

# WORKERS' COMPENSATION DIVISION



## COVID-19 Denied Claims Audit

**Final Report**

May 9, 2022

### **Insurance Companies**

AIU Insurance Company

American Zurich Insurance Company

Arch Indemnity Insurance Company

Berkshire Hathaway Homestate Insurance Company

Charter Oak Fire Insurance Company

Continental Divide Insurance Company

Guideone Mutual Insurance Company

Indemnity Insurance Company of North America

LM Insurance Corporation

New Hampshire Insurance Company

Old Republic Insurance Company

SAIF Corporation

Sentry Insurance A Mutual Company

**Self-Insured Employers**

CIS Trust

City of Portland

Clackamas County Oregon

Evraz Inc NA

Kaiser Foundation Health Plan of the Northwest

Lane County

Providence Health & Services - Oregon

**Auditors**

Barbara Belcher, Audit Manager

Troy Painter, Senior Auditor

## Introduction

On June 22, 2020, Governor Kate Brown asked the Management-Labor Advisory Committee (MLAC) to review the effects of the COVID-19 pandemic on Oregon's workers' compensation system. Among several recommendations from MLAC was a request that the Workers' Compensation Division (WCD) adopt a new administrative rule requiring the WCD to audit claims for COVID-19 that were denied by insurance companies and self-insured employers. The WCD filed a temporary Oregon Administrative Rule (OAR) 436-060-0141, effective October 1, 2020, that required WCD, under specified circumstances, to audit denied COVID-19 claims.

Under WCD's statutory authority, the audit was limited to reasonableness of investigations and did not evaluate compensability decisions. Issues of compensability are under the jurisdiction of the Workers' Compensation Board and are not subject to audit by WCD.

In the initial audit, WCD audited claims for COVID-19 filed *prior to October 1, 2020*, under the investigation standard in OAR 436-060-0140, below, and published a report on February 5, 2021 summarizing the findings.

***OAR 436-060-0140(1):*** *The insurer is required to conduct a "reasonable" investigation based on all available information in determining whether to deny a claim.*

*(a) A reasonable investigation is whatever steps a reasonably prudent person with knowledge of the legal standards for determining compensability would take in a good faith effort to ascertain the facts underlying a claim, giving due consideration to the cost of the investigation and the likely value of the claim.*

*(b) In determining whether an investigation is reasonable, the director will only look at information contained in the insurer's claim record at the time of denial. The insurer may not rely on any fact not documented in the claim record at the time of denial to establish that an investigation was reasonable.*

Additional compensability investigation standards for COVID-19 claims were also implemented effective October 1, 2020, by temporary rule OAR 436-060-0141(2) below.

***436-060-0141(2):*** *Under OAR 436-060-0140(1), insurers must conduct a "reasonable investigation" before denying any claim. For all claims filed for COVID-19 or exposure to SARS-CoV2 on and after Oct. 1, 2020, in addition to the requirements of OAR 436-060-0140(1), a reasonable investigation must include:*

*(a) Investigating whether or not the nature of the worker's employment resulted in a likely exposure to COVID-19 or SARS-CoV-2;*

*(b) Determining whether the worker did not work for a period of quarantine or isolation at the direction of a medical service provider, the Oregon Health Authority Public Health Division, a local public health authority as defined in ORS 431.003, or the employer, for purposes of discovering information that may be relevant to the compensability determination;*

*(c) Obtaining a medical or other expert opinion if, before a compensability denial is issued, the worker tests positive for COVID-19 or a medical service provider diagnoses a presumptive case of COVID-19, the insurer is aware of the test results or presumptive diagnosis, and the source of the exposure is unclear; and*

*(d) Determining whether medical services were required as a result of potential*

*workplace exposure to COVID-19 or SARS-CoV-2, even if the worker ultimately did not test positive for COVID-19.*

Effective February 1, 2021, the temporary rule was replaced by substantially similar permanent rule OAR 436-060-0141(2) below.

