



presented by:



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# Fraud, Medical Records, Marijuana, and MSA Compliance

## Navigating Workers Comp Minefields

EPIC W/C WEBINAR SERIES

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**Fraud:**

Questionable claim v a Fraudulent claim?

What constitutes a Fraudulent claim

Steps needed to prove a Fraudulent claim?

Why would a nuisance value settlement be offered during a deposition?

**Medical Records:**

Information employers are privy to without violating HIPPA?

**Marijuana:**

Recreational v Medicinal

Is Medical Marijuana covered under Workers Comp?

Can Marijuana disqualify a Workers Comp claim?

Testing for Marijuana impairment after a work injury?

**Medicare Set Aside:**

What is MSA?

MSA New Requirements and Effective Dates

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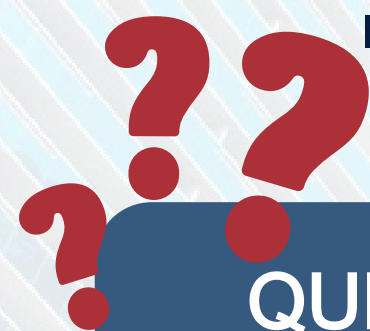
# FRADULENT CLAIMS

- Questionable claim v. a Fraudulent claim?
- What constitutes a Fraudulent claim?
- Steps needed to prove a Fraudulent claim?
- Why would a nuisance value settlement be offered during a deposition?



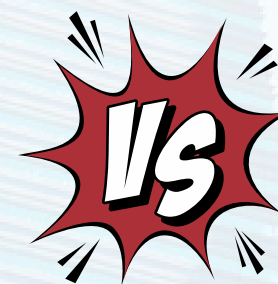
# FRAUDULENT CLAIMS

- Defining Fraud in Workers' Compensation
  - Per IC § 1871.4, fraud includes:
    - Making knowingly false material statements to obtain/deny compensation
    - Presenting false written/oral statements for/against a claim
    - Making false statements to discourage benefit claims
    - Knowingly assisting or conspiring in these acts



## QUESTIONABLE CLAIM

- Raises legitimate concerns but lacks definitive proof of fraud
- May have inconsistencies requiring investigation
- Can be resolved through normal claims investigation



## FRAUDULENT CLAIM

- Contains proven material misrepresentations
- Involves knowingly false statements
- Requires criminal conviction to be legally established as fraud



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# STEPS TO PROVE FRAUD



- **Investigation Requirements**
  - Must report suspected fraud
  - Report to local district attorney and Insurance Fraud Division
  - Use prescribed forms for reporting
- **Evidence Collection**
  - Surveillance evidence
  - Medical records review
  - Witness statements
  - Documentary evidence
- **Proving Materiality**
  - Must show statements were "material" to the claim
  - Misrepresentation must be reasonably relevant to investigation
  - Must demonstrate importance to claim determination

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# STEPS TO PROVE FRAUD



- **Consequences of Proven Fraud**
  - Criminal penalties including:
    - Imprisonment (1 year county jail or 2-5 years state prison)
    - Fines up to \$150,000 or double fraud value
    - Professional license impacts
    - Loss of benefits related to fraudulent portion of claim
- **Reporting Requirements**
  - Must adhere to reporting deadlines
- **Must notify :**
  - Local district attorney
  - Insurance Fraud Division
  - Required use of prescribed forms
  - Protection from civil liability for good faith reporting

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# NUISANCE VALUE SETTLEMENTS

- **Reasons for Offering During Deposition**
  - Avoid discovery and litigation costs
  - Close files early
  - Prevent escalating claim costs
  - Strategic consideration when threshold issues exist
- **Considerations**
  - Risk assessment
  - Cost-benefit analysis
  - Litigation expense savings
  - Early resolution benefits



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# MEDICAL RECORDS

- Information employers are privy to without violating HIPPA?





## General Privacy Framework

- Employees have privacy rights under:
  - State and Federal Constitutions
  - HIPAA (Health Insurance Portability and Accountability Act)
  - CMIA (California Confidentiality of Medical Information Act)

## Employer Access Rights



- **Basic Rule :**
  - Employers entitled to medical information regarding industrial condition
  - Access limited to relevant records related to claimed injury
- **Permitted Disclosures (LC § 3762(c)):**
  - Diagnosis of claimed industrial condition
  - Treatment provided for claimed condition
  - Medical information necessary for work duty modifications

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## HIPAA Exceptions for Workers' Compensation

- **Permitted Disclosures :**
  - Information necessary to comply with workers' compensation laws
  - Required reports from treating physicians
  - QME reports
- **Disclosure Requirements :**
  - Must be limited to minimum necessary information
  - Must be relevant to the claim
  - Must comply with applicable laws
- **Penalties for Unauthorized Disclosure**
  - Compensatory damages and Punitive damages
  - Attorney's fees and costs
  - Potential misdemeanor prosecution
  - Administrative fines
  - Civil penalties



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## Restrictions on Medical Information

