

BEFORE ALLAN L. MCVEY, INSURANCE COMMISSIONER  
OF THE STATE OF WEST VIRGINIA

*In the Matter of:*

**CITY OF WHEELING**

Administrative Proceeding No. 24-IC-172728

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER ADOPTING  
REPORT OF SELF-INSURED MARKET CONDUCT COMPLIANCE EXAMINATION  
AND DIRECTING CORRECTIVE ACTION AND ASSESSING PENALTY

NOW COMES Allan L. McVey, Insurance Commissioner of the State of West Virginia (hereinafter, "Commissioner"), who after consideration of *the Report of Self-Insured Market Conduct Compliance Examination* (hereinafter, the "*Examination Report*") of the City of Wheeling for the audit period ending March 31, 2024, make the following findings of fact, conclusions of law and order.

FINDINGS OF FACT

1. A Self-Insured Compliance Audit concerning the operational affairs of the City of Wheeling for the period ending March 31, 2024, was conducted in accordance with W.Va. Code §33-2-9, W.Va. Code §23-2-9, W.Va. Code §23-2C-22, W.Va. Code §33-2-21 and W.Va. Code R. §85-18-1, *et seq.* by auditors duly appointed by the Commissioner. The Self-Insured Compliance Audit began on May 23, 2024 and concluded on July 11, 2024.

2. On or about July 15, 2024, the examiner filed with the Commissioner, pursuant to W. Va. Code § 33-2-9(j)(2), the *Examination Report*.

3. A true copy of the *Examination Report* was provided to the City of Wheeling and the City of Wheeling was notified pursuant to W. Va. Code § 33-2-9(j)(2) that it had ten (10) days after receipt of the *Examination Report* to file a submission or rebuttal with the Commissioner.

4. As set forth in the *Examination Report*, the examination focused on the methods used by the City of Wheeling to manage its operations for each of the business areas examined, including whether and how the City of Wheeling, a self-insured employer, complies with West Virginia's statutory and

regulatory law.

5. The exam discovered one (1) area where the City of Wheeling failed to achieve 100% compliance with West Virginia law.

6. The Commissioner reviewed the *Examination Report* and considered the City of Wheeling's submissions, if any, prior to issuing these findings of fact, conclusions of law and order.

### CONCLUSIONS OF LAW

1. The Commissioner has jurisdiction over the subject matter of, and the parties to this proceeding.

2. This proceeding is pursuant to and in accordance with W.Va. Code §33-2-9, W.Va. Code §23-2-9, W.Va. Code §23-2C-22, W.Va. Code §33-2-21 and W.Va. Code R. §85-18-1, *et seq*

3. As detailed in the *Examination Report*, City of Wheeling failed to comply with provisions West Virginia law as follows:

**Claims Standard M3** (twelve (12) violations) The Self-Insured Employer did not update EDI claim status to closed when necessary.

4. The Commissioner is charged with the responsibility of verifying the City of Wheeling's continued compliance with West Virginia Law.

5. The Commissioner has determined that the City of Wheeling should be assessed a penalty for violating the aforementioned standard.

ORDER

Pursuant to W. Va. Code § 33-2-9(j)(3)(A), as a result of his review of the *Examination Report*, the examination work papers, and the City of Wheeling's response, it is **ORDERED** as follows:

