

MAINE STATE LEGISLATURE

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**Maine Bureau of Insurance
Consumer Health Care Division
Annual Report to the Legislature for the Year 2008**



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I. Overview

This report is issued pursuant to Title 24-A, §4321(J) to detail the activities of the Consumer Health Care Division (CHCD) during 2008. The (CHCD) is one of several work units in the Maine Bureau of Insurance (Bureau), which is within the Department of Professional and Financial Regulation (DPFR). The CHCD focuses its efforts on consumer assistance, outreach, and oversight of insurer compliance with the Insurance Code (Title 24-A) and Bureau regulations.

A. Responsibilities

CHCD is responsible for the following activities:

- Investigating and resolving consumer health, disability and life insurance complaints;
- Reviewing and approving health insurance forms (policy language);
- 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 health insurance carriers and other licensed entities when violations occur;
- Reviewing managed care plans for compliance with provider network adequacy measures;
- Approving the licenses for preferred provider arrangements (PPAs);
- Approving the 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 received by telephone or by e-mail, as well as through one-on-one conferences;
- 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, and life insurance consumers in understanding their rights and responsibilities.

"...I want to thank you for helping me....I did not have much to live on. It took me a long time to get my husband's life insurance. Yes, you may close your file. They have sent me my money and are finally paying the bills....Thanks again so much. "-- Consumer, March 26, 2008

B. Background

- **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 web site (www.maine.gov/pfr/insurance), and mailing issue-related brochures. Staff also responds to consumer written inquiries. For topics not within the Bureau's jurisdiction, consumers are referred to the appropriate agency, such as the Maine Department of Health and Human Services (regarding MaineCare or elder issues, for example) and the U.S. Department of Labor (regarding such federal laws as ERISA, COBRA, or HIPAA). Many times, CHCD staff can contact the carriers to get immediate resolution or to expedite the appeals process.

In addition to inquiries staff also receives and investigates written consumer complaints. Enrollees and policyholders typically file complaints because an insurance company or health plan has denied a claim or service.

An individual or entity 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 web site. The CHCD has seen a significant increase in the number of complaints filed electronically using the online complaint form.

In conducting a complaint investigation, CHCD staff direct 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 CHCD staff includes a nurse consultant who has the knowledge required to answer medical necessity questions and resolve complex medical issues as they arise in the dispute of a medical or disability complaint investigation. 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.

The CHCD reviews each complaint to determine the proper jurisdiction for its review. We sometimes receive complaints filed by residents of other states who believe we are the agency for resolving complaints nationally. In such cases, the jurisdictional issue is explained and the consumer is directed to the appropriate agency in the appropriate state. Often, the complaint is with an employer or an insurance company (ERISA plan) outside the

Bureau's jurisdiction. In those instances, the consumer is directed to the regulatory agency with jurisdiction to investigate and enforce the provisions of the health insurance contract.

It is not uncommon for consumers to request immediate Bureau intervention when carriers deny services perceived as urgent by consumers and their providers. These situations generally occur when a surgical procedure or an inpatient stay has been denied by a carrier or health plan. CHCD staff has been able to resolve many of those situations immediately when it is evident that the carrier's denial is flawed or contrary to specific requirements in either the consumer's insurance policy or Maine law.

The staff frequently is able to assist consumers in achieving a favorable outcome; however, there are instances when the Bureau is unable to assist the enrollee or policyholder to his or her satisfaction. At times, CHCD staff must explain the basis and rationale for the carrier's decision and inform enrollees that the carrier has not violated Maine law. These cases generally include situations in which the carrier has appropriately administered contract exclusions or the plan is exempt from State regulation due to federal law. Even in those situations, however, staff takes the opportunity to provide consumers with information regarding insurance law, their rights and responsibilities, and the terms of their coverage. Consumers are provided information on the external review process administered by the Bureau of Insurance. The staff also refers those consumers to the U.S. Department of Labor or other agencies, as appropriate.

"I want to express my sincere thanks for your follow up regarding my complaint...Although disappointed with the result; I am gratified knowing that you and your staff took prompt action on my behalf. Thanks again."

