

August 26, 2011

Honorable Rodney L. Whittemore
Honorable Wesley E. Richardson
Joint Standing Committee on Insurance and Financial Services
100 State House Station
Augusta, ME 04333-0100

RE: Bureau of Insurance 2010 Consumer Health Care Division Annual Report to the Legislature

Dear Senator Whittemore, Representative Richardson, and Honorable Members of the Joint Standing Committee:

Please accept this annual report of the Consumer Health Care Division in the Maine Bureau of Insurance in the Department of Professional and Financial Regulation.

This report is being issued pursuant to 24-A M.R.S.A. §4321(J).

“Submit an annual report by January 1st of each year to the Commissioner of Professional and Financial Regulation, the Consumer Health Care Division Advisory Council and the joint standing committee of the Legislature having jurisdiction over insurance matters describing the activities carried out by the division in the year for which the report is prepared, analyzing the data available to the division and evaluating the problems experienced by consumers.”

The Consumer Health Care Division (CHCD) is one of several work units in the Maine Bureau of Insurance (the Bureau), which is within the Department of Professional and Financial Regulation (PFR). The CHCD focuses its efforts on consumer assistance, outreach, and oversight of insurer compliance with the Insurance Code (Title 24-A) and Bureau regulations.

Individuals with questions about the report are encouraged to contact Glenn Griswold, Director of the Consumer Health Care Division at 800-300-5000

Sincerely,

Eric A. Cioppa
Acting Superintendent of Insurance



DEPARTMENT OF

**Professional &
Financial Regulation**

STATE OF MAINE

- OFFICE OF SECURITIES
- BUREAU OF INSURANCE
- CONSUMER CREDIT PROTECTION
- BUREAU OF FINANCIAL INSTITUTIONS
- OFFICE OF LICENSING AND REGISTRATION

Maine Bureau of Insurance Consumer Health Care Division Annual Report to the Legislature for the Year 2010

August 2011



Paul R. LePage
Governor

Eric A. Cioppa
Acting Superintendent

Anne L. Head
Commissioner

Maine Bureau of Insurance Consumer Health Care Division

Eric A. CioppaActing Superintendent
Tim SchottDeputy Superintendent
Glenn GriswoldDirector
Joanne Rawlings-SekundaDeputy Director
Norman StevensStaff Attorney
Pamela StutchStaff Attorney (part-time)
Violet HyattNurse Consultant
Patricia LibbySenior Insurance Analyst
Michael McGonigleSenior Insurance Analyst
Linda DionSenior Insurance Analyst
Michael RobertsInsurance Analyst
Debra VioletteInsurance Analyst
Patricia WoodsInsurance Analyst
Lisa LewisAssistant Insurance Analyst

Telephone Numbers:

Toll Free (in-state):	800-300-5000
Out-of-state:	207-624-8475
Fax:	207-624-8599

Website: www.maine.gov/pfr/insurance
E-mail link: Insurance.PFR@maine.gov

Mailing Address:

**34 State House Station
Augusta, Maine 04333**

Physical Location:

**76 Northern Avenue
Gardiner, Maine 04345**

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I. Overview

Pursuant to 24-A M.R.S.A. § 4321(J), this report details the 2010 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 focuses on consumer assistance, outreach and oversight of insurer compliance with the Insurance Code (Title 24-A) and Bureau regulations.

A. Responsibilities

The CHCD is responsible for:

- Investigating and resolving consumer complaints related to health, disability, long-term care and life insurance;
- Reviewing and approving the policy 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 measures;
- Approving registrations for preferred provider arrangements (PPAs);
- Approving licenses of viators;
- Developing outreach and educational materials;
- Drafting reports on issues involving health policy;
- Conducting the Quality Oversight of commercial Health Maintenance Organizations (HMOs);
- Tracking, trending and analyzing data;
- Responding to consumer inquiries;
- Analyzing consumer complaint data for trending purposes;
- Reviewing complex complaints that include determinations of medically necessary care and complex health questions;
- Conducting outreach to a variety of groups including other State agencies;
- Providing information to consumers regarding health care plan options and obtaining health care coverage and services; and
- Assisting health, disability, long-term care, and life insurance consumers in understanding their rights and responsibilities.