1. The referenced and attached *Examination Report* is hereby **ADOPTED** and **APPROVED** and, by this reference, incorporated herein and made a part hereof;
2. The City of Wheeling shall endeavor to comply with the recommendations contained in the *Examination Report*;
3. The City of Wheeling shall continue to monitor its compliance with applicable West Virginia law;
4. The City of Wheeling shall specifically cure the violations and deficiencies identified in the *Examination Report* so as to bring itself into compliance and conformity with West Virginia law, as set forth hereinabove, to the extent such has not already been completed and/or accomplished;
5. The City of Wheeling **shall file a Corrective Action Plan (CAP)**, subject to the approval of the Commissioner, which said CAP shall detail the City of Wheeling's changes to its procedures and/or internal policies to ensure compliance with West Virginia law, and shall further incorporate all recommendations of the Commissioner's examiners and address all violations specifically cited in the *Examination Report*;
6. The CAP shall be submitted to the Commissioner for his approval within 30 days of the date this order is entered;
7. The City of Wheeling shall make reasonable changes to the CAP if and as directed by the Commissioner within 30 days of its receipt of the Commissioner's changes to, or disapproval of the CAP;
8. The City of Wheeling shall within 90 days of its receipt of notice from the Commissioner of his final approval thereof, implement the CAP; and
9. The City of Wheeling **shall pay an administrative penalty in the amount of Seven Hundred Fifty Dollars (\$750.00)** for its non-compliance with West Virginia law as set forth hereinabove,

the assessment of which penalty is in lieu of any other regulatory penalty and shall be remitted within 30 calendar days of the date this order is entered.

Entered this 9<sup>th</sup> day of August, 2024.



Allan L. McVey  
CPCU, ARM, AAI, AAM, AIS  
Insurance Commissioner

# Report of Self-Insured Market Conduct Compliance Examination

As of March 31, 2024



**City of Wheeling**  
1500 Chapline Street  
Wheeling, WV 26003

TPA  
ProMedica Employer Services

**Examination Number:** 24-IC-172728

**Date Prepared:**

**07/15/2024**

## Table of Contents

<u>COMPLIANCE WITH PREVIOUS EXAMINATION</u> .....	4
<u>EXECUTIVE SUMMARY</u> .....	4
<u>HISTORY AND PROFILE</u> .....	5
<u>METHODOLOGY</u> .....	5
<u>ELEMENTS OF THE REVIEW</u> .....	6
<u>COMPLIANCE TABLE</u> .....	10
<u>OBSERVATIONS</u> .....	11
<u>RECOMMENDATIONS</u> .....	13
<u>EXAMINER'S SIGNATURE AND ACKNOWLEDGEMENT</u> .....	14
<u>EXAMINER'S AFFIDAVIT</u> .....	15

07/15/2024

The Honorable Allan L. McVey, CPCU, ARM, AAI, AAM, AIS  
West Virginia Insurance Commissioner  
900 Pennsylvania Avenue  
Charleston, West Virginia 25305

Dear Commissioner McVey:

Pursuant to your instructions and in accordance with West Virginia Code §§ 33-2-9, 33-2-10(b), 33-2-21(a), 23-1-1, 23-2-9(b)(1) & (2), 23-2C-22 and West Virginia Code of State Rules Title 85, a Market Conduct examination has been made for the period of January 1, 2021, through March 31, 2024 on the Workers' Compensation self-insured claims handling of

**City of Wheeling**  
1500 Chapline Street  
Wheeling, WV 26003

hereinafter referred to as the "Self-Insured Employer." The following report of the findings of this examination is herewith respectfully submitted.

## COMPLIANCE WITH PREVIOUS EXAMINATION RECOMMENDATIONS

All previous recommendations concerning the erroneous EDI reporting of closed without payment claims appear to have been addressed by the Self-Insured Employer as no failure of this element- of review was noted.

Although the primary issue identified in the prior report has been addressed, a different element of review noted as an area of concern in this exam continues a pattern of failing to adhere to the provisions outlined by W. VA. Code §23-2C-5(C)(8), W. VA. Code R. §85-2-1 ET SEQ. and the West Virginia Offices of the Insurance Commissioner's Electronic Data Interchange ("EDI") Implementation Guide.

## EXECUTIVE SUMMARY

This Self-Insured Market Conduct Compliance Examination ("examination") was initiated to determine the compliance of City of Wheeling with the West Virginia statutes, rules and regulations governing the self-administration of workers' compensation claims.

