

**Maine Bureau of Insurance**  
***Consumer Health Care Division***  
***Annual Report to the Legislature for 2018,***  
***Incorporating the Division's Annual Report***  
***on External Reviews***

May 2019

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## **I. Overview**

Pursuant to Title 24-A M.R.S.A. § 4321(J), this report details the 2018 activities of the Consumer Health Care Division (CHCD) of Maine's Bureau of Insurance (Bureau), within the Department of Professional and Financial Regulation (DPFR). The CHCD provides consumer assistance, outreach, and oversight of insurance companies for compliance with the Insurance Code (Title 24-A) and Bureau regulations. This report also incorporates 2018 external review details as required by § 4312 (7-A).

### **A. Responsibilities**

The CHCD is responsible for regulation related to health, Medicare supplement, disability, long-term care, annuities, and life insurance. Its responsibilities are detailed as follows:

- Investigates and resolves consumer complaints;
- Responds to consumer inquiries;
- Assists consumers in understanding their rights and responsibilities;
- Reviews and approves forms, such as certificates of coverage or summaries of benefits;
- Licenses medical utilization review entities (UREs);
- Provides oversight of the external review process and contracting with independent medical review entities;
- Drafts and reviews regulations;
- Brings enforcement actions against licensed entities when violations occur;
- Reviews managed health care plans for compliance with Maine's provider network adequacy standards;
- Reviews and approves registrations for preferred provider arrangements (PPAs);
- Develops outreach and educational materials;
- Coordinates compliance with the federal Affordable Care Act (ACA), as it pertains to the commercial health insurance market;
- Drafts legislative reports;
- Reviews complaints that include determinations of medically necessary care and complex health questions;
- Conducts outreach to a variety of public and private groups;
- Participates in public-private efforts to improve health payment policy.

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

### **1. Consumer Assistance**

#### **a. Consumer Inquiries**

One of the CHCD staff's most important duties is to provide assistance and information to consumers. Staff members answer callers' questions, refer them to the Bureau's website ([www.maine.gov/insurance](http://www.maine.gov/insurance)) for additional information, and mail issue-related brochures as needed. They also respond to written inquiries including emails, in-person visits by consumers, and constituent referrals from legislators and the Governor's office.

For topics not within the Bureau's jurisdiction, the CHCD refers consumers to the appropriate agency. For example, if consumers have questions about MaineCare, staff refers them to the Maine Department of Health and Human Services. Those with questions about federal laws are referred to the appropriate federal agency.

#### **b. Consumer Complaints**

Staff investigate written consumer complaints. Consumers completing a CHCD complaint form – either in hard copy or electronically through the Bureau's website -- authorize staff to contact insurance companies to investigate the dispute.

When a written and signed complaint is received for which CHCD has jurisdiction, a staff investigator is assigned to the case. The investigator directs the insurance carrier to respond to the consumer's allegations. CHCD staff review the carrier's response and supporting documentation to determine if these comply with the terms of the insurance policy, as well as with laws, and regulations. The complainant is kept informed of the progress of the investigation and may be asked to provide additional information. Complex issues may require significant staff time to gather facts and correspond with relevant parties.

In a case involving an urgent need for assistance – e.g., denial of a surgical procedure, medication, or inpatient stay – CHCD staff can promptly intervene on behalf of the consumer to ensure that the carrier complies with its legal and contractual obligations.

If the insurer has inappropriately denied a claim or otherwise acted improperly, the Bureau works to make sure that the company pays benefits to the consumer according to the law and the policy's requirements. If the insurer has acted properly, staff explains the basis and rationale for this conclusion to the consumer.

The Bureau sometimes receives complaints involving issues over which it has no jurisdiction, such as for the Employee Retirement Income Security Act (ERISA) plans. In such cases, the jurisdictional issue is explained, and the consumer is directed to the appropriate regulatory agency, such as the U.S. Department of Labor.

