

State of New York
Office of the Workers' Compensation Fraud
Inspector General



2021 Annual Report

Kathy Hochul
Governor

Lucy Lang
Inspector General

EXECUTIVE SUMMARY

The mission of the Office of the New York State Workers' Compensation Fraud Inspector General (WCFIG) is to conduct and supervise investigations of possible fraud and other violations of the laws, rules, and regulations pertaining to New York State's workers' compensation system. Through its investigations, audits, and reports, WCFIG reduces costs to the workers' compensation system by eliminating fraud and improving the efficiency and effectiveness of the system. WCFIG's investigations are complex and often involve detailed analyses of records and taking of testimony from employers, attorneys, employees, health care providers, and insurance carriers. These investigations result in criminal referrals, arrests, and prosecutions, as well as recoveries of overpayments and restitution resulting from the fraud identified.

On December 3, 2021, Governor Kathy Hochul appointed Lucy Lang to serve as the New York State Workers' Compensation Fraud Inspector General. Ms. Lang had previously been appointed by Governor Hochul on November 29, 2021, to serve as the New York State Inspector General.¹ In one of Inspector General Lang's first staffing decisions, on January 7, 2022, she appointed a skilled senior attorney to serve in the newly-created role of Attorney-in-Charge for Workers' Compensation Fraud, in order to further strengthen the handling of these critically important cases.

In 2021, WCFIG continued to fulfill its mission to combat workers' compensation fraud while adopting procedures to ensure the safety of the public and staff and adapting to a changing environment resulting from the ongoing COVID-19 pandemic. In addition to the health and safety risks associated with COVID-19, the pandemic continued to result in New York State unemployment at nearly double pre-pandemic levels, though this rate steadily declined throughout 2021.² With New Yorkers beginning to come back to work, new workers' compensation claims rose slightly in 2021 but continued to be reported at more than 18 percent lower than pre-pandemic levels.³ Additionally, while courts across New York State reopened in

¹Press Release, Governor Hochul Announces Administration Appointments, Nominations and Recommendations (October 21, 2021), <https://www.governor.ny.gov/news/governor-hochul-announces-administration-appointments-nominations-and-recommendations>.

² U.S. Bureau of Labor Statistics, <https://www.bls.gov/lau/> (Reporting New York State Unemployment for October 2019 of 3.8% and for October 2021 of 6.9%)

³ See, New York State Workers' Compensation Board 2021 Annual Report, <http://www.wcb.ny.gov/content/main/TheBoard/2021AnnualReport.pdf>

2021, a significant backlog caused by closures during the pandemic resulted in the limitation or delay of criminal proceedings and the presentation of new cases to grand juries by district attorneys throughout the state.⁴

Despite the continuing challenges resulting from the ongoing COVID-19 pandemic, in 2021, WCFIG continued to conduct investigations and partner with law enforcement agencies in cases that resulted in seven arrests and the recovery of hundreds of thousands of dollars in fines and restitution for New York State, private employers, and insurers.

PURPOSE AND SCOPE OF ANNUAL REPORT

New York State Workers' Compensation Law section 136 mandates that the Workers' Compensation Fraud Inspector General submit a report to the Governor and the Chair of the Workers' Compensation Board that summarizes the activities of the office for each calendar year. Consistent with this statutory mandate, this Annual Report outlines the mission of WCFIG, describes the operational and administrative actions implemented by the office, and provides an overview and summary of significant prosecutions that resulted from the office's investigations. The report also provides information about WCFIG's operations during the ongoing COVID-19 pandemic and continued and strengthened partnerships with and outreach to law enforcement organizations, State agencies, insurers and employers.

INTRODUCTION AND BACKGROUND

WCFIG is responsible for protecting and promoting the integrity of the New York State workers' compensation system, which provides cash benefits, medical care, or both, to workers who are injured or become ill as a direct result of their employment. Claims for compensation are adjudicated by the New York State Workers' Compensation Board. Appeals from decisions by the Workers' Compensation Board are brought to board panels and full boards within the workers' compensation system. Ultimately, appeals can be brought to the New York State Supreme Court Appellate Division, Third Department.