-Consumer, September 2008

- **External Review**

Policyholders and enrollees have the right to request an external review when a health insurance carrier or HMO denies benefits for medically necessary health care services after exhausting the internal appeals process established by their insurance company or HMO. The review is external because a review organization having no affiliation with the insurance carrier is contracted by the Bureau to conduct the review. The decision of the external review is binding only on the carrier since policyholders and enrollees can seek private legal action as a remedy.

- **Outreach and Education**

A principal objective of the CHCD is to educate consumers on how to advocate for themselves, by explaining the insurance system and informing consumers of their rights under the insurance laws of Maine. The CHCD encourages communication between carriers and providers during outreach activities. This outreach provides opportunities for the public

to ask questions, obtain information, and file complaints about insurance related issues directly with CHCD staff members.

The CHCD also promotes coordination with other organizations that assist consumers, including the Maine Department of Health and Human Services, the Maine Health Data Organization, the Maine Advisory Council on the Education of Children with Disabilities, and the Long Term Care Stakeholders Group.

- **Licensing Activity**

Medical Utilization Review. 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. 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.

Preferred Provider Arrangements. The CHCD policy development specialist reviews and registers preferred provider arrangements (PPAs). 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. A list of Maine licensed preferred provider arrangements can also be accessed from the Bureau's home page under the *Producer/Entity Information* link.

Viatical Settlement Providers. The CHCD is responsible for reviewing and approving viatical settlement 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 (a viatical or life settlement provider), for a cash payment that is less than the full amount of the death benefit.

The CHCD staff reviews managed care entities' provider networks to determine if they comply with the accessibility standards set forth in Maine law and regulation. Managed care entity applications to expand their geographic service area are also reviewed by CHCD staff to determine if an adequate network of providers is available to render medical services to enrollees. The staff is often notified when contractual relationships between an insurance carrier and the provider community dissolve, creating the possibility that enrollees may not have access to a participating provider. The CHCD staff monitors the situation to assure enrollees are provided adequate notice and opportunity to find alternative providers and to make sure continuity of care for enrollees currently receiving medical services is addressed by the carrier.

- **HMO Quality Oversight**

The Bureau of Insurance has regulatory oversight of commercial HMOs operating in Maine. The CHCD staff visits HMO offices to sample files and conduct quality review examinations.

Pursuant to Title 24-A, § 4215, the Bureau notifies each HMO to be examined that the Bureau of Insurance 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, quality 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.)

The State 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.

"I wanted to take the time to let you know what an excellent and professional job CHCD staff did regarding my complaint...Had it not been for her, I would have never received a check from them for \$826.00. ...Please extend to CHCD staff my thanks for a job well done. "

-Consumer, June 13, 2008

- **Policy Form Review**

Another vital role of the CHCD is to review and approve insurance company policy forms. The CHCD receives form filings both in paper and 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).

Insurance companies now have the opportunity to file forms for review and approval with the Interstate Product Regulation Commission (IIPRC) better known as the "Compact." Insurance carriers offering national products in multiple states will likely file with the IIPRC rather than file forms with individual states such as Maine. The IIPRC's approval of forms is recognized in 29 states and Puerto Rico.