### c. Appeals

The Bureau ensures that carriers provide consumers with information about their appeal rights. Some complaints involve allegations that the insurance company has not properly handled a consumer's appeal. Under Maine law, health insurance carriers are required to offer two levels of internal appeals to the consumer. The carrier's appeals process is separate from the Bureau's complaint investigation, and consumers are advised that they can proceed simultaneously with both an appeal and a complaint.

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

Pursuant to 24-A M.R.S. § 4321, after proceeding through at least one of two levels of their insurance carrier's internal appeals processes, consumers have the right to request an independent external review for denials involving medical necessity, pre-existing conditions, experimental treatments, and denials based on disputes in diagnosis, care or treatment. CHCD staff coordinate independent external reviews and assign each review to one of three contracted External Review Organizations (EROs). The Bureau assigns the case to an ERO having no affiliation with the insurance carrier involved in the appeal.

During an external review, the ERO conducts an independent clinical peer review of the case. The insurance carrier pays for the external review, not the consumer. The decision of the external review is binding only on the carrier; the consumer can pursue private legal action as an additional remedy.

## **3. Long-term Care Insurance Independent External Review**

Pursuant to 24-A M.R.S. § 5083 and Bureau of Insurance Rule Chapters 420 and 425, consumers have the right to external reviews of claim denials involving benefit triggers and certain policy limitations/exclusions that require the professional judgment of a health care professional. The Bureau oversees the external review process and has contracted with two EROs specifically for long-term care appeals. There were no requests for Long-term Care external reviews in 2018.

## **4. Outreach and Education**

An ongoing CHCD priority is to educate Maine consumers about their rights under our insurance laws and about the Bureau services available to them. This is in part accomplished through public speaking engagements and participation in outreach events. In 2018, CHCD participated in the following outreach and education efforts:

- Maine State Chamber *Healthcare Forum*, Augusta
- Southern Maine Agency on Aging *Volunteer Medicare Supplement Training*, Westbrook
- Bureau's *Public Informational Meeting regarding Federal ACA 1332 Waiver*, Bangor
- Bureau's *Public Informational Meeting regarding Federal ACA 1332 Waiver*, Portland
- Eastern Area Agency on Aging *Volunteer Medicare Supplement Training*, Bangor (via Skype)
- University of Maine Senior College, *Life, Health & Long-Term Care Insurance 101*, Presque Isle
- Maine Council for Elder Abuse Prevention *Elder Abuse Summit*, Augusta
- JumpStart *Fostering Financial Education in Maine Schools Conference*, Augusta
- Aroostook Area Agency on Aging *Aging Well Living Well Expo*, Presque Isle
- Eastern Area Agency on Aging *Senior Expo*, Bangor
- Seniors Plus *Volunteer Medicare Supplement Training*, Lewiston
- Maine Association of Retirees *Annual Meeting*, Augusta
- Senior Spectrum *Healthy Aging Expo*, Hallowell
- New England Assoc. of Insurance Compliance Professionals *Annual Conference*, Sturbridge MA
- Southern Maine Area Agency on Aging *Volunteer Medicare Supplement Training*, Westbrook
- University of New England *Maine Geriatrics Conference*, Bar Harbor
- Potato Blossom Festival, Presque Isle
- Mollyckett Day, Bethel
- Bureau's *Public Informational Meeting regarding 2019 ACA Rates*, Bangor
- Bureau's *Public Informational Meeting regarding 2019 ACA Rates*, Portland
- Winter Harbor Lobster Festival, Winter Harbor
- Machias Wild Blueberry Festival, Machias
- AARP Local Chapter, *Health, Life & Long-Term Care Insurance 101*, Hallowell
- Maine Council on Aging *Wisdom Summit*, Augusta
- Senior Spectrum/People Plus *Senior Expo*, Brunswick
- Common Ground Festival, Unity
- Health Care for ME (HC4ME) *Training for Marketplace Navigators/Assistors*, Augusta
- Seniors Plus *Aging Well Living Well Expo*, Newry
- Maine Primary Care Association *Annual Conference*, Bar Harbor
- Maine Public's *Maine Calling* (ACA Open Enrollment/Individual Marketplace), on air/Statewide
- Division of Disease Control *Annual Infectious Diseases Conference*, Augusta

As part of its ongoing consumer education mission, CHCD produces and updates many publications, including guides to 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, [www.maine.gov/insurance](http://www.maine.gov/insurance) under the "Consumers" section, as well as under "Publications & Reports" and "FAQs."

