

Workers' Comp

REPORT TO THE INDUSTRY

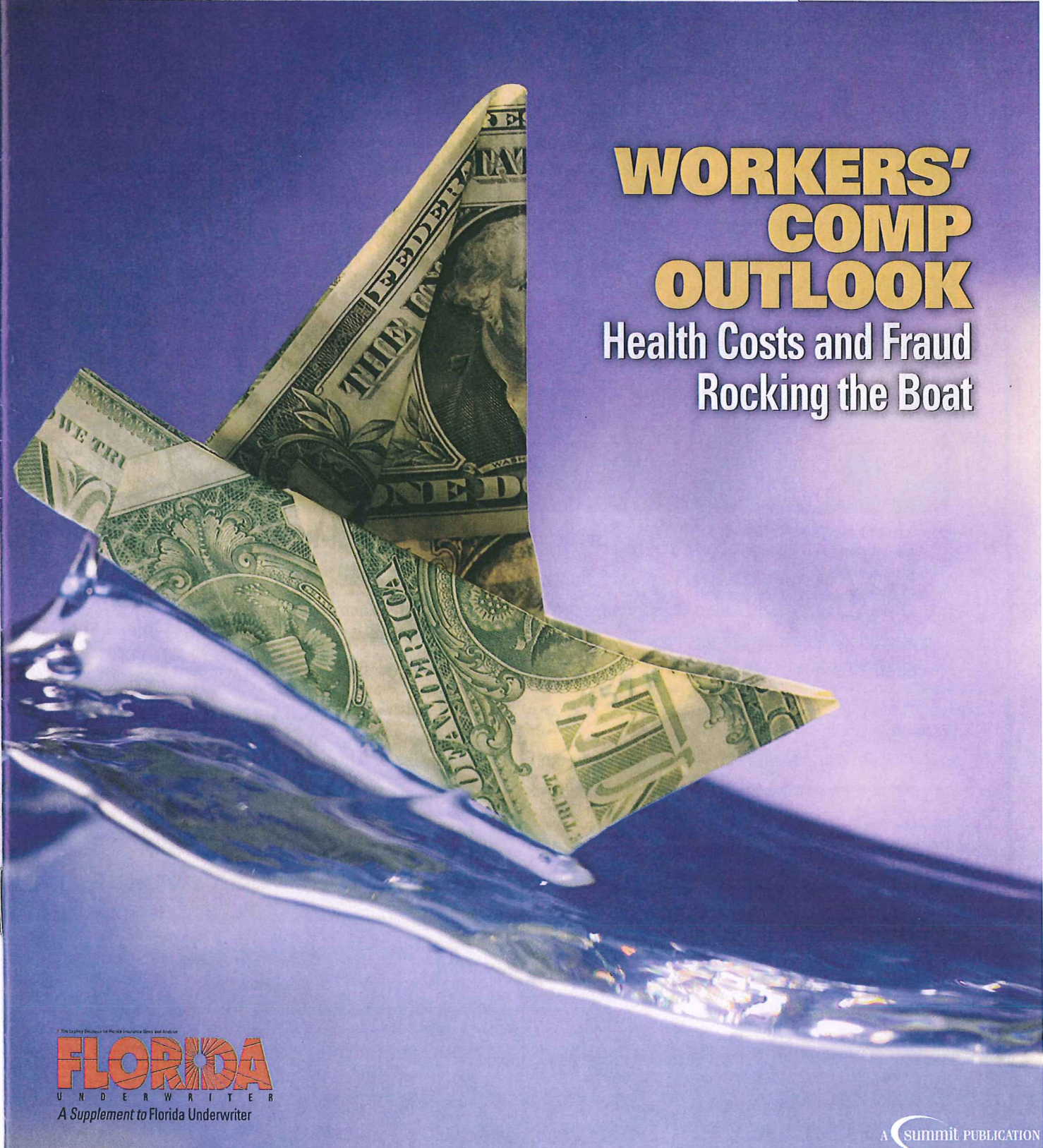
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WORKERS' COMP OUTLOOK

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False SSNs: It's a Matter of Fraud

By Steve Cassell, President, RSight Investigations, Inc.

It may be a crime, but you can still get benefits.

If an employee uses a false Social Security number to obtain employment and then suffers a compensable work-related injury, he is eligible for coverage under the current Florida workers' compensation statutes.

