



DEPARTMENT OF

# Professional & Financial Regulation

STATE OF MAINE

- OFFICE OF SECURITIES
- BUREAU OF INSURANCE
- CONSUMER CREDIT PROTECTION
- BUREAU OF FINANCIAL INSTITUTIONS
- OFFICE OF PROF. AND OCC. REGULATION

## **Maine Bureau of Insurance Consumer Health Care Division Annual Report to the Legislature for the Year 2013, Incorporating the Division's Annual Report on External Reviews**

March 2014

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## TABLE OF CONTENTS

I. Overview .....	1
A. Responsibilities.....	1
B. Consumer Assistance, Consumer Outreach, and Licensing Activities.....	2
1. Consumer Assistance.....	2
2. Health Insurance External Review.....	3
3. Outreach and Education.....	3
4. Licensing Activity .....	4
a. Medical Utilization Review.....	4
b. Preferred Provider Arrangements .....	5
c. Managed Care Provider Networks .....	5
5. Policy Form Review .....	6
II. Statistics .....	8
A. Consumer Inquiries and Complaints .....	8
1. Inquiries.....	8
2. Complaints.....	9
B. External Review .....	10
C. Policy Form and Rate Review .....	11
III. Legislative and Regulatory Activities .....	12
A. Regulatory Changes.....	12
B. NAIC Committee Participation .....	12
IV. Conclusion.....	12

## I. Overview

Pursuant to 24-A M.R.S.A. § 4321(J), this report details the 2013 activities of the Consumer Health Care Division (CHCD) at Maine's Bureau of Insurance (Bureau), within the Department of Professional and Financial Regulation (DPFR). The CHCD provides consumer assistance, outreach, and oversight of compliance by insurance companies with the Insurance Code (Title 24-A) and Bureau regulations.

This report also incorporates 2013 External Review details as required by § 4312 (7-A). Although some information about external reviews has been provided in past reports, the Legislature enacted legislation in 2013 to require additional details. This is the first reporting since the new law took effect.

### A. Responsibilities

The CHCD is responsible for:

- Investigating and resolving consumer complaints related to health, disability, long-term care, and life insurance;
- Responding to consumer inquiries;
- Providing information to consumers regarding health insurance plan options and obtaining health care coverage and services;
- Assisting health, disability, long-term care, and life insurance consumers with understanding their rights and responsibilities;
- Reviewing and approving the language of health insurance forms;
- Licensing medical utilization review entities (UREs);
- Reviewing and approving long-term care insurance forms;
- Reviewing and approving disability and life insurance forms;
- Providing oversight of the Bureau's external review process;
- Drafting and reviewing health insurance regulations;
- Bringing enforcement actions against licensed entities when violations occur;
- Reviewing managed care plans for compliance with provider network adequacy standards;
- Approving registrations for preferred provider arrangements (PPAs);
- Developing outreach and educational materials;
- Coordinating compliance with the Affordable Care Act, as it pertains to the commercial health insurance market;
- Drafting legislative reports on issues involving health policy;
- Tracking and analyzing data – including consumer complaint data -- for trending purposes;
- Reviewing complaints that include determinations of medically necessary care and complex health questions;
- Conducting outreach to a variety of public and private groups.

"I emailed your office about what I thought could be a scam. You not only called me the same day but followed through and found that it was a legitimate inquiry from the insurance company. I did contact them and sent them the information that they requested. I am happy to tell you that today I received a check from the insurance company. Had you not followed through and contacted me I would have missed this opportunity." – *Consumer, March 18, 2013*

## **B. Consumer Assistance, Consumer Outreach, and Licensing Activities**

### **1. Consumer Assistance**

One of the CHCD's most important duties is to provide assistance and information to consumers. Staff responds to telephone inquiries by providing information to callers, referring callers to the Bureau's website ([www.maine.gov/pfr/insurance](http://www.maine.gov/pfr/insurance)), and mailing issue-related brochures. Staff also responds to written inquiries and to in-person visits by consumers. For topics not within the Bureau's jurisdiction, consumers are referred to the appropriate agency. For example, consumers with questions about MaineCare are referred to the Maine Department of Health and Human Services, and consumers with questions about federal laws are referred to the appropriate federal agency.