Pursuant to New York State Workers' Compensation Law section 136, WCFIG is vested with the authority to investigate fraud and other violations of the laws, rules, and regulations

⁴ Courts facing lengthy case backlogs amid ongoing COVID-19 restrictions (June 29, 2021), <https://spectrumlocalnews.com/nys/central-ny/news/2021/06/29/faced-with-restrictions--county-courts-deal-with-backlogs>.

relating to the workers' compensation system, and to refer matters to federal, state, and local prosecutors or other appropriate law enforcement agencies for further investigation and criminal prosecution. In addition, WCFIG may refer matters to administrative entities, the New York State Insurance Fund, and other insurance carriers for investigation and/or audit. As part of its mission, WCFIG may also recommend legislative and regulatory changes to strengthen the workers' compensation system.

Operations During COVID-19 Pandemic

Despite the challenging and changing environment resulting from the ongoing COVID-19 pandemic, WCFIG continued to swiftly adapt through the implementation of policies to ensure the ongoing safety of the public and WCFIG staff members while continuing to fulfill its mission to conduct and supervise investigations of possible fraud and other violations of the laws, rules, and regulations pertaining to New York State's workers' compensation system. Throughout 2021, WCFIG continued to tailor its procedures to meet the challenges posed by the pandemic and evolving health and safety recommendations. WCFIG conducted operations remotely when necessary, using secure technology to safely hold witness interviews, collaborate with law enforcement partners, and access files and investigative systems. In doing so, WCFIG seamlessly continued its ongoing investigations and prosecutions of individuals involved in workers' compensation fraud.

OVERVIEW AND SUMMARY

Investigations in Response to Complaints

WCFIG investigations usually begin with either the lodging of a complaint alleging workers' compensation fraud or the identification of potential fraud by the Inspector General in the course of WCFIG's proactive initiatives. Allegations received or potential fraud identified by WCFIG are generally of three types: (1) fraud by medical providers and/or other professionals, including but not limited to physicians, physician assistants, law judges, attorneys, court reporters, and insurance professionals; (2) fraud by employers who are required to maintain workers' compensation insurance coverage for their employees but who either fail to maintain insurance coverage, have inadequate coverage, or misrepresent the number and classification of individuals employed and their payroll in the insurance application process; and (3) fraud by claimants or their caretakers receiving benefits to which they are not entitled.

WCFIG's complaint review process is commenced in the same manner as complaints received and reviewed by the New York State Inspector General. Under this process, every telephone, online, email, mail, and personally delivered complaint is initially received and reviewed by the Case Management Unit. WCFIG complaints are then referred to the WCFIG Triage Unit, an internal group formed in 2018 in response to the growing number of workers' compensation fraud complaints. This unit, which is headed by the attorney-in-charge for workers' compensation fraud and the managing investigator for workers' compensation fraud, includes investigators, an investigative nurse, and an auditor, and conducts a preliminary investigation involving an in-depth analysis of the matters alleged.

Thereafter, where appropriate, certain preliminary investigations are referred to the appropriate agency or insurance carrier for further action or to a WCFIG investigative team for further investigation. Cases opened for full investigation are assigned to multi-disciplinary teams led by an investigative counsel who is assisted by staff including investigators, investigative auditors, an investigative nurse, and computer forensic specialists. The investigations are supervised by a regional deputy inspector general and the attorney-in-charge of workers' compensation fraud. Acting under WCFIG's statutory authority, the investigative teams may subpoena witnesses, take sworn testimony, and compel the production of relevant records.

Following a WCFIG investigation, findings may be referred for prosecution to district attorneys across New York State, the New York State Attorney General's Office, or the United States Department of Justice. Referrals may also be made to investigative offices within the New York State Workers' Compensation Board for further action such as the revocation of a medical provider's authorization to treat workers' compensation patients or the issuance of "stop work" orders against non-compliant businesses for failure to secure appropriate workers' compensation insurance. In cases where criminal prosecution is not warranted, findings may be referred to state agencies and insurance carriers for further action. Insurance carriers, such as the New York State Insurance Fund, can engage in civil litigation or administrative proceedings, including the reduction or suspension of workers' compensation wage indemnity benefits to claimants engaging in fraudulent or inappropriate conduct. Investigations may also be closed as unsubstantiated.