Even if this very same claimant pursues benefits but does not utilize the invalid number, the State of Florida will issue the injured worker a temporary SSN in an effort to process his claim. The claimant may even candidly admit to the fact that he provided his employer with a false SSN in the hopes of successfully securing employment.

These facts alone do not constitute a violation of 440.105 and cannot be the basis to deny a claim. Most recently, this has been affirmed by the First District Court of Appeal, *Matrix v. Hernandez*.

This issue becomes a matter of fraud when a claimant uses a false SSN for the purpose of securing workers' compensation.

To knowingly make or cause to be made a false, fraudulent, or misleading oral or written statement to any person as evidence of identity for the purpose of obtaining medical benefits is a violation of FS 440.105.

This is the basis and the very essence of a successful fraud defense using FS 440.105. The use of an invalid or false SSN to obtain employment alone is simply not applicable as it relates FS 440.105.

Case Law on False SSNs

The recent Judge of Compensation Claims Final Order (*Zuniga v. Florida Southern Roofing*) Case Number 06-005842DBB clearly affirms this position. Summarizing, the claimant used his false identification (SSN) in support of his claim. This includes writing his false SSN on various medical forms in pursuit of benefits.

The false SSN may be used during the patient intake, an initial recorded statement of the claimant, or to any medical provider involved in the claim. The use of the false SSN must be clearly documented in an

effort to show intent on behalf of the claimant to secure medical benefits.

Based upon the clear and concise court opinions regarding this matter, many carriers are proactively undertaking a SSN verification program to ensure the legitimate validation of their claims.

Help for Employers

The Social Security Administration (SSA) currently offers the Social Security Number Verification Service (SSNVS), which was developed in partnership with The Department of Homeland Security (DHS). This voluntary, online service allows an employer to verify the applicant's SSN prior to hiring or within three days of the hire. This validation process empowers the employer to confidently hire a candidate based upon the results of the on-line query.

Due to the scope and objectives of the SSNVS system, the user cannot use this program to determine an individual's legal status, to make a determination of future benefits, to terminate the employee, or to take any type of punitive damages against the individual due to an invalid SSN result.

The SSA also offers a call-in service, wherein the user provides specific information pertaining to the individual. If the data parameters provided result in a perfect match, the query will be "valid." If any one of the data components is inconsistent with the SSA's information, an "invalid" result will be received.

To ensure accuracy and reduce the potential of false-positive results, a multi-tiered verification program should be used. The program should utilize secured database centers in conjunction with independent verification done through the SSA.

An organization that is considering implementing a SSN Verification Program must integrate the protocol into their claims process. The verification process must be consistently used on every claim. Inconsistent or selective usage of such a program will invalidate the established protocols and jeopardize the credibility of the entire program.

If a claim is indeed denied based upon the use of an invalid SSN to secure benefits (440.105), the carrier is compelled to document this activity with the Division of Insurance Fraud (DIF). The carrier shall report this matter to DIF and must clearly articulate their suspicions of fraud and be able to produce all supporting documents upon request.

Criminal Charges May Apply

RSight has been involved with a number of DIF submissions that have resulted in the arrest of the claimant for using a false SSN to obtain workers' compensation benefits. Two of these cases are currently in the criminal courts awaiting trial. The state is pursuing criminal charges under both the 440.105 statute and identity theft charges.

In both scenarios, the candidate who used a false SSN or some type of altered or fraudulent identity to obtain employment broke the law. However, this law is not enforced within the Florida 440 statute.

For example, if a Florida driver's license is obtained using false documents, a felony has been committed (F.S. 322.212(5) (a) (b)). In addition, there are other legal issues such as identity theft and a myriad of other federal and state laws that are applicable in such matters.

When an individual uses a false SSN to obtain employment, the employer may be a victim or a knowing accomplice. Section 440.105(3)(b), FS (2003) makes it unlawful for any employer to knowingly participate in the creation of the employment relationship in which the employee has used any false, fraudulent, or misleading oral or written statement as evidence of identity.

The false use of a SSN to obtain benefits is a matter of fraud. This fundamental issue should not be overlooked as an effective claims tool to mitigate exposure. Fraud shall be identified and reported by the insurance carrier. It is the law. ▲

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