## 5. Licensing and Registration 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 must be licensed in Maine if they intend to conduct utilization reviews for plans providing coverage to Maine residents. Each applicant must, at a minimum, provide the Bureau with a detailed description of the review processes it uses for each review program, 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 MURs must certify compliance with Maine's utilization review requirements and all applicable standards. Licenses must be renewed annually. In 2018, there were 81 active licensed utilization review entities in Maine. Maine's licensed medical utilization review entities can be found by using the "Licensee Lookup" tool in the left menu of the Bureau's website at [www.maine.gov/insurance](http://www.maine.gov/insurance).

### 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 offer services to a health plan enrollee whose plan benefits include incentives to use that provider's services.

Staff reviews preferred provider arrangements for compliance with Maine statutes regarding provider accessibility/network adequacy, utilization review, grievance and appeal procedures, consumer notification, benefit level differential, and emergency service access requirements.

In 2018, 2 new arrangements applied for registration; both met the registration requirements, bringing the total number of arrangements to 71. Maine's registered preferred provider arrangements can be found by using the "Licensee Lookup" tool in the left menu of the Bureau's website at [www.maine.gov/insurance](http://www.maine.gov/insurance).



### 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 and regulations.

A carrier must notify the CHCD each time a contractual relationship between it and a group of providers dissolves, creating the possibility that enrollees may not have access to a category of participating providers. Carriers must provide consumers with adequate notice and opportunity to find alternative providers. They must also ensure that consumers currently receiving medical services receive continuity of care. The CHCD staff closely monitors the situation to assure that carriers comply with Maine law.

## **6. Policy Form Review**

Another vital role of the CHCD is to review and approve insurance company rate and form filings to ensure compliance with 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).

The Bureau's Life and Health Actuarial Unit reviews life, long-term care, and health insurance rates for compliance with Maine law. The unit disapproves rate increases that are excessive, inadequate or unfairly discriminatory.

In 2018, CHCD and Life & Health Actuarial staff managed the review of forms and rates associated with the sixth year (2019) of the federal Affordable Care Act's Health Insurance Marketplace, using both SERFF and the Centers for Medicare and Medicaid Services (CMS) Health Insurance Oversight System (HIOS).

Insurance companies can file certain forms for review and approval with the Interstate Insurance Product Regulation Commission (IIPRC), better known as the "Compact." Insurance products permitted by IIPRC include life insurance, annuities, disability income, and long-term care insurance. IIPRC's approval of forms is recognized in 45 states, including Maine.