II. Statistics

A. Consumer Assistance

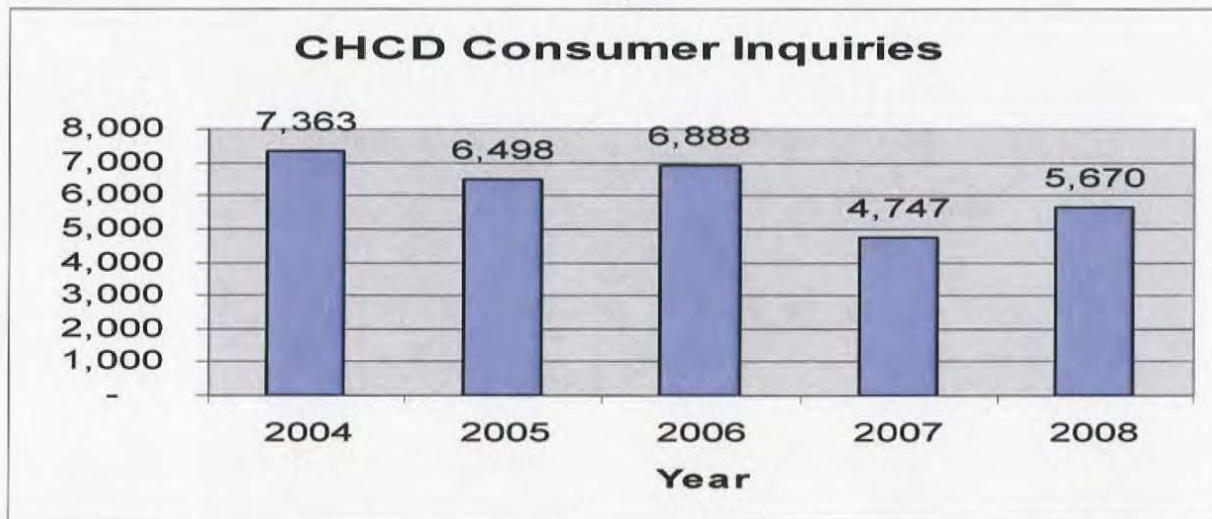
- **Inquiries**

CHCD staff responded to 5,670 telephone and written inquiries during 2008. The most frequent inquiries related to:

- Mega insurance company refunds
- Individual insurance
- Medicare
- Claim Denials

Figure 1 illustrates the number of telephone and written inquiries received for the years 2004 – 2008.

Figure 1



The CHCD staff responded to an additional 20 requests for consumer assistance from state and federal legislative officials who were contacted by constituents. Like the telephone inquiries, these requests for assistance on behalf of constituents encompass a wide range of health or life and disability insurance issues.

"In response to your letter of September 8, 2008, we are pleased to inform you that this complaint has officially been resolved...We cannot thank you enough for your adept knowledge and persistence. We were at a loss for direction. This whole event was bizarre to us but the resolution is more than satisfactory."

-Consumer, November 12, 2008

- **Complaints**

During 2008, the CHCD responded to 593 written health, disability 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.

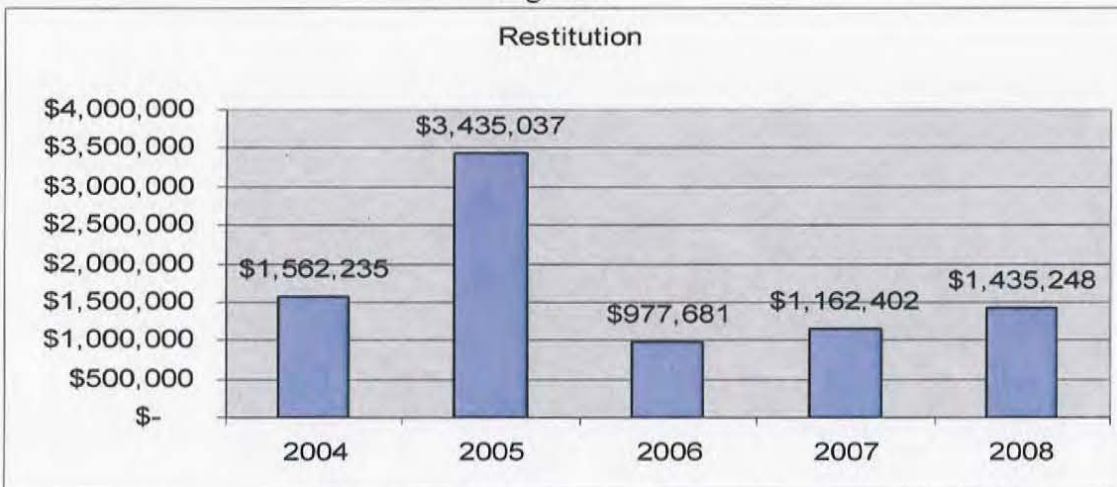
Figure 2 illustrates the number of written complaints filed with the CHCD.