Staff also receives and investigates written consumer complaints. Maine consumers who complete a CHCD complaint form – either in hard copy or electronically through the Bureau's website -- authorize staff to contact insurance company representatives to investigate the dispute.

When a complaint is received, a staff investigator is assigned to the case. The investigator directs the insurance carrier to respond to the consumer's allegations. The carrier's response and supporting documentation are reviewed by CHCD staff to determine if the processes used by the carrier comply with the terms of the insurance policy, as well as with Maine's laws and regulations. The complainant is kept informed of the progress of the investigation and at times may be asked to provide additional information. Complex issues related to health, life, and disability insurance coverage require significant staff time to gather facts and correspond with relevant parties.

The Bureau ensures that carriers provide consumers with their appropriate appeals rights. Some complaints involve allegations that the insurance company has not properly handled a consumer's appeal of a health insurance adverse decision. Under Maine law, carriers are required to provide two levels of internal appeals to the consumer. In some cases, such as those involving a question of medical necessity, the consumer also has a right to an independent external review following the two levels of internal appeals. The carrier's appeals process is separate from the Bureau's complaint investigation, and consumers are advised that they can proceed with both an appeal and a complaint with the Bureau simultaneously.

The CHCD reviews each complaint to determine the proper jurisdiction for the complaint investigation. The Bureau sometimes receives complaints involving issues over which it does not have jurisdiction. In such cases, the jurisdictional issue is explained, and the consumer is directed to the appropriate regulatory agency.

In cases involving an urgent need for assistance – e.g., denial of a surgical procedure or inpatient stay -- CHCD staff can promptly intervene on behalf of the consumer to ensure that the carrier complies with its legal obligations. The CHCD staff has been able to resolve many of

these situations very quickly when it is evident that the carrier's denial is flawed or contrary to specific requirements in either the insurance policy or Maine law.

If the insurer has inappropriately denied a claim or otherwise acted improperly, the Bureau works to ensure that benefits are properly paid to the consumer. If the insurer has acted properly, the basis and rationale for this conclusion are explained to the consumer, who is informed that there was no violation of Maine law. There are also cases in which the Bureau does not have jurisdiction due to federal preemption. In those situations, staff takes the opportunity to provide consumers with information regarding insurance law, their rights and responsibilities, and the terms of their coverage.

## **2. Health Insurance External Review**

After exhausting the two-level internal appeals process of their insurance plan, consumers have the right to request an external review for denials involving medical necessity, pre-existing conditions, experimental treatments, and denials based on a dispute in diagnosis, care, or treatment. External review appeals are coordinated by CHCD staff who assigns the appeal to an External Review Organization (ERO). The Bureau contracts with EROs having no affiliation with the insurance carrier involved in the appeal.

During the external review, the ERO has an appropriate independent medical expert review the case. For example, in a case involving a mental health issue, a psychiatrist or other appropriate mental health professional experienced with the diagnosis in question would be assigned to the case. The external review process is reimbursed by the insurance carrier, not the consumer. The decision of the external review is binding only on the carrier; the consumer can seek private legal action as an additional remedy.

"I appreciate your time today and peace it gave me just being able to feel something other than frustration....and that dead end feeling....not knowing what to do or where to turn. I'm not well versed in annuity speak." – *Consumer, August 1, 2013*

## **3. Outreach and Education**

An ongoing priority of the CHCD is to educate Maine consumers about their rights under Maine's insurance laws and the Affordable Care Act. We also highlight the services available through the Bureau of Insurance. We do this through public speaking engagements and participation in public forums and events. Public speaking and other outreach events in which the CHCD participated in 2013 included:

- Thirty seven (37) educational sessions on the Affordable Care Act
- New England Geriatric Conference – Bar Harbor
- Southern Maine Area Agency on Aging – Training – Scarborough
- Bridgton Hospital Guild Annual Meeting – Bridgton