“...I want to sincerely express my appreciation for your efforts. In my former life, I was quite used to being able to successfully resolve most conflicts. That only makes me more impressed with your progress in breaking what was rapidly becoming an entrenched logjam.” – *Consumer, August 30, 2010*

B. Consumer Assistance, Consumer Outreach and Licensing Activities

1. Consumer Assistance

One of the most important duties of the CHCD 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), and mailing issue-related brochures. Staff also responds to written inquiries from 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 outside the Bureau's jurisdiction are referred to the appropriate federal agency.

In addition to inquiries, staff also receives and investigates written consumer complaints. Maine consumers may file a complaint by completing a CHCD complaint form, which authorizes staff to contact insurance company representatives and health care providers in order to investigate the dispute. Consumers can file complaints electronically on the Bureau's website. In recent years, use of the Bureau's online complaint form has increased.

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 law and regulations.

The complainant is kept informed of the progress of the investigation and at times may be requested 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 when resolving complaints.

Some complaints involve allegations that the insurance company has not properly handled a consumer's appeal of an 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 of the case following the two levels of internal appeals. The Bureau ensures that carriers provide consumers with their appropriate appeals rights. 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 the Bureau of Insurance does not have jurisdiction. In such cases, the jurisdictional issue is explained, and the consumer is directed to the regulatory agency with jurisdiction to investigate and enforce.

In cases involving an urgent need for immediate assistance, CHCD staff can promptly intervene on behalf of the consumer to ensure that the carrier complies with its legal obligations.

Examples include denial of a surgical procedure or needed inpatient stay. 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.

In cases in which the insurer has inappropriately denied a claim or otherwise acted improperly, the Bureau works to see that benefits are properly paid to the consumer. In cases in which 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. External Review

After exhausting the two level internal appeals process provided by 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 paid for 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.

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 services available through the Bureau of Insurance. This includes public speaking engagements and CHCD participation in public forums and events throughout the year.

Public speaking and other outreach events in which the CHCD participated in 2010 included:

- AARP – Bangor
- Diabetes Aging Out - Portland
- Living with Cancer – Augusta
- Maine Partnership for Financial Literacy – Augusta
- Senior Spectrum – Bangor
- 20th Anniversary Maine Geriatric Conference - Bar Harbor
- Potato Blossom Festival – Fort Fairfield
- Bureau Outreach - Lewiston, Greenville, Ellsworth, Brunswick
- Disability Presentation – Portland

- Blueberry Festival – Machias
- Common Ground Fair - Unity
- Annual Area Agency on Aging Conference – Northport
- CMS – Ellsworth
- Elder Outreach – Presque Isle
- CMS – SHIPs – Waterville
- Redington Fairview Hospital – Skowhegan
- York Senior Center – York
- Marvin Towers – Augusta

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

4. Licensing Activity

a. Medical Utilization Review

“Medical Utilization Review” 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. Medical Utilization Review (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 to 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. Licenses are issued based on the company’s representation of compliance with all applicable standards. Licenses must be renewed annually.

A list of Maine licensed UREs can be found on the Bureau’s website at: www.maine.gov/insurance/producer/utilization_review.htm under the *Producer/Business Entity Information* link. Licensed companies can also be located by using the website’s “Find a licensee” feature.

In 2010, three new UREs were licensed in Maine, bringing the total number of licensees to 70.

b. Preferred Provider Arrangements

The CHCD reviews and registers preferred provider arrangements (PPAs). A “preferred provider arrangement” is a contract, agreement or arrangement between an insurance carrier or plan administrator and a provider in which 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 accessibility, utilization review, grievance and appeal procedures, provider compensation, consumer notification, and emergency access requirements.