The examination work related to City of Wheeling commenced May 23, 2024, and concluded July 11, 2024. City of Wheeling maintains an electronic environment; the majority of the examination work was conducted by electronic virtual private network through the Third-Party Administrator's ("TPA's") computer systems. Of the total population of ninety-six (96) claims, thirty-one (31) claims were reviewed, consisting of five (5) Medical Only (MO) claims, one (1) Permanent Partial Disability (PPD) claim, nineteen (19) Temporary Total Disability (TTD) claims, and six (6) denied/CWOP claims.

The following is an area of concern:

- Element of review M.3.

Twelve (12) claims were not properly updated in EDI to "closed" claim status when no additional transactions were expected on the claims.



## HISTORY AND PROFILE

The City of Wheeling was founded in 1769 and incorporated in 1836 and was the first Capital of West Virginia. Currently, the municipal/Fire and Police workforce comprises 401 employees, encompassing full-time, part-time, and seasonal positions. The City of Wheeling has been self-insured in West Virginia since July 1, 1983.

## METHODOLOGY

The examiner conducted file reviews and was familiar with the Self-Insured Employer/TPA claim process in as much as prior examinations had been performed. This examination report is a report by test, rather than a report by exception, and all elements tested are described and the results indicated.

Typically, areas below 93% would generally require systemic corrective action. Any element scoring below 100% will detail the observations of the specific issue and include a recommendation.

Except as otherwise noted, all tests were conducted via a random sample taken from a given population. A maximum initial sample of fifty (50) claims files was selected randomly using the following parameters. Denied Claims: A maximum initial sample of fifty (50) denied claims files will be selected; if the population of denied claims is less than twenty-five (25) then the entire population will be reviewed. Paid Claims: A maximum initial sample of twenty-five (25) paid claims files will be selected; A weighted sampling methodology of "80% Indemnity" (20 Claims) and 20% "Medical Only" (5) Claims will be utilized. If the population of indemnity claims is less than the indicated indemnity sample size, then the remaining sample size will be medical only. Supplemental (Secondary) Samples: Supplemental or secondary samples will be obtained if the pass rate for any given standard is greater than 80% but less than 100%. If the pass rate is less than 80% on the initial sample, no additional sample will be obtained.

Each area of the examination has specific elements that were tested, and the areas and elements are listed below. The examiners may not have discovered every unacceptable or non-compliant activity in which the Self-Insured Employer/TPA is engaged. The failure to identify, comment on, or criticize specific practices does not constitute an acceptance of the practices by the West Virginia Offices of the Insurance Commissioner or its' designee. A compliance table follows containing results of each area of review with the compliance percentage for the Self-Insured Employer/TPA.

## ELEMENTS OF THE REVIEW

### A. COMPLAINTS: THE TIME FRAME WITHIN WHICH THE EMPLOYER RESPONDS TO COMPLAINTS IS IN ACCORDANCE WITH APPLICABLE STATUTES, RULES, AND REGULATIONS.

1. Did the Self-Insured Employer respond to complaints received from the WVOIC within fifteen (15) working days? [W. Va. Code R. § 85-1-16]

### B. INITIAL COMPENSABILITY DECISIONS AND INVESTIGATIONS ARE CONDUCTED IN A TIMELY MANNER.

1. Did the Self-Insured Employer properly investigate then provide a written ruling on a claim within fifteen (15) working days, or if "tolled" while evidence for the claim is gathered, rule in the appropriate time? [W. Va. Code §§ 23-4-1c (a) and (b) & W. Va. Code R. § 85-1-10.1]
2. Did the Self-Insured Employer include on the written notice of the decision the protest clause? [W. Va. Code § 23-5-1(b)(1) & W. Va. Code R. § 85-1-7.2]

### C. TEMPORARY TOTAL DISABILITY (TTD)

1. Did the Self-Insured Employer/TPA properly notify the claimant of the TTD award? [W. Va. Code § 23-5-1]
2. Did the Self-Insured Employer/TPA immediately pay amounts due the claimant for benefits upon determination of eligibility? [W. Va. §§ 23-4-1c(b) and (g)]
3. Did the Self-Insured Employer/TPA calculate and pay indemnity payments correctly? [W. Va. Code § 23-4-14(b)(2) and Informational Letter 162A]
4. Did the Self-Insured Employer/TPA issue temporary total disability closure letters properly? [W. Va. Code §§ 23-5-1, 23-4-7a and 23-4-22]