- Senior Outreach Education – Lewiston
- Spectrum Generations – Long Term Care Issues – Augusta
- Eastern Area Agency on Aging – Bangor
- Senior Outreach Session – Newport
- American Cancer Society's Living With Cancer Conference - Augusta
- Fostering Financial Literacy in Maine Schools – Augusta
- Potato Blossom Festival – Fort Fairfield
- Blueberry Festival – Machias
- Common Ground Country Fair – Unity
- State Health Insurance Program/Seniors Medicare Patrol (SHIP/SMP) Annual Meeting – Waterville
- Aging Advocacy Summit – Augusta
- Maine Psychological Association Annual Meeting – South Portland
- Lincoln County Triad Elder Appreciation Day
- Financial Professional Day – Portland

As part of its ongoing consumer education mission, CHCD produces and updates numerous brochures on a variety of topics, including purchasing health insurance and appealing adverse decisions by health insurance companies. Brochures and other information, including answers to frequently asked questions, are available on the Bureau's website.

#### **4. Licensing Activity**

##### *a. Medical Utilization Review (MUR)*

“Medical Utilization Review” (MUR) includes any program or practice by which a person, on behalf of an insurer, nonprofit service organization, third-party administrator, or employer, seeks to review the utilization, clinical necessity, appropriateness, or efficiency of health care services, procedures, providers, or facilities. MUR entities are required to be licensed in Maine if they intend to conduct utilization reviews for plans that provide coverage to Maine residents. MUR applicants are, at a minimum, required to provide the Bureau a detailed description of the medical utilization review processes used for each review program offered by the applicant, including but not limited to:

- Second opinion programs;
- Hospital pre-admissions certification;
- Pre-inpatient service eligibility determinations;
- Determinations of appropriate length of stay; and
- Notification to consumers and providers of utilization review decisions.

Licensed medical utilization review entities (UREs) must certify compliance with Maine's utilization review requirements and all applicable standards. Licenses must be renewed annually. A list of Maine licensed UREs can be found on the Bureau's website at: [http://www.maine.gov/pfr/insurance/company/licensee\\_list.htm](http://www.maine.gov/pfr/insurance/company/licensee_list.htm) under the *Producer/Business*

*Entity Information* link. Licensed companies can also be located by using the website’s “Find a licensee” feature.

In 2013, four new UREs were licensed in Maine, bringing the total number of licensees to 74.

*b. Preferred Provider Arrangements (PPAs)*

The CHCD reviews and registers preferred provider arrangements (PPAs), which are contracts, agreements, or arrangements between an insurance carrier or plan administrator and a health care provider. The provider agrees to provide services to a health plan enrollee whose plan benefits include incentives to use the services of that provider. Preferred provider arrangements are reviewed for compliance with Maine statutes regarding provider accessibility/network adequacy, utilization review, grievance and appeal procedures, consumer notification, and emergency access requirements.

In 2013, 9 new arrangements applied for registration, with 6 meeting the registration requirements, bringing the total number of arrangements to 50. A list of Maine licensed preferred provider arrangements can be accessed at the Bureau’s home page under the *Producer/Entity Information* link.

*c. Managed Care Provider Networks*

The CHCD staff reviews managed care provider networks to determine if they comply with the provider accessibility standards of Maine law.

Managed care entities’ applications to expand their geographic service area are also reviewed by CHCD staff to determine if an adequate network of providers would be available in the expanded area. The CHCD is notified when contractual relationships between an insurance carrier and a group of providers dissolve, creating the possibility that enrollees may not have access to a category of participating provider. The CHCD staff monitors the situation to assure that carriers are complying with Maine law by providing consumers with adequate notice and opportunity to find alternative providers and by ensuring that needed continuity of care is provided to consumers currently receiving medical services.

On June 28<sup>th</sup> and July 2<sup>nd</sup>, Superintendent Cioppa held public hearings regarding Anthem Blue Cross and Blue Shield’s request for approval of two networks: the “Anthem Guided Access HMO” plan in 10 southern counties, and “Anthem Guided Access POS” (Point-of-Service) in the six northern counties. The Anthem Guided Access HMO network has been referred to as a “narrow network,” meaning that a number of health care providers in the 10 southern counties are not included. The networks were approved for new products in the individual market and small group markets, including products to be offered on Maine’s federally facilitated marketplace. The purpose of the proceedings was for the Superintendent to determine whether Anthem’s proposed networks meet adequacy standards applicable to



HMOs, including 24-A MRSA S. 4303(1) and Insurance Rule 850(7), consistent with standards that are realistic for the community, the delivery system, and clinical safety.

