

REGULATING WORKERS' COMPENSATION IN WEST VIRGINIA

Second Annual
West Virginia
Workers' Compensation Educational Conference
May 3-4, 2011

POLICY COUNT

TOTAL POLICY COUNT

32,805

TOTAL RESIDUAL
MARKET POLICIES

834

As of 4/14/2011

CARRIER COUNT

TOTAL CARRIERS

185

TOTAL CARRIER GROUPS

80

As of 4/14/2011

SELF-INSURED COUNT

91

Active

As of 4/19/2011

WVOIC Authority

- ▣ W.Va. Code §33-2-3(a) - “The Commissioner shall enforce the provisions of this chapter...”
- ▣ W.Va. Code §33-2-21(a) - Upon termination of the WCC, the powers and duties are transferred to the Insurance Commissioner.

WVOIC Authority (contd.)

- ▣ W.Va. Code §23-2C-21(b) – Administrative fines in Chapters 23 and 33 are exclusive civil remedies for any violations committed by private carrier or a third-party administrator

Specific Areas of Regulation [Claims]

- ▣ W.Va. Code §33-11-4(9) – Unfair Claims Practices
- ▣ Private W/C carriers exempt from W.Va. Code of State Rules §114-14-1, *et seq.* – Unfair Claims Practice Rule BUT not from W.Va. Code §33-11-4 (Unfair methods of competition and unfair or deceptive acts or practices)
- ▣ *See* W.Va. Code of State Rules §85-1-1 *et seq.* – Claims Mngmnt. and Admin.

Specific Areas of Regulation [Claims]

- ▣ EDI reporting
 - *See W.Va. Code St. R. §85-2-6*
 - “All private carriers, special funds and self-insured employers shall report claims data to the Commissioner consistent with the provisions of the WV OIC EDI IG.”
 - “Failure of an insurer or self-insured employer to timely report data to the Commissioner as required in subsection 6.1. of this section may subject the private carrier or self-insured employer to a fine not to exceed \$500 per occurrence of untimely reporting.”

Specific Areas of Regulation [Claims]

- ▣ Failure to timely act
 - *See* W.Va. Code §23-4-1c(a)(3) & W.Va. Code St. R. §93-1-18
- ▣ Attorney Fees
 - *See* W.Va. Code (W.Va. Code §23-2C-21(c))
 - For unreasonable denials of compensability, TTD awards or denial of a medical benefit authorization

Specific Areas of Regulation [Settlements]

- ▣ Unconscionable Settlement Review (*See W.Va. Code §23-5-7 & W.Va. Code of State Rules §85-12-1 et seq.*)
 - Over ten criteria can be reviewed including relative position of parties, adequacy of bargaining position, alternatives, unfair terms, overall agreement, ample time to review, informed of right to legal rep., material terms conspicuously shown, percentage of total benefits received and time elapsed before review request
 - Review must be filed within 180 days (jurisdictional) after the date on which the settlement agreement is executed

Specific Areas of Regulation [Self-Insureds/TPAs]

- ▣ W.Va. Code §23-2-9(j), “ All regulatory, oversight and document-gathering authority provided to the commission under this section shall transfer to the Insurance Commissioner and the Industrial Council upon termination of the commission.”
- ▣ W.Va. Code of State Rules §85-18-1, *et seq.*
 - Audits
 - Noncompliance Penalties
 - Corrective Action Plans
 - TPA use authorized (must comply w/ Chpt. 23 & 33)

Specific Areas of Regulation [Policies & Coverage]

- ▣ Proof of coverage (POC) reporting (*See W.Va. Code St. R. §85-8-1, et seq.*)
 - Cancellations and Nonrenewals
 - The workers' compensation insurance policy
 - Ratemaking and rating organizations
 - Fines for failure to report timely

Specific Areas of Regulation [Producer/Agent Licensing]

- ▣ Appointments [See W.Va. Code §33-12-18] – Both agent and carrier responsible for conduct in this regard
- ▣ Quotes “net of commission” [See W.Va. Code §33-11-4] – Could be considered rebate, restraint of trade, misrepresentation or other concern
- ▣ Terminations [See W.Va. Code §33-12-25]

Specific Areas of Regulation [Adjusters]