In 2010, 19 new arrangements applied for registration, with 11 meeting the registration requirements, bringing the total number of arrangements to 37. A list of Maine licensed preferred provider arrangements can be accessed at the Bureau’s home page under the *Producer/Entity Information* link.

c. Viatical Settlement Producers and Providers

The CHCD is responsible for licensing viatical and life settlement producers and providers. A viatical settlement occurs when a person with a terminal or chronic illness sells his or her life insurance policy to a third party for a cash payment that is less than the full amount of the death benefit. If the seller is not terminally ill, the transaction is called a life settlement. In either case, the person selling the policy is the viator. The third party who purchases the policy is the settlement provider. A settlement producer represents the viator in seeking a settlement with a settlement provider.

In 2010 three new viatical and life settlement providers were licensed in Maine, bringing the total number to 20.

d. Managed Care Provider Networks

The CHCD staff reviews managed care provider networks to determine if they comply with the accessibility standards of Maine law. Primary care services must be available within a 30-minute drive time from the home of each member of a managed care plan, and specialty and hospital services must be available within a 60-minute drive time of the member’s home.

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. Staff are notified when contractual relationships between an insurance carrier and providers dissolve, creating the possibility that enrollees may not have access to a participating provider. The CHCD staff monitors the situation to assure carriers are complying with Maine law by providing consumers with adequate notice and opportunity to find alternative providers and by ensuring needed continuity of care is provided to consumers currently receiving medical services.

5. HMO Quality Oversight

The Bureau of Insurance has regulatory oversight of Health Maintenance Organizations (HMOs) operating in Maine. An HMO is a health insurance plan that entitles its members to receive services from participating physicians, hospitals, and other providers in exchange for their monthly premium and cost sharing, such as copays or coinsurance. The CHCD staff conducts on-site quality review examinations of HMO offices, including reviewing sample files.

Pursuant to Title 24-A, M.R.S.A. § 4215, the Bureau notifies each HMO to be examined that the CHCD staff will conduct a coordinated, on-site State examination of the quality of the carrier's health care and customer services. To minimize duplication of time and resources, examinations are coordinated with each HMO's triennial National Committee for Quality Assurance (NCQA) accreditation review cycle. (Although participation in NCQA's accreditation and certification programs is voluntary, all HMOs operating in Maine currently participate.)

Specific areas reviewed by CHCD staff include utilization review programs, provision to consumers and providers of toll-free information numbers, benefit decision notifications and emergency room services. CHCD staff also review HMO networks for a variety of quality-related factors, including appropriate member/provider ratios, 24-hour Emergency Room access, geographic accessibility, reasonable appointment and waiting times, and coordination and continuity of care.

The CHCD exam team conducts HMO examinations using a two-part process. First, the team receives a copy of the HMO's NCQA accreditation report. The review team uses the NCQA's findings to credit the HMO for compliance with any State standards that are equivalent to NCQA standards. Second, the team returns to the HMO to assess its compliance with State-specific standards not covered by NCQA. The team then develops a report of its findings.

The Bureau works closely with NCQA on data elements and the review schedule; a CHCD staff person is a member of NCQA's Public Sector Advisory Council, along with other state and federal officials. Copies of the exam reports are posted on the Bureau's website at www.maine.gov/pfr/insurance/hmo/index.htm.

6. Policy Form Review

Another vital role of the CHCD is to review and approve insurance company rate and form filings. The CHCD receives form filings in electronic format. Electronic filings are submitted 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 2010, CHCD received 2,584 form filings, and approved 2,198 filings.

Insurance companies now have the opportunity to file certain forms for review and approval with the Interstate Insurance Product Regulation Commission (IIPRC), better known as the "Compact." Insurance products which 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 36 states, including Maine, as well as in Puerto Rico. At the beginning of 2010, the number of forms approved by IIPRC for use in Maine totaled 1,160.