Figure 2



During 2008, the CHCD staff obtained restitution of \$1,453,248 for complainants. Most often, the recovered funds were from previously denied claims. Figure 3 illustrates the restitution obtained for enrollees during 2004 - 2008. The amount of restitution obtained by CHCD staff varies year to year, reflecting the underlying value of the claims filed by enrollees.¹

Figure 3



¹ Pursuant to a consent agreement (INS- 07-1010) with Mega Life and Health Insurance Company premium overpayments and interest totaling \$6,200,470 was ordered to be returned to policyholders. An additional \$250,000 in penalties was paid by the insurance company to the State of Maine.

The CHCD staff works proactively with insurance carriers to identify trends in consumer complaints 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 this State or write a significant volume of coverage for Maine residents.

In the CHCD's analysis of 2008 consumer complaints and inquiries, two trends have persevered:

- Maine residents contacted the CHCD in search of affordable health insurance coverage; and
- Many residents who contact the CHCD are often confused about their benefits and the steps they must take to receive the maximum benefits under their policy.

"Thank you for helping me out on my mix up. It has been a success. My last check arrived July 5th. Thank you.."
--Consumer, July 9, 2008

B. External Review

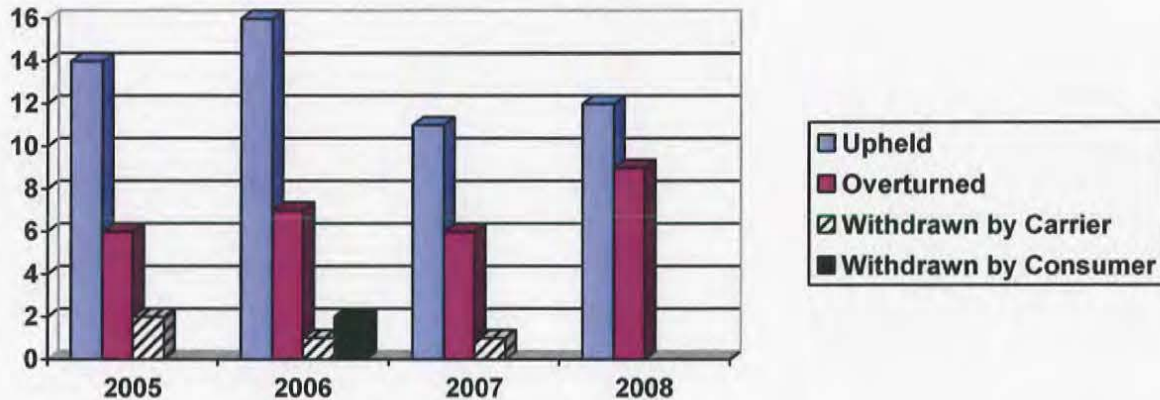
The Bureau contracted with three independent external review organizations in 2008: Island Peer Review Organization (IPRO), Medwork Independent Review and Health Strategies, Inc.

The Bureau processed 21 qualified requests for external review during 2008. The carrier's original decision to deny coverage was completely overturned in seven of these cases (33%), and upheld in 12 (57%). Two reviews, representing 10%, resulted in a partial overturn of the denial.

The CHCD received additional requests for external review that did not qualify under the statute, either because the consumer had not exhausted both levels of the insurance 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 that were overturned, upheld or withdrawn by either the carrier or consumer prior to the review for the years 2005 - 2008.

