

Illinois Department of Insurance
Workers' Compensation Fraud Unit

2012 ANNUAL REPORT



Pat Quinn, Governor

Andrew Boron, Director



Illinois Department of Insurance

PAT QUINN
Governor

ANDREW BORON
Director

June 29, 2012

The Honorable Pat Quinn
Governor
207 State House
Springfield, Illinois 62706

Re: Workers' Compensation Fraud Unit – 2012 Annual Report

Dear Governor Quinn:

On behalf of the Department of Insurance and pursuant to Sections 25.5(e-5) and 25.5(h) of the Workers' Compensation Act (820 ILCS 305/25.5(e-5) and 820 ILCS 305/25.5(h)), I hereby submit the Workers' Compensation Fraud Unit's 2012 Annual Report.

Respectfully submitted,

Andrew Boron, Director
Illinois Department of Insurance

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I. Introduction

In 1911, Illinois became one of the first states in the nation to pass comprehensive workers' compensation laws. While state law has changed over the years, the basic principle guiding workers' compensation remains the same: employees and employers deserve a reliable and affordable system of insurance which protects employers, injured workers and their families from financial catastrophe.

Today, state law requires almost every working resident of Illinois to be covered by workers' compensation insurance. Employers provide workers' compensation benefits either by purchasing insurance policies or by paying for the benefits themselves (known as self-insurance). Employers and employees benefit from the state's mandatory system, which allows employers to avoid costly litigation and provide employees protection and compensation for work-related injuries.

The business environment in Illinois could benefit significantly from greater fraud protection because the decrease in fraudulent claims would lead to more cost effective insurance, and therefore, a more efficient market. The Illinois market is highly competitive, with 330 different companies competing to write direct workers' compensation premiums in 2011.

II. 2005 Reforms

In 2005, representatives from the business sector, labor, and government leaders united to address the problems of fraud and non-compliance in the Illinois workers' compensation system. Later that year, the General Assembly passed House Bill 2137, which would become Public Act 94-277. This legislation established in Illinois, for the first time, a statute devoted specifically to criminalizing and combating workers' compensation fraud.

Public Act 94-277, later codified as Section 25.5 of the Illinois Workers' Compensation Act (Act) (820 ILCS 305/25.5), introduced two anti-fraud reforms. First, the Act required the Illinois Department of Insurance (Department) to create an investigative unit, hereafter referred to as the Workers' Compensation Fraud Unit (WCFU).¹ The WCFU is charged with examining allegations of workers' compensation fraud and insurance non-compliance.² Section 25.5(c) of the Act specifically provides that it "shall be the duty of the [WCFU] to determine the identity of insurance carriers, employers, employees, or other persons or entities that have violated the fraud and insurance non-compliance provisions of this Section." 820 ILCS 305/25.5(c).

The Act's fraud and insurance non-compliance provisions constitute the second major anti-fraud reform. Prior to the passage of Public Act 94-277, fraudulent receipt, denial, or application for workers' compensation benefits were not specifically defined as unlawful by the Act. The 2005 reforms established eight specific fraudulent acts:

1. Intentionally presenting or causing to be presented any false or fraudulent claim for the payment of any workers' compensation benefit;
2. Intentionally making or causing to be made any false or fraudulent material statement or material representation for the purpose of obtaining or denying any workers' compensation benefit;
3. Intentionally making or causing to be made any false or fraudulent statements with regard to entitlement to workers' compensation benefits with the intent to prevent an injured worker from making a legitimate claim for workers' compensation benefits;

¹ Section 25.5 states that the "Division of Insurance of the Department of Financial and Professional Regulation" shall establish the WCFU. Pursuant to Executive Order 4 (2009) and a statute passed by the General Assembly, the Division of Insurance was re-established as the Department of Insurance effective June 1, 2009. Section 25.5 was amended to reflect this change in 2011.

² In addition to the WCFU, the Illinois Workers' Compensation Commission, which is separate and apart from the Department, also employs a number investigators charged with investigating insurance non-compliance pursuant to Section 4 of the Act, which requires employers to provide workers' compensation benefits to employees.