The Superintendent analyzed the capacity of the proposed Guided Access HMO network to serve the health care treatment demands of the membership base, including new members joining Anthem as a result of the Affordable Care Act's federally facilitated marketplace. He also analyzed whether the geographic dispersal of providers would provide meaningful access to health care services to members in all parts of the southern 10 counties. Capacity and geographic distribution analyses were completed for hospitals, primary care providers, high-volume specialty care providers, non-high-volume specialty care providers, behavioral health providers, ancillary providers, and allied health providers. The Superintendent found the capacity and geographic dispersal of providers adequate for all hospitals and providers, except for certain non-high-volume specialists in specific counties. He directed Anthem to make these specific non-high-volume specialists available within these counties, either by contracting with additional providers, establishing office hours for existing network providers from other counties to see patients within these counties, or by holding members residing in these counties financially harmless if they choose to see out-of-network providers practicing these specialties.

On July 25, 2013, Superintendent Eric Cioppa issued a Decision and Order approving the networks with required modifications (available as of the date of this Annual Report at <http://www.maine.gov/pfr/insurance/index.html>). For the Guided Access HMO in the 10 southern counties, Anthem was directed to report to the Bureau quarterly on the results of monitoring activities regarding the percentage of practices open to new patients, individual and small group members' experience accessing care, consumer complaints, and requests for approval of out-of-network services.<sup>1</sup>

“...Thank you so much for your help. You were the kingpin that solved this problem with the ‘insurance company’. I just got notice that (hospital) has received full payment. ... We are so appreciative.” – *Consumer, December 11, 2013*

## 5. Policy Form Review

Another vital role of the CHCD is to review and approve insurance company rate and form filings to ensure compliance with Maine laws and regulations. The CHCD receives form filings in electronic format via the System for Electronic Rate and Form Filings (SERFF). SERFF is a nationwide system developed by the National Association of Insurance Commissioners (NAIC). In 2013, CHCD received 2,323 insurance contract form filings; 120 filings were either disapproved or rejected for failing to meet established requirements. An additional 77 filings were withdrawn by the insurance company based on questions raised by CHCD staff. The remaining 2,126 form filings were reviewed and approved subject to any modifications.

<sup>1</sup> This decision is currently being appealed to Superior Court.

Life and health insurance rates are also subject to review by the Bureau's Life and Health Actuarial Unit. Rates are reviewed by the unit for compliance with Maine law, and rate increases are not approved if they are found to be excessive, inadequate or unfairly discriminatory.

The implementation of the Affordable Care Act was the biggest challenge facing the insurance contract form review staff this past year. A very compressed time frame for the review of insurance contracts to comply with Maine laws and regulations as well as the new and complex requirements of the Affordable Care Act created challenges. In addition to using SERFF, staff learned the new Centers for Medicare and Medicaid Services (CMS) Health Insurance Oversight System (HIOS) for populating the complex templates to demonstrate that the form filings conformed to the requirements of the Affordable Care Act.

Insurance companies can now file certain forms for review and approval with the Interstate Insurance Product Regulation Commission (IIPRC), better known as the "Compact." Insurance products that companies are permitted to file through IIPRC include life insurance, annuities, disability income, and long-term care insurance. IIPRC's approval of forms is recognized in 43 states, including Maine.