***436-060-0141(2): Reasonable investigation.***

*Under OAR 436-060-0140(1), insurers must conduct a “reasonable investigation” before denying any claim. For claims filed on or after Feb. 1, 2021, for COVID-19 or exposure to SARS-CoV-2, in addition to the requirements of OAR 436-060-0140(1), a reasonable investigation must include the steps in subsections (a) through (d) of this section. The steps in subsections (a) through (d) are not required if the claim is denied for procedural reasons not related to the worker’s exposure to COVID-19 or SARS-CoV-2 (for example, the claim was filed with the wrong insurer, the insurer did not provide coverage, or the worker is nonsubject).*

*(a) Investigate whether there was likely exposure to COVID-19 or SARS-CoV-2 that arose out of and in the course of the worker’s employment;*

*(b) Investigate the source of the worker’s exposure to COVID-19 or SARS-CoV-2, which must include obtaining a medical or expert opinion, if, before a compensability denial is issued, the worker tests positive for COVID-19 or a medical service provider diagnoses a presumptive case of COVID-19, the insurer is aware of the test results or presumptive diagnosis, and the source of the exposure is unclear;*

*(c) Determine whether the worker did not work for a period of quarantine or isolation at the direction of a medical service provider, the Oregon Health Authority Public Health Division, a local public health authority as defined in ORS 431.003, or the employer, for purposes of discovering information that may be relevant to the compensability determination; and*

*(d) Determine whether medical services were required as a result of potential workplace exposure to COVID-19 or SARS-CoV-2, even if the worker ultimately did not test positive for COVID-19.*

This report summarizes the findings of a subsequent audit of claims for COVID-19 filed *on or after October 1, 2020*, under the investigation standards in the temporary and permanent OAR 436-060-0141(2) above. A comparison of notable differences between findings and observations in the two audits is also included.

**Objective**

The audit objective was to assess compliance with OAR 436-060-0141(2) relating to the investigation of denied claims for COVID-19 or exposure to SARS-CoV-2. Claims were reviewed for reasonable investigation, including compliance with the four specific requirements provided in OAR 436-060-0141(2)(a)-(d), prior to denial. Whether an investigation is reasonable is determined by evaluating the record in its entirety.

For informational purposes, the auditors tracked statistical information such as the results of COVID-19 tests, whether temporary disability due was paid, etc. This information is captured in the *Other Findings and Observations* section.

### Sample

Denied claims were selected for audit if, as of April 5, 2021 (the date of sampling), an insurer had reported to the director five or more accepted or denied claims for COVID-19 or SARS-CoV-2.

That standard produced a sample of 377 denied claims processed by twelve entities covering thirteen insurance companies and seven self-insured employers. From June 2021 through March 2022, two auditors reviewed 315 claims (see Table 1 below) with dates of injury ranging from April 23, 2020, through February 15, 2021.

Sixty-two claims were not reviewed because they were not appropriate for inclusion: 51 claims were filed prior to the October 1, 2020, effective date of OAR 436-060-0141(2), five denials were not final by operation of law at the time of review, three claims had been settled, two workers were non-subject workers, and one denial was rescinded.