4. Intentionally preparing or providing an invalid, false, or counterfeit certificate of insurance as proof of workers' compensation insurance;
5. Intentionally making or causing to be made any false or fraudulent material statement or material representation for the purpose of obtaining workers' compensation insurance at less than the proper rate for that insurance;
6. Intentionally making or causing to be made any false or fraudulent material statement or material representation on an initial or renewal self-insurance application or accompanying financial statement for the purpose of obtaining self-insurance status or reducing the amount of security that may be required to be furnished;
7. Intentionally making or causing to be made any false or fraudulent material statement to the WCFU in the course of an investigation of fraud or insurance non-compliance; and
8. Intentionally assisting, abetting, soliciting, or conspiring with any person, company or other entity to commit any of the acts listed above.

These eight prohibitions defined the nature and scope of WCFU investigations from 2005 to 2011.

III. 2011 Reforms

In 2011, the General Assembly passed House Bill 1698, which would become Public Act 97-18. The 2011 amendments to Section 25.5 of the Act provided the WCFU with additional tools to combat worker's compensation fraud. The first change enacted was the addition of a ninth prohibition. This provision makes it illegal to "intentionally present a bill or statement for the payment for medical services that were not provided." 820 ILCS 305/25.5(a)(9).

Public Act 97-18 also reformed the sentencing provisions in the Act. Previously, those convicted of workers' compensation fraud were guilty of a Class 4 felony and required to pay appropriate restitution. The amended sentencing provisions now base the punishment for a violation of the Act's fraud provisions on the value of the property the person convicted of fraud obtained or attempted to obtain. The new sentencing scheme, codified at 25.5(b) of the Act, is as follows:

1. A violation in which the value of the property obtained or attempted to be obtained is \$300 or less is a Class A misdemeanor.
2. A violation in which the value of the property obtained or attempted to be obtained is more than \$300 but not more than \$10,000 is a Class 3 felony.
3. A violation in which the value of the property obtained or attempted to be obtained is more than \$10,000 but not more than \$100,000 is a Class 2 felony
4. A violation in which the value of the property obtained or attempted to be obtained is more than \$100,000 is a Class 1 felony.

These changes to the sentencing scheme have led to greater interest from prosecutors.

Unfortunately, the changes to the sentencing scheme have also had a number of unintended consequences. As the new sentencing scheme is based upon the monetary value of the fraud committed, an issue exists for a number of violations where a value cannot be quantified. While the new sentencing guidelines work well for cases involving false claims and benefits received by workers' compensation claimants through false statements or fraudulent means, the guidelines pose problems for a number of other violations.

Thirdly, the recent reforms have given the WCFU broader powers of subpoena. While the WCFU utilized the subpoena power granted to the Director of the Department from its

inception, the statute now clearly states that the WCFU has “the general power of subpoena of the Department of Insurance, including the authority to issue a subpoena to a medical provider, pursuant to section 8-802 of the Code of Civil Procedure.” 820 ILCS 305/25.5(c). Section 8-802 of the Code of Civil Procedure, which defines the physician-patient privilege in Illinois, states that “no physician or surgeon shall be permitted to disclose any information he or she may have acquired in attending any patient in a professional character, necessary to enable him or her professionally to serve the patient, except . . . [upon] the issuance of a subpoena pursuant to Section 25.5 of the Workers' Compensation Act.”³ 735 ILCS 5/8-802. This makes it clear that medical providers not only have to provide the medical records, but may speak to investigators about what would otherwise be privileged.

Additionally, Public Act 97-18 removed the notice requirement from Section 25.5(e) of the Act. Prior to the 2011 amendments, the WCFU was required to contact the target of a potential investigation immediately upon receipt of a complaint, notifying them of the investigation, the nature of the reported conduct, and the name and address of the complainant. This requirement hindered the WCFU greatly in that it made attempts to conduct surveillance futile, as the target was aware of the investigation. The notice requirement also discouraged complainants from coming forward, as they would have their identity and address given to the target of the investigation. Without this requirement, the WCFU can be much more effective as well as more inviting to potential complainants.