### D. PERMANENT PARTIAL DISABILITY (PPD)

1. Did the Self-Insured Employer/TPA act on PPD evaluations timely? [W. Va. Code R. § 85-1-10.5 a. The responsible party shall act on a permanent disability evaluation report received from a physician to whom the responsible party referred a claimant in a claim for injuries and occupational diseases other than occupational pneumoconiosis within thirty (30) working days of receipt by the responsible party of the report.]

2. Did the Self-Insured Employer/TPA make timely IME referrals? [W.Va. Code R. § 85-1-10.5 b. The responsible party shall make a referral of a claimant to a physician for examination and evaluation in response to a request by or on behalf of the claimant for consideration of a permanent disability award in a claim for injuries and occupational diseases other than occupational pneumoconiosis within thirty (30) working days from the date the request was received by the responsible party.]
3. Did the Self-Insured Employer/TPA commence PPD award payments timely? [W.Va. Code R. § 85-1-10.5 c. Permanent partial disability awards may be paid, at the discretion of the responsible party, either by lump sum or in installments consistent with applicable law. Payment of permanent partial awards shall commence within fifteen (15) working days of the decision granting the award.]
4. Did the Self-Insured Employer/TPA calculate and pay the payment correctly? [W. Va. Code § 23-4-14(b)(2) and Informational Letter 162A]

#### **E. MEDICAL AUTHORIZATIONS**

1. Did the Self-Insured Employer/TPA comply with W. Va. Code R. § 85-1-10.3? "Medical treatment, medications, appliances, devices, and supplies. – The responsible party shall act upon an injured worker's request for authorization of medical treatment, medications, appliances, devices and supplies within fifteen (15) working days from the date the request was received by the responsible party."

#### **F. NON-AWARDED PARTIAL BENEFITS (NAP)**

1. Were non-awarded partial disability benefits paid at the same rate as the permanent partial disability rate per W. Va. Code R. § 85-1-9.7?

#### **G. DEATH CLAIMS (FATAL)**

1. Were the death benefits in the proper amounts and to the proper person(s) per W. Va. Code §§ 23-4-1 and 23-4-10.

#### **H. CLOSURE**

1. Were the claims properly closed and a notice issued? [W. Va. Code § 23-4-16 and Supreme Court of Appeals of West Virginia decision May 23, 2008, LOVAS v. CONSOLIDATION COAL COMPANY]

## **I. OCCUPATIONAL PNEUMOCONIOSIS**

1. Did the Self-Insured Employer enter non-medical decisions in occupational pneumoconiosis claims within ninety (90) days from the date the responsible party receives properly executed, prescribed forms? (can be "tolled" for no more than thirty (30) additional days during the evidence gathering process) [W. Va. Code § 23-4-15b and W.Va. Code R. § 85-1-10.2] (If necessary, this should reflect in the report as N/A with explanation as none were in the samples.)

## **J. DENIED AND CLOSED WITHOUT PAYMENT**

1. Did the Self-Insured Employer properly investigate then give a written ruling on a claim within fifteen (15) working days, or if "tolled" while evidence for the claim is gathered, rule in the appropriate time? [W. Va. Code § 23-4-1c (a) and W. Va. Code R. § 85-1-10.1]
2. Were claims handling practices meeting West Virginia statutes, rules and regulations of "denied" and "closed without payment" claims including proper notifications, reasonable basis for denial, and whether or not claimants are provided adequate instructions for rebuttals? [W. Va. Code §§ 23-5-1(a) 23-5-1(b)(1)]
3. Were claims denied inappropriately due to a technicality? [W. Va. Code § 23-5-13]
4. Were appropriate protest/grievance language on the decision order? [W. Va. Code §§ 23-5-1(b)(1) and 23-4-3(f) and W. Va. Code R. §§ 85-1-7.2 and 85-21-10.2b]
5. Were denied claim investigations by the Self-Insured Employer/TPA complete and thorough?