In 2021, WCFIG received 1,118 complaints. Following the preliminary investigation of each complaint by WCFIG's Triage Unit, WCFIG opened 28 as full investigations, continued 334 matters as ongoing preliminary investigations, and closed 51 for the failure to allege actionable wrongdoing or where WCFIG lacked jurisdiction to investigate, among other reasons. WCFIG also closed 492 matters as unsubstantiated. Additionally, WCFIG referred 213 complaints for further action to the appropriate agency or insurance carrier, including the New York State Insurance Fund, other investigative offices within the New York State Workers' Compensation Board, or other interested parties.

Cases Resulting in Criminal Prosecutions

WCFIG's investigations in 2021 led to criminal prosecutions resulting in seven arrests, including one arrest involving a provider/professional matter, four involving employer matters, and two involving claimant matters. Additionally, through completed prosecutions in 2021, WCFIG's investigations facilitated the recovery of hundreds of thousands of dollars in fines and orders of restitution for New York State agencies, insurance carriers including the New York State Insurance Fund and private carriers, and self-insured employers that were the victims of workers' compensation fraud.

Cases Involving Fraud by Medical Providers or Other Professionals

In 2021, WCFIG continued its investigation of medical providers and other professionals whose work is integral to the proper administration of the workers' compensation system. These professionals included treating and independent physicians, physician assistants, nurses, home health aides, law judges, attorneys, court reporters, and insurance professionals. These cases are often complex and involve long-term investigations. WCFIG's investigations in 2021 of workers' compensation fraud by medical providers and other professionals resulted in one arrest and prosecution.

Home Health Aide Arrested for Billing for Services that Were Not Provided

Following one such WCFIG investigation, in November 2021, an Elmira home health aide was arrested on charges that the aide intentionally billed an insurance carrier for hundreds of hours of services that were never provided to a disabled and elderly workers' compensation

recipient at the recipient's home in Chemung County.⁵ The aide was charged with eight felonies including Insurance Fraud, Grand Larceny, Falsifying Business Records and Fraudulent Practices under the Workers' Compensation Law.

The WCFIG investigation found that the aide claimed in detailed time sheets submitted to the insurance carrier to have provided home health care services to the workers' compensation recipient during hours when surveillance and eyewitnesses confirmed the aide was never present at the home. In total, the aide submitted more than 20 fraudulent time sheets for payment and was paid more than \$6,000 for more than 400 hours that were never worked.

This matter is pending with the Chemung County District Attorney's Office.⁶

Cases Involving Fraud by Employers

In 2021, WCFIG continued its investigations of employers within New York State who fail to maintain appropriate workers' compensation insurance for their employees as mandated by New York State Workers' Compensation Law or misclassify their employees to reduce the cost of their insurance. Fraud by employers adversely impacts both the residents and the economy of New York State by placing injured employees at risk and placing honest employers on an uneven playing field with those competitors who do not provide their employees with the requisite insurance. WCFIG's investigations in 2021 of workers' compensation fraud by employers resulted in four arrests and prosecutions.

Roofer Failed to Provide Workers' Compensation Insurance to Employees

Following a WCFIG investigation, in June 2021, the owner of Amherst-based Veterans Home Improvement/Veterans Roofing was charged and entered into a plea agreement for failing to provide workers' compensation coverage for employees of the company and submitting multiple false attestations that the company was exempt from the requirement to have workers' compensation coverage (Workers' Compensation Certificate of Attestation of Exemption, Form CE-200).⁷

⁵ Press Release, Office of the New York State Workers' Compensation Fraud Inspector General, Elmira Home Health Aide Paid \$6,000 To Care For Workers' Compensation Recipient (November 16, 2021), <https://ig.ny.gov/news/elmira-home-health-aide-paid-6000-care-workers-compensation-recipient>

⁶ All defendants are presumed innocent unless and until proven guilty in a court of law.