Figure 4.
External Review Outcomes
By Year



C. Outreach and Education

Division staff participated in several public speaking events in 2008, including;

- Maine Association of Agricultural Fairs
- Consumer Matters – Time Warner Cable
- Maine Osteopathic Association
- "Taking Charge of Money Matters"
- "Living with Cancer" Forum
- Maine Potato Blossom Festival
- Maine Medical Association's Annual Meeting
- CAHC – Insurance 101
- Spectrum Generations
- The Maine Office of Securities Conference on Wise and Safe Investing
- Blaine House Conference on Elder Issues
- Ellsworth Cancer Forum
- American Association of Healthcare Administrative Management

Annuities Workgroup

Division staff participated in the Annuities workgroup formed to review the sales practices of insurance companies and insurance producers. The Bureau focused its analysis on the consumer complaints received in the Bureau that flowed through the Consumer Health Care Division. The Annuities workgroup will focus on education and enforcement actions involving insurance carriers and insurance producers taking advantage of Maine's most senior and vulnerable population.

D. Licensing Activity

Medical Utilization Review - In 2008, three new medical utilization review entities (URE's) were licensed, bringing the total to 72 URE's licensed in Maine.

Preferred Provider Arrangements - In addition to the 26 PPAs previously registered, 8 new arrangements applied for registration in 2008, with 7 meeting the requirements to be registered.

Viatical Settlement Providers – In 2008, four new providers were approved bringing the total to 17 viatical settlement providers licensed in Maine.

"Because you took the time to correspond...on my benefit, they sent me a refund check for \$179.00...I'm now going to have it a little easier...Again, thank you so very much!" --Consumer, August 15, 2008

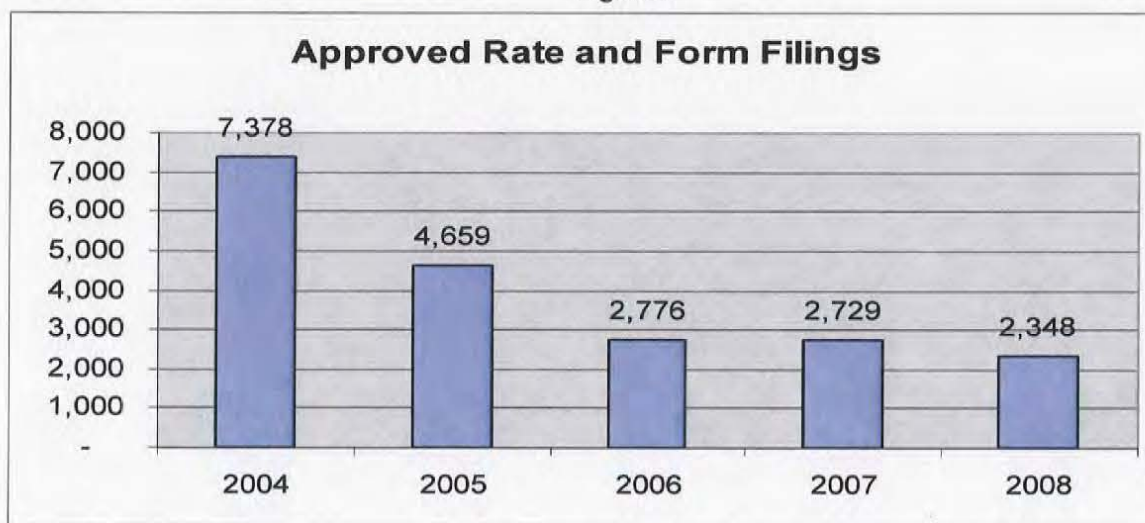
E. HMO Quality Oversight

In 2008, no exams were scheduled for a triennial review. The Bureau's triennial review follows the schedule established by the NCQA accreditation review cycle. Copies of the exam reports are posted on the Bureau's website at <http://www.maine.gov/pfr/insurance/hmo/index.htm>.

F. Policy Form Review

During 2008, the CHCD approved 2,423 (Figure 5) policy form filings. A total of 3,067 form filings were filed with the Bureau. Several filings were disapproved, placed on file for information or withdrawn by the insurance company. It is important to note that 94 filings were approved by the Interstate Insurance Product Regulation Commission (Interstate Compact) for approval in Maine. Those filings were not reviewed by the Maine Bureau of Insurance staff. Those numbers are not included in the table below.

