conclusions of law.

LD 809 An Act To Facilitate Testimony in Workers' Compensation Proceedings

Enacted law summary

Public Law 2005, chapter 99 authorizes nurse practitioners and physicians' assistants to submit sworn written testimony in Workers' Compensation Board proceedings, just as physicians, psychologists and chiropractors may do.

LD 1107 An Act To Promote Compliance with the Workers' Compensation Laws

Enacted Law Summary

Public Law 2007, Chapter 265 raises the penalty not-to-exceed amount from \$10,000 to \$25,000 that the Workers' Compensation Board may assess, where there has been a 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 bill requires that the amount of the penalty be commensurate with the severity of the proscribed acts and that penalties collected go to the General Fund. The bill also changes from mandatory to permissive the assessment of a penalty by the Workers' Compensation Board against an employer or insurance carrier for failure to pay compensation. Finally, the bill provides that an insurance carrier's payment of any penalty assessed under the Maine Revised Statutes, Title 39-A, section 359 may not be considered an element of loss for the purpose of establishing rates for workers' compensation insurance.

LD 1259 An Act To Use the Date of Injury To Calculate the Average Weekly Wage in Occupational Disease Cases

Enacted Law Summary

Public Law 2007, Chapter 313 provides that the amount of compensation in occupational disease cases must be based on the average weekly wages of the employee on the date of injury rather than on the date the employee was last exposed to the disease. Where the employee is no longer working on the date of incapacity, the average wages of a comparable employee in the occupation in which the employee was working at the time of the employee's last injurious exposure, and as of the date of injury, must be used to determine the amount of compensation.

LD 1314 An Act To Reimburse MaineCare in Certain Workers' Compensation Cases

Enacted Law Summary

Public Law 2007, Chapter 311 requires MaineCare to be reimbursed for 100% of any expenses it incurs for the treatment of an injury to an employee covered by workers' compensation. The bill also requires the Workers' Compensation Board to notify the Commissioner of Health and Human Services 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, identifying the employee who is to receive the compensation. Finally, the bill authorizes the Department of Health and Human Services to contract for attorney services in order to pursue reimbursement of MaineCare costs in workers' compensation claims cases.

**Changes to Maine Workers' Compensation Act of 1992
Law Summaries (cont.)**

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LD 1327 An Act To Amend Survivors' Benefits under the Workers' Compensation Laws

Enacted Law Summary

Public Law 2007, Chapter 361 removes the death benefit credit employers have under current law for indemnity payments made to an injured worker up to the time of death.

LD 1439 An Act To Enhance the Workers' Compensation Board Advocate Program

Enacted Law Summary

Public Law 2007, Chapter 312 establishes a new Workers' Compensation Advocate Attorney classification, reclassifies qualified Workers' Compensation Advocates to Workers' Compensation Advocate Attorneys, provides for the reclassification of vacant Workers' Compensation Advocate positions to Workers' Compensation Advocate Attorney positions, reclassifies other staff attorney and paralegal positions and provides a range change from 86 to 89 for the Workers' Compensation Board General Counsel position.

LD 1715 An Act To Amend the Laws Governing Employees of the Workers' Compensation Board

Enacted law summary

Public Law 2005, chapter 498 adds the position of Deputy Director of Information Management and the salary range of the position to the list of salary ranges of deputy directors of the Workers' Compensation Board.

LD 1861 An Act Regarding Payment of Penalties for Nonpayment of Bills for Medical or Health Care Services under the Maine Workers' Compensation Act of 1992

Enacted Law Summary

Public Law 2007, Chapter 218 provides that penalties for nonpayment of bills for medical or health care services provided in a workers' compensation case are payable to the provider of the medical or health care services or the employee who paid for the medical or health care services instead of the Workers' Compensation Board Administrative Fund.

LD 1862 An Act Regarding Fairness for Families Regarding Workers' Compensation Coverage

Enacted Law Summary

Public Law 2007, Chapter 350 adds registered domestic partners to the list of individuals who may waive workers' compensation coverage in certain circumstances.

LD 2068 An Act Regarding the Maine Insurance Guaranty Association

Enacted law summary

Public Law 2005, chapter 603 makes the Maine Insurance Guaranty Association subject to audit, enforcement and monitoring by the Workers' Compensation Board with respect to workers' compensation claims. The Association is liable for the payment of any compensation, interest, penalty or other obligation determined to be due by the Workers' Compensation Board. The law also includes interest and penalties in the claims the Association is obligated to pay and adds the Association to those entities for which the Workers' Compensation Board has auditing and enforcement responsibility. Finally, the law requires that the audits of the Association consider when the Association obtained the records of an insolvent insurer.