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OFFICE OF THE STATE COMPTROLLER

January 11, 2002

Mr. Robert R. Snashall
Chairman
Workers' Compensation Board
20 Park Street
Albany, New York 12207

Re: Report 2001-F-34

Dear Mr. Snashall:

Pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution, and Article II, Section 8 of the State Finance Law, we have reviewed the actions taken by officials of the Workers' Compensation Board's Office of Fraud Inspector General as of October 4, 2001, to address the issues contained in our study, *Comparison of Workers' Compensation Fraud Detection and Prosecution Systems in New York and Other States* (Report 96-D-21) issued June 26, 1997. That report compared the fraud-detection and prosecution systems in New York State to 32 other states in order to identify practices that could be used to improve the detection and prosecution of workers' compensation fraud in New York State.

Background

Workers' compensation insurance reimburses injured workers for lost wages and associated medical expenses. New York State's Workers' Compensation Law requires employers to have insurance coverage for the cost of these wages and medical expenses. The Workers' Compensation Board is responsible for ensuring that all employers in New York State have this insurance coverage and for monitoring the payments to injured employees and adjudicating disputed claims.

Employers in New York State may obtain workers' compensation coverage through private insurance carriers, the State Insurance Fund, or self-insurance. The State Insurance Fund is a non-profit agency of the State that underwrites workers' compensation and disability benefits insurance coverage. Many private carriers will not underwrite coverage for companies in hazardous industries or businesses. The State Insurance Fund is the insurer of last resort for such high-risk employers, and a competitive insurer for other segments of the market.

On November 14, 1996, the Workers' Compensation Board's Office of Fraud Inspector General (OFIG) was established to investigate allegations of criminal and civil fraud in the workers' compensation system throughout New York State. A toll-free fraud hotline was established in

March of 1997 to handle calls from the public regarding individuals suspected of committing workers' compensation fraud. Allegations are investigated, and cases involving fraud are presented to the Office of the Attorney General or to local District Attorneys for criminal prosecution. OFIG works closely with the Workers' Compensation Board's Office of Special Projects where computer technology is used to provide leads for fraud investigations.

OFIG records show that during calendar year 2000, it initiated 3,884 fraud investigations from all sources including the Special Projects Unit. Of these, 1,213 cases were referred to outside agencies and 2,481 cases were closed. In addition, 115 cases were sent to the Office of the Attorney General and/or local District Attorney's Office for criminal prosecution, resulting in 71 arrests and prosecutions. Most of the defendants in these cases pled guilty once the evidence was revealed.

Summary Conclusions

OFIG was created by New York State in response to the steep increase in workers' compensation premiums due, in part, to the rise in workers' compensation fraud. The purpose of our prior study was to identify practices in other states that could be used in New York State to improve the prevention, detection, and prosecution of workers' compensation fraud. Some of the practices identified in other states included the development of centralized databases of workers' compensation claims, information-sharing between various state agencies, and authorizing investigators to use search warrants. The study disclosed that other states concentrate their anti-fraud efforts more on claimant fraud. Fraud committed by medical providers and employers did not receive much attention. The study cautioned OFIG not to overlook these types of fraud as they typically involve more money than claimant fraud.

Our follow-up review indicated OFIG has taken actions to address several of the issues in our prior report. These actions include deploying staff resources to ensure that they investigate all types of workers' compensation fraud, instituting information-sharing agreements with other New York State Government agencies and computerizing all of its current and active workers' compensation files. OFIG submitted a proposal to the Legislature to obtain peace officer status and a request to the Department of Motor Vehicles for untraceable automobile license plates, but both were denied. We found that the Workers' Compensation Board has fraud warning signs posted in or near the hearing rooms, but fraud warnings are not printed on any workers' compensation forms utilized by the public. Four issues relating to the establishment of performance measures to evaluate the effectiveness of their programs, monitoring the outcome of court cases and establishing dedicated funding for the State's frauds units were not addressed. The issue that insurers be provided incentives to implement fraud control measures is no longer applicable.

Summary of Status of Prior Issues for Further Consideration

Of the nine issues for further consideration in our prior study report: three were addressed, two were partially addressed, three were not addressed and one was no longer applicable.

Follow-up Observations

Issue for Further Consideration 1

Should performance measures be developed for evaluating the effectiveness of New York State's efforts to prevent, detect, and prosecute workers' compensation fraud?

Status - Not Addressed

Agency Action - OFIG officials state that while they have not developed performance measures to evaluate the overall effectiveness of their program, they do monitor the effectiveness of each investigator's work through a supervisory review at the end of each completed investigation. They add that it is inappropriate to develop time expectations for cases because the complexity of each case is different and that the investigator's supervisor must, within limits, be allowed to use judgment, discretion, and skills, which cannot be measured objectively.

Auditor's Comment - Although OFIG officials have not established performance measures to evaluate the overall effectiveness of their program, they do report some performance statistics, such as cases received, cases closed, cases referred to prosecutors, and number of arrests. The next step in the process is to develop performance goals for these and other relevant performance measures. In addition, we disagree that it is inappropriate to develop expectations regarding the amount of time it should take to complete investigations. Regarding non-claimant cases, OFIG officials indicated they have not investigated a sufficient number of these cases during the past five years to establish standards. To do so, they must have a specific number of cases that would be adequate for this purpose. By establishing time standards as a management tool, OFIG supervisory staff could prioritize for review investigations that take more than the expected amount of time to complete.