Figure 5



III. Legislative and Regulatory Activities

A. Dirigo

Implementation of the Dirigo legislation required the CHCD to work with the Governor's Office on Health Policy and Finance and with the Dirigo Health Agency as they reviewed and analyzed a variety of initiatives aimed at developing a health insurance product for small businesses. The staff attended many meetings monitoring the progress of the Dirigo health plan providing feedback and advice as requested.

B. Rules

The CHCD was responsible for the implementation of seven administrative rules or rule amendments in 2008:

- Rule 245, Military Life Insurance and Annuity Sales Practices: Effective January 1, 2008;
- Rule 490, Acquired Immune Deficiency Syndrome and Medical and Lifestyle Standards: Amended with revisions effective February 13, 2008;
- Rule 585, Life Insurance Third Party Notice of Cancellation; Rights of Reinstatement for Individuals Afflicted with Organic Brain Disease: Effective October 26, 2008;
- Rule 600, Screening Mammograms: Amended with revisions effective January 9, 2008;
- Rule 630, Rural Medical Access Program: Amended with revisions effective August 10, 2008;
- Rule 850, Health Plan Accountability: Amended with revisions effective June 29, 2008;
- Rule 945, Annual Report Supplement for Health Insurers: Amended with revisions effective January 9, 2008.

Staff is currently working on newly proposed Rule 745, which is designed to facilitate a pilot project permitting health insurance carriers to offer affordable health insurance plans to persons less than 30 years of age. The public hearing was held December 17, 2008. The public comment period extended until December 27, 2008.

Staff is also involved with amending Rule 425, Maine's Long Term Care Insurance rule, to incorporate changes relevant to implementing Maine's Long Term Care Partnership Program.

C. Long Term Care Partnership Project

The staff is currently working with the Department of Health and Human Services on measures to implement Maine's Long Term Care Partnership Program, established by 22 M.R.S.A § 3174-GG. The program is intended to encourage the purchase of long-term care insurance policies so persons will be less reliant upon MaineCare funding in the event that long-term care services are needed. Under the program, persons who purchase a long-term care Partnership policy and then

exhaust the policy's benefits may qualify for asset disregard for either the purpose of MaineCare eligibility or estate recovery in the amount equal to the benefits paid by the Partnership policy.

D. Direct Care Workers Report

In 2008, the Joint Standing Committee on Insurance and Financial Services requested that the Bureau of Insurance convene a working group and report on options to expand access to health insurance coverage for direct care workers providing home and long-term care to Maine's elderly and people with disabilities. The request came following a defeat of LD 1687, which proposed to expand the DirigoChoice program to direct care workers. The Direct Care Working Group, consisting of 36 stakeholders, held seven meetings throughout the summer of 2008 and considered many different ideas for expanding coverage to direct care workers, including existing options in the Insurance Code, publicly funded initiatives, and options modeled after programs in other states. After careful analysis of all options, the final report proposed implementation of a pilot project that would use enhanced State reimbursements to pay for coverage within DirigoChoice for direct care workers employed by large home and community based direct care service providers.

IV. Conclusion

The CHCD analyzes its consumer complaint reviews and inquiries to identify complaint patterns and carrier-specific complaint trends. When trends are identified, carriers are notified through both formal and informal communications. This process addresses complaints early and is believed to be one of the principal reasons for a declining number of complaints in recent years.

The rural nature of Maine can present special challenges. Commercial carriers have difficulty contracting with certain providers because of the limited number of providers in remote areas of the state. This is especially true in the area of mental health: psychiatrists - especially pediatric and adolescent psychiatrists, and acute care mental health facilities are either scarce or even nonexistent in some areas of Maine. Some of the current acute care facilities also are unable to meet the needs of some persons with challenging behavioral problems. The CHCD staff continually monitors compliance with accessibility standards and works with carriers to ensure that consumers can access the care they need.

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

For additional information or answers to questions, please contact the Consumer Health Care Division at the Maine Bureau of Insurance by calling toll free 800-300-5000.

"Thank you more than I can say for your help. Your success in persuading my former insurance company to pay these bills at the in-network rate has made an enormous difference to me...thank you for doing such a great job."
-Consumer, August 1, 2008