II. Statistics

A. Consumer Inquiries and Complaints

1. Inquiries

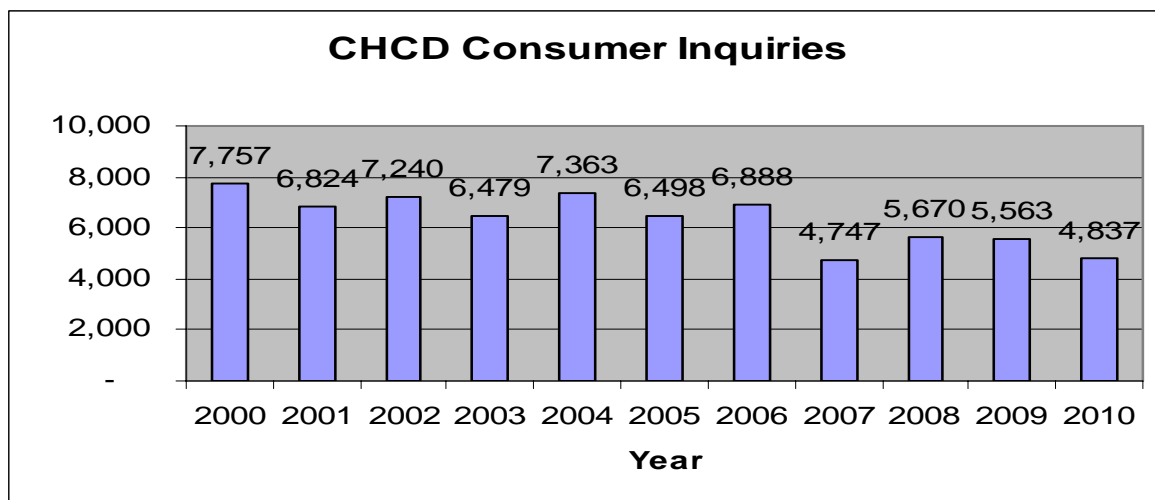
The CHCD assists consumers with inquiries and complaints. An “inquiry” is when a consumer calls to obtain general information on insurance issues, such as a specific line of insurance or an insurance company, or to complain generally about a regulated person or entity but not regarding any specific dispute.

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, 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 the share of premiums written. Complaint index reports are available on the Bureau’s website at www.maine.gov/pfr/insurance/consumer/Health_Complaint_Comparison2010.htm.

CHCD staff answered 4,837 telephone and written inquiries during 2010. The most frequent inquiries related to:

- Individual insurance;
- Medicare; and
- Claim denials.

Figure 1 illustrates the number of telephone and written inquiries received from 2000 – 2010.
Figure 1



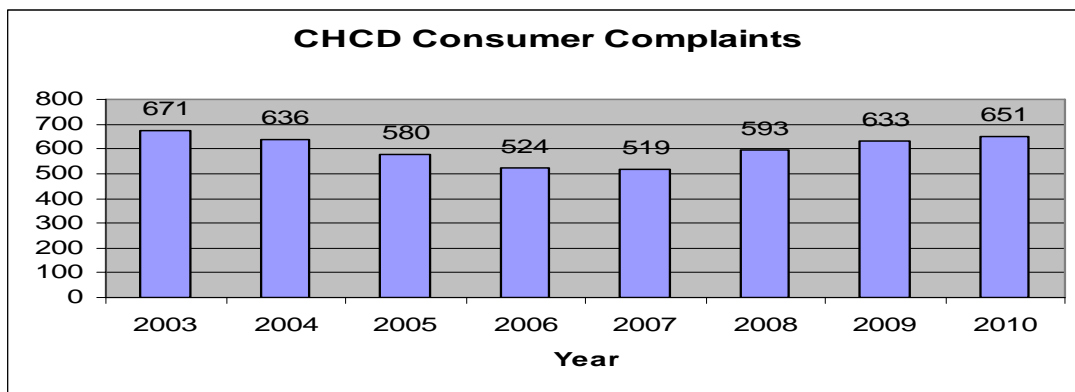
The CHCD staff answered an additional 55 requests for constituent assistance from state and federal legislative officials. Like telephone inquiries, these requests for assistance encompass a wide range of health or life and disability insurance issues.

2. Complaints

During 2010, the CHCD responded to 651 written health, disability, annuity and life insurance complaints filed by health plan enrollees, policyholders, insurance producers, and health care providers. The complaints involved insurance carriers, utilization review entities, and third party administrators.