**Table 1**

<b>Insurance Company</b>	<b>Claims Processor</b>	<b># Claims Audited</b>
AIU Insurance Company	AIG Claims, Inc.	1
AIU Insurance Company	Sedgwick Claims Management Services, Inc.	1
American Zurich Insurance Company	Cannon Cochran Management Services, Inc	1
American Zurich Insurance Company	Gallagher Bassett Services Inc	2
American Zurich Insurance Company	Sedgwick Claims Management Services, Inc.	2
Arch Indemnity Insurance Company	Gallagher Bassett Services Inc	2
Berkshire Hathaway Homestate Insurance Company	Intermountain Claims Inc	1
Charter Oak Fire Insurance Company	The Travelers Companies, Inc.	1
Continental Divide Insurance Company	Intermountain Claims Inc	1
Guideone Mutual Insurance Company	Corvel Enterprise Comp, Inc.	3
Indemnity Insurance Company of North America	Helmsman Management Services LLC.	1
Indemnity Insurance Company of North America	Sedgwick Claims Management Services, Inc.	1
LM Insurance Corporation	Liberty Mutual Cos	23
New Hampshire Insurance Company	Sedgwick Claims Management Services, Inc.	15
Old Republic Insurance Company	Gallagher Bassett Services Inc	1
SAIF Corporation	SAIF Corporation	174
Sentry Insurance A Mutual Company	Intermountain Claims Inc	2
<b>Self-Insured Employer</b>	<b>Claims Processor</b>	<b># Claims Audited</b>
CIS Trust	Corvel Enterprise Comp, Inc.	2
City of Portland	City of Portland	1
Clackamas County Oregon	Clackamas County Oregon	37
Evraz Inc NA	Sedgwick Claims Management Services, Inc.	8
Kaiser Foundation Health Plan of the Northwest	Sedgwick Claims Management Services, Inc.	1
Lane County	Corvel Enterprise Comp, Inc.	2
Providence Health & Services – Oregon	Sedgwick Claims Management Services, Inc.	32

## **Performance Standard**

Investigations in all claims reviewed must have been reasonable and compliant with the specific requirements in OAR 436-060-0141(2). WCD may assess a civil penalty for any claim in which a reasonable and compliant investigation was not conducted.

## **Findings**

Investigations were reasonable and compliant with OAR 436-060-0141(2) in all claims reviewed. Claims were investigated and processed to a standard at or above that of industry norms for other types of claims. Claims processors frequently staffed claims and investigation results among supervisors, managers, or attorneys before denying the claim.

## **Explanation of Violations**

No violations were found. No civil penalties were issued.

## **Other Findings and Observations**

These findings and observations were outside of the audit's objective and are for informational purposes only.

### COVID-19 Test Results

About 89% (281) of workers were tested for COVID-19, and about 58% (164) of them tested positive. Table 2 on pages 9-10 lists the test results by insurance company and self-insured employer. No presumptive diagnoses were in the audited claims.

### Claim Filing Reasons

Auditors determined the reason the claims were filed *at the time of filing*. Of the 315 claims filed:

- 150 claims filed for COVID-19 infection
- 103 claims filed for known or suspected exposure without symptoms
- 33 claims filed for known or suspected exposure with symptoms
- 26 claims filed for symptoms only, no known or suspected exposure
- 3 claims filed for undetermined reasons.

In about 22% (70) of audited claims, workers did not respond to contact attempts by the claims processors. Claims processors made efforts in these claims to obtain a statement from the workers, including multiple attempts by phone (often a dozen or more), regular mail, and email if available.

### Temporary Disability

Auditors found evidence that workers had lost wages from work in 60% (189) of audited claims. Temporary disability was due in 15% (28) of those claims and was paid in all but three. Temporary disability was paid but was not due in another 33% (104) of claims. In these claims, claims processors may have inferred authorization from the records or voluntarily paid temporary disability. Table 3 on pages 11-12 shows a breakdown by insurance company and self-insured employer.

In many of the claims in which temporary disability was not due, various combinations of reasons, including those listed below, were factors in disability not being due. Singular reasons identified were distributed as follows:

- 127 claims did not have proper medical authorization
- 4 claims did not have wage loss past the three-day waiting period
- 3 claims were denied within 14 days (temporary disability not due)

Several employers paid “COVID-19 leave” or other continued wages to workers while off work. Statistics were not gathered on this topic.

#### Medical Bills

Some insurance companies and self-insured employers paid medical bills received for COVID-19 testing and for medical exams to authorize the tests. Some employers also directly paid for testing, often when testing was required by the employer. Statistics were not gathered on this topic.

#### Medical Treatment Other Than a Test

Auditors found evidence of medical treatment other than simply a test for COVID-19 in 32% (101) of claims. However, this treatment was rarely more than an initial exam to recommend the worker be tested for COVID-19. Statistics were not gathered on this topic.

