

PROCEEDING BEFORE JAMES A. DODRILL
INSURANCE COMMISSIONER
STATE OF WEST VIRGINIA

IN RE:
CITY OF FAIRMONT

ADMINISTRATIVE PROCEEDING #19-AP-MCSI-02001

AGREED ORDER ADOPTING REPORT OF
SELF-INSURED MARKET CONDUCT COMPLIANCE EXAMINATION


NOW COMES James A. Dodrill, Insurance Commissioner of the State of West Virginia, and issues this Order adopting the attached Report prepared May 14, 2019, for the period of January 1, 2016 through December 31, 2018. It is hereby found that the City of Fairmont was compliant with all standards examined as evidenced in the examiner's report. The City of Fairmont shall continue to monitor its compliance with West Virginia law.

Entered this 30th day of July 2019.



James A. Dodrill
Insurance Commissioner
State of West Virginia

ON BEHALF OF THE
INSURANCE COMMISSIONER:


Jeffrey C. Black, Attorney Supervisor
Regulatory Compliance and Enforcement

Dated: 7/29/19

REVIEWED AND AGREED TO
ON BEHALF OF CITY OF FAIRMONT:

By: Valerie A. Means

[Print Name]

Its: City Manager

Signature: Valerie A. Means

Date: 7/25/19

Report of Self-Insured Market Conduct Compliance Examination

As of December 31, 2018



**City of Fairmont
P.O. Box 1428
Fairmont, WV 26555-1428**

Examination Number: 19-MCSI-02002

**Date Prepared:
May 14, 2019**

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May 14, 2019

The Honorable James A. Dodrill
West Virginia Insurance Commissioner
900 Pennsylvania Avenue
Charleston, West Virginia 25302

Dear Commissioner Dodrill,

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 01/01/2016 through 12/31/2018 on the Workers' Compensation self-insured claims handling of

City of Fairmont
P.O. Box 1428
Fairmont, WV 26555-1428

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

The previous recommendations have been addressed by the Self-Insured Employer and we found no subsequent failure of those standards.

EXECUTIVE SUMMARY

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

The examination work related to The City of Fairmont commenced April 15, 2019 and concluded May 3, 2019. The City of Fairmont 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") SmartCasualtyClaims computer systems.

HISTORY AND PROFILE

The City of Fairmont, located in Marion County, West Virginia, has a population of 18,467 residents based on 2017 statistics provided by the U.S. Census Bureau. The City of Fairmont operates under a City Manager/ City Council form of government. The City Manager is appointed by City Council for an indefinite term and serves as the Chief Administrative Officer. The City Manager is responsible to the Council for the administration of all city affairs placed in his/her charge by or under the City Charter. City Council consists of nine elected members, including the Mayor and Deputy Mayor, who represent the districts in which they live. They each serve a term of four years.

The City of Fairmont employs approximately 190 full time employees plus 9 City Councilmembers and 2 seasonal employees. The City of Fairmont provides residents with a professional paid Police Department and Fire Department as well as Finance, Water Filtration, Wastewater Treatment, Engineering, Public Works, Building Inspection, Code Enforcement, Planning and Development and many sub-departments.

The TPA for the City of Fairmont's Worker's Compensation is SmartCasualtyClaims.

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.

Due to the limited number of claims for during the examination period, the entire claim population of paid, closed without paid and denied claims was reviewed. There were no denied claims during the exam period. The claims reviewed were thirty- six (36) No Lost Time, four (4) Temporary Total Disability (TTD) and two (2) Permanent Partial Disability (PPD).

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 § 24-4-16 and Supreme Court of Appeals of West Virginia decision May 23, 2008, LOVAS v. CONSOLIDATION COAL COMPANY]

I. OCCUPATIONAL PNEUMOCOONIOSIS

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 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 – No issues were found during the exam period.

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						
B1	40	0	0	100		
B2	40	0	0	100		
C1	4	0	0	100		
C2	4	0	0	100		
C3	4	0	0	100		
C4	4	0	0	100		
D1	2	0	0	100		
D2	2	0	0	100		
D3	2	0	0	100		
D4	2	0	0	100		
E1	40	0	0	100		
F1						
G1						
H1	40	0	0	100		
I1						
J1						
J2						
J3						
J4						
J5						
K1						
L1	40	0	0	100		
M1	40	0	0	100		
M2	40	0	0	100		
M3	40	0	0	100		
N1						
N2						
O						

*See "Observations and Recommendations" below.

OBSERVATIONS

No issues were found during the exam period.

RECOMMENDATIONS

No recommendations at this point and time.

EXAMINER'S SIGNATURE AND ACKNOWLEDGEMENT

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

Barbara A. Hudson

Barbara A. Hudson, CIE, CWCP, MCM, PAHM
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, Barbara A. Hudson being duly sworn, states as follows:

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

The affiant says nothing further.

Barbara A. Hudson
Barbara A. Hudson CIE, CWCP, MCM, PAHM

Subscribed and sworn before me by Barbara A. Hudson on this May 14, 2019.

Georgia Lee Cisco
Notary Public

My commission expires: 10-11-2019

