Q2 | 2024

# AMCOMP SPECIAL

## Triple Threat: Heathcare Fraud, Waste and Abuse in Workers' Comp

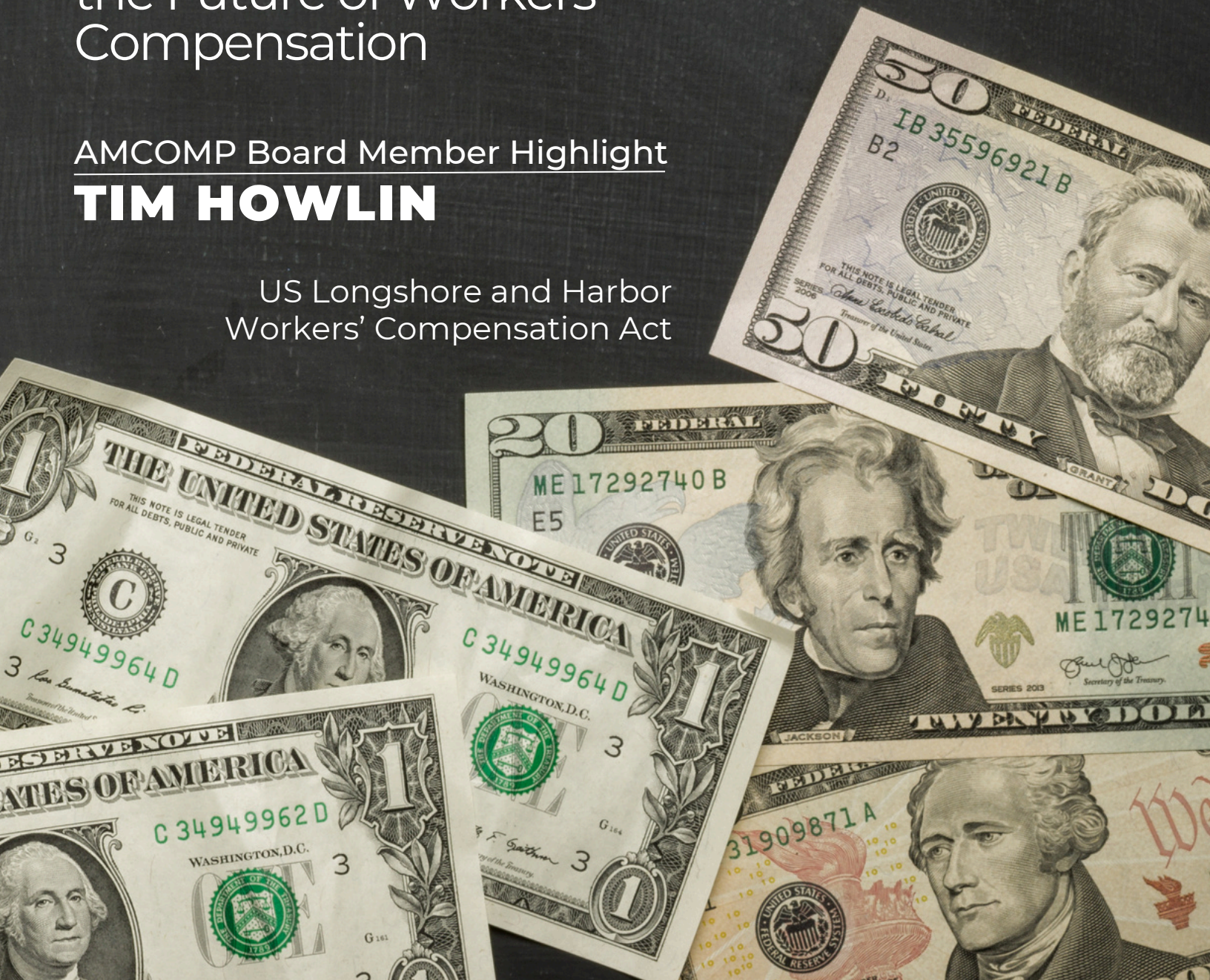
## New California Law Expands Work Comp Role in Curbing Workplace Violence

## Value-Based Care and the Future of Workers' Compensation

AMCOMP Board Member Highlight

## TIM HOWLIN

US Longshore and Harbor Workers' Compensation Act

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# Workers' Compensation Professional WCP® Program

### What is the AMCOMP WCP® Program?

AMCOMP's certified Workers' Compensation Professional (WCP®) program provides industry professionals with a strong educational foundation in the various aspects of the workers' compensation industry. Those who complete the coursework will have a better understanding of how the various pieces of the workers' compensation industry (e.g., claims, risk management, pricing, ratemaking) all work together to make the greater whole. The program highlights the following topics: History of workers' compensation, Statutory provisions, Benefits, Claims Administration, Cost Containment Strategies, Methods for Determining Rates, Exclusive Remedy Challenges, Federal Legislation, and the Availability of Insurance. Students are also required to learn the AMCOMP Code of Ethics which describes the minimum standards of individual conduct expected of those certified as a WCP®.

### Who Should Be Certified as a WCP®?

Professionals from all areas of the workers' compensation industry such as claims examiners, health care providers, attorneys, rehabilitation counselors, and auditors will benefit from this program. It is strongly recommended for all employees of insurance companies, self-insured, agents, brokers and third-party administrators as well as those from state agencies. The WCP® coursework is offered in various formats, including self-study, classroom lectures, and online. Students must successfully complete all course material and pass a final examination to earn their WCP® designation. Upon graduation, WCP® professionals will receive a diploma and are entitled to use the WCP® designation. Visit www.amcomp.org to review the various study options available or email info@amcomp.org for more information.

### Additional WCP® Benefits

Certified professionals are invited to participate in both an annual meeting and a Fall seminar designed to further educate workers' compensation professionals and encourage discussions on important and emerging workers' compensation issues and trends. Additionally, AMCOMP provides the finest forum for workers' compensation professionals to network with leaders and other professionals who are making a difference in the industry.

**For more information about AMCOMP and the WCP® program, CLICK HERE or contact AMCOMP Headquarters at 833.626.2667 or email info@amcomp.org.**

# EDITOR'S CORNER

Welcome to Editor's Corner!

I would like to focus on some practical cutting edge articles in this edition of the newsletter., which includes valued care for injured workers and related return to work initiatives, and the resulting claims savings to insurers.

1. Valued Care for Injured Workers and the Future of Workers' Compensation: Paradigm's article leverages 30 years of experience to discuss valued care for injured workers and its impact on return-to-work initiatives, highlighting the resulting claims savings for insurers.

2. Health Fraud, Waste, and Abuse: This article examines the $34 billion annual cost of fraud in the workers' compensation industry and explores how artificial intelligence (AI) offers innovative solutions to combat this issue.

3. Longshore and Harbor Workers Compensation Act (LHWCA): Often regarded as the model federal workers' compensation law, this edition includes an article on the LHWCA, focusing on bridge workers' claims. This topic is particularly timely given the recent Maryland bridge accident and other similar incidents.