## II. Statistics

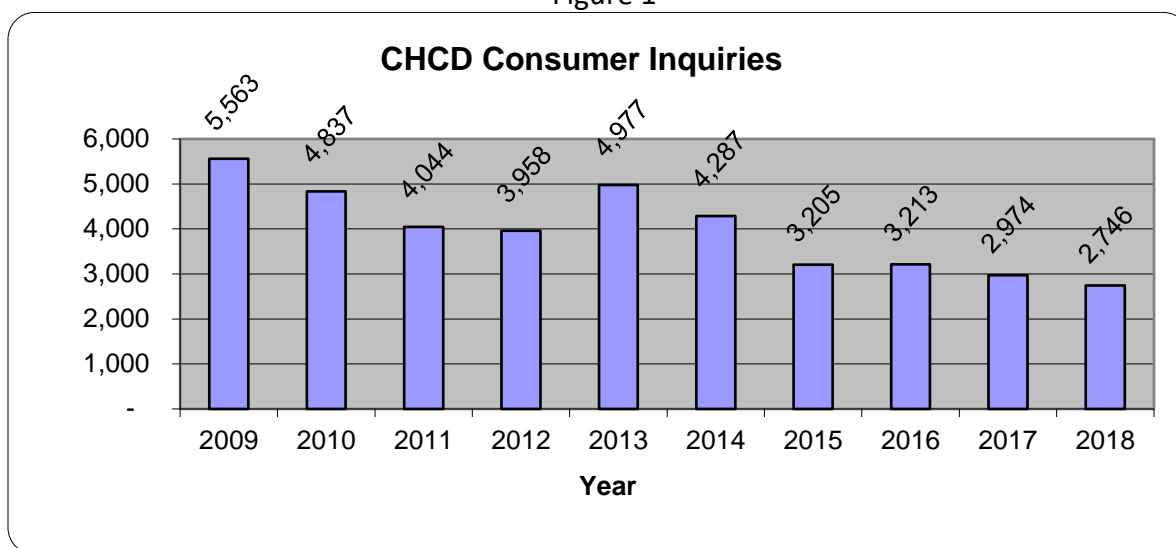
### A. Consumer Inquiries and Complaints

#### 1. Inquiries

An “inquiry” is a consumer call or written/electronic request for 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.

CHCD staff answered 2,746 telephone and written inquiries during 2018. The most frequent inquiries were related to individual insurance, Medicare Supplement, and claim denials. Figure 1 illustrates the number of telephone and written inquiries received from 2009–2018.

Figure 1



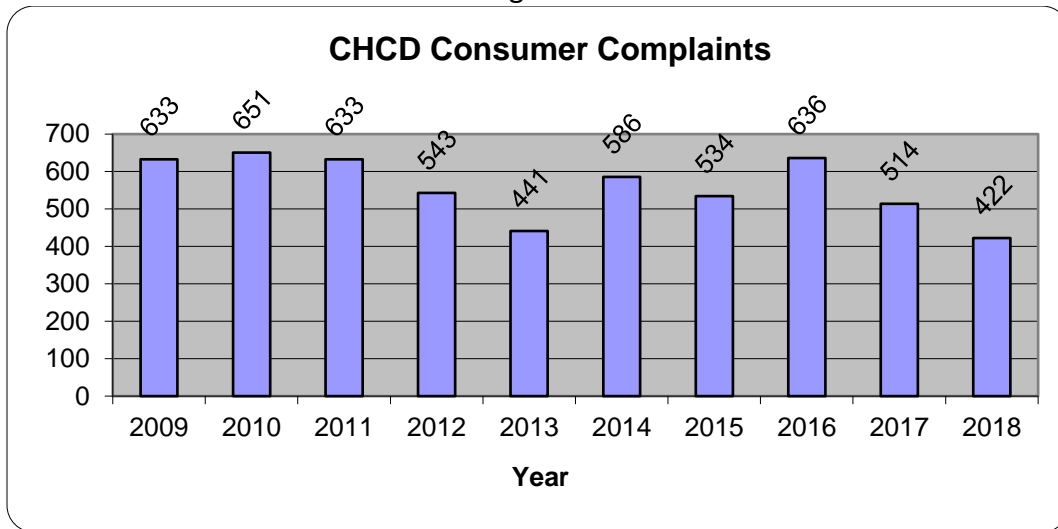
CHCD staff also answered 32 requests for constituent assistance from state and federal officials.

#### 2. Complaints

A “complaint” is defined in Title 24-A M.R.S. § 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.”

