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What is Workers' Compensation Fraud – Perspectives & Strategies from Injured Worker & Employer Sides

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What is Workers' Compensation Fraud

1) Types of Fraud

- Injured Worker
- Employer
- Provider

2) R.C. 2913.48 Workers' Compensation Fraud

(A) No person, with purpose to defraud or knowing that the person is facilitating a fraud, shall do any of the following:

(1) Receive workers' compensation benefits to which the person is not entitled;

(2) Make or present or cause to be made or presented a false or misleading statement with the purpose to secure payment for goods or services rendered under Chapter 4121., 4123., 4127., or 4131. of the Revised Code or to secure workers' compensation benefits;

(3) Alter, falsify, destroy, conceal, or remove any record or document that is necessary to fully establish the validity of any claim filed with, or necessary to establish the nature and validity of all goods and services for which reimbursement or payment was received or is requested from, the bureau of workers' compensation, or a self-insuring employer under Chapter 4121., 4123., 4127., or 4131. of the Revised Code;

(4) Enter into an agreement or conspiracy to defraud the bureau or a self-insuring employer by making or presenting or causing to be made or presented a false claim for workers' compensation benefits;

(5) Make or present or cause to be made or presented a false statement concerning manual codes, classification of employees, payroll, paid compensation, or number of personnel, when information of that nature is necessary to determine the actual workers' compensation premium or assessment owed to the bureau by an employer;

(6) Alter, forge, or create a workers' compensation certificate to falsely show current or correct workers' compensation coverage;

(7) Fail to secure or maintain workers' compensation coverage as required by Chapter 4123. of the Revised Code with the intent to defraud the bureau of workers' compensation.

(B) Whoever violates this section is guilty of workers' compensation fraud. Except as otherwise provided in this division, a violation of this section is a misdemeanor of the first degree. If the value of premiums and assessments unpaid pursuant to actions described in division (A)(5),

(6), or (7) of this section, or of goods, services, property, or money stolen is one thousand dollars or more and is less than seven thousand five hundred dollars, a violation of this section is a felony of the fifth degree. If the value of premiums and assessments unpaid pursuant to actions described in division (A)(5), (6), or (7) of this section, or of goods, services, property, or money stolen is seven thousand five hundred dollars or more and is less than one hundred fifty thousand dollars, a violation of this section is a felony of the fourth degree. If the value of premiums and assessments unpaid pursuant to actions described in division (A)(5), (6), or (7) of this section, or of goods, services, property, or money stolen is one hundred fifty thousand dollars or more, a violation of this section is a felony of the third degree.

(C) Upon application of the governmental body that conducted the investigation and prosecution of a violation of this section, the court shall order the person who is convicted of the violation to pay the governmental body its costs of investigating and prosecuting the case. These costs are in addition to any other costs or penalty provided in the Revised Code or any other section of law.

(D) The remedies and penalties provided in this section are not exclusive remedies and penalties and do not preclude the use of any other criminal or civil remedy or penalty for any act that is in violation of this section.

(E) As used in this section:

(1) "False" means wholly or partially untrue or deceptive.

(2) "Goods" includes, but is not limited to, medical supplies, appliances, rehabilitative equipment, and any other apparatus or furnishing provided or used in the care, treatment, or rehabilitation of a claimant for workers' compensation benefits.

(3) "Services" includes, but is not limited to, any service provided by any health care provider to a claimant for workers' compensation benefits and any and all services provided by the bureau as part of workers' compensation insurance coverage.

(4) "Claim" means any attempt to cause the bureau, an independent third party with whom the administrator or an employer contracts under section [4121.44](#) of the Revised Code, or a self-insuring employer to make payment or reimbursement for workers' compensation benefits.

(5) "Employment" means participating in any trade, occupation, business, service, or profession for substantial gainful remuneration.

(6) "Employer," "employee," and "self-insuring employer" have the same meanings as in section [4123.01](#) of the Revised Code.

(7) "Remuneration" includes, but is not limited to, wages, commissions, rebates, and any other reward or consideration.

(8) "Statement" includes, but is not limited to, any oral, written, electronic, electronic impulse, or magnetic communication notice, letter, memorandum, receipt for payment, invoice, account, financial statement, or bill for services; a diagnosis, prognosis, prescription, hospital, medical, or dental chart or other record; and a computer generated document.

(9) "Records" means any medical, professional, financial, or business record relating to the treatment or care of any person, to goods or services provided to any person, or to rates paid for goods or services provided to any person, or any record that the administrator of workers' compensation requires pursuant to rule.

(10) "Workers' compensation benefits" means any compensation or benefits payable under Chapter 4121., 4123., 4127., or 4131. of the Revised Code.