⁷ Press Release, Office of the New York State Workers' Compensation Fraud Inspector General, NYS Inspector General Announces Guilty Plea of Erie County Roofer for Failing to Provide Workers' Compensation Insurance to

The WCFIG investigation found that the owner operated a roofing business in Erie and Niagara Counties since at least 2014, utilizing eight or more employees at various times but failing to provide proper workers' compensation coverage for the employees. The owner repeatedly changed the name of the business and altered the name of the owner in order to avoid detection. The owner also submitted multiple false workers' compensation exemption certificates when applying for permits and obtained a contractor's license using a fictitious name in an attempt to circumvent the requirements of Workers' Compensation Law.

In a universal plea covering criminal conduct in both Erie and Niagara Counties, the owner pled guilty in Erie County to two counts each of Offering a False Instrument for Filing and Failing to Secure Compensation. The owner was sentenced to pay a \$10,000 fine and \$500 in surcharges.

Cases Involving Fraud by Claimants

In 2021, WCFIG continued its investigations of workers' compensation claimants who defrauded the workers' compensation system by falsely reporting their work status or activities or otherwise collecting benefits to which they were not entitled. Fraud by claimants increases the costs of insurance to New York State employers and erodes the public's trust in the workers' compensation system. In 2021, WCFIG's investigations related to claimants who fraudulently collected workers' compensation benefits resulted in two arrests and prosecutions.

NYS Office of Mental Health Employee's Workers' Compensation Fraud

Following a WCFIG investigation, in November 2021, a mental health therapy aide employed with the New York State Office of Mental Health (OMH) at the New York City Children's Center who filed multiple workers' compensation claims for injuries sustained on the job was arrested on 19 felony charges that the aide repeatedly submitted false work activity updates to the New York State Insurance Fund in order to obtain workers' compensation wage indemnity benefits to which the aide was not entitled.⁸

Employees (June 25, 2021), <https://ig.ny.gov/news/nys-inspector-general-announces-guilty-plea-erie-county-roofer-failing-provide-workers>

⁸ Press Release, Office of the Bronx County District Attorney, Bronx Man Indicted for Defrauding More Than \$35,000 from State Compensation Benefits (November 19, 2021), <https://www.bronxda.nyc.gov/downloads/pdf/pr/2021/58-2021%20James-Garner-indicted-workers-comp-defrauding.pdf>

The WCFIG investigation found that in 2019, the aide claimed to be injured while working for OMH and filed claims for workers' compensation wage indemnity benefits for periods of time that the aide was out of work. During these periods, the aide repeatedly submitted work activity forms to the New York State Insurance Fund certifying that the aide was not working and was entitled to ongoing wage indemnity benefits. Contrary to the aide's certifications, while absent from the aide's State job, the aide was working 20 hours each week with a Bronx not-for-profit agency in a position similar to the State job. The aide's false certifications resulted in the payment of more than \$35,000 in workers' compensation wage indemnity benefits by the New York State Insurance Fund to which the aide was not entitled.

This matter is pending with the Bronx County District Attorney's Office.⁹

Training and Outreach

During 2021, WCFIG continued its efforts to provide training and information on its mission and various aspects of workers' compensation fraud to stakeholders across New York State and State agencies. As part of this initiative, the Inspector General's staff provided training to every new recruit enrolled in programs at the New York State Department of Corrections and Community Supervision's Albany Training Academy regarding the Inspector General's jurisdiction and issues relating to workers' compensation fraud and abuse. Since the inception of this initiative, the Inspector General has trained thousands of correction officer recruits on these matters. The Inspector General's staff also provided training to new parole officer recruits regarding workers' compensation fraud and abuse.

On October 21, 2021, the Inspector General's staff presented to the Utica Chapter of the American Academy of Professional Coders. This organization has over 200,000 members who work in the area of medical coding, billing, auditing, compliance, clinical documentation and practice management. The presentation to the Utica Chapter, attended by more than 80 members, included instruction for identifying and reporting workers' compensation fraud and addressed concerns found in its members' practices. In addition, the Inspector General's staff delivered a presentation to the Workers' Compensation Board on October 19, 2021, regarding

⁹ All defendants are presumed innocent unless and until proven guilty in a court of law.

