

STATE OF OHIO  
OFFICE OF THE INSPECTOR GENERAL

RANDALL J. MEYER, INSPECTOR GENERAL

REPORT OF  
INVESTIGATION



PRELIMINARY INQUIRY

AGENCY: OHIO BUREAU OF WORKERS' COMPENSATION  
FILE ID NO.: 2012-CA00064  
DATE OF REPORT: FEBRUARY 20, 2013



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**OFFICE OF THE INSPECTOR GENERAL**  
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**REPORT OF INVESTIGATION  
PRELIMINARY INQUIRY**

**FILE ID NUMBER:** 2012-CA00064

**SUBJECT NAME:** Ohio Bureau of Workers' Compensation

**AGENCY:** Ohio Bureau of Workers' Compensation

**BASIS FOR INVESTIGATION:** Preliminary Inquiry

**ALLEGATIONS:** Failure to comply with state laws and regulations

**INITIATED:** May 15, 2012

**DATE OF REPORT:** February 20, 2013

## **INITIAL ALLEGATION AND COMPLAINT SUMMARY**

On May 15, 2012, the Office of the Ohio Inspector General initiated a preliminary inquiry based on a complaint received from Bruce DeMarco alleging the Ohio Bureau of Workers' Compensation (OBWC) is "allowing, condoning, and supporting, the violation of Ohio Administrative Code §4123-6-20(d)" and "the violation of this rule by the OBWC Certified Physicians unjustly extracts a large amount of out of pocket money from the Employer in the State of Ohio." Even though he has notified OBWC administrators of the violations, DeMarco stated nothing has been done to resolve this issue and that OBWC does not impose penalties for certified physicians violating this section.

Ohio Administrative Code §4123-6-20 (D) requires a provider, upon written request or fax, to submit "all medical, psychological, or psychiatric documentation relating causally or historically to physical or mental injuries relevant to the claim" within five business days to the required parties for the claimant to be paid and receive medical services.

## **INVESTIGATIVE SUMMARY**

On June 4, 2012, the Office of the Ohio Inspector General met Bruce DeMarco at the Construction Employers Association, located at 950 Keynote Circle, Brooklyn Heights, Ohio, who reiterated his earlier complaint that the Ohio Bureau of Workers' Compensation (OBWC) is not requiring its certified physicians to follow Ohio Administrative Code §4123-6-20(d). DeMarco stated these actions have resulted in increased OBWC employer premiums, claim expenses, and unnecessary cost of doing business in Ohio for the employer and could result in employers being eliminated from a Group Rating Discount program and or paying a higher OBWC premium. DeMarco stated he believes the employers are paying for a claim three times by paying their initial

premium; paying again when the “noncompliant claim” increases their premium; and lastly, paying unnecessary “continuous pay”<sup>1</sup> to the injured worker.

During this meeting, Demarco provided a copy of a March 20, 2012, memorandum from Ohio Director of Regulatory Policy Mark Hamlin of the The Common Sense Initiative to OBWC employee Aniko Nagy, stating that a new rule (OAC §4123-6-02.7) for the Health Partnership Program was submitted on February 13, 2012, to implement a “progressive discipline” process to “manage providers who violate the terms of their provider agreements and/or workers’ compensation statutes or rules,” thereby allowing OBWC to proceed with decertifying a perpetually noncompliant provider in as little as two months. Per the memo, the progressive discipline process “was developed in consultation with the Ohio Attorney General’s Office, and is intended to establish a pattern of behavior and failure to correct which will strengthen the Bureau’s position at any decertification hearing.”

On September 14, 2012, the Office of the Ohio Inspector General met with OBWC Chief of Medical Services Freddie Johnson, Provider Relations Manager Tammie Mihaly, and Assistant General Counsel Tom Sico who acknowledged there were doctors who failed to meet the five-day reporting requirement contained in OAC §4123-6-20. OBWC representatives explained that a strict adherence to this rule could have a detrimental effect on OBWC’s ability to maintain doctors in the system, which were otherwise compliant with OBWC rules and regulations. OBWC representatives further explained it is necessary to reach a balance between doctors and businesses, which are both integral parts of the system.

OBWC representatives stated OBWC was in the process of updating their rules to create a fair reporting system for both the employer and the doctors. They explained the new

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<sup>1</sup> Continuous pay is the continued payment by the employer to the injured worker for their services until OBWC-certified physicians rule whether the claim is for medical expenses only or for lost days worked.

OAC §4123-6-02.7 would include escalating potential penalties against doctors for failure to comply with the rule within the specified time periods including, but not limited to, doctor decertification.

OBWC representatives stated these rules were available for public comment and provided documents to the Office of the Ohio Inspector General on October 1, 2012, summarizing the comments received on the proposed rule. They also said a public hearing was held and that DeMarco spoke at the hearing. On January 1, 2013, OAC §4123-6-02.7 became effective and provided OBWC with a mechanism for disciplining providers who fail to comply with a workers' compensation statute or rule.

### **RECOMMENDATION**

The Office of the Ohio Inspector General reviews complaints to determine whether there is reasonable cause to believe that allegations made constitute “wrongful acts or omissions” on the part of a state officer, agency, or employee. The Ohio Bureau of Workers' Compensation acknowledged an issue existed with OBWC-certified physicians submitting the required medical documentation within the five-day period as required by Ohio Administrative Code §4123-6-20. However, this section did not include penalties for providers who failed to comply.

On February 12, 2012, OBWC submitted a new rule to the Common Sense Initiative for Ohio implementing a progressive discipline process to decertify those providers who fail to comply with OBWC statutes or rules to address this issue. This rule was available for comment until February 27, 2012, a public hearing was held on June 18, 2012, and the rule became effective on January 1, 2013.

Since OBWC implemented a new progressive discipline and decertification process to address this issue, which was effective January 1, 2013, it is recommended that no further review be completed.



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**NAME OF REPORT: Ohio Bureau of Workers'  
Compensation**  
**FILE ID #: 2012-CA00064**

**KEEPER OF RECORDS CERTIFICATION**

**This is a true and correct copy of the report which is required to be prepared by the Office of the Ohio Inspector General pursuant to Section 121.42 of the Ohio Revised Code.**

**Jill Jones**  
**KEEPER OF RECORDS**

**CERTIFIED**  
**February 20, 2013**

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