## II. Statistics

### A. Consumer Inquiries and Complaints

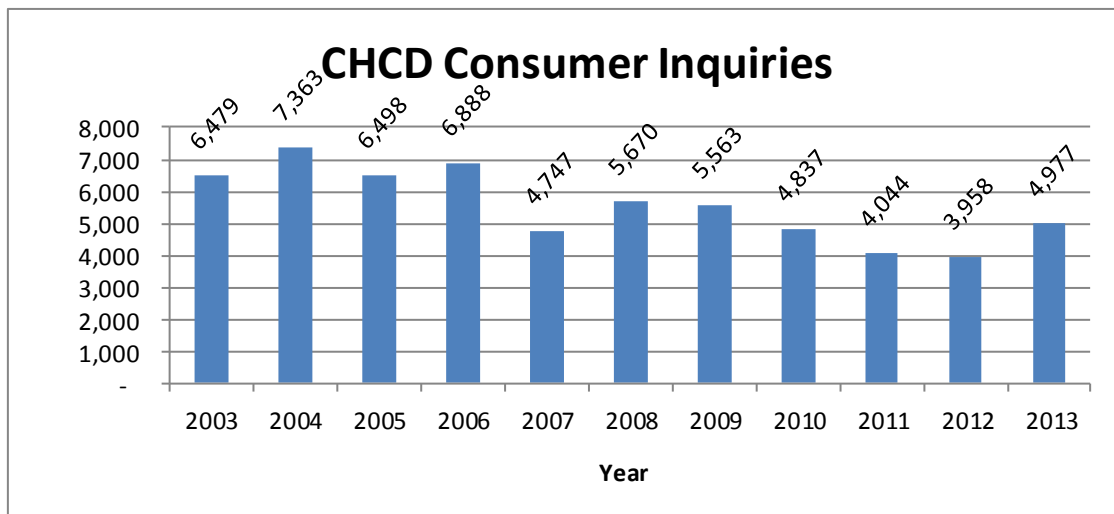
#### 1. Inquiries

The CHCD assists consumers with inquiries and complaints. An “inquiry” is a consumer call or written request to obtain general information on insurance issues, such as a specific line of insurance or an insurance company, or to complain generally about a regulated person or entity, but not regarding a specific dispute.

A “complaint” is defined in 24-A M.R.S.A. § 216 (2) as “any written complaint that results in the need for the Bureau to conduct further investigation or to communicate in writing with a regulated entity for a response or resolution to the complaint.” On a yearly basis, the CHCD compiles a “complaint index” comparison for Maine health insurance companies. Complaints, not inquiries, are utilized in calculating complaint indices for different insurance companies. The complaint index compares the share of complaints against a company to their share of the market (premiums written). Complaint index reports are available on the Bureau’s website at [http://www.maine.gov/pfr/insurance/consumer/Health\\_Complaint\\_Comparison2012.htm](http://www.maine.gov/pfr/insurance/consumer/Health_Complaint_Comparison2012.htm)

CHCD staff answered 4,977 telephone and written inquiries during 2013. The most frequent inquiries related to individual insurance, Medicare, and claim denials. Figure 1 illustrates the number of telephone and written inquiries received from 2003 – 2013.

Figure 1

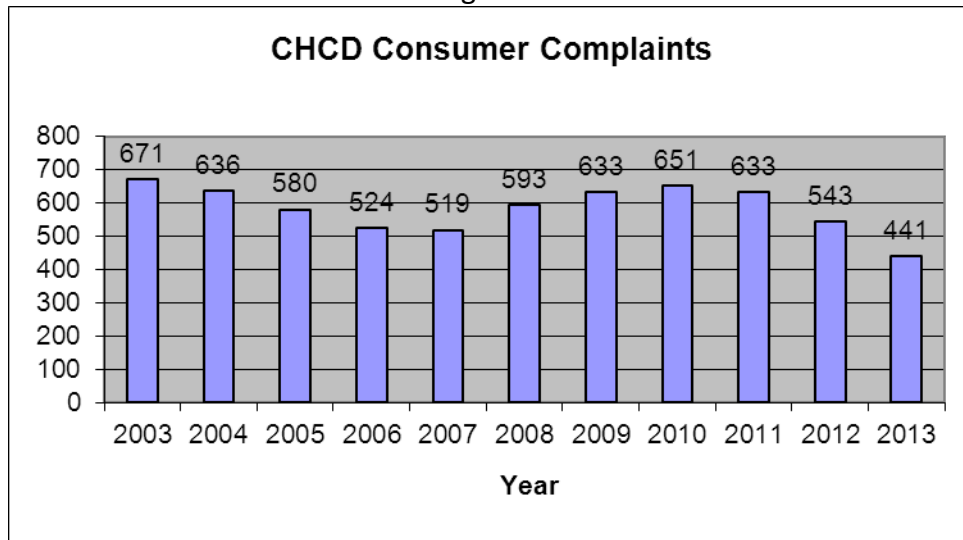


Additionally, the CHCD staff answered 88 requests for constituent assistance from state and federal legislative officials. And, in addition to the written inquiries referenced above, another 198 written inquiries were received from consumers using the Bureau’s webpage inquiry tool, requesting general assistance on a wide range of health, life and disability insurance issues.

