

**CHAPTER 119. ANTI-FRAUD—
STATEMENT OF POLICY**

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The provisions of this Chapter 119 adopted August 27, 1993, effective August 31, 1993, 23 Pa.B. 4111, unless otherwise noted.

GENERAL

§ 119.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Act—The Workers' Compensation Act (77 P. S. §§ 1—1041.4).

Department—The Insurance Department of the Commonwealth.

INSURANCE FRAUD REPORTING

§ 119.11. Insurance claims fraud reporting, investigation and prosecution.

Insurers, as defined in section 1101 of the act (77 P. S. § 1039.1) should report an incidence of workers' compensation insurance fraud to State and local criminal law enforcement agencies.

(1) Sections 1106 and 1107 of the act (77 P. S. §§ 1039.6 and 1039.7) provide incentives for active reporting of fraud by an express grant of civil and criminal immunity to insurers and their representatives and the opportunity to pursue restitution through judicial proceedings.

(2) Section 1109 of the act (77 P. S. § 1039.9) expressly authorizes district attorneys or the Attorney General, or both, to investigate and prosecute instances of fraud as identified in Article XI of the act (77 P. S. §§ 1039.1—1039.12).

(3) The Department will look to insurers to report an incidence of fraud directly to district attorneys or the Attorney General, or both, and, when practical, seek court ordered restitution to compensate for fraud-related losses.

ANTIFRAUD PLANS

§ 119.21. Department referrals to criminal law enforcement authorities.

Section 1202 of the act (77 P. S. § 1040.2) authorizes the Department to report to and cooperate with criminal law enforcement agencies with respect to Article XI of the act (77 P. S. §§ 1039.1—1039.12). Department actions under this section will be limited to cases in which the incidence of fraud involves the specific acts of insurers, agents, brokers or other entities required to be licensed to engage in the business of insurance in this Commonwealth. The Department's actions under this section may be in addition to or in lieu of its exercise of its civil jurisdiction over entities engaged in the business of insurance in this Commonwealth. In addition, when an insurer makes a direct case referral involving an agent or broker to a criminal law enforcement authority, the insurer shall also refer the matter to the Department for possible civil action under the insurance laws and regulations of the Commonwealth.

§ 119.22. Institution and maintenance of anti-fraud plans.

(a) Section 1203 of the act (77 P. S. § 1040.3) requires insurers, as defined in section 1101 of the act (77 P. S. § 1039.1), to institute and maintain an insurance anti-fraud plan. This requirement applies to a workers' compensation insurer with workers' compensation premium volume as of August 31, 1993. Workers' compensation insurers which become licensed or commence a writing premium volume, or both, after August 31, 1993, should institute and maintain an anti-fraud plan within 4 months of commencing to write business. Maintenance of the anti-fraud plan includes its ongoing implementation and operation by insurers. Since a substantial number of workers' compensation insurers also actively write motor vehicle insurance, the Department encourages insurers to merge their workers' compensation anti-fraud initiatives into their established motor vehicle insurance anti-fraud plans established under 75 Pa.C.S. Chapter 18 (relating to motor vehicle insurance fraud). The content of each insurers' workers' compensation anti-fraud plan should reflect the following minimum requirements:

(1) Policies and procedures established by the insurer to prevent workers' compensation insurance fraud. The policies and procedures should cover all aspects of the insurer's operation and recognize the wide variety of potential fraudulent activity. Procedures should address internal fraud, fraud involving

the integrity and security of company data including electronic data processed information, fraud involving employes or company representatives, and fraud resulting from misrepresentation on applications and renewals for insurance coverage and claims fraud. Detailed information should be provided describing existing procedure manuals, internal policies, guidelines and employe training programs implemented by the insurer to prevent fraud. It is recommended that specific policies and procedures be either included in the anti-fraud plan or, if the policies and procedures are voluminous, appropriately summarized.

(2) Policies and procedures established by the workers' compensation insurer to detect and investigate possible insurance fraud in the claims process. Reference should be made to specific procedure manuals, internal policies, guidelines and training initiatives designed to detect fraud in the claims process.