- **Insurers/Claims Administrators Cannot Disclose :**
  - Complete medical history
  - Non-industrial conditions
  - Private medical information unrelated to claim
  - Diagnostic study details beyond basic diagnosis
- **Protected Information :**
  - Family medical history
  - Non-industrial medical conditions
  - Personal identifying information
  - Privileged communications



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# MARIJUANA

- **Recreational v Medicinal**
- **Is Medical Marijuana covered under Workers Comp?**
- **Can Marijuana disqualify a Workers Comp claim?**
- **Testing for Marijuana impairment after a work injury?**



# MARIJUANA

## Recreational vs. Medical Marijuana



- **Legal Framework :**
  - Compassionate Use Act
    - (Health and Safety Code 11362.5)
  - Provides defense against certain state criminal charges
  - Employers not required to accommodate medical marijuana use
- **Key Distinctions :**
  - Medical marijuana requires physician recommendation
  - Not equivalent to legal prescription drugs under FEHA
  - Different legal protections and limitations

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## Medical Marijuana Coverage



- **Not Covered Under Workers' Comp :**
  - Health & Safety Code § 11362.785(d):
    - No requirement for health insurance providers to reimburse
    - Includes workers' compensation insurers
- **Legal Precedent :**
  - Appeals board decisions consistently deny reimbursement
  - Even with AME concurrence, not compensable
  - Different from some other states (e.g., New Mexico)

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## Marijuana and Claim Disqualification



- Intoxication Defense (LC § 3600 (a)(4)):
  - Must prove:
    - Unlawful use of controlled substance
    - Intoxication caused the injury
  - Burden of proof on employer
- Proving Causation :
  - Mere presence of marijuana insufficient
  - Must demonstrate direct link to injury
  - Requires substantial evidence

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## Testing for Marijuana Impairment

- **Testing Requirements :**
  - Postaccident drug testing allowed
  - Positive test alone insufficient to prove impairment
  - Must establish
    - Actual impairment at time of injury
    - Causal connection to accident
- **Evidence Considerations :**
  - Medical expert testimony needed
  - Timing of marijuana use relevant
  - Observable impairment important
  - Video evidence may be considered



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## Best Practices for Employers

- **Documentation:**
  - Maintain clear drug policies
  - Document signs of impairment
  - Preserve video evidence if available
- **Investigation:**
  - Prompt drug testing when appropriate
  - Gather witness statements
  - Obtain qualified medical opinions

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# MSAs

- **What is MSA?**
- **MSA New Requirements and Effective Dates**



# MSAs | Generally



- Medicare Set -Aside arrangement
  - a financial agreement often used during settlement of a workers' compensation claim when the injured worker is eligible or likely to become eligible for Medicare.
- Purpose of an MSA
  - An MSA ensures that Medicare does not pay for treatment related to the work injury once the claim is settled. Instead, a portion of the settlement is "set aside" to pay for future medical treatment that would otherwise be covered by Medicare.

## General Rule of Thumb

- An MSA is appropriate in a settlement where (1) future medicals are being released; (2) the individual claimant will require claim -related, Medicare-covered medical care, and (3) the individual claimant is either a current Medicare beneficiary or has a reasonable expectation of becoming a Medicare beneficiary within 30 months of the settlement date.

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# 3 Pillars of MSA Compliance

There are 3 areas to address when considering MSP obligations for injured Medicare Beneficiaries:

## Conditional Payments

(past medicals)  
under 42 U.S.C.  
Section  
1395y(b)(2)

## Mandatory Insurer Reporting

under Section 111 of the  
Medicare Medicaid SCHIPS  
Extension Act of 2007, codified  
at 42 U.S.C. Sec 1395y(b)(8)  
("Section 111 of the MMSEA")

**\*applies to All Medicare  
beneficiary workers'  
compensation settlements,  
regardless of settlement  
amount and/or whether the  
MSA was submitted to CMS**

## Future Medicals

Medicare's right to  
remain a secondary  
payer after settlement,  
judgment or payment  
under 42 U.S.C. Section  
1395y(b)(2)

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# Mandatory Insurer Reporting | (Section 111 Reporting)

- **The purpose** behind Section 111 reporting is to enable Medicare to pay appropriately for Medicare -covered items and services furnished to Medicare beneficiaries
- Section 111 reporting **helps Medicare determine** when other insurance coverage is primary to Medicare, meaning that the other insurance should pay for the items and services first before Medicare considers its payment responsibilities
- In other words, Section 111 **assists CMS** with coordination of Medicare Benefits as well as recovery of conditional payments
- **Failure to comply** with Section 111 will result in hefty penalties

**Your carriers and TPAs are trained on best practices for Section 111 compliance**

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Given that Section 111 reporting only applies to Medicare beneficiaries, the reporting of WCMSA information will **NOT APPLY** to individuals who meet “reasonable expectation” status as defined under the WCMSA Reference Guide.

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Your employees might be seeing communications re: MSA, so it's best to re-route them to the carrier / TPA / adjuster

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# THANK YOU! Questions?



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PLEASE CONTACT US FOR ANY OTHER QUESTIONS OR CONCERNS



# Thank You



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