Issue for Further Consideration 2

Should the process used by New York State to set workers' compensation insurance rates be modified to provide insurers with incentives to implement fraud control measures?

Status - No Longer Applicable

Agency Action - OFIG officials stated that this suggestion is more appropriate for the State Insurance Department rather than the Workers' Compensation Board.

Auditor's Comment - While no incentives have been added to the rate-setting process, the insurance companies who underwrite workers' compensation insurance in New York State, including the State Insurance Fund, now have fraud investigation units.

Issue for Further Consideration 3

Should Workers' Compensation Board officials monitor the outcome of court cases involving workers' compensation fraud to determine whether the check endorsement certification provides adequate evidence of intent to commit fraud?

Status - Not Addressed

Agency Action - New York State law requires that a certification statement be printed above the endorsement on workers' compensation checks to claimants and health care providers stating that the recipient is entitled to the payment and there has been no change in the circumstances affecting the entitlement. The purpose of our suggestion was to determine if judges accept this type of certification as sufficient evidence of fraud. OFIG officials advised us they do not monitor the outcome of cases once they are referred to the AG or local prosecutor. They also indicated that prosecutors do not always accept cases that are intended to prove workers' compensation fraud. However, if through legislation the WCB-OFIG was authorized to prosecute its own cases, they would do it as a priority. As an alternative to this suggestion, OFIG officials propose penalizing claimants who do not submit notarized statements of their condition to continue to receive benefits. Although this is already required in some states, OFIG officials advised that in New York State legislation would be needed to penalize claimants who do not periodically file a notarized statement of condition.

Issue for Further Consideration 4

Should all of the New York's workers' compensation fraud units have the power to arrest, the power to issue search warrants, and the power to use unmarked cars with license plates that cannot be traced?

Status - Partially Addressed

Agency Action - OFIG officials stated that they were unsuccessful in their legislative proposals to pursue peace officer status for their investigators, but argue that their investigators are effective even without having peace officer status. In addition, OFIG officials state that they applied for untraceable automobile license plates for their investigators. The Department of Motor Vehicles denied this request because OFIG investigators are not police officers or peace officers. The Workers' Compensation Board should continue its efforts to obtain these approvals, contacting units of other State agencies, such as the State Insurance Department's Insurance Frauds Bureau that do similar investigations about WCB authority to perform these activities.

Issue for Further Consideration 5

Should information-sharing agreements be implemented among government agencies in New York to facilitate the detection of workers' compensation fraud?

Status – Addressed

Agency Action - The Workers' Compensation Board has information-sharing agreements with the Department of Taxation and Finance and the Department of Criminal Justice Services; the Workers' Compensation Board's Office of Special Projects uses computer matching with these agencies to disclose possible fraud patterns and illegal schemes. OFIG also uses computer matches to identify potential instances of worker's compensation fraud by employers and has other pending information technology programs.

Issue for Further Consideration 6

Should New York State develop a centralized database of workers' compensation claims?

Status - Addressed

Agency Action - The Workers' Compensation Board has computerized all of its current and active workers' compensation files so it can analyze large volumes of claims and possibly detect patterns of workers' compensation fraud and abuse.

Issue for Further Consideration 7

Should New York State's fraud units receive dedicated funding?

Status - Not Addressed

Agency Action - OFIG officials do not believe there is a need to consider this issue.

Auditor's Comment - Several other states have dedicated funding for their workers' compensation fraud units. An advantage of this process is that these budgets are set by the legislature and provide greater protection against funding cuts or diversion of funding to other programs.

Issue for Further Consideration 8

Should New York State use the types of warnings used in other states to deter workers' compensation fraud?

Status - Partially Addressed

Agency Action - In New York State, workers' compensation benefit claims are paid for by insurance carriers. Although OFIG has not required insurance carriers to include fraud warnings on workers' compensation claim forms as was done in some other states, OFIG officials state that warnings and education should be provided to claimants at every workers' compensation hearing and such warnings are conspicuously posted either in or around workers' compensation hearing rooms. The workers' compensation law judges should also inform claimants about their responsibilities to report whenever there are changes in their medical condition or employment status.

Auditor's Comment - Our study identified that some other states included fraud warnings on workers' compensation forms. OFIG officials did not give us any documentation to indicate that the Workers' Compensation Board encouraged the carriers to include fraud warnings on their claim forms.

Issue for Further Consideration 9

Should New York State's fraud units formally plan their deployment of staff resources to ensure that all types of workers' compensation fraud, including employer and provider fraud are adequately addressed?

Status - Addressed

Agency Action - While OFIG has not formalized its plan to investigate all types of workers' compensation fraud, it is moving to investigate more non-claimant fraud cases. OFIG has recently established an Audit Unit to identify possible employer premium fraud and provider fraud. Further, the Workers' Compensation Board has established the Special Projects Unit that uses computer matching and tracking systems to disclose possible fraud patterns, trends and illegal schemes.

Major contributors to this report were Roger C. Mazula, Kenneth Ring, Kathy Hotaling and Lisa Dunleavy.

We would appreciate your response to this report within 30 days, indicating any actions planned or taken to address any unresolved matters discussed in this report. We also thank the management and staff of the Workers' Compensation Board's Office of Fraud Inspector General for the courtesies and cooperation extended to our auditors during this review.

Very truly yours,

Carmen Maldonado
Audit Director

cc: John H. Burgher
Robert Gabrielli
Deirdre Taylor, DOB