Figure 2 illustrates the number of written complaints filed with the CHCD from 2003-2010.

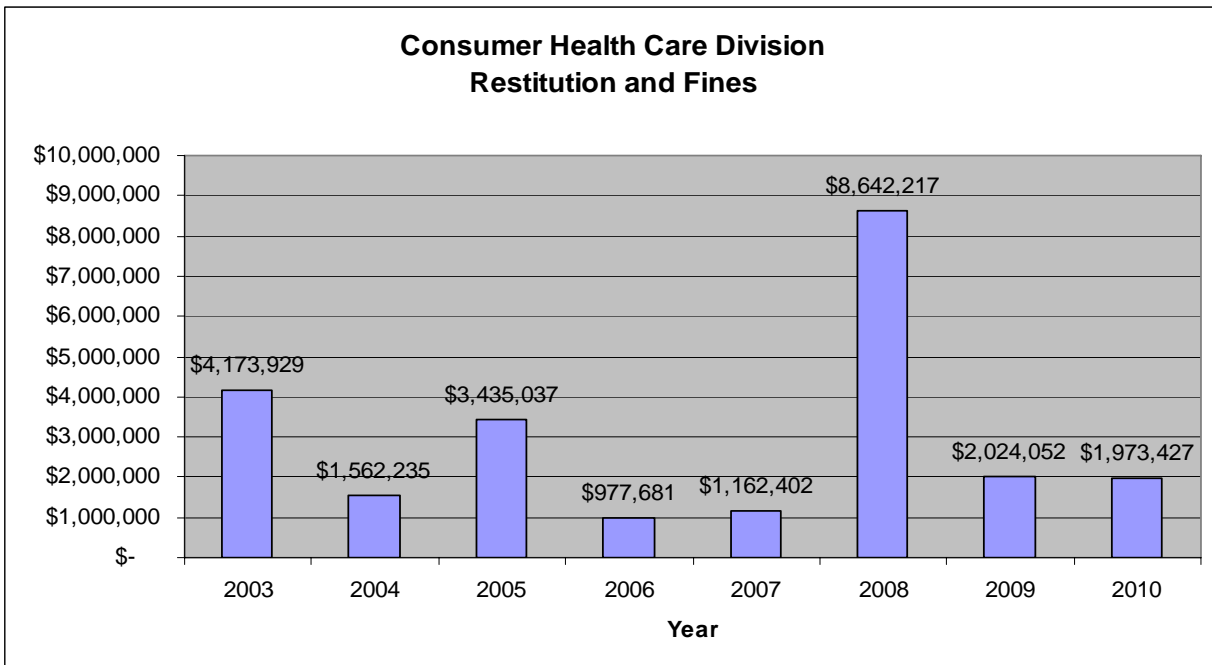
Figure 2



As part of the complaint investigative process, CHCD staff works to obtain restitution for consumers in cases in which consumers have suffered a financial loss due to improperly denied claims or claims which were not paid in accordance with the policy. During 2010, the CHCD staff obtained restitution of \$1,923,427 for complainants. Most often, the recovered funds were from previously denied claims.

In addition to restitution for consumers, in appropriate cases, the Bureau imposes civil penalties against violators. Figure 3 illustrates the total amounts of restitution obtained for consumers and civil penalties imposed by the Bureau from 2003 – 2010. The amounts of restitution and civil penalties vary from year to year depending upon specific losses to consumers and violations committed by licensed entities and individuals.

Figure 3



The 2010 total includes a \$50,000 civil penalty against Household Life Insurance Company. The 2009 total includes a \$500,000 civil penalty against Bankers Life and Casualty Company. The 2008 total includes \$1,000,000 in civil penalties and \$6,206,469 in refunds and interest payments to Maine policy holders ordered against MEGA Life and Health Insurance Company. The 2005 total includes a civil penalty of \$500,000 against Banker's Life and Casualty Company. The 2003 total includes a \$900,000 civil penalty against Cigna Healthcare of Maine, Inc. and Cigna Behavioral Health, Inc., as well as \$350,000 in civil penalties against Anthem Health Plans of Maine, Inc., and Maine Partners Health Plan, Inc., a subsidiary of Anthem Health Plans of Maine.