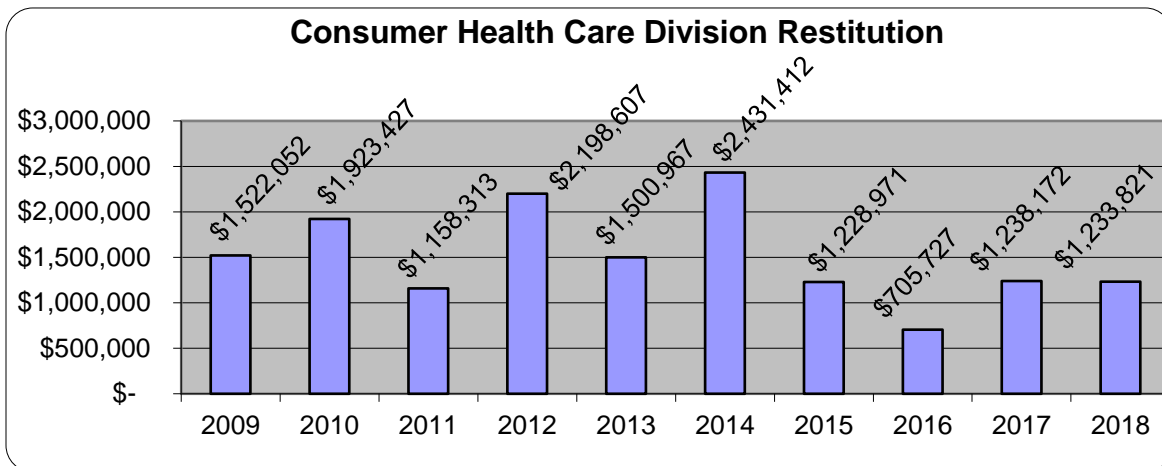
During 2018, the CHCD responded to 422 new written health, disability, annuity, and life insurance complaints. Figure 2 illustrates the number of written complaints filed with the CHCD from 2009-2018.

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 recovered \$1,233,821 for complainants during 2018. Most often, the recovered funds were from previously denied claims.

Figure 3



In addition to *investigating* consumer complaints, 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. CHCD stays in close communication with carriers if problems arise, e.g., a carrier's consumer hotline goes down for a day.

On a yearly basis, the CHCD compiles a "complaint index" comparison of Maine health insurance companies. The complaint index compares the share of complaints against a company to their share of the market. The most recent report is available at [www.maine.gov/insurance/consumer/consumer\\_guides#health](http://www.maine.gov/insurance/consumer/consumer_guides#health)

## **B. External Review**

In 2018 the CHCD went through the contracting process for independent external review organizations; seven responded to the request for proposal, and three were selected: National Medical Review, Maximus Federal Services, Inc., and Island Peer Review Organization (IPRO). These contracts were approved to begin on July 1, 2018.

In 2018, the CHCD received a total of 55 requests for external review:

- 17 were not completed because the consumer did not return the necessary signed releases to continue the process;
- 8 requests did not qualify for external review (they either did not utilize the internal appeal process prior to requesting external review or the denial was based on issues other than the validity of the carrier's medical decisions);
- Of the 30 remaining requests, 26 were completed by January 1, 2019;
- Of the 26 completed requests, 15 overturned the carrier's prior decision, 8 upheld the carrier's decision, it, and 3 were withdrawn.

Twenty cases were heard regarding medical necessity of treatment:

- 4 mental/behavioral health or substance abuse treatment;
- 4 medical device or equipment;
- 3 medication therapy;
- 2 lab tests;
- 3 air ambulance; and
- 4 general treatment decisions.