3) Fraud v. Abuse

- Committing fraud is violating the law and prosecuted in court.
- Abuse can be addressed by administrative actions and/or proper case management.
- BWC SIU will investigate cases of fraud and abuse but cannot pursue criminal charges on an individual abusing the system.

4) Red flags for Fraud

- **Worker fraud**
 - Collect BWC total disability compensation benefits while working.
 - Work for cash under the table.
 - Are self-employed or work from home.
 - Are never available to answer calls at home or have limited availability for medical exams and/or appointments.
 - Perform seasonal work that is about to end when they file a claim.
 - Are on disability compensation, but engage in physical activities inconsistent with the limitations they claim to have due to their injury.
 - Divert their prescribed narcotics to others or deceive medical providers to obtain multiple prescriptions.
 - Claim to be injured at work, but were actually injured elsewhere.
 - Grossly exaggerate the extent of his or her injury.
- **Employer fraud**
 - Someone who operates a business without workers' compensation coverage.
 - A competitor who frequently underbids contracts (due to not paying for workers' compensation coverage).
 - If a certificate of BWC coverage is not visible, or contains an outdated coverage period and/or incorrect name of the BWC administrator.
 - An employer who misreports the amount of payroll or shifts payroll to lower cost jobs to avoid paying its fair share.

- An employer who misrepresents/reports employees as independent contractors/subcontractors.
- An employer who pays employees cash under the table.
- **Provider fraud**
 - Provider bills for a more costly service than what was actually performed.
 - Provider misrepresents who provided the care.
 - Provider dispenses controlled substances with no legitimate medical purpose.
 - Provider consistently bills the same procedure codes across their entire patient base.
 - Provider bills a high number of units related to time-based codes.
 - Injured worker's treatment notes do not change from visit to visit.
 - Information contained in injured worker's treatment notes is incorrect.

5) BWC SIU Division

- **2018 SID performance**
 - Employer: 78 referred for prosecution, 68 indictments, 52 convictions, \$8.8 million in savings.
 - Health-care/Provider: 16 referred for prosecution, 4 indictments, 4 convictions, \$3.5 million in savings.
 - Claimant: 72 referred for prosecution, 39 indictments, 45 convictions, \$47.8 million in savings.
 - Total: \$60.1 million in savings
- **Since 1994**: The savings to the state insurance fund has been \$1.8 billion.

6) Per SIU – The most common complaints for fraud for the three groups

- **Employers:**
 - Operating without coverage
 - Altering BWC certificates of coverage.
 - Obtaining multiple BWC
 - Policies through deception.
 - Misclassifying employees.
 - Submitting dishonored premium payments to the BWC
- **Providers:**
 - Services not rendered
 - Up-coding (billing for more services or more expensive services than those provided)
 - Providing medically unnecessary treatment.

- False billing.
- **Claimants:**
 - Working while receiving benefits – TT, PTD, LM, NWWL
 - Physical activity – Activity inconsistent with medical reports, deceptive behavior during medical appointments to deceive providers.
 - False claims – No real injury, mechanism of injury inconsistent
 - Drug deception – selling narcotics, using deceptive means to obtain narcotics from various providers

7) Reporting fraud

- BWC website
- Calling the BWC
- For both follow the fraud reporting options.
- Provide as much information as you can, including
 - Name and address of person you are reporting
 - Details about the improper or fraudulent activity you suspect
 - Other general information pertaining to the suspected fraudulent activity

8) Proving Fraud

- Intent Documents
 - FROI-1
 - Warrants
 - TT Entitlement letters
 - C-84 application
 - PTD contact letters
- FROI-1: Warning: “Any person who obtains compensation from BWC or self-insuring employers by knowingly misrepresenting or concealing facts, making false statements or accepting compensation to which he or she is not entitled, is subject to felony criminal prosecution for fraud. (RC 2913.48)”
- C-84: Just above the IW signature: “I understand I am not permitted to work while receiving temporary total compensation. I have answered the foregoing questions truthfully and completely. I am aware that any person who knowingly makes a false statement, misrepresentation, concealment of act or any other act of fraud to obtain compensation as provided by BWC or who knowingly accepts compensation to which that person is not entitled its subject to felony criminal prosecution and may, under appropriate criminal provisions, be punished by a fine, imprisonment or both.”
- TT Entitlement letter: “You are not entitled to temporary total benefits if you meet any of the conditions below. 1. You return to any type of work for any employer...”

Practice Tip:

- SI employers should have warning language on their compensation checks, direct deposits form, TT letters, contact letter, acknowledgement letters/forms, etc.

9) SID process

- Allegation received
- Review of medical
- Witness interviews
- Physician interviews
- Review of costs in claim
- Refer for prosecution.

10) SID on Facebook and twitter

- <http://www.facebook.com/ohiobwcfraud>
- <http://twitter.com/#!/ohiobwc>

11) REVIEW OF ACTUAL CASES