### **Comparison of First Audit (pre-10/1/20 claims) and Second Audit (post-10/1/20 claims)**

As noted in the introduction section, the division conducted an audit of the reasonable investigation of denied COVID-19 claims processed before the October 1, 2020, temporary rule was adopted. This section highlights some of the notable differences in findings between the two audits:

#### COVID-19 Test Results

Percentage of workers tested for COVID-19 infection:

- 80% in the first audit
- 89% in the second audit

Percentage of those workers who tested positive:

- 26% in the first audit
- 58% in the second audit

#### Claim Filing Reasons

Percentage of workers who filed claims for COVID-19 infection:

- 17% in the first audit
- 48% in the second audit

Percentage of workers who filed claims for exposure or symptoms:

- 81% in the first audit
- 51% in the second audit

Temporary Disability

Percentage of workers who lost wages:

- 55% in the first audit
- 60% in the second audit

Percentage of claims in which temporary disability was due:

- 22% in the first audit
- 15% in the second audit

Percentage of claims in which temporary disability was paid but was not due:

- 9% in the first audit
- 33% in the second audit

Medical Treatment Other Than a Test

Percentage of claims with medical treatment beyond only a test for COVID-19:

- 58% in the first audit
- 32% in the second audit

Many claims involved in the first audit were denied because workers did not have COVID-19 – claims were filed out of an abundance of caution, usually prior to testing that showed the worker was not infected. Most claims in the second audit were filed after the worker had tested positive, often through regular testing by the employer. This is demonstrated by the higher rates of testing positive and of filing claims for infection that were seen in the second audit.

The higher rate of medical treatment beyond a only test that was seen in the first audit was likely due to testing restrictions during the early-pandemic time period causing workers to need a medical exam to obtain a prescription to be tested for COVID-19. Most claims in the second audit had testing available without a prescription and many workers were tested regularly by their employers. The higher frequency of treatment before testing in the first audit also explains the higher rate of temporary disability being due – workers had medical authorization for disability from the initial exam that was necessary to get tested. In the second audit, workers frequently were tested at work and usually had not seen a medical provider prior to being tested. Auditors rarely saw medical treatment after testing in either audit.



**Table 2 – COVID-19 Testing Results**

<b>Insurance Company</b>	<b>Claims Processor</b>	<b># Claims Audited</b>	<b># Tested</b>	<b># Positive</b>	<b># Negative</b>	<b># Unknown</b>
AIU Insurance Company	AIG Claims, Inc.	1	1	1	--	--
AIU Insurance Company	Sedgwick Claims Management Services, Inc.	1	1	1	--	--
American Zurich Insurance Company	Cannon Cochran Management Services, Inc	1	1	1	--	--
American Zurich Insurance Company	Gallagher Bassett Services Inc	2	1	--	1	--
American Zurich Insurance Company	Sedgwick Claims Management Services, Inc.	2	2	--	2	--
Arch Indemnity Insurance Company	Gallagher Bassett Services Inc	2	2	--	2	--
Berkshire Hathaway Homestate Insurance Company	Intermountain Claims Inc	1	1	1	--	--
Charter Oak Fire Insurance Company	The Travelers Companies, Inc.	1	1	1	--	--
Continental Divide Insurance Company	Intermountain Claims Inc	1	1	1	--	--
Guideone Mutual Insurance Company	Corvel Enterprise Comp, Inc.	3	3	3	--	--
Indemnity Insurance Company of North America	Helmsman Management Services LLC.	1	1	1	--	--
Indemnity Insurance Company of North America	Sedgwick Claims Management Services, Inc.	1	1	1	--	--
LM Insurance Corporation	Liberty Mutual Cos	23	23	23	--	--
New Hampshire Insurance Company	Sedgwick Claims Management Services, Inc.	15	13	2	10	1
Old Republic Insurance Company	Gallagher Bassett Services Inc	1	1	--	1	--
SAIF Corporation	SAIF Corporation	174	161	121	35	5
Sentry Insurance A Mutual Company	Intermountain Claims Inc	2	2	1	1	--
Subtotals (insurers)		232	216	158	52	6