## 2. Complaints

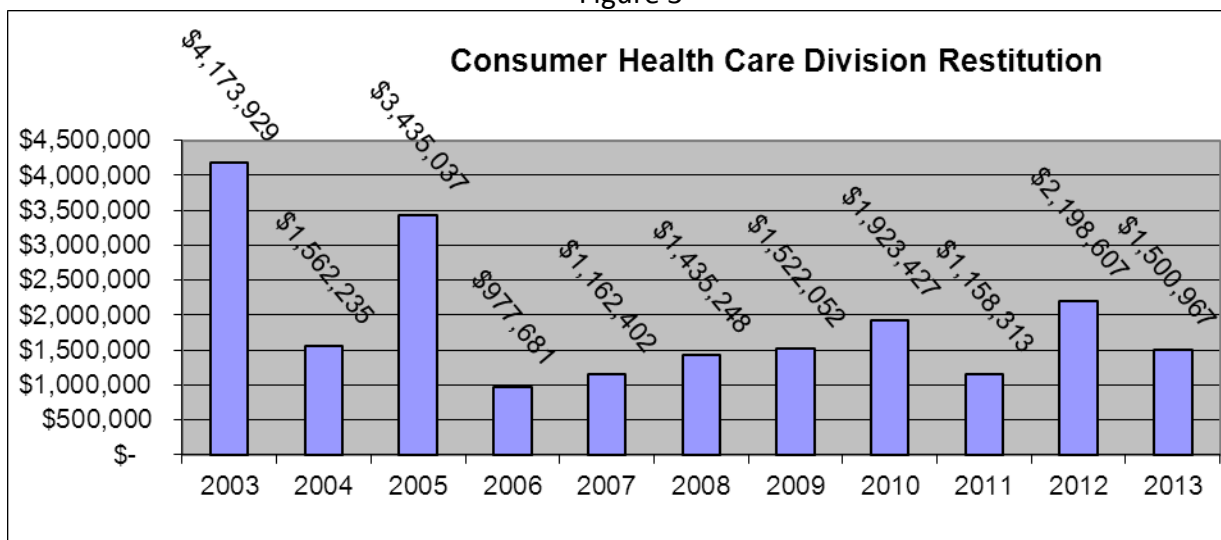
During 2013, the CHCD responded to 441 written or emailed health, disability, annuity, and life insurance complaints filed by health plan enrollees, policyholders, insurance producers, and health care providers. Figure 2 illustrates the number of written complaints filed with the CHCD from 2003-2013.

Figure 2



As part of the complaint investigation process, CHCD staff works to obtain restitution for consumers who have suffered a financial loss due to improperly denied claims or claims which were not paid in accordance with the policy. As indicated in Figure 3, the CHCD obtained restitution of \$1,500,967 for complainants during 2013. Most often, the recovered funds were from previously denied claims.

Figure 3



In addition to investigating consumer complaints and referring appropriate cases for enforcement actions, CHCD staff works proactively with insurance carriers to identify trends in consumer complaints in an effort to remedy problems before they result in violations of the Insurance Code. The CHCD holds quarterly meetings with several insurance carriers that write a significant volume of coverage for Maine residents. CHCD staff meets with insurers subject to regulatory actions for significant violations of Maine law to help them identify and correct problems at an early stage, before becoming systemic.

## B. External Review

The CHCD contracted with four independent external review organizations in 2013: IMX Medical Management Services, Medwork Independent Review, Maximus Federal Services, Inc., and Island Peer Review Organization (IPRO).