- ▣ Company adjusters must be licensed unless no physical presence by adjuster and carrier in State (*See W.Va. Code §33-12B-1, et seq. & W.Va. Code of State Rules §114-25-1, et seq.*)
 - Amendments to Rule in 2011
 - Informational Letter #151

Specific Areas of Regulation [Rates]

- ▣ NCCI Dispute Resolution Process
 - Internal Review Panel established to provide mechanism for policyholders to obtain review by NCCI of the application by an insurance carrier of NCCI classifications, manual rules, and rating plans
 - Authority to hear written requests relating to experience modification factors, payroll classification code assignments and NCCI manual rules
 - No authority to interpret, apply or opine on state or federal laws, rules, regulations, decisions of courts or administrative proceedings or carrier disputes

Specific Areas of Regulation [PEOs]

- ▣ Professional Employer Organizations (*See W.Va. Code §33-46A-1, et seq., W.Va. Code of State Rules §114-85-1, et seq. and W.Va. Code of State Rules §85-31-1, et seq.*)
 - Must be licensed (provisions for limited license)
 - Types of policies include master policies and multiple coordinated policies
 - Allocation agreement important
 - Solvency requirements

WVOIC Avenues of Review

- ▣ Investigations (W.Va. Code §33-2-3a)
 - “...the [C]ommissioner has the authority to conduct investigations whenever...she has cause to believe that a violation of any provision of this chapter or of chapter twenty-three... of this code has been or is being committed.”
 - *See also* W.Va. Code §33-2-19 – Confidentiality and use of information obtained in an investigation

WVOIC Avenues of Review (contd.)

- ▣ Market Conduct and Financial Regulation (W.Va. Code §33-2-9)
 - (a) “The purpose of this section is to provide an effective and efficient system for examining the activities, operations, financial condition and affairs of all persons transacting the business of insurance in this state and all persons otherwise subject to the jurisdiction of the [C]ommissioner.”
 - ▣ Analysis
 - ▣ Examinations
 - ▣ Multi-state collaborative actions

WVOIC Avenues of Review (contd.)

- ▣ Self-Insured audits and annual reviews [*See* W.Va. Code of State Rules §85-18-1, *et seq.*]

Fines, Penalties & Other Action

- ▣ Continuum of Regulatory Action
- ▣ W.Va. Code §33-2-11- Enforcement of Orders (includes restitution provisions)
- ▣ W.Va. Code §33-3-11- Revocation or Suspension of COA (fines in lieu thereof)
- ▣ W.Va. Code §33-11-7 - Cease and Desist Orders (undefined acts)
- ▣ Fines under Chapter 23 of the W.Va. Code for reporting issues
- ▣ *See also* W.Va. Code §33-12-24 (producers)

Enforcement and Compliance {Since Market Opening in '08}

- ▣ Comprehensive Market Conduct Exams = 1
- ▣ Comprehensive Financial Exams = 1
- ▣ Self-Insured audits completed = 28
- ▣ Self-Insured annual reviews (financial) = 91 per calendar year
- ▣ Investigations and analysis opened = 44
- ▣ Fines and/or restitution = Over \$13 million dollars
- ▣ Collaborative action anticipated fines &/or restitution = In excess of \$500,000.00

As of 4/19/11

Important Resources

- ▣ Consumer Services division
 - Complaint assistance and general reference on issues
 - 1-888-TRY-WVIC

- ▣ www.wvinsurance.gov
 - WVOIC website contains information, rules and other pertinent legislation, data, reports, listing of pertinent stakeholders, other regulated entities and forms

Questions



Contact

Andrew R. Pauley, Associate Counsel, APIR
Attorney Supervisor, Legal Compliance &
Enforcement