4. California's Workers' Compensation Developments: California continues to lead in workers' compensation legislation. Our article discusses the recent SB 553 legislation, effective from July 1, 2024, which addresses workplace violence.

5. Interview with Tim Howlin: We are excited to present an interview with AMCOMP Board member Tim Howlin, a seasoned expert in the workers' compensation industry. Tim shares his insights on AMCOMP's educational programs and discusses the latest developments in pharma and other medical fields. His focus on the networking benefits of AMCOMP is both important and informative.

I look forward to further efforts for staying in touch with the members through meetings and the newsletter.

All the Best to Our Readers,
**DON DECARLO, JD | EDITOR**
FOUNDER OF AMCOMP

# New California Law Expands Work Comp Role in Curbing Workplace Violence

*By: Yoni Sherizen | Gabriel*

New legislation aimed at reducing workplace violence in California vastly increases employers' responsibilities and hands workers' compensation insurers an unprecedented oversight role that is likely to trigger lawsuits and affect rates and capacity.

The Workplace Violence Prevention Bill SB 553, which comes into effect on July 1, is the first sector-agnostic piece of legislation by a U.S. state aimed at tackling what has become an urgent issue. In other words, any employer and sector of work must respond. It reflects a nationwide push to extend workplace violence prevention measures beyond healthcare and applies to all companies in the state, with only a limited number of exceptions.

The bill mandates written workplace violence prevention plans and sets out requirements for employee training, incident response and record keeping. Responsibility for implementing these plans must be assigned to specific individuals, and failure to comply from July 1 will trigger a range of fines and potentially multiple penalties per incident.

Workers' comp insurers will become the de facto regulator of these plans. For higher risk employers they must produce a written report about employers' efforts to prevent and reduce injuries within six months of the policy start. As part of this, they are required to evaluate the plan's various components and recommend any changes needed to make it effective. This is not the type of work that many insurers can do in house: They will need to enlist a licensed California professional engineer, certified safety professional, or a certified industrial hygienist to help them.

The law adds to existing California legislation covering hospitals, and follows years of debate about how to protect employees in the workplace from what has become a significant risk.

Nationwide, the National Safety Council (NSC) found assault was the fifth-leading cause of workplace deaths in 2022. Some 525 American workers lost their lives this way, with 57,610 sustaining injuries.

While attacks on schools gain the most headlines, workplace violence affects many types of businesses. Alongside healthcare, where around a quarter of US states already have workplace violence legislation in place, trouble spots include the service sector, education, transportation and logistics, and manufacturing.

Mass shootings will generally attract attention, but many other incidents fly under the radar or even go unreported altogether. This has created an awareness deficit among employers about the security issues their workers face. (Health care is largely excluded from this bill because California already passed even more stringent rules for that sector in a previous law.)

The assailants in these incidents are often known to their victims and are likely to be current or former employees. That was the case in the incident that propelled California lawmakers into action over the latest bill: the fatal shooting in 2021 of nine employees by a co-worker at the Santa Clara Valley Transportation Authority railyard in San Jose.

Although such attacks may seem to come out of the blue, the NSC points to mood swings, emotional responses to criticism, unexplained absenteeism, depression, rule-breaking, paranoia and excessive use of alcohol or drugs among potential early warning signs in employees.

The California law is the first of its kind in the U.S. and, importantly, defines "workplace violence" broadly, with no actual injury necessary for an employee to be deemed to be on the receiving end. Instead, workplace violence is defined as "any act of violence or threat of violence that occurs in a place of employment, including the threat or use of physical force, with or without firearms or other dangerous weapons, against an employee that results in, or has a high likelihood of resulting in, injury, psychological trauma or stress."

This wording, in what is already a highly litigious market, opens the doors to a wave of litigation if insureds, insurers, or both, are found to be non-compliant when the inevitable incident occurs after July 1.

Plaintiffs' attorneys are likely to target general liability policies since workers' comp insurance itself was created to be a "no-fault" system that is litigation free, with compensation administered by states and designed to merely put the injured worker in the position they would have been in before the incident.

The prospect of legal action, along with the additional costs for insurers of overseeing companies' workplace violence prevention efforts, threaten workers' comp's status as the golden child of P/C insurance. Only last year, AM Best declared that the line remains a "profit engine" for the P/C industry as a whole, while the most recent figures from the National Council on Compensation Insurance put the calendar-year combined ratio of 84% in 2022, on net written premiums of $47.5 billion. (It did, however, warn that medical claims severity and indemnity claims severity were rising.)

The new legislation is likely to force an increase in workers' comp rates and have a knock-on impact on liability lines, too. In a worst-case scenario, the additional costs of insurers' new obligations and the anticipated lawsuits may mean capacity in the workers' comp market shrinks as carriers decide it's just not worth their while.

At the same time, demand for workplace violence cover is likely to increase. The cover augments the physical injury cover provided under workers' comp insurance to indemnify against additional expenses incurred in the aftermath of attacks such as third party harm, mental health support, and the cost of crisis management, security and public relations consultants.

The legislation in California is highly significant in its own right. California, the biggest U.S. economy by gross domestic product, accounted for more than 12% of overall U.S. P/C premiums of $862 billion in 2022, according to the Insurance Information Institute.

However, this pioneering legislation is being watched closely by other states, including New York, where similar legislation aimed at protecting retail workers is in the pipeline. Legal intelligence company LexisNexis found that more than 100 bills mentioning "workplace violence" had been introduced between January and November 2023 in 27 states, with a quarter of those measures enacted or adopted.

It's important to note also that although the deadline for insureds' compliance with the Workplace Violence Prevention Bill is July 1, that's only the start of the process, since the California Division of Occupational Safety and Health has been charged with devising new standards and regulations by Dec. 1, 2025. That means initial requirements flagged in the legislation may change.

Human resources and compliance departments are now racing against the clock to meet the existing requirements, and keeping a close eye on what will come next. It's also vital that compliance with the new rules becomes a key priority of workers' comp insurers.

Insurers' new responsibilities under the California bill may look onerous, but a recognition of these duties and early action will put carriers on the front foot and prepare them well for similar legislation elsewhere.

Though the prospect of litigation and higher costs are concerning, the legislation also provides a genuine opportunity for insurers to enhance their reputation and demonstrate their social purpose. By playing a risk prevention role, today's insurers can protect millions of lives from injury or death in the workplace – a role that could scarcely be more significant.

*Sherizen is CEO and founder of Gabriel. Before his work in security technology, Sherizen was a serial social entrepreneur, educator and spiritual leader. He ran welfare programs for the disabled, a social cohesion initiative in Israel, and founded the full time Jewish Chaplaincy at Oxford University.*

*Headquartered in Israel, with offices in Austin,* Texas, Gabriel is a technology company that tackles the challenge of mass shootings and workplace violence threats, together with insurers, risk managers and brokers.