The CHCD received 36 requests for external review and processed 26 that were qualified; 24 were completed, as two were withdrawn by the consumers prior to hearing. Of the 24 completed requests, 13 were upheld (54%), and 11 were overturned (46%).

There were 18 cases heard for medical necessity of treatment: 2 prescription drugs, 8 mental/behavioral health, 3 PT/chiropractic care, and 5 for specific care/treatment decisions. There were 8 decisions based on the treatments being experimental or investigational: 1 involving a mental/ behavioral health treatment, 1 with a drug therapy, and 6 for specific care/treatment decisions.

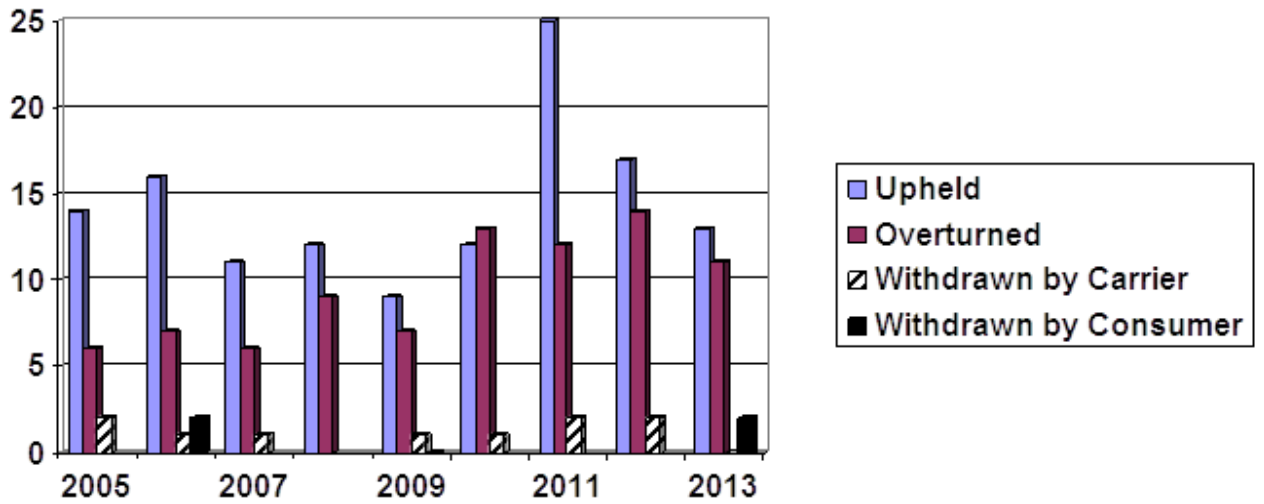
Pursuant to 24-A §4312 (7-A) the following table illustrates the status of external reviews by carrier for calendar year 2013:

	2013 External Reviews			
	Anthem	Aetna	Harvard	Cigna
Requested	22	11	2	1
Consumer didn't complete process	5	3	0	0
Review Submitted	17	8	1	0
Withdrawn	2	0	0	0
Upheld	5	7	1	0
Overtured	10	1	0	0
Not qualified	0	0	1	1

None of the external reviews in 2013 included provider network issues.

Figure 4 illustrates the number of external reviews overturned, upheld, or withdrawn by either the carrier or consumer prior to the review for the years 2005 – 2013.