(3) Policies and procedures established by the insurer to report workers' compensation insurance fraud to appropriate criminal law enforcement agencies, including procedures to cooperate with and monitor progress of the agencies in their fraud cases.

(b) To facilitate the Department's understanding of insurers' administration of their anti-fraud procedures, insurers are encouraged to cover the following areas in their plans:

(1) Organizational components involved in or affected by the policies and procedures, including key positions involved.

(2) Roles and interrelationships of components as they relate to the policies and the procedures described.

(3) Personnel resources involved and budget allocations to implement the anti-fraud policies and procedures.

(4) Extra-company relationships with central claims data bases and criminal law enforcement authorities as they relate to the policies and procedures implemented for anti-fraud plans.

§ 119.23. Anti-fraud plan certification.

Each insurer writing workers' compensation insurance as of August 31, 1993, shall certify in writing to the Department by December 31, 1993, that it has instituted and is maintaining an anti-fraud plan that satisfies the requirements of the act as explained by this chapter. An insurer newly licensed and writing coverage on and after August 31, 1993, shall certify within 4 months of commencement of writing coverage that it has instituted and maintains an anti-fraud plan. Letters of certification should be filed with Dennis C. Shoop, Director, Bureau of Enforcement, Insurance Department, 1321 Strawberry Square, Harrisburg, Pennsylvania, 17120.

§ 119.24. Anti-fraud plan annual reports.

(a) Section 1204 of the act (77 P. S. § 1040.4) requires insurers to report annually to the Department a summary of actions taken under their anti-fraud plans to prevent and combat fraud. Annual reports under this section should cover anti-fraud activities for each calendar year. The first annual report should cover the period August 31, 1993, through December 31, 1994, and shall be filed with the Department by March 31, 1995. Thereafter, reports are to be filed by March 31 of each year and cover the previous calendar year's anti-fraud activities. The annual report should provide detailed information on the following:

(1) Specific actions taken by the insurer during the year to prevent and combat insurance fraud. The actions should be thoroughly described in the annual report and should contain statistical information relating to the number of cases of detected fraud, including the status of disposition of those cases, the number of personnel and other resources committed to detecting and combating fraud, the total dollar cost of fraud and the savings attributed to detected fraud or otherwise recovered by the insurer.

(2) Measures implemented throughout the year to provide for the integrity and security of fraud related data and information collected and maintained. The measures apply to data collected and maintained in a manual or automated environment.

(3) Originating sources of the information on the fraudulent activity—for example, an agent, adjuster, employe, policyholder or citizen.

(b) The annual reports should be submitted to the Department in a standard report format, including a table of contents, summary, subdivisions of information in the report, including tables and graphs necessary to clearly illustrate the statistical information. Additionally, insurers should identify the person responsible for preparing and filing the annual report. The Department may require that the insurer clarify items addressed in the report or provide additional information relative to the annual report.

(c) Workers' compensation insurers which also write motor vehicle insurance may file a single annual report for both motor vehicle and workers' compensation insurance anti-fraud activities. The combined report shall segregate the information reported for both motor vehicle and workers' compensation lines of business. The reports should be sent to the attention of the Insurance Department, Dennis C. Shoop, Director, Bureau of Enforcement, 1321 Strawberry Square, Harrisburg, Pennsylvania, 17120.

§ 119.25. Reporting of fraud to criminal law enforcement authorities.

Consistent with section 1109 of the act (77 P. S. § 1039.9), section 1205 of the act (77 P. S. § 1040.5) authorizes insurers to refer an incidence of fraud to criminal law enforcement agencies. Workers' compensation insurers should refer cases

directly to criminal law enforcement authorities and cooperate with and assist those authorities when requested.

§ 119.26. Monitoring of insurer compliance with anti-fraud requirements.

The Department will audit insurers to determine compliance with the anti-fraud provisions of the act as part of financial and market conduct examinations performed under sections 213, 214 and 216 of The Insurance Department Act of 1921 (40 P. S. §§ 51, 53 and 54).

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