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*https://www.insurancejournal.com/magazines/mag-features/2024/05/06/772591.htm*

# Understanding the Narrow Application of the Longshore and Harbor Workers' Compensation Act LHWCA for Bridge Workers

*By: Maureen Gallagher | AssuredPartners*

The Longshore and Harbor Workers' Compensation Act (LHWCA) is an important federal law designed to provide benefits to employees engaged in maritime work or occupations, covering those who work either full or part-time on the navigable waters of the United States or in adjoining waterfront areas.

To be eligible for longshore benefits under the LHWCA, employees must satisfy both the "status" and "situs" tests. The status test concerns the nature of the employee's work performed for the employer, covering traditional maritime occupations like longshore workers, ship repairers, ship builders or ship breakers, and harbor construction workers. However, it excludes individuals in non-maritime roles or those covered by state workers' compensation law. The situs test, on the other hand, focuses on the location of work, requiring that the injury occur on navigable waters of the U.S. or in areas like piers, docks, terminals, and similar waterfront locations.

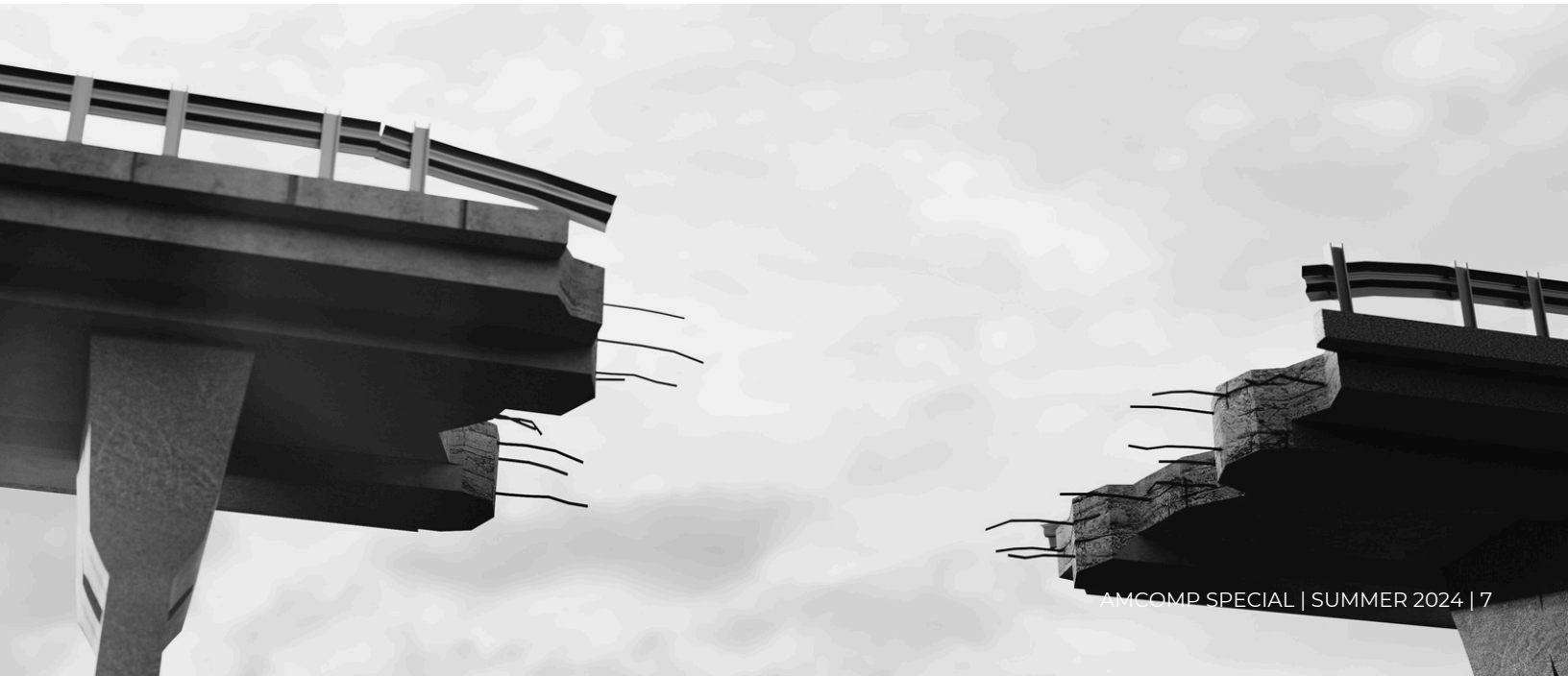
Section 902(3) of the LHWCA Act outlines who is covered by the Act (status) and where they must be working to be covered by the Act (situs).

Bridges, whether over navigable waters or not, are considered "extensions of land" except for a few narrow exceptions. Bridge construction or repair work that does not specifically aid in navigation (e.g., drawbridges) is typically not covered by the LHWCA, with injuries occurring under such circumstances being compensated under state law.

Amendments made to the LHWCA in 1972 expanded coverage landward but maintained that bridge workers are generally not covered under the Act, except under specific conditions that might aid navigation. For instance, work on drawbridges or work performed from floating platforms may be covered. The 1983 Supreme Court case, Director, OWCP v. Perini North River Associates, affirmed that workers injured on navigable waters who would have been covered before the 1972 amendments remain covered under the current law.

While the LHWCA is an important law that provides essential protections for maritime workers, its coverage has specific limits, particularly regarding work on bridges. This highlights the narrow interpretation of eligible work environments and activities under the Act.

Gallagher Michigan President and National Work Comp Specialty Leader in the 5th largest P & C US broker - AssuredPartners. Gallagher specializes in insurance placement and risk management consulting. She began her career over 40 years ago and has held the titles of insurance underwriter, broker, claims consultant, expert witness, keynote speaker, historian, and teacher. Previously Gallagher held the position of President and CEO of Acordia of Michigan (Wells Fargo), assuming that position after heading up my own agency, Gallagher Group, Inc., for more than ten years. She also serves as Director of Insurance Partners Academy.



# 5 Ways to Get to the Bottom of Work Injury Causation

By: Michael Stack

Some things were much simpler back in the day, like determining whether an employee's injury or illness should be compensated through workers' comp. Workers tended to stay with the same employer throughout their careers, creating a solid trust level on both sides. Employees were also more inclined to retire earlier, before the onset of age-related and comorbid conditions.

But things are more complicated now, and proving causation can be a tricky business. You want to ensure that injured workers who sustain work-related injuries at your company are duly compensated, but you certainly don't want to pay for injuries that did not result from your employment. While determining causation is not an exact science, there are some tools you can use to ensure you pay only for those injuries truly related to your workplace.

## 1 Investigate

The best place to start is at the beginning, as soon as you get word of an injury or illness. Work with your team to find out what happened. In addition to speaking with the injured worker, talk to any witnesses. Drill down to the details. Ask lots of questions – of witnesses and others who may have been aware of potential problems in the area in question. Take pictures of the area, since that may shed some light on what was happening at the time. If nothing else, you may at least uncover a festering problem in your workplace that can be corrected to prevent another injury.