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 are either domiciled in Maine or write a significant volume of coverage for Maine residents. CHCD staff also meet with insurers who were subject to regulatory actions for significant violations of Maine law to help the insurers identify and correct problems at an early stage, before becoming systemic.

B. External Review

The CHCD contracted with four independent external review organizations in 2010: IMX Medical Management Services, Island Peer Review Organization (IPRO), Medwork Independent Review, and Maximus Federal Services.

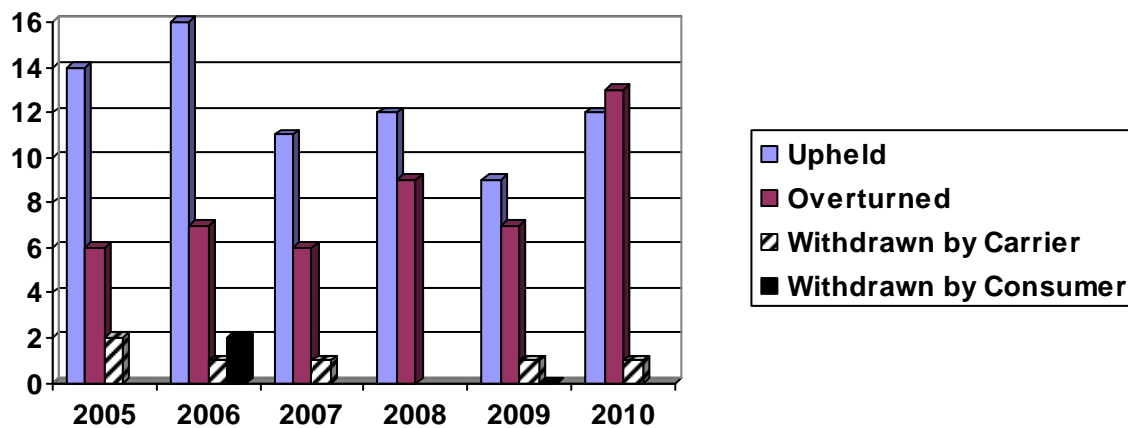
The CHCD processed 26 qualified requests for external review during 2010. The carrier's original decision to deny coverage was completely or partially overturned in thirteen cases (50%), and upheld in twelve cases (46%). One review was withdrawn because the carrier reversed its earlier decision and provided coverage.

The CHCD received additional requests for external review that did not qualify under the statute, either because the consumer had not exhausted the carrier's internal appeal process or because the denial was based on issues other than validity of the carrier's medical decisions.

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 – 2010.