## **K. OFFICE OF JUDGES (OOJ) AND BOARD OF REVIEW (BOR) ORDERS**

1. Did the Self-Insured Employer comply with all orders of the Office of Judges ("OOJ") and the Board of Review ("BOR") and all mandates of the West Virginia Supreme Court of Appeals within thirty (30) days from the date of receipt, unless the responsible party is required to act sooner under the terms of the order or mandate, or the order or mandate is subject to a lawfully ordered stay? [W. Va. Code § 23-5-9(f) and W. Va. Code R. § 85-1-10.7]

**L. DOCUMENTATION**

1. Did the Self-Insured Employer follow state statutes, rules and regulations which require that claim files contain adequate documentation and to be maintained in a manner so that pertinent events and dates of such events can be reconstructed if necessary? [W. Va. Code R. §§ 85-18-13.3 and 13.4]

**M. EDI - DOES THE SELF-INSURED EMPLOYER PROMPTLY AND ACCURATELY PROVIDE THE WVOIC WITH ALL NECESSARY CLAIM INFORMATION TO MAINTAIN THE WORKERS' COMPENSATION CLAIM INDEX? [W. VA. CODE §23-2C-5(C)(8) AND W. VA. CODE R. §85-2-1 ET SEQ. AND WEST VIRGINIA OFFICES OF THE INSURANCE COMMISSIONER'S ELECTRONIC DATA INTERCHANGE ("EDI") IMPLEMENTATION GUIDE]**

1. FROI – Did the Self-Insured Employer/TPA submit the First Report of Injury report timely within ten (10) business days?
2. SROI - Did the Self-Insured Employer/TPA submit the Subsequent Reports of Injury report(s) updates on each claim either monthly or quarterly?
3. Closing - Did the Self-Insured Employer/TPA properly report closure of the claim when no additional transactions are expected on the claim? (For example: A notification that an accident has occurred is not a request for a compensability decision and therefore should not be denied (FROI 04) or administratively closed (SROI FN) and should be canceled as a FROI 01.)

**N. THE SELF-INSURED EMPLOYER COOPERATES ON A TIMELY BASIS WITH EXAMINERS PERFORMING THE EXAMINATION.**

1. Did the Self-Insured Employer respond to RFI's in a timely manner?
2. Did the Self-Insured Employer provide records in a timely basis and cooperate with the examination? [W. Va. Code R. § 85-18-13.6]

**O. OTHER ISSUES**

**COMPLIANCE TABLE**

<u>Review Section</u>	<u># Pass</u>	<u># Fail</u>	<u>N/A</u>	<u>Compliance %</u>	<u>Individual Corrective Action</u>	<u>Systemic Corrective Action</u>
A1	N/A	N/A	N/A	N/A		
B1	25	0	0	100%		
B2	25	0	0	100%		
C1	20	0	0	100%		
C2	20	0	0	100%		
C3	20	0	0	100%		
C4	20	0	0	100%		
D1	1	0	0	100%		
D2	1	0	0	100%		
D3	1	0	0	100%		
D4	1	0	0	100%		
E1	1	0	0	100%		
F1	N/A	N/A	N/A	N/A		
G1	N/A	N/A	N/A	N/A		
H1	31	0	0	100%		
I1	N/A	N/A	N/A	N/A		
J1	6	0	0	100%		
J2	6	0	0	100%		
J3	6	0	0	100%		
J4	6	0	0	100%		
J5	6	0	0	100%		
K1	N/A	N/A	N/A	N/A		
L1	31	0	0	100%		
M1	31	0	0	100%		
M2	31	0	0	100%		
M3	19	12	0	61%		*
N1	31	0	0	100%		
N2	31	0	0	100%		
O	N/A	N/A	N/A	N/A		