## 2 Look at the mechanism of injury

The mechanism of injury can reveal valuable details to medical professionals about injuries to the bones, skin, muscles, and organs. Did the person fall from a height? How high? Or, was it a ground-level fall? If it involved a motor vehicle accident, what speeds were involved? Get as many details as possible as soon as possible after the injury is reported.

## 3 Understand Chronic vs. Acute

While the medical nuances are best left to those in the biz, you can at least have a general idea so you can speak the lingo with medical providers, adjusters, and others. The problem with chronic conditions is that they affect just about everyone on the planet in some way, at some time, and often we don't even know it's happening to us. Degenerative changes may build up somewhere in the body yet the person has no awareness of it until an awkward movement at work renders him wracked with pain. Of course, he assumes it is work-related. But maybe it's not.

For example, arthritis is not typically aggravated by soft tissue trauma, so check that out before you agree to pay for a knee replacement in such cases. Researchers have found that low back pain — one of the most common ailments among injured workers — often has a genetic basis rather than a link to occupational activity. A rotator cuff injury may be chronic, especially if it is associated with muscle atrophy; however, such a tear may become larger after acute trauma. And contrary to what many believe, carpal tunnel syndrome does not necessarily result from keyboarding. It behooves you to request and get medical evidence to help identify what your responsibility under workers' comp is and what is not.

## 4 Use Quality Providers

Seek medical providers who use evidence-based medicine, especially in jurisdictions where you have a say in the physician the injured worker sees; look at their credentials — board certification, etc., and check out their educational backgrounds. Same with other providers and medical facilities — you want to make sure the MRI

that's the basis of your decision on a claim is of high quality and read by a top-notch radiologist.

If you use a medical expert in a challenge to a claim denial, find one that is believable. Ask questions such as how the provider arrived at a certain diagnosis, whether the mechanism of injury was accurately described and applied, and how evidence-based medicine pertains to the case.

## 5 Know the Law

Causation standards have changed in a number of states in recent years, with many requiring work to be the major contributing cause of injury. However, some injured workers and their attorneys have become more adept at challenging those standards.

There are also legislative proposals in several states that would ensure first responders are compensated for instances of post-traumatic stress following an incident on the job. Still other statutes or proposals would guarantee benefits to firefighters who contract certain cancers. It would be a mistake to assume all states have the same types of allowances for workers' comp benefits.

## Conclusion

Weeding out legitimate claims can be tough, as there is often no black-and-white answer. Being proactive when a claim is first reported and using the right experts can save you headaches, time, and money.

**Michael Stack**
**CEO, Amaxx LLC**

Michael Stack, CEO of Amaxx LLC, is an expert workers' compensation cost containment systems and provides education, training, and consulting to help employers reduce their workers' compensation costs by 20% to 50%. He is co-author of the #1 selling comprehensive training guide "Your Ultimate Guide to Mastering Workers' Comp Costs: Reduce Costs 20% to 50%." Stack is the creator of Injury Management Results (IMR) software and founder of Amaxx Workers' Comp Training Center. WC Mastery Training teaching injury management best practices such as return to work, communication, claims best practices, medical management, and working with vendors. IMR software simplifies the implementation of these best practices for employers and ties results to a Critical Metrics Dashboard.

# Value-Based Care and the Future of Workers' Compensation

*Three perspectives from Paradigm leaders explore how guaranteed outcomes, increased patient engagement, and aligned incentives can create a better system for everyone—including those who experience, treat, and pay for musculoskeletal (MSK) injuries.*

## Activity-Based Care, Burnt-out Doctors, and Frustrated Injured Workers

**Michael Choo, MD, MBA, FACEP, FAAEM, CMRO**
**Chief Medical Officer, Workers' Compensation**

Dr. Michael Choo is Paradigm's Chief Medical Officer, Workers' Compensation. He maintains the company's relationships with its network of consulting physicians and centers of excellence, and is responsible for enhancing clinical operations and leading outcomes research and development. He also teaches residents in emergency medicine, internal medicine, and family medicine at Wright State Boonshoft School of Medicine. Dr. Choo has more than 30 years of experience as a clinician, academician, and health care executive. Dr. Choo holds his BA and MD from Boston University's accelerated six-year honors program in medicine, as well as a MBA from the University of Tennessee's Haslam Graduate School of Business. He is a senior oral board examiner for the American Board of Emergency Medicine, a fellow of the American College of Emergency Physicians, and a fellow and board member of the American Academy of Emergency Medicine.

From the start, the workers' compensation system has been built on a fee-for-service model where providers bill for activities of care they perform. While sending a bill for performing a service seems like a straightforward way to reimburse for the practice of medicine, it can lead to mis-incentives that don't always align with helping injured workers' timely recovery and return to prior level of function. The main problem is that this model focuses simply on activities—not outcomes.

In the current system, a worker with a knee or back injury typically sees a doctor, receives diagnostic imaging, and gets prescriptions for medications, along with some outpatient physical therapies. If symptoms do not improve, the injured worker will be referred to specialists for additional expert recommendations. This may lead to surgical and interventional procedures, which will be followed by more prescriptions and additional physical therapy and rehabilitation. This cycle can be repeated

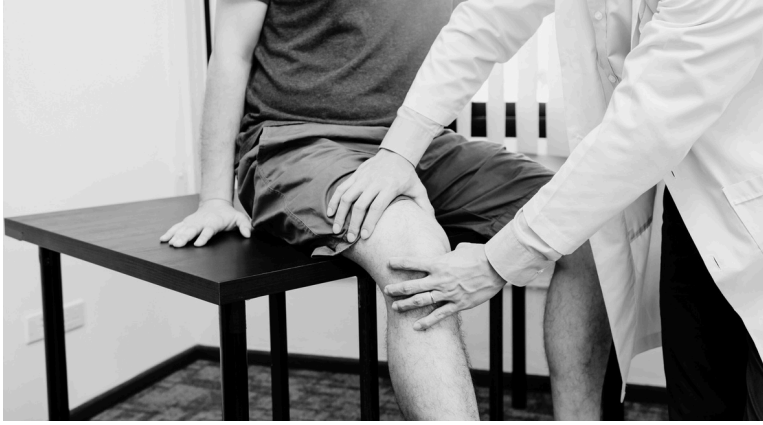
ad nauseam if symptoms persist. Although the sequence of these activities initially appears reasonable, the reality is there is a lack of accountability to the goal of returning the injured worker back to work and functional health.

All of these care services can be successfully performed, billed, and reimbursed without necessarily resulting in an optimal outcome for the injured worker. When the entire system is built around payment for activities, providers spend a disproportionate amount of time performing activities and documenting these treatment activities for reimbursement. The focus is not always on providing the high-value aspects of care that contribute to achieving functional recovery to return to work.

This conundrum is further complicated by the traditional approach to creating provider networks. Currently, provider networks are created with attention to negotiated savings for provider services. Many networks base discounts on the number of patients they send to a provider. While volume-based discounts are effective in other areas of business, this can create challenges in health care.