The time limit for the WCFU to conduct a fraud investigation was removed from Section 25.5(e) of the Act. Previously, the WCFU had to complete its investigation within one hundred twenty (120) days of the time a complaint was received. Given the resources available, this

³ The language in Section 8-802 of the Code of Civil Procedure concerning subpoenas pursuant to Section 25.5 of the Illinois Workers' Compensation Act was added by PA 97-18.

limitation often proved to be impossible to comply with as the time limit started to run before the case was even assigned to an investigator, and subpoena compliance took up the majority of the one hundred twenty (120) days. However, with that requirement removed, the WCFU can collect all of the relevant records, complete thorough investigations, and make better referrals to prosecutors, resulting in more convictions.

Finally, the 2011 amendments require that the WCFU to procure and implement a system utilizing advanced analytics inclusive of predictive modeling, data mining, social network analysis, and scoring algorithms for the detection and prevention of fraud, waste, and abuse by January 1, 2012. To date, no system has been procured, as no funding was provided for this mandate. Additionally, the WCFU spent nearly its entire allocation for FY2012, and would have spent the entire amount allocated, were it not for the resignation of an investigator in April of 2012.

In fact, the WCFU has operated with a budget that is roughly half of what was originally allocated when the unit was created since FY2009. The Department and the WCFU did issue a Request for Information (RFI) regarding this system in March of 2012 in the hopes of receiving information regarding how to draft a Request for Proposal (RFP) to obtain such a system. The Department received a number of responses, and continues to review the information provided with a goal towards issuing an RFP.

As the system has yet to be procured and implemented as required by statute, the WCFU has no recommendations at this time regarding opportunities for additional fraud prevention and detection of fraud, waste, and abuse. However, the WCFU and the Department believe that this system may be more useful to another agency.

IV. WCFU Operations

Section 25.5(c) of the Act charged the Department with establishing the WCFU. The Department established the WCFU in 2006 and now oversees its operations, investigations, personnel, and progress.

A. Complaints

The WCFU reporting system records and tracks reports of workers' compensation fraud. Complainants are required by statute to identify themselves and can report fraud by regular mail, electronic mail, or by calling a toll-free telephone number (1-877-WCF-UNIT or 1-877-923-8648). After receiving a report, the WCFU supervisor reviews each complaint to determine whether the complaint alleges a violation of the Act's fraud provisions that warrants investigation. In conducting this review, the supervisor assigns a case number to each complaint. If necessary, the supervisor contacts the complainant or requests additional information in order to complete the review process. If the report is frivolous or unsubstantiated, the investigation ceases and the report is closed. If the supervisor finds evidence sufficient to justify further inquiry the case is assigned for investigation.

B. Investigations

The primary responsibility of the WCFU is to conduct investigations and refer worthy cases for prosecution. To fulfill this task, WCFU investigators spend countless hours each year conducting field investigations, reviewing hours of surveillance footage, issuing numerous subpoenas, and reviewing insurance, payroll, medical, and other records. An investigation begins after the WCFU supervisor assigns it to an investigator. During 2011, the number of WCFU investigators statewide varied between three and six throughout the course of the year.

While structurally similar, each investigation differs based upon a host of factors,

including the nature and quality of the initial report. Most investigations involve: (1) review of documentary and physical evidence; (2) detailed background checks of persons related to the case (*e.g.*, investigative targets and witnesses); and (3) interviews of persons related to the case (*e.g.*, complainants, witnesses, insurance company personnel, medical treatment providers, and the investigative target).

C. Referrals for Prosecution

At the conclusion of each investigation, a review of the sufficiency of evidence is conducted. If the inquiry does not produce evidence deemed sufficient to convict an individual or entity of workers' compensation fraud, the case is dismissed. Investigations that produce sufficient evidence to convict are referred to the Attorney General's office or the State's Attorney of the county where the offense occurred. The power to decide whether to file criminal charges rests solely with the prosecutor who receives the WCFU referral.