Figure 4

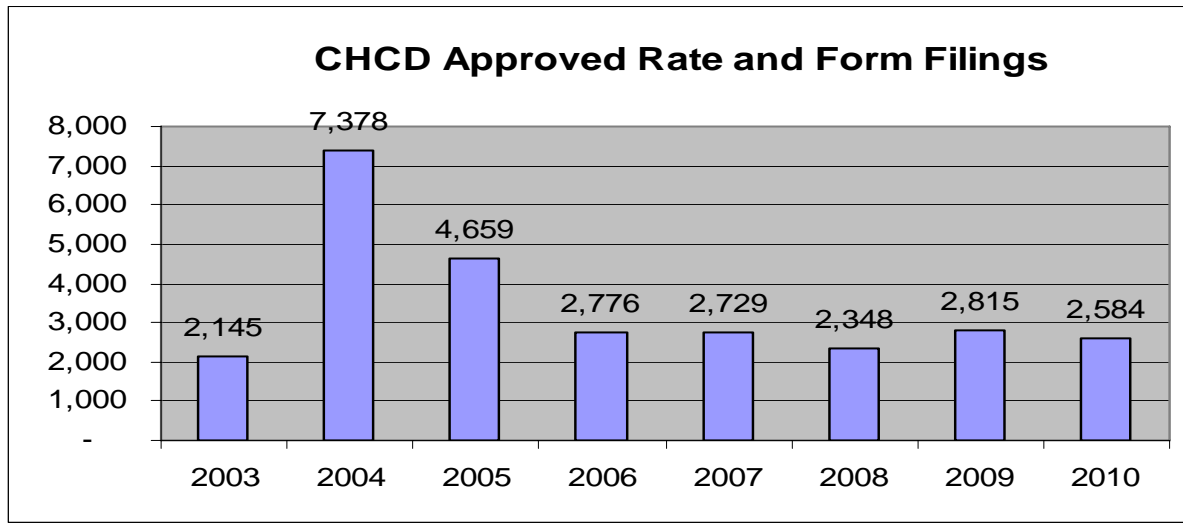
External Review Outcomes



C. Policy Form and Rate Review

During 2010, the CHCD approved 2,198 rate and form filings. The Bureau received a total of 2,584 rate and form filings. Some filings were disapproved, placed on file for information or withdrawn by the insurance company. There were 200 filings approved by the Interstate Insurance Product Regulation Commission (Interstate Compact) for use in Maine. Those filings were not reviewed by the Bureau of Insurance and are not included in Figure 5 below.

Figure 5



III. Legislative and Regulatory Activities

A. Advisory Council for Health Systems Development

Staff attended meetings of the Advisory Council for Health Systems Development (created by Title 24-A M.R.S.A. Ch. 87) and the Council’s Payment Reform Subcommittee. The major task for these groups during 2010 was to discuss key elements of the Patient Protection and Affordable Care Act of 2010 (“ACA”), and how the ACA could be implemented to the State’s best advantage. Recommendations are found in the report, “Options and Opportunities for Implementing the ACA in Maine” (December 17, 2010), located at www.maine.gov/healthreform/.

B. Long-Term Care Partnership Project

Maine’s Long-Term Care Partnership Program, established by Title 22 M.R.S.A. § 3174-GG, was launched with a retroactive effective date of July 1, 2009, following approval from the Centers for Medicare and Medicaid Services (CMS) on November 10, 2009. The Bureau issued Bulletins 367, 368, and 369 on January 22, 2010, clarifying the inflation protection requirements for policies qualifying for Maine’s Long-Term Care Partnership Program. The Bureau further developed a Long-Term Care Form Filing Certification and Checklist for insurance companies filing both Partnership and non-Partnership form filings. During 2010, the Bureau reviewed and approved 27 Partnership policies.

The Partnership Program operates under the direction of the Maine Department of Health and Human Services in consultation with the Bureau. It is intended to encourage the purchase of long-term care insurance policies so persons will be less reliant on MaineCare if long-term care

services are needed. Under the Partnership Program, individuals who purchase policies meeting certain requirements can apply for MaineCare assistance under special rules determining financial eligibilities and estate recoveries. These rules generally allow an individual to protect assets equal to the insurance benefits received from a Partnership policy so that such assets will not be taken into account in determining MaineCare financial eligibility and will not be subject to MaineCare liens and recoveries.

C. NAIC Committee Participation

CHCD staff actively participate in several working groups and task forces of the National Association of Insurance Commissioners (NAIC), 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 has sought to develop best practices and guidelines for use by state insurance regulators in developing information disclosures to consumers.

IV. Conclusion

After declining for several years, the number of consumer complaints received by CHCD has increased for the past four years (see Figure 2). The CHCD analyzes consumer complaints and inquiries to identify complaint patterns and carrier-specific complaint trends. When trends are identified, the Bureau works to ensure that carriers cease illegal activities and that they operate in compliance with Maine law. In addition to regular communications with insurance carriers, violations of the Insurance Code committed by insurance companies and agents are prosecuted by the Bureau through enforcement actions.

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 increasingly complex issues.

For additional information, please contact the Consumer Health Care Division at the Maine Bureau of Insurance by calling toll free 1-800-300-5000 or by visiting the Bureau's website at www.maine.gov/pfr/insurance.