Whether a provider sees 10 injured workers or 10,000, the time that should be spent on each case doesn't decrease relative to the referral source. Medical errors, low-value treatment, and missed or incorrect diagnoses certainly aren't reduced by volume or discounts—and this can escalate the total cost of care.

The result of this activity-based model is extreme frustration for our health care industry, including workers' compensation stakeholders. Too often, providers are overwhelmed as they spend less time with more patients—while patients become disengaged as the quality of interaction and overall



care decreases. Instead of focusing on practicing high-value health care, physicians and clinicians are required to spend more time on billable activities and meeting patient quotas.

I've been an advocate for value-based, outcome-focused care since its inception in 2010 with the introduction of the Affordable Care Act. In fact, Paradigm's commitment to this value-based model and proven results is one of the reasons I joined this organization more than 10 years ago. In value-based, outcome-focused care, the goal is to align incentives around achieving measurable outcomes and becoming accountable to the cost of care spent for the health of injured workers. This enables a more appropriate competitive market; one that is centered on achieving better outcomes at better value for episodes of care related to a given medical condition or injury diagnosis.

Aligning care around outcomes is a necessity for a value-based reimbursement methodology to improve our health care system and workers' compensation claims management. As we'll see next, focusing on outcomes naturally moves the care upstream to address the identification and mitigation of risks, such as costly comorbidities and behavioral health issues.

## Moving Care Upstream for Healthier Workers and Lower Costs

**Jennifer Doyle-Fidler, MSN, RN, CCM, ONC**
**Director, Clinical Product Solutions**

As Director, Clinical Product Solutions, Jennifer supports the ongoing development and implementation of Paradigm's HERO MSK℠ product. She also oversees the team of MSK Care Managers, who provide clinical direction and management of injured workers with orthopedic injuries. Jennifer is a registered nurse with more than 20 years' experience in varying aspects of healthcare. Her experience ranges from direct patient care in orthopedics and critical care, case management and utilization review, operational management, and quality improvement. She is licensed in 42 states, she has a Master of Science in Nursing with a concentration in leadership in health care systems from the University of Arizona. She holds the CCM designation and is a certified orthopedic nurse (ONC).

For too long, the norm in workers' compensation has been to avoid mental and behavioral health diagnoses due to their open-ended nature and the ongoing costs of a compensable mental health claim. This has created an environment where unaddressed behavioral concerns can have a negative impact on physical recovery, potentially creating a downward cycle of worsening physical and mental health. Although the intention is to limit spending, the effect often increases the length and cost of claims.

> There's a famous quote from Archbishop Desmond Tutu, "There comes a point where we need to stop just pulling people out of the river. We need to go upstream and find out why they're falling in."

In health care and workers' compensation, this quote speaks to the critical need for preventative care. In the case of work-related behavioral and mental health concerns, addressing underlying risk factors early can prevent a compensable mental health claim later.

For psychosocial issues related to workplace injury, there is considerable evidence that prevention is effective. A 2023 white paper demonstrated that surgical outcomes for back-related workplace

injury cases tend to be significantly worse than similar cases in commercial health, despite workers' compensation patients being statistically younger and healthier. The paper highlighted psychosocial risk factors as primary drivers of poor outcomes and increased costs.

In workers' compensation, there are many risk factors that can be successfully addressed early and sub-clinically, including perceived injustice, symptom magnification, and fear avoidance behaviors. With proper training and resources, case managers and even claims professionals can engage and empathize with injured workers to build trusting, productive relationships. Combined with ongoing self-guided education, this can create a cognitive shift that helps lessen the risk of a compensable behavioral health diagnosis and long-term, creeping catastrophic loss.

Prior to Paradigm, I served as the Director of Quality at one of the largest physician-owned orthopedic groups in the United States, where I implemented a successful bundled payment for care improvement program and accountable care organization contracts at large health systems. I saw firsthand how an emphasis on whole-person health and outcomes and value-based care models is a significant driver toward proactive care that identifies emerging problems upstream. In the next section, we'll question how competing interests and disparate incentives within a system can align to build a care platform that truly benefits all participants.

## Aligning Incentives to Make the Value-Based Model Work

**David Lupinsky**
**Vice President, Clinical Product Solutions**

As Vice President, Clinical Product Solutions, David is the "Product Owner" within Clinical Solutions. In his role at Paradigm, David is responsible for the clinical quality and overall growth of HERO MSK℠, an industry first care management solution for musculoskeletal injuries. David is based in California and carries a degree in Biomechanics from UC Davis and approaches workers compensation through the lens of the athletic model, with the goal of getting employees back in the 'game' and treating the whole person.

The current fee-for-service model not only incentivizes activity, as Dr. Choo discussed above, but sets stakeholders against each other in counterproductive ways. In addition to networks generating revenue based on discounts, ancillary services like physical therapy, durable medical equipment, and pharmacy managers make money on the spread between wholesale and retail pricing. This creates a financial incentive to focus on the lowest unit cost to help improve the margin between the wholesale and retail price points, versus a focus on reduction in the cost of the episode of care. At the same time, regulations in many states micromanage provider decisions with prior authorizations, formularies, and mandatory forms.

Even if intended to prevent fraud, waste, and abuse, these measures can create downward pressure on quality care decisions. In short, adversarial friction permeates our industry as stakeholders work against each other, often hindering the provision of quality care for injured workers. In fact, allocated loss adjustment expenses, such as bill review and utilization review, can amount to as much as 15% of all medical expenses—and that is before adding the administrative costs of the pharmacy benefit manager, physical therapy networks, and durable medical equipment.

A value-based care model has the power to align incentives around injured worker outcomes. The creation of a single bill for a single episode of care requires everyone to work together and overcome embedded frictional management costs. Instead of focusing on unit price, accountable care organizations compete around total value creation. And providers that truly perform care that achieves better outcomes are rewarded through value-based contracting, even if they perform fewer interventions.

At Paradigm, we have been delivering value-based care to catastrophically injured workers for more than 30 years and have committed to applying that expertise to work-related musculoskeletal injuries. With these conditions comprising a significant portion of workplace injuries, Paradigm's HERO MSK solution provides a much-needed episodic approach to this segment.

HERO MSK delivers access to quality providers who are accountable, value-based partners with a track record for successful outcomes. Paradigm's predictive analytics and the industry standard for behavioral support move care upstream. Finally, guaranteed outcomes, medical risk transfer, and fixed costs align incentives to build a team around what matters most—injured workers.

Learn more about HERO MSK and value-based care for musculoskeletal injuries.