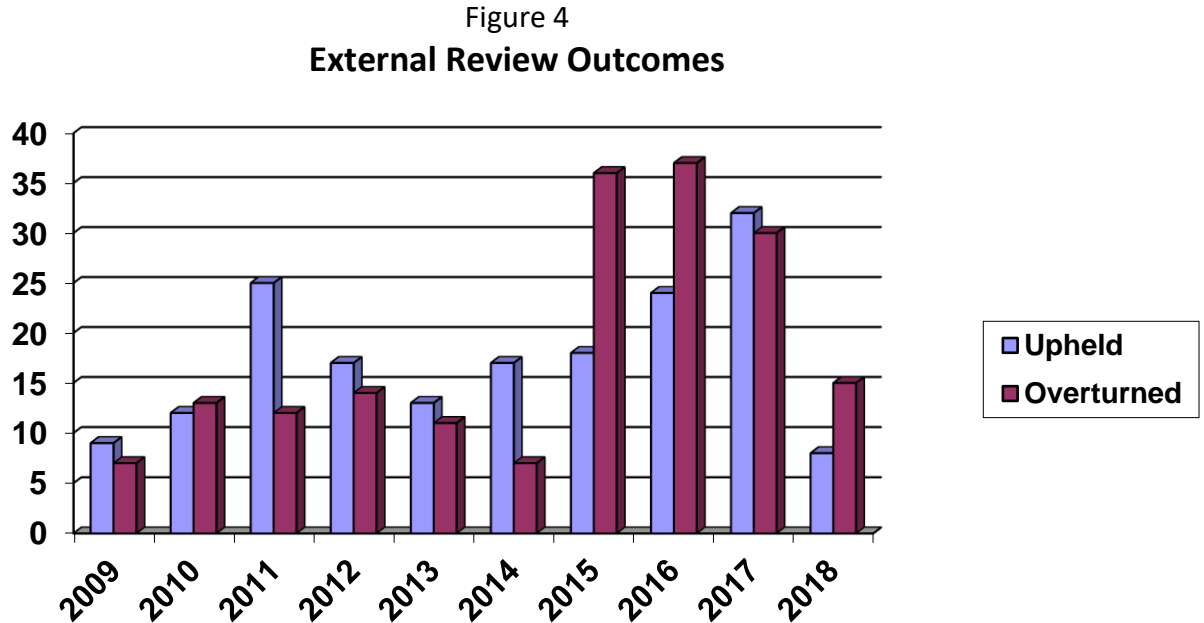
Ten decisions were related to whether the treatment provided was experimental or investigational:

- 6 lab tests; and
- 4 general treatment decisions.

Pursuant to Title 24-A M.R.S. § 4312 (7-A) the following table illustrates the status of external reviews by insurance carrier for 2018:

	2018 External Review						
	Total	Anthem	Aetna	CIGNA	Community Health Options	Harvard	Express Scripts
<b>55 External Review Requests</b>							
Not qualified	8	3	1	2	2	0	0
Consumer didn't complete process	17	9	3	1	3	1	0
<b>30 Approved/Submitted for External Review</b>							
Withdrawn prior to hearing	3	1	0	0	1	0	1
Upheld	8	6	0	0	1	1	0
Overturned	15	10	1	2	0	2	0
Partially Overturned	0	0	0	0	0	0	0
Not completed before 1/1/19	4	2		1		1	
<b>Breakdown by Qualifying Issue:</b>							
Experimental/Investigational	10	7	0	2	0	1	0
Pre-Existing Condition	0	0	0	0	0	0	0
Care/Treatment/Diagnosis	0	0	0	0	0	0	0
Medical Necessity	20	11	1	2	2	3	1

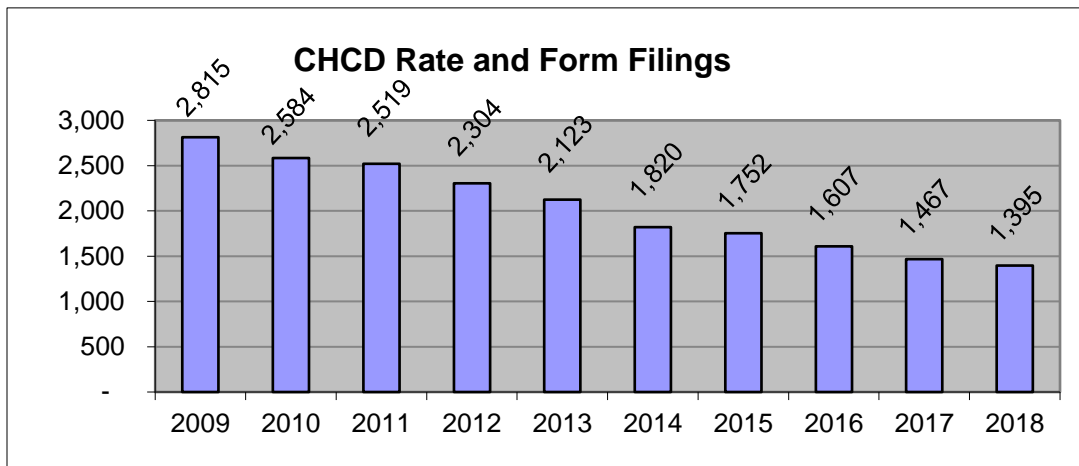
Figure 4 illustrates the number of external reviews upheld or overturned.