Figure 4  
**External Review Outcomes**

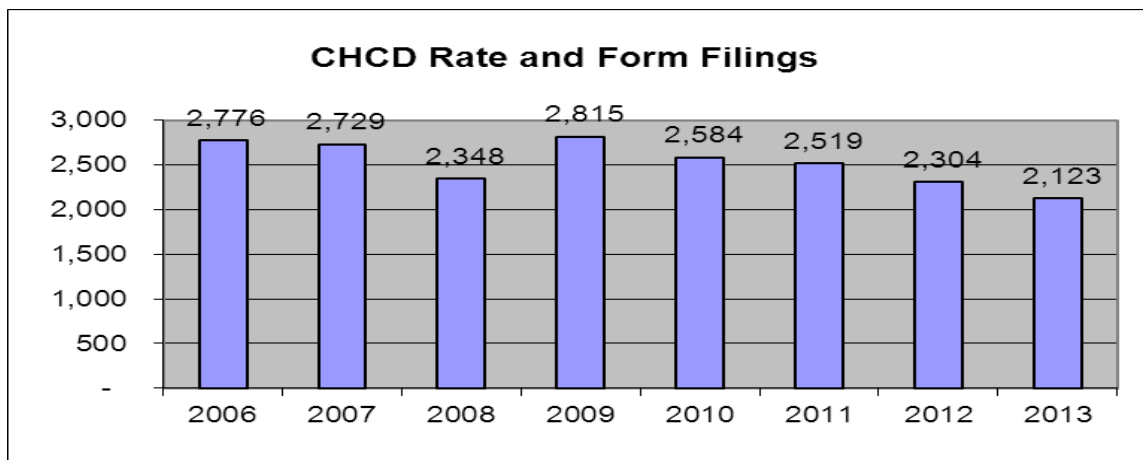


**C. Policy Form and Rate Review**

During 2013, the CHCD received 2,323 rate and form filings and approved 2,126. Some filings were disapproved, placed on file for information, or withdrawn by the insurance company. The 416 filings approved by the Interstate Insurance Product Regulation Commission (Interstate Compact) for use in Maine were not reviewed by the Bureau and are not included in Figure 5 below.

Updates to the form and rate checklists utilized by insurance companies in the filing process were completed to ensure companies’ policy forms and contracts comply with regulatory changes at both the state and federal levels.

Figure 5



### **III. Legislative and Regulatory Activities**

#### **A. Regulatory Changes**

In 2013 CHCD staff assisted in issuing three bulletins to provide guidance on Medicare Supplement policies, timelines for filing small group health plans and annuities. The bulletins are:

Bulletin 385, Guaranteed Issue of Medicare Supplement Policies for Dually Eligible Persons Losing Medical Benefits under MaineCare.

Bulletin 386, Timeline for Non-Grandfathered Small Group Health Plan Filings.

Bulletin 389, Updated NAIC Annuity Buyer's Guide

#### **B. NAIC Committee Participation**

CHCD staff actively participates in several NAIC subgroups, including the Annuity Disclosures Working Group, the Suitability of Annuity Sales Working Group, the Senior Issues Task Force, and the Consumer Disclosures Working Group. The Annuity Disclosures Working Group seeks to improve consumer information about annuity products. The Suitability of Annuity Sales Working Group considers ways to improve regulations to protect consumers against unsuitable and abusive sales and marketing practices which can be associated with annuity sales. The Senior Issues Task Force considers policy issues and develops regulatory standards and consumer information for insurance issues specifically affecting older Americans. The Consumer Disclosures Working Group develops best practices and guidelines for use by states in creating information disclosures for consumers.

### **IV. Conclusion**

The evolving and expansive implementation of the Affordable Care Act (ACA), including the federally facilitated marketplace plan management functions, was the biggest challenge for the CHCD team this past year. The ACA required staff to familiarize themselves with new and changing federal laws and regulations and information systems designed and operated by the federal government, and to coordinate with insurance carriers to meet strict filing timeframes that were beyond the control of the Bureau of Insurance.

Insurance carrier representatives and consumers rely on the Bureau to interpret the new laws and regulations. The CHCD continues to analyze consumer complaints and inquiries to identify complaint patterns and carrier-specific complaint trends. When trends are identified, the Bureau works to ensure that carriers operate in compliance with Maine law. The CHCD staff are in regular communication with insurance carriers during complaint investigations, through quarterly meetings, and when providing regulatory interpretations of the Insurance Code.

Finally, as is the case across the United States, health insurance costs in Maine continue to escalate at a rate exceeding the consumer price index. These costs are driven by a number of factors, which makes dealing with the problem extremely complicated. The CHCD is committed to assisting consumers and carriers with these complex issues.

For additional information, please contact the Consumer Health Care Division at the Maine Bureau of Insurance by calling 624-8475 or toll free (in-state only) 1-800-300-5000 (TTY: Please Call Maine Relay 711) or by visiting the Bureau's website: [www.maine.gov/pfr/insurance](http://www.maine.gov/pfr/insurance).