**If you would like to speak to someone about HERO MSK, contact David Lupinsky at david.lupinsky@paradigmcorp.com.**

*1 "Is Workers' Compensation Driving an Epidemic of Healthcare Outcomes Disparity?"; Gerry Stanley, M.D., P-CEO; Adam Seidner, M.D., M.P.H.; 2023; The Hartford.*

# AMCOMP BOARD MEMBER SPOTLIGHT: Tim Howlin

*In this edition of our newsletter, we feature an exclusive interview with Tim Howlin, Chief Sales & Marketing Officer for Cadence Rx. With over twenty years of experience, Tim has built a remarkable career, from starting at Consolidated Claim Service to leading significant teams at Medical Service Company. His journey is a testament to the power of dedication and continuous learning.*

*We delve into how Tim entered the industry, his vision for AmComp, and the valuable lessons he has accumulated throughout his career. His story offers a unique perspective on the evolution of the workers' compensation industry and highlights the importance of a patient-centric approach. Join us as we explore Tim's professional path and gain insights from his extensive expertise.*

**Tell our readers about how you got into the workers' compensation industry.**

My father worked in the workers' compensation industry as an adjuster for 25 years. When I graduated from college, I was interested in potentially owning my own private investigation company. My father arranged an interview for me with the owner of a company called Consolidated Claim Service to learn about starting a business. A few weeks later, the owner offered me a job instead. I took the job and learned the business from the ground up, eventually representing the company in the tri-state area as we expanded to additional states.

I eventually left because I wanted to gain ownership, but that wasn't in the cards with Consolidated Claim Service. I joined a new company called Medical Service Company, based in Jacksonville, Florida, after someone recommended me for a position there. That's how I got into the medical side of the industry, which I've been in for over 20 years. I grew through the ranks, expanding our presence nationally.

I absolutely love building teams and being a part of the Executive team at Cadence Rx. I feel blessed by the timing and opportunities in my career. We helped many workers by reducing their pharmacy and ancillary costs, contributing to the industry's shift towards a patient-centric approach. Watching the industry evolve to focus on the injured worker has been incredibly rewarding.

**What seasons of the year are toughest in your job?**

In business-to-business sales, the summer months are often characterized by a slowdown in new sales, particularly in workers' compensation, with the most noticeable decline typically occurring in July. This lull can be attributed to various factors, including family vacations, peak work seasons for some businesses, and decision-makers deferring essential tasks until the fall. As someone with experience in this industry, I have recognized this seasonal pattern and learned to navigate it effectively. Instead of succumbing to panic, I have embraced this period as an opportunity for personal and professional growth, strategic assessment, and planning. Moreover, I believe in

investing in personal development by furthering my education, which enriches my skills and contributes to my business's overall growth. By approaching this period strategically, I have found that it can result in significant growth and improvement for companies in unique and unexpected ways.

**What technology and advances do you see in the pharmacy benefit management (PBM) industry and its impact on workers' compensation?**
I believe the pharmacy benefit management (PBM) industry is undergoing significant changes as new technologies like artificial intelligence (AI) and blockchain are reshaping how medication is managed in workers' compensation. These technologies can help improve patient education and outcomes, reduce fraud and unnecessary medications, and break down the barriers that exist in the healthcare system.

AI, which is already being used in various industries, including healthcare, has the potential to analyze large amounts of data to create personalized medication management plans for individual patients. This means considering things like a patient's age, medical history, and genetic information to provide better recommendations.

The use of AI can also help patients understand their medications and conditions better, ultimately leading to improved health outcomes and better adherence to treatment plans. At the same time, it can help identify and prevent fraudulent activities.

Blockchain technology can provide a secure and transparent platform for managing a patient's medications, making it easier for different healthcare providers to share important information securely. This can help make the medication management process more efficient and can break down the barriers that exist between different parts of the healthcare system.

I see by using a combination of AI and blockchain, we can create a more patient-focused approach to managing medications. Patients will have better access to information, healthcare professionals will have a complete view of a patient's medication history, and insurers will be able to process claims more efficiently while reducing fraud and waste.

Overall, the use of AI and blockchain in the PBM industry has the potential to bring about significant positive changes in workers' compensation, leading to better patient care, improved health outcomes, and a more efficient healthcare system.

**How did you become involved with AMCOMP?**
In the beginning, I was very New York-based, and there were few vendors. It was beneficial for me as a young professional to be in that environment. The skill set of the people I encountered was very high, which helped me grow in my career. It wasn't just about sales; it was about the value of moving in those circles. AMCOMP was a very professional organization with a standard suit-and-tie dress code, and it was accessible for me locally.

My company gave me the opportunity to attend various shows and yearly meetings, which helped me get more involved. I met key people, including Don, and eventually, I was voted onto the board at a meeting in Las Vegas. Once I joined the board, I volunteered on the education committee and had the chance to give presentations at Columbia University and other venues.

I initially became involved because AMCOMP had a New York focus and a national presence. I was impressed by the professionalism and talent within the organization. Their educational seminars were incredibly informative, and I always had access to the valuable materials they provided. Being part of AMCOMP allowed me to learn continuously and contribute meaningfully. Although I had opportunities to join various boards within the industry, I chose to stay with AMCOMP because of its strong foundation in education.

**What kind of future do you hope to see with AMCOMP?**
I want to emphasize the importance of education in AMCOMP and its role in achieving the organization's objectives. I have always been committed to promoting learning and professional development as a board member. I have been actively involved in the education and planning committees in the past, and I will continue to do so. I aim to ensure our members access the most relevant and beneficial education programs. I also aim to be an ambassador for the Workers' Compensation Professional (WCP®) designation and will complete the course this fall to gain firsthand experience. I am optimistic about the future of AMCOMP, especially regarding our education programs and in-person meetings. These opportunities will allow me to expand my network and gain insights from industry professionals as I advance in my career. Networking is a vital aspect of AMCOMP, and the benefits for our members are substantial. The recent yearly meeting in Charleston, SC, was a great success, and I eagerly anticipate our next in-person event.


Triple Threat

# Healthcare Fraud, Waste and Abuse in Workers' Comp

Fraud, waste, and abuse (FWA) is an unfortunate fact of life for workers' compensation payers who must contend with a variety of issues that drive up costs, compromise care for injured workers, and undermine the workers' compensation system.

Workers' compensation insurance fraud costs are estimated to be $34 billion per year, with $25 billion attributed to employer fraud and $9 billion attributed to worker fraud.[1] Employer fraud usually involves efforts to lower premiums, often by misclassifying or under-reporting employees. Worker fraud is when an employee misrepresents the facts of an injury in some way, such as exaggerating symptoms to prolong paid time off, making a claim for an injury that occurred outside of work, or faking an illness or injury altogether.

The third, and possibly most expensive, type of fraud that impacts workers' compensation payers is healthcare/provider fraud.

Workers' comp payers must provide all necessary medical care for injured workers, which makes them highly susceptible to healthcare system fraud, which is estimated to total $100 - $300 billion per year across public and private payers.[2] And fraud is just one part of the FWA triangle that drives up healthcare and workers' compensation costs across the country.

**Healthcare System Fraud, Waste and Abuse**

Of the $4.5 trillion in annual U.S. healthcare spending[3], approximately 25 percent is considered wasteful[4], and three to 10 percent is estimated to be fraudulent.[3] It's a huge problem that affects all healthcare payers and administrators, including those in workers' compensation.

