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Lt. Governor



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Commissioner

BETH SAMMIS  
KAREN STAKEM HORNIG  
Deputy Commissioners

200 St. Paul Place, Baltimore, Maryland 21202  
1-800-492-6116 TTY: 1-800-735-2258  
www.mdinsurance.state.md.us

### BULLETIN 09-30

Date: December 11, 2009  
To: All Workers Compensation Insurers and TPA's  
Re: Premium Avoidance Fraud – Workplace Fraud Act of 2009

As a member of the joint agency Task Force created by the Governor “to coordinate and enhance law enforcement” response to the problem of workplace fraud, in conjunction with enactment of the Workplace Fraud Act of 2009 (SB 909 and HB 819) (the “Act”), the Maryland Insurance Administration is launching an initiative to combat premium avoidance scams in the area of workers compensation insurance. Chapter 188, 2009 Acts.

The Act prohibits employers in certain specified industries from failing to properly classify employees, thus impacting on the amount of premiums paid for workers compensation insurance, and authorizes the Commissioner of Labor and Industry of the Department of Labor, Licensing and Regulation (DLLR) to take appropriate regulatory and civil actions. One such mandated action is to share with the Maryland Insurance Administration (MIA) information concerning any suspected failure to properly classify an individual as an employee (as opposed to an independent contractor).

Under the Insurance Article, the MIA is authorized to investigate and prosecute the making of false or fraudulent statements or representations in or with reference to an application for insurance, to include misclassifications of employees or under-reporting of payroll on workers comp policy applications (criminal premium avoidance fraud), which authority is not limited by industry or nature of work performed. *See* Insurance Article, §27-406.

The Insurance Article additionally mandates that every authorized insurer, HMO and TPA file an insurance antifraud plan with the Insurance Commissioner (Insurance Fraud Division). Section 27-803 requires that each such plan, *inter alia*, “establish specific procedures to prevent insurance fraud, including . . . fraud that results from misrepresentations on insurance applications. . .”

As part of our statutory duty to review the antifraud plans of all authorized insurers and TPA's for compliance with the statute (Section 27-803), it has come to our attention as a result of a survey we recently conducted of various workers compensation carriers licensed in Maryland

that not all Plans on file with the Commissioner detail specific procedures for detecting and preventing premium avoidance fraud. We urge all such insurers to review their Plans with an eye towards making the necessary updates.

Secondly, in furtherance of the above requirement of specificity and because the issue of misclassification has been identified by the Governor as "an ongoing problem," the MIA believes it a 'best practice' for workers compensation carriers to require any applicant who claims it uses independent contractors to produce to the carrier the following: certificate of insurance for general liability coverage, a copy of the independent contractor's business license, written subcontract in place for each job conducted by the individual contract laborer, and a signed copy of the "Sole Proprietor's Status as a Covered Employee" form (a Workers Compensation Commission form). If further questions remain after review of the foregoing, the carrier may request further research by its Premium Audit Department or SIU. The MIA is considering adopting a regulation to this effect and would like input from the carriers in this regard, to be sent to the attention of the below signed Associate Commissioner.

Thirdly, the MIA wishes to – in accordance with the mandate in Section 27-802 - encourage referral to its Fraud Division of any instances where an insurer in good faith has cause to believe that insurance fraud has been or is being committed, which would include false or fraudulent applications for workers compensation coverage where the applicant for such coverage has knowingly or willfully misclassified employees either as to risk or as to independent contractor status, or under-reported its payroll.

Questions about this bulletin may be directed to the Insurance Fraud Division at 410-468-3904.

*Signature on file with original*

Signature on File with Original

Carolyn H. Henneman  
Associate Commissioner  
Insurance Fraud Division  
Maryland Insurance Administration