## OBSERVATIONS

- A.1.**– This element of review was N/A as there were no complaints for the exam period.
- B.1.**– Initial compensability rulings were made with fifteen (15) working days on all files the examiner reviewed.
- B.2.**– Protest language was properly included on all claims decisions as required.
- C.1.**– TTD award notifications reviewed were properly provided to the injured worker.
- C.2.**– TTD payments were timely issued on the files reviewed.
- C.3.**– TTD payments were found to be calculated correctly upon examiner's review.
- C.4.**– TTD closure letters reviewed were found to be timely issued.
- D.1.**– IMEs were acted upon within thirty (30) working days.
- D.2.**– IME referrals were made within thirty (30) working days of request upon examiner's review.
- D.3.**– PPD payments were issued within fifteen (15) working days of decision as required.
- D.4.**– PPD awards were calculated correctly upon examiner's review.
- E.1.**– Medical authorizations were timely acted upon on all reviewed files.
- F.1.**– This element of review was N/A as there were no awards issued for Non-Awarded Partial (NAP) benefits.
- G.1.**– This element of review was N/A as there were no benefits awarded for Death Claims (FATAL) during the examination period.
- H.1.**– Claims were properly closed upon examiner's review.
- I.1.**– This element of review was N/A as there were no occupational pneumoconiosis claims for the exam period.
- J.1.**– Written rulings on claims were made within fifteen (15) working days as required.

- J.2.**– A reasonable basis for denial and instructions for rebuttal was provided for denied claims.
- J.3.**– Claims were properly denied upon examiner’s review.
- J.4.**– Appropriate protest/grievance language was included on decision orders upon examiner’s review.
- J.5.**– Claims were properly investigated upon examiner’s review.
- K.1.** – This element of review was N/A as there were no claims with orders from the Board of Review (“BOR”) noted.
- L.1.**– Claims were adequately documented upon examiner’s review.
- M.1.**– Examiner reviewed First Report of Injury (FROI) on all claims and they were found to be timely.
- M.2.**– Examiner reviewed Subsequent Reports of Injury (SROI) concerning EDI compliance, and they were found to be timely.
- M.3.**– During review of the EDI closures, it was noted that twelve (12) claims failed to have the claim status updated to “closed”.
- N.1.**– Requests for Information (RFIs) from examiner were responded to in a timely manner.
- N.2.**– Records were provided on a timely basis on all files when requested by the examiner.
- O.** – This element of review was N/A as there were no additional issues.

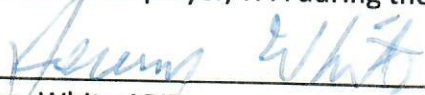


## RECOMMENDATIONS

**M.3.** – It is recommended that the Self-Insured Employer comply with all provisions outlined by W. Va. Code §§ 23-2C-5(C)(8), W. Va. Code R. § 85-2-1 et seq. and the West Virginia Offices of the Insurance Commissioner’s Electronic Data Interchange (“EDI”) Implementation Guide. It is strongly encouraged that the Self -Insured Employer also conducts periodic reviews of its adherence to current EDI standards and guidelines, so compliance can be noted as improved for future exams.

**EXAMINER'S SIGNATURE AND ACKNOWLEDGEMENT**

The examiner would like to acknowledge the cooperation and assistance extended by the Self-Insured Employer/TPA during the course of the examination.

  
\_\_\_\_\_  
Jeremy White APIR  
Examiner-in-Charge

**EXAMINER'S AFFIDAVIT**

State of West Virginia  
County of Kanawha

**EXAMINER'S AFFIDAVIT AS TO STANDARDS AND PROCEDURES USED IN AN EXAMINATION**

I, Jeremy White, being duly sworn, states as follows:

1. I have the authority to represent West Virginia in the examination of City of Wheeling.
2. I have reviewed the examination work papers and examination report, and the examination of City of Wheeling was performed in a manner consistent with the standards and procedures required by West Virginia.

The affiant says nothing further.

  
\_\_\_\_\_  
Jeremy White APIR

Subscribed and sworn before me by Jeremy White on this 15th Day of July 2024.

  
\_\_\_\_\_  
Notary Public

My commission expires: 10-11-2024