West Virginia Offices of the Insurance
Commissioner

1124 Smith St.

Charleston, WV

304-558-6279 Ext. 1402

andrew.pauley@wvinsurance.gov



OFFICES OF THE INSURANCE COMMISSIONER

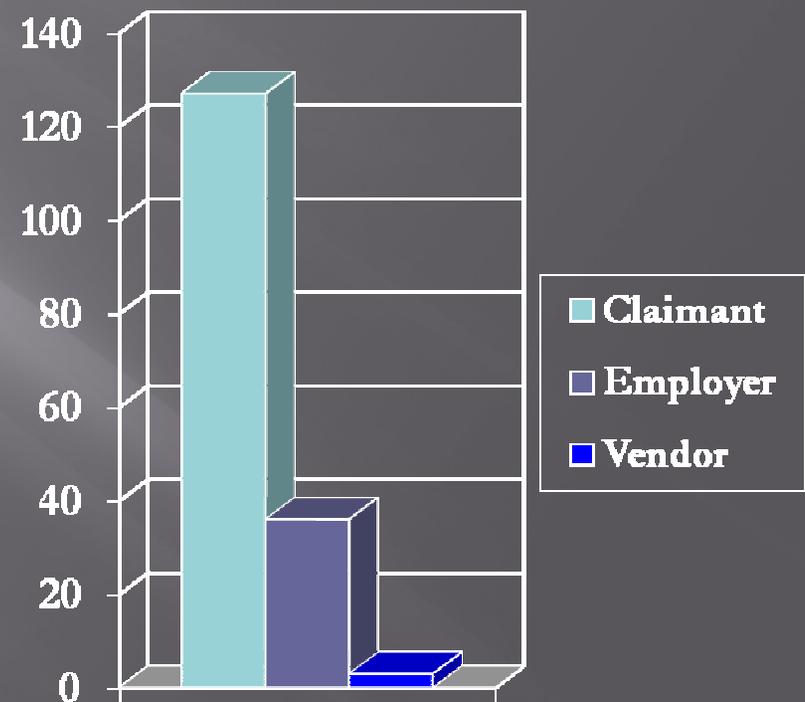
OIG/Fraud Investigations Unit

OIG/Fraud Investigations Unit Intake Referral Process

- ▣ Referrals received in multiple formats
 - Internet – (www.wvinsurance.gov)
 - Correspondence – P.O. Box 2901 Charleston, WV 25330-2901
 - Telephone Hotline – 1-800-779-6853
 - Internal – Consumer Services and Legal Department

Statistical Data for Referrals

- ▣ 888 Referrals were received in calendar year 2010
 - WC = 166
 - Claimant- 127
 - Employer - 36
 - Vendor - 3



Initial Investigation Process

- ❑ System file initiated.
- ❑ Allegation reviewed and investigated for merit.
- ❑ Referral received and assigned based upon alleged fraud type.
- ❑ Determination made by Investigative Manager whether a field investigation is warranted.



Field Investigation Process



- ❑ Field Investigator Assigned
- ❑ Investigation Completed
- ❑ Inspector General & Fraud Director Review for possible prosecution.
- ❑ Cases presented to local or internal prosecutors where and when applicable.

What is needed to prove fraud

- ❑ A material misrepresentation must occur
- ❑ The party **must** know the information supplied to insurance company is false.
- ❑ The individual or entity intended to deceive in order to secure an unfair or unlawful gain.

Common Types of WC Insurance Fraud

- ▣ Claimant
 - Faking Injuries.
 - Exaggerating symptoms.
 - Working while drawing TTD Benefits.
 - Nondisclosure of previous medical conditions.
 - Falsifying travel reimbursement requests.
 - “Doctor Shopping”

Common Types of WC Insurance Fraud

- ▣ Employer
 - Failure to obtain and maintain Workers' Compensation insurance Coverage.
 - Underreporting of payroll.
 - Declaring employees as independent contractors.
 - Misrepresenting type of work being performed.
 - Underestimating employment projections.

Common Types of WC Insurance Fraud

- ▣ Vendor
 - Billing for services not performed.
 - Double billing for services.
 - Upcoding
 - Unbundling
 - Over and underutilization.
 - Product switching.
 - Internal Fraud

How can you help fight fraud?

- ▣ Insurance industry mandated to report suspected fraud.
- ▣ Abuse to be reported to carrier, fraud to OIC Fraud Unit.
- ▣ Report only what you know.
- ▣ Forward all supporting information to the Fraud Unit.

Field Office Locations

- ▣ Martinsburg
- ▣ Wheeling
- ▣ Beckley
- ▣ Fairmont
- ▣ Huntington
- ▣ Logan
- ▣ Parkersburg
- ▣ Charleston