**Table 2 – COVID-19 Testing Results,  
continued**

<b>Self-Insured Employer</b>	<b>Claims Processor</b>	<b># Claims Audited</b>	<b># Tested</b>	<b># Positive</b>	<b># Negative</b>	<b># Unknown</b>
CIS Trust	Corvel Enterprise Comp, Inc.	2	2	--	2	--
City of Portland	City of Portland	1	1	1	--	--
Clackamas County Oregon	Clackamas County Oregon	37	27	2	24	1
Evraz Inc NA	Sedgwick Claims Management Services, Inc.	8	1	--	1	--
Kaiser foundation Health Plan of the Northwest	Sedgwick Claims Management Services, Inc.	1	1	1	--	--
Lane County	Corvel Enterprise Comp, Inc.	2	1	1	--	--
Providence Health & Services - Oregon	Sedgwick Claims Management Services, Inc.	32	32	1	31	--
	Subtotals (self-insurer)	83	65	6	58	1
	Grand totals (all)	315	281	164	110	7

**Table 3 – Lost Wages and Temporary Disability (TD) Due and Paid**

<b>Insurance Company</b>	<b>Claims Processor</b>	<b># Claims Audited</b>	<b># Lost Wages</b>	<b>TD Due</b>	<b>TD Paid</b>
AIU Insurance Company	AIG Claims, Inc.	1	1	--	--
AIU Insurance Company	Sedgwick Claims Management Services, Inc.	1	1	--	1
American Zurich Insurance Company	Cannon Cochran Management Services, Inc	1	1	--	--
American Zurich Insurance Company	Gallagher Bassett Services Inc	2	1	--	--
American Zurich Insurance Company	Sedgwick Claims Management Services, Inc.	2	--	--	--
Arch Indemnity Insurance Company	Gallagher Bassett Services Inc	2	1	--	--
Berkshire Hathaway Homestate Insurance Company	Intermountain Claims Inc	1	1	--	1
Charter Oak Fire Insurance Company	The Travelers Companies, Inc.	1	1	1	1
Continental Divide Insurance Company	Intermountain Claims Inc	1	1	--	--
Guideone Mutual Insurance Company	Corvel Enterprise Comp, Inc.	3	3	--	3
Indemnity Insurance Company of North America	Helmsman Management Services LLC.	1	1	--	--
Indemnity Insurance Company of North America	Sedgwick Claims Management Services, Inc.	1	--	--	--
LM Insurance Corporation	Liberty Mutual Cos	23	5	--	--
New Hampshire Insurance Company	Sedgwick Claims Management Services, Inc.	15	6	3	--
Old Republic Insurance Company	Gallagher Bassett Services Inc	1	--	--	--
SAIF Corporation	SAIF Corporation	174	147	24	116
Sentry Insurance A Mutual Company	Intermountain Claims Inc	2	1	--	--
	Subtotals (insurers)	232	171	28	122

**Table 3 – Lost Wages and Temporary Disability (TD) Due and Paid, continued**

<b>Self-Insured Employer</b>	<b>Claims Processor</b>	<b># Claims Audited</b>	<b># Lost Wages</b>	<b>TD Due</b>	<b>TD Paid</b>
CIS Trust	Corvel Enterprise Comp, Inc.	2	--	--	--
City of Portland	City of Portland	1	--	--	--
Clackamas County Oregon	Clackamas County Oregon	37	--	--	--
Evrax Inc NA	Sedgwick Claims Management Services, Inc.	8	8	--	8
Kaiser foundation Health Plan of the Northwest	Sedgwick Claims Management Services, Inc.	1	--	--	--
Lane County	Corvel Enterprise Comp, Inc.	2	2	--	1
Providence Health & Services - Oregon	Sedgwick Claims Management Services, Inc.	32	8	--	0
	Subtotals (self-insurers)	83	18	0	9
	Grand totals (all)	315	189	28	131