In California:

**Average loss for cases involving worker fraud = $30,000**

**Average loss for cases involving large medical provider fraud rings = $10 million**

Fraud, waste, and abuse are often lumped together, but they are three distinct issues, although closely related and with some overlap.

## FWA DEFINED

### FRAUD

Intentional deceit to receive unearned payment from a healthcare payer

### WASTE

Unnecessary use of medical services and/or resources, usually due to carelessness or negligence

### ABUSE

Failure to follow standard protocols or best practices leading to additional and unnecessary treatments and/or expenses.

Fraud is generally considered a crime and abuse can be a crime depending on circumstances, such as frequency and level of abuse, as well as intent.

Healthcare provider fraud and abuse come in many forms and can range from a small number of incidents by a single entity to widespread endeavors by groups or organizations. Medicare and Medicaid are prime targets for large-scale fraud, but private healthcare payers – both group health and workers' comp — also experience regular fraud and abuse.

**Types of Healthcare Fraud, Waste, and Abuse**
The sheer size and complexity of the American healthcare system creates a lot of opportunities for unethical, negligent, greedy, and careless behaviors. Common types of FWA that occur in both group health and workers' comp include the following.

**Service Fraud**

- Intentional overcharging for services
- Submitting inflated or false claims
- Billing for medical services and treatments
- not rendered
- Billing for medical supplies never provided to the injured worker
- Duplicate claims

**Billing Code Fraud**

- DRG Creep: manipulating diagnostic and procedural codes to increase reimbursement amounts
- Unbundling: billing individual service codes versus group service codes
- Up-coding of services: billing for a higher level of service than provided
- Billing for mutually exclusive procedures
- Using miscellaneous or other broad-based codes to obscure product/service selection or price

**Billing Code Fraud**
Healthcare providers (can include medical practices, laboratories, pharmacies, physical therapists, home health and others) pay or receive monetary incentives in exchange for:

- Referrals
- Prescribing and/or fulfilling/dispensing specified drugs or medical equipment/supplies
- Prescribing and/or fulfilling/dispensing specified drugs or medical equipment/supplies
- Colluding with patients and claims professionals to falsify records
- Colluding with patients and claims professionals to falsify records
- Other service providers, such as attorneys, can also be involved in kickback schemes
- Other service providers, such as attorneys, can also be involved in kickback schemes

**Service Abuse**

- Unnecessary or harmful treatments, procedures, or tests administered or recommended purely for monetary gain
- Excess number of services or extending duration of treatments past their usefulness in patient recovery
- Experimental/investigational products or services with no proven efficacy

**Waste**
*Administrative Waste*
Inefficiencies in managing claims, clinical documentation, coding, and prior authorizations

*Clinical waste*

- Care delivery failure means not delivering the right treatment, either by omission or error and not adhering to best practice or evidence-based medicine

- Care coordination failure occurs when patients fall through the cracks along the continuum of care and do not receive necessary treatment as a result

*Operational waste*

- Inconsistent pricing and/or the misuse of materials, such as prescribing an expensive drug or product when an equally good and less expensive one is available

- Unnecessarily discarding effective products in favor of new ones that offer little or no benefit

**FWA in Workers' Comp Healthcare**

Generally speaking, all forms of healthcare FWA are relevant to workers' compensation care. As a group, injured workers receive a wide variety of medical services and claims must be filed with and approved by insurers for payment. However, there are some nuances to combatting FWA in workers' comp.

Because workers' compensation benefits and the regulations that guide them are determined by state lawmakers, the benefits afforded to injured workers are often more generous, as compared to group health, and insurers sometimes have less leeway in limiting costs and services. In addition, the state-by-state system creates 50+ separate departments/bureaus of workers' compensation, and hundreds of insurers and TPAs who authorize and pay claims from thousands of healthcare service providers. This makes it harder to detect suspicious activity because bad actors can distribute schemes across a wide network of stakeholders.

> Workers' compensation is a fraudster's paradise! [6]

Other factors, such as the size and composition of a state's workforce, the type of injuries that are compensable, and the state's medical oversight regulations and resources, may make some states more vulnerable to fraud and abuse. For example, a $200 million fraud scheme in California was perpetrated there because of three combined factors: generous benefits; a large population of migrant workers who had limited English language skills and even less knowledge of workers' comp; a large and cumbersome system with limited oversight capabilities. 7

Another example of how the idiosyncrasies of states' workers' comp systems can result in more fraud, waste, and abuse is a Florida statute that has entitled injured workers to "free full and absolute choice in the selection of the pharmacy or pharmacist dispensing and filling prescriptions for medications required," which has led to physicians dispensing/selling medications directly to patients or through third-party mail order services, both of which result in unnecessarily high pharmacy costs and potential harm to patients.8

Expanding compensability for mental health conditions might also lead to new cases of FWA, given that about 20 percent of healthcare fraud is attributed to mental health services9 and it has become increasingly common for these services to be provided via telehealth.

## Telehealth Fraud Alert!

During the COVID 19 pandemic, telehealth visits became a necessity, and many payers adjusted their policies to allow more liberal use of telehealth services. In addition, workers' compensation laws were amended in many states to accommodate telehealth visits for injured workers. While not used at the same levels they were during the pandemic, telehealth visits have remained popular for many medical services. Unfortunately, they have also become fertile ground for fraud schemes. Specialized telehealth organizations in particular recruit and pay providers with kickbacks for prescribing unnecessary products and services, such as durable medical equipment and lab tests, as well as prescribing unnecessary medications.[10]

Telehealth services are most commonly used for mental and behavioral health services, follow-up office visits, and in rural communities.[11] Both telehealth companies and traditional medical practices offer these services to workers' compensation payers who should beware of other common types of fraud, such as upcoding and duplicate billing.

While each state has its own variables, they also share commonalities that create widespread opportunities for fraud, waste and abuse. Most notably, workplace injuries frequently involve the treatment of pain, which led to excessive rates of opioid abuse over the last two decades. At the height of the crisis 55% of injured workers were prescribed opioids[12] and approximately 30% of those were still filling prescriptions after 90 days.[13] Worse still, opioid abuse was found to account for 61% of drug-related deaths among workers with lost-time injuries.[14] Fortunately, opioid prescriptions have decreased dramatically in workers' comp. But abuse and addiction risk with opioids remains high and there are other concerning drugs and prescribing practices that warrant vigilance in workers' comp medical management.

The types of injuries common in workers' comp also often require a large variety of medical services, including diagnostics, physical therapy, durable medical equipment, and more. Ancillary services such as these can be challenging to manage and are ripe for several types of FWA, including upcoding, overutilization, kickback schemes, and more. One case in California involved $310,000 of fraudulently billed translation services.[15] Much larger dollar amounts were involved in a physical therapy fraud scheme in Texas where $80 million of inflated and fraudulent physical therapy and durable medical equipment were charged to the Department of Labor's Bureau of Workers' Compensation.[16]

**Impact on Injured Workers**
Workers' compensation fraud, waste and abuse costs billions of dollars every year and causes financial stress for individual payers and the system as a whole. It also hurts injured workers. Some of the lost money could potentially have been used to provide more or better benefits. Worst of all, medical fraud, waste, and abuse can compromise care and directly harm injured worker patients.