The WCFU is building working relationships with relevant prosecuting authorities. Investigators regularly work with attorneys from the Attorney General's office and numerous State's Attorneys' offices. Since its creation, the WCFU has referred cases to and worked with State's Attorneys representing thirty-five (35) counties: Bureau, Cass, Champaign, Christian, Cook, DeKalb, DeWitt, DuPage, Edgar, Ford, Franklin, Gallatin, Jasper, Jefferson, Kane, Kankakee, Knox, Lake, Macon, Macoupin, Morgan, Madison, Ogle, Peoria, Perry, Saline, Sangamon, St. Clair, Tazewell, Union, Vermillion, White, Will, Williamson and Winnebago.

D. Confidentiality

The confidentiality of all fraud reports and associated medical records is strictly maintained in accordance with the relevant statutes, and is only shared in the course of referring a case for prosecution or in complying with other lawful requests.

V. Building Relationships

WCFU investigators have learned many valuable lessons since the unit was established in 2006. Primary among them is the importance of building working relationships with state law enforcement authorities. WCFU investigators, conscious of the broad discretion but limited resources possessed by hard-working state and county prosecutors, work to aid prosecutors in the exercise of their discretion. Cases referred for prosecution are presented clearly and succinctly. WCFU investigators are committed to their investigations, and for this reason assist the Illinois Attorney General or respective State's Attorney throughout any criminal case. This level of communication and continued assistance establishes trust, which improves future referrals and prosecutions.

The progress of WCFU investigations over the years has improved the general public's understanding of workers' compensation fraud investigations. In the past, some complainants (*e.g.*, employers, insurers, employees) were confused about what kind of evidence the WCFU needed to successfully investigate an allegation of fraud. Nowhere was this more true than with agencies of state government. In 2011, the WCFU worked with state agencies, including the Department of Central Management Services and the Department of Corrections, to agree on guidelines for submitting complaints and to open lines of communication. Establishing working relationships with these, and other entities, has helped to clarify the type of information that is required to prove workers' compensation fraud.

As the WCFU has grown in experience over the years, the WCFU's cooperation and coordination with other investigative and law enforcement agencies has also grown. WCFU investigators have worked with the Federal Bureau of Investigation, the Postal Inspector's

Office, the Internal Revenue Service, state medical investigators, local police departments, the Illinois State Police, and numerous State's Attorney investigators. Investigators also share non-confidential information with organizations dedicated to identifying and stopping fraud conspiracies, including the National Insurance Crime Bureau.

VII. Statistics

In 2011, the WCFU received one hundred seventy-three (173) allegations of fraud. Of these allegations, sixty-nine (69) were referred by insurance companies⁴; thirty-six (36) were referred by employers; fifteen (15) were reported by concerned individuals; fourteen (14) were referred by special investigation agencies (commonly referred to as SIUs) on behalf of employers, insurance companies, and third party administrators (TPAs)⁵; fourteen (14) were referred by attorneys; thirteen (13) were referred by employees regarding employers and insurance companies; seven (7) were referred by the Illinois Department of Central Management Services (CMS), who acts as the administrator for claims filed by state employees; four (4) were referred by medical providers; and one (1) were referred by the IWCC. Of the complaints received in 2011, one hundred thirteen (113) did not warrant further investigation because of insufficient evidence, lack of jurisdiction, or because the statute of limitations expired.

The WCFU investigated forty-eight (48) allegations of insurance fraud in 2011. Of these investigations, nine (9) investigations remained open from 2010, while an additional thirty-nine (39) were opened in 2011. Of the thirty-nine (39) cases opened in 2011, eighteen (18) were

⁴ Of these sixty-nine (69) complaints submitted by insurance companies, thirty (30) were referrals deemed "information only" regarding the use of social security numbers that were assigned to other individuals. As these cases were also referred to the Social Security Administration, and no allegations of fraud pursuant to Section 25.5 of the Act were alleged in the complaints, no action was taken with regard to these claims.