WCFIG's 2020 annual report, notable WCFIG cases, and the office's continuing response to the COVID-19 pandemic.

Initiatives and Task Forces

In 2021, WCFIG maintained key partnerships in the office's efforts to combat workers' compensation fraud. WCFIG regularly met virtually with representatives of the New York State Insurance Fund to share information and coordinate resources to combat fraud and improve the efficiency and effectiveness of the workers' compensation system. WCFIG also met with many of the state's district attorneys, the United States Attorneys' Offices and the Federal Bureau of Investigation to discuss WCFIG's enhanced oversight and enforcement efforts, as well as case referrals. Additionally, WCFIG staff met regularly with the Northern District of New York Health Care Fraud Task Force.

Throughout 2021, WCFIG continued its participation in the Workers' Compensation Task Force, which was created in an effort to reduce workers' compensation costs in New York State as well as prevent and mitigate accidents, create efficient and effective claims management, and reduce fraud and abuse. WCFIG has been an active participant in this task force since its 2015 inception and meets regularly with members of the task force, including representatives from the New York State Insurance Fund and human resources staff from various state agencies. In 2021, numerous investigations involving the task force were ongoing.

Additionally, in 2021, WCFIG continued to collaborate with the Joint Task Force on Employee Misclassification and Worker Exploitation (JTF), which was established in 2016. WCFIG had previously been a member of both the Joint Enforcement Task Force on Employee Misclassification and the Task Force to Combat Worker Exploitation. In 2016, the two task forces were merged with the Nail Salon Task Force to create the JTF. Employee misclassification adversely impacts the residents, businesses, and economy of New York State by denying employees of the protections of workers' compensation and unemployment compensation and placing honest employers on an uneven playing field with those competitors who do not provide their employees with legally required benefits. Accordingly, the JTF was charged with coordinating the work of State agencies to ensure the enforcement of laws which are violated when employers misclassify workers and developing legislative proposals and other tools to combat this problem, among others. WCFIG is currently investigating several cases

involving employee misclassification.

WCFIG also continued its collaboration in 2021 with the New York State Workers' Compensation Board's Division of Operations and Compliance Enforcement Unit, which monitors the workers' compensation insurance coverage of businesses and employers in New York in order to ensure coverage for all New York workers in the event of a work-related injury. WCFIG and the Division of Operations and Compliance Enforcement Unit met in 2021 to combine resources in investigating matters involving fraud perpetrated by employers in New York State. In cases where a criminal prosecution was not warranted, WCFIG referred matters to the Division of Operations and Compliance Enforcement Unit for administrative or civil action, such as a "stop work" order against a non-compliant business and/or civil penalties for failure to secure appropriate workers' compensation insurance.

In addition, WCFIG continued its collaboration with the Workers' Compensation Board in order to combat fraud committed by healthcare providers complicit in enabling fraud against the workers' compensation system. Throughout 2021, WCFIG coordinated efforts with the Workers' Compensation Board's Office of General Counsel, which oversees healthcare provider discipline, in conjunction with the Office of the Medical Director within the Workers' Compensation Board. Healthcare providers and physicians must be authorized by the Workers' Compensation Board in order to treat workers' compensation patients. Similar to WCFIG's endeavors with the Workers' Compensation Board's Division of Operations and Compliance Enforcement Unit, when a WCFIG investigation involving a medical provider reveals misconduct that does not rise to the level of criminality sufficient for prosecution, WCFIG refers those matters to the Workers' Compensation Board for appropriate administrative action.

CONCLUSION

This 2021 WCFIG Annual Report summarizes the office's anti-fraud activities during the past year. In 2022, despite the ongoing COVID-19 pandemic, WCFIG will continue to adapt to this challenging and changing environment to promote the integrity of the New York State workers' compensation system through its investigations, collaborative efforts with other local, State, and federal agencies, and training and outreach. Additionally, WCFIG will continue to engage in proactive initiatives that will strengthen the workers' compensation system and increase the detection, prevention, and prosecution of claimant, employer, and

provider/professional fraud. In the years ahead, WCFIG's efforts will continue to protect vulnerable workers, prevent fraud, and yield significant savings for New York State.