

Office of the Inspector General Putting an End to Fraud

The Difference Between Fraud and Abuse

Fraud vs. Abuse

What is fraud? What is abuse? What is the difference between them? Because abuse is a very broad term, it is easy to confuse the two.

Abuse Defined:

Workers' compensation abuse is any practice that uses the workers' compensation system in a way that is contrary to either the intended purpose of the system or the law. This includes some behavior that is not criminal and some that is, most significantly, fraud.

Insurance Fraud Defined:

In the simplest terms, insurance fraud occurs when someone knowingly and with intent to defraud, presents or causes to be presented, any written statement that is materially false and misleading to obtain some benefit or advantage, or to cause some benefit that is due to be denied. If there is no material, written lie, there may be abuse, but it is not fraud. However, workers' compensation fraud may be committed by a false statement, which could be verbal.

Merely filing a claim that is not warranted or violating the rules of the workers' compensation system, in the absence of fraud (a lie) or kickbacks, may be abuse, but it is not criminal. The specific elements of fraud must be present. Similarly, over-treatment by a physician might represent a difference in opinion; although it could appear excessive and possibly abusive, it does not necessarily constitute fraud. Typical abuses of the system also include magnification of complaints or disability that fall short of an outright lie, or an over utilization of benefits. For example, soft tissue injuries give rise to subjective complaints that they cannot either prove or disprove.

The presence or absence of a specific, provable lie is the deciding factor. To separate fraud from abuse, it is necessary to look for the material, written lie that was presented or caused to be presented to or by an insurer. The New York Penal Law punishes written fraud only; the Workers' Compensation Law also prohibits oral fraud, in addition to written fraud.

For example, returning to work while receiving temporary disability payments might be abuse, or it might be fraud, depending upon the circumstances. If temporary disability benefits continue when the claimant has returned to work, and no one ever asks the claimant "are you working?", there is an abuse of temporary disability benefits, but there is no written lie and therefore no insurance fraud.

However, using the same example, if someone, such as the adjuster or the doctor, specifically asks the claimant "are you currently working?" - and the claimant replies "no" and thus lies, and that lie is transcribed in a written instrument (e.g., doctor's report or employer's claim form) there is insurance fraud and a possible action under the Workers' Compensation Law and Penal Law, if the lie is relied upon to determine the amount and payment of temporary disability.

The Workers' Compensation Reform Act of 1996 has made it easier for prosecutors to establish fraud cases. Under an amendment to Section 132 of the Workers' Compensation Law, every check issued directly to a benefit recipient or health care provider must contain a statement directly beneath the endorsement line indicating that in endorsing the check, the signatory certifies that s(he) is entitled to such payment and that the circumstances which would affect entitlement to payment have not changed. Thus, with every check that is presented, prosecutors potentially have the basis for the "written lie" that is essential to a fraud case.

Kickbacks

Though not legally a fraud, offering or accepting kickbacks for the referral or settlement of cases is a reportable and highly prosecutable crime. Kickbacks indirectly feed the problem of fraud and as a result, cause damage to our society and our economy. Consequently, the legislature has determined that paying and receiving kickbacks can contribute to fraud are punishable criminal acts.

Insurance Fraud

In separating criminal insurance fraud from abuse, remember these key elements:

- There is always a false representation - the lie
- The lie must be intentional or knowingly made
- The lie must be made for the purpose of obtaining a benefit the claimant is not due, denying a benefit that is due, or obtaining insurance at less than the proper rate
- The lie must be material, that is, it must make a difference:
"If the truth had been told, would you have done anything differently?"

Reporting Fraud

Any claims of suspected workers' compensation fraud should be referred to the Workers' Compensation Fraud Inspector General for investigation and development of the appropriate case for prosecution by the State Attorney General's Office, or local District Attorneys.

The Fraud Inspector General may be contacted by writing to:

Inspector General
Fraud Investigations
NYS Workers' Compensation Board
20 Park St.
Albany, NY 12207

-or-

by telephoning the Inspector General's Office at (518) 473-4839,
or the Fraud Hotline at 1-888-363-6001.

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