⁵ Of these fourteen (14) complaints submitted by SIUs, seven (7) were referred on behalf of TPAs, six (6) were referred on behalf of insurance companies, and one (1) was referred on behalf of an employer.

initially reported to the WCFU in 2010 and twenty-one (21) were reported in 2011. Twenty-four (24) of the investigations initiated in 2011 remained open at the beginning of 2012. As of the date of this report, thirteen (13) complaints received in 2011 have been assigned for investigation in 2012, and twenty-six (26) additional complaints received in 2011 have yet to be assigned for investigation.

In 2011, the WCFU referred ten (10) cases to the Office of the Illinois Attorney General and the various county State's Attorneys for prosecution. Eight (8) of the cases referred in 2011 were from investigations begun in 2010, while two (2) of the referred investigations were initiated in 2011. The referrals were made to seven (7) different prosecutors: three (3) were referred to the Cook County State's Attorney; two (2) were referred to the Will County State's Attorney; one (1) case each was referred to the DeKalb County State's Attorney, the Lake County State's Attorney, Sangamon County State's Attorney, St. Clair County State's Attorney, and the Attorney General.

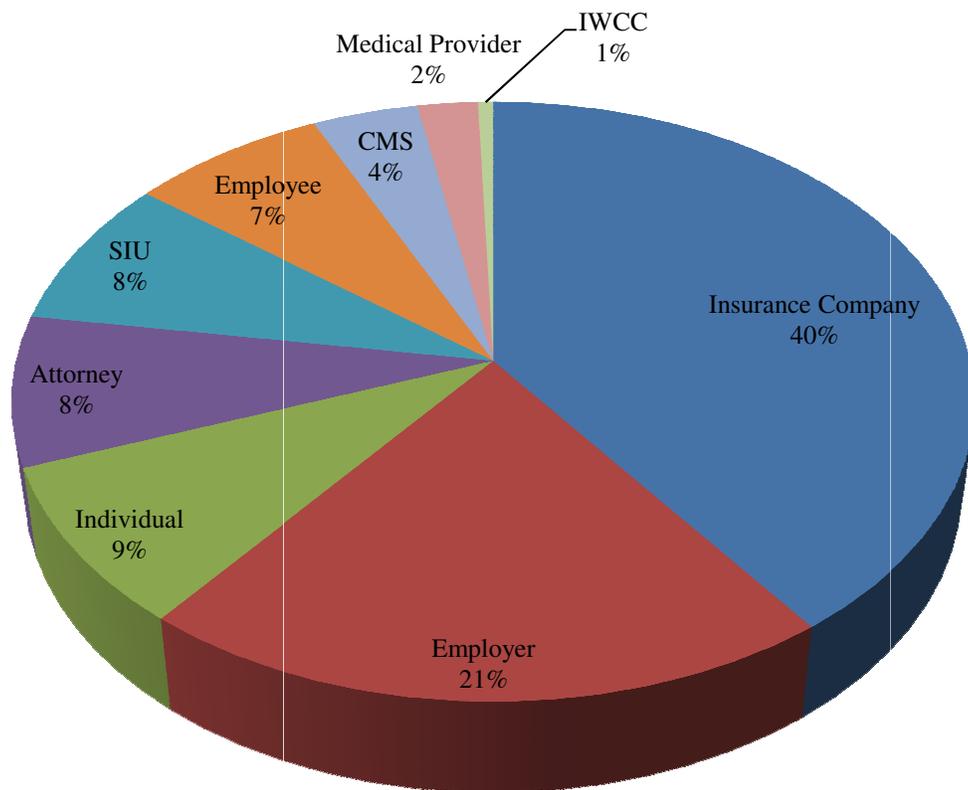
Of the cases referred for prosecution in 2011, four (4) were indicted, three (3) were declined, two (2) are still pending with the respective State's Attorney, and one (1) investigation has been re-opened by the WCFU. As of the date of this report, only one of the cases referred in 2011 has been resolved. That case, which was prosecuted by the Attorney General, resulted in a plea to a misdemeanor charge of Insurance Fraud in January of 2012.