For example, the previously cited $200 million fraud case in California involved hundreds of workers who were subjected to unnecessary and sometimes painful treatments, including unneeded medical devices inserted into their spines.[7] More broadly, a study sponsored by Johns Hopkins School of Bloomberg Public Health found that patients seen by medical providers who were later banned due to FWA were 11 to 30 percent more likely to require emergency hospitalization and were 14 to 17 percent more likely to die than patients treated by providers in good standing.[17]

In addition to compromising care and risking injured worker health and recovery, incidents of FWA have a damaging effect on the injured worker experience and can undermine confidence in the workers' compensation system and its ability to provide quality care.

**Combating Healthcare FWA**
The methods of committing FWA in healthcare are myriad. The number and diversity of potential perpetrators is even larger. One line of defense that is often effective against FWA is expert knowledge and experience. Claims staff and clinical case managers often spot an anomaly – or a suspicious pattern – that indicates inappropriate or suspicious activity. Over time, different types of FWA become known and healthcare payers and benefits managers employ a variety of methods to combat them. But the large scale and constantly evolving variations of FWA incidents in healthcare can only consistently be detected through data.

**Traditional Data Detection**
A standard FWA identification method used today is rule-based detection. Rule-based detection involves developing rules to mine claims data and identify known FWA behaviors, such as upcoding, duplicate bills, inappropriate utilization and more.19 Rules can be written to identify patterns of FWA at various levels, such as provider, patient, or transaction. Rules-based FWA detection is commonly used and has been successful. Indeed, many insurance carriers, TPAs, PBMs, and other industry stakeholders are currently reducing costs and improving health outcomes using rule-based data detection. But this method may become insufficient as fraud schemes and waste/abuse patterns change.

**AI Enters the Picture**
The global healthcare fraud detection technology market was valued at $1.1 billion in 2021 and is estimated to reach $3.6 billion by 2031.20 This projected growth is mainly due to advances in artificial intelligence (AI) and its ability to learn and adapt as conditions change.

Even uncomplicated rules-based detection systems involve thousands of algorithms that must be rewritten to accommodate changes as simple as updating NCCI codes.21 In contrast, some AI models, including machine learning and natural language processing, can update themselves through continuous learning and adaptation to observed changes. AI can enable the automation of applied analytics to swiftly identify signs of both known and potentially new types of FWA. AI's ability to accurately detect signs of FWA at higher volumes and in a fraction of the time could lead to significant cost savings and better health outcomes for injured workers.

However, adopting these models is not without risk and complications.

**AI Obstacles**
AI-driven models vary, but many share the ability to detect patterns and anomalies over vast datasets and hundreds of thousands of variables that humans are not equipped to analyze. To do this effectively, AI models rely on a store of relevant and clean data. Claims data, which generally contains all of the medical transaction records, is the most essential and commonly used data set for FWA detection.19 However, claims data contains personal health information (PHI), which is protected by federal privacy regulations and cannot be legally shared without patient consent. This can make it difficult for healthcare organizations to use some commercially available generative AI models, such as ChatGPT, due to security risks.

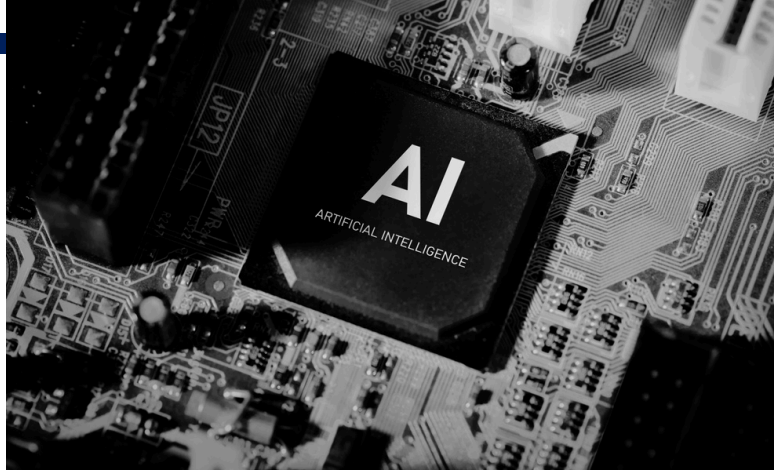
Two ways around this problem are for organizations that store PHI data to use large language learning models that do not expose it and/or to utilize generative AI models internally and train them to access relevant new information while keeping PHI secure. Using these advanced technologies to keep up with evolving fraud schemes requires a high degree of technical expertise, which will take time and money to build across the industry. More time may also be needed for stakeholders to have confidence in AI models and to develop the necessary multi-disciplined cooperation needed to build successful applications.

As promising as AI appears to be as a tool to reduce FWA in workers' comp healthcare, it is not likely to be the sole tool. Workers' comp organizations can already employ a multi-pronged approach to effectively combat FWA using a combination of evolving data-driven tools combined with human expertise.

**Current Solutions for FWA in Workers' Comp Healthcare**
A combination of technologies and human oversight will always be needed to effectively combat FWA now and in the future, including:

1. Strategic planning and ongoing data & trends analysis to identify and address potential FWA across all types of medical services and products, including pharmaceuticals, DME, physical medicine, diagnostics and even non-medical services, such as translation and home/vehicle modification.

2. A stringent qualification and credentialing process for network providers and service vendors to ensure they are in good standing and the right fit for specific injured worker populations, combined with leveraging performance and benchmarking data to help identify top-performing providers within networks.




3. Prospective adjudication of all medical services and products to allow denial of inappropriate treatments.

4. Rules-driven enforcement of strategies to circumvent common practices that result in FWA, such as auto shipments and ambiguous billing codes.

5. Data-driven risk identification triggers paired with outreach and intervention strategies for providers, prescribers, and patients to educate and encourage appropriate, cost-effective therapies.

6. Programmatic alerts that identify and educate claims professionals at the point of authorization about inappropriate, high-cost treatments, based on expert clinical and trends analysis.

7. Automated and human-aided reviews and audits to identify and reconcile inaccurate coding and billing that drives up costs.

8. Secure interoperability between systems to facilitate communication and the exchange of information between payers, providers, and injured worker patients.

Delivering medical care to help injured workers recover and return to work is a critical component of the workers' compensation mission and accounts for approximately half of its total costs.22 Awareness of evolving FWA and how to effectively detect and prevent it are crucial to containing costs and ensuring the best possible care injured workers.

Healthesystems' proprietary ancillary benefits management program was created to address unmanaged FWA in medical products and services commonly used for injured worker care.

To learn more, go to: https://healthesystems.com/rxi-articles/triple-threat-healthcare-fraud-waste-and-abuse-in-workers-comp/

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