### C. Policy Form and Rate Review

In 2018 CHCD reviewed 1,395 insurance contract form filings: 567 were filed for information only; 28 were approved as submitted; 689 were approved subject to modifications; and the balance were either disapproved, withdrawn, or in process at year's end.

Figure 5



### III. Legislative and Regulatory Activities

#### A. Regulatory Changes

In 2018, CHCD staff drafted a revision to one rule and held a stakeholder meeting on another:

- Rule 275 – Medicare Supplement Insurance, 2018 amendments effective December 26, 2018
- A second stakeholder meeting was held on a proposed Stop Loss draft rule June 11, 2018.

The CHCD also assisted in issuing the following bulletins:

- Bulletin 431—Short-Term Health Insurance
- Bulletin 430—Requirement to Accept Referrals from Out-of-Network Providers
- Bulletin 429—Tax Credit for Employer-Offered Disability Insurance (Supersedes Bulletin 425)
- Bulletin 428—Extension of Transitional Authorization to Review Small Group Health Plans (Supersedes Bulletin 420)
- Bulletin 427—Uniform Deadlines for Rate, Form and QHP Filings for Non-Grandfathered Individual and Small Group Health Plans with Effective Dates of Coverage During 2019
- Bulletin 425—Tax Credit for Employer-Offered Disability Insurance (Superseded by Bulletin 429)

CHCD also assisted in the successful submission of a federal 1332 Waiver under the Affordable Care Act and the subsequent relaunch of the Maine Guarantee Access Reinsurance Association (MGARA), which had a positive impact on rates in Maine's 2019 Individual Health Insurance Market.

#### B. National Association of Insurance Commissioners (NAIC) Committee Participation

In addition to Superintendent of Insurance Eric Cioppa serving as NAIC's President-Elect in 2018, CHCD staff participated in numerous NAIC working groups:

- **The ERISA Working Group** monitors, reports and analyzes developments related to ERISA, and makes recommendations regarding NAIC strategy and policy with respect to those developments.

- **The Health Actuarial Task Force** identifies, investigates and develops solutions to actuarial problems in the health insurance industry.
- **The Senior Issues Task Force** considers policy issues and develops regulatory standards and consumer information for insurance issues specifically affecting older Americans.
- **The Long-Term Care Pricing Subgroup** discusses rate review of proposed rate increases.
- **The Long-Term Care Valuation Subgroup** discusses modifications to the long-term care insurance stand-alone asset adequacy Actuarial Guideline proposal.
- **The State Rate Review Subgroup** addresses issues related to implementation of the Affordable Care Act.



## **IV. Conclusion**

The Bureau works to ensure that carriers operate in compliance with our laws and regulations. The CHCD continues to assist consumers and analyzes consumer complaints and inquiries to identify complaint patterns. The CHCD staff regularly communicates with insurance carriers -- during complaint investigations, through meetings, and when providing regulatory interpretations of the Insurance Code.

In 2018, the CHCD continued to implement both state laws and the federal Affordable Care Act, including performing federally-facilitated health insurance marketplace plan management functions. The ACA has required staff to familiarize themselves with changes in federal regulations and to coordinate with insurance carriers to meet strict filing timeframes that are set at the Federal level. Insurance carrier representatives and consumers rely on the Bureau to interpret the new statutes and regulations.

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