Two (2) cases referred for prosecution prior to 2011 were also resolved this past year. A case referred to the Shelby County State's Attorney in 2010 resulted in a Class 3 felony conviction for insurance fraud with the defendant being sentenced to thirty (30) months probation, ten (10) days in jail, and \$5,242 in restitution. Another case, referred to the Saline County State's Attorney in 2010 resulted in a Class 1 felony conviction for Theft of Government

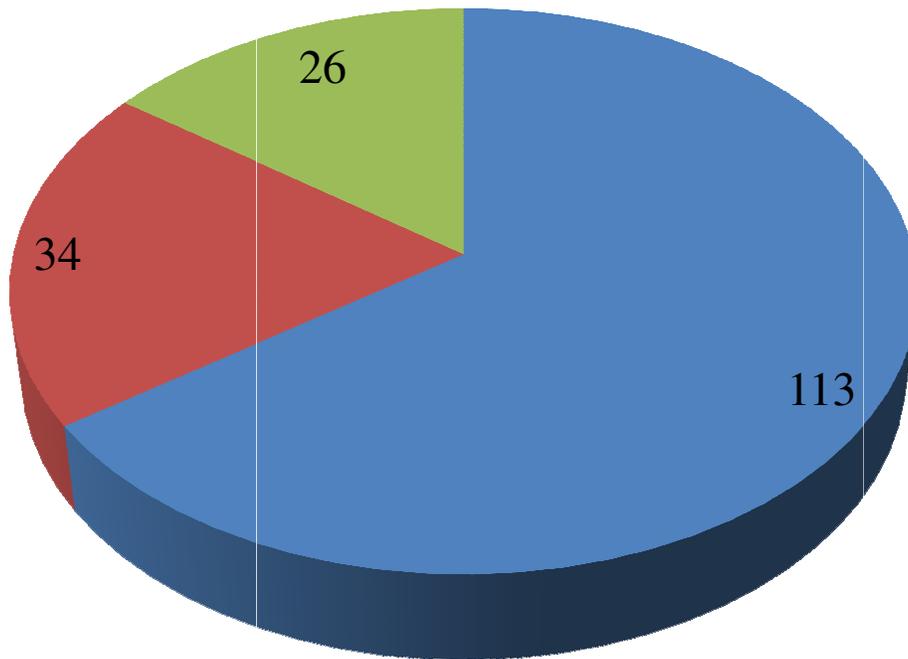
Property with the defendant being sentenced to thirty-six (36) months of probation. Finally, as of the date of this report, four (4) cases are pending against individuals who's cases were referred for prosecution in 2009 and 2010, and one (1) case referred to the Attorney General's office in 2009, and is still pending a decision regarding charges.

In addition to the complaints and investigations mentioned above, in 2011 the WCFU began an unprecedented investigation into workers' compensation claims filed by Department of Corrections (DOC) employees at Menard Correctional Center. That investigation has included the review of more than seven hundred (700) claims filed by DOC, IWCC, and CMS employees. Information on a number of those claims has been provided to the U.S. Attorney for the Southern District of Illinois. As of the date of this report, that investigation is ongoing.

2011 Fraud Complaints by Source



Disposition of 2011 Complaints



■ No Investigation ■ Assigned for Investigation ■ Awaiting Investigation

2011 Convictions Resulting from WCFU Referrals

County	Date	Offense	Sentence	Summary
Shelby	1/28/11	Insurance Fraud (Class 3 felony)	30 months probation, 10 days confinement in the Shelby County Jail, restitution in the amount of \$5,242, and \$1,987 in fines, fees, and costs.	The defendant was working as a repossession officer while collecting TTD benefits from an injury with another employer.
Saline	3/3/11	Theft of Government Property (Class 1 felony)	36 months probation, restitution in the amount of \$17,098, and \$3,335 in fines, fees, and costs.	The defendant submitted false affidavits, including altered checks, regarding his eligibility to receive benefits from the Rate Adjustment Fund.
Kane	9/27/11	Workers' Compensation Fraud (Class 4 felony)	24 months probation, 50 hours of community service, restitution in the amount of \$4,104, and \$1,890 in fines, fees, and costs.	The defendant claimed to have suffered a work-related injury that did not occur at work and made numerous false statements regarding the alleged injury. The defendant was found guilty by a Kane County Jury.