

# MAINE STATE LEGISLATURE

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**Maine Bureau of Insurance  
Consumer Health Care Division  
Annual Report to the Legislature for 2015,  
Incorporating the Division's Annual Report  
on External Reviews**

May 2016

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## **I. Overview**

Pursuant to Title 24-A M.R.S.A. § 4321(J), this report details the 2015 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 with the Insurance Code (Title 24-A) and Bureau regulations by insurance companies. This report also incorporates 2015 external review details as required by § 4312 (7-A).

### **A. Responsibilities**

The CHCD is responsible for:

- Investigating and resolving consumer complaints related to health, disability, long-term care, annuities, and life insurance;
- Responding to consumer inquiries;
- Providing information to consumers regarding health insurance plan options;
- Assisting health, disability, long-term care, annuities, and life insurance consumers understand 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.
- Participating in public-private efforts to improve health payment policy, such as the State Innovations Model (SIM) grant.

## **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 members respond to telephone inquiries by providing information to callers, referring callers to the Bureau's website ([www.maine.gov/insurance](http://www.maine.gov/insurance)), and mailing issue-related brochures. They also address written inquiries, 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.

Staff also investigate written consumer complaints. Maine consumers completing 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. CHCD staff review the carrier's response and supporting documentation to determine if the processes used 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, long-term care, and disability insurance coverage may require significant staff time to gather facts and correspond with relevant parties.

The Bureau ensures that carriers provide consumers with their appropriate 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 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 one of 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 simultaneously with both an appeal with the carrier and a complaint with the Bureau.

The Bureau sometimes receives complaints involving issues over which it has no 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, 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. The CHCD staff has

been able to resolve many of these situations quickly, when it is evident that the carrier's denial is 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 make sure that the company pays benefits to the consumer according to Maine law and the policy's contractual obligation. If the insurer has acted properly, staff explains the basis and rationale for this conclusion to the consumer.

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

After proceeding through at least one of two levels of the internal appeals processes 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. CHCD staff coordinate external reviews and assign each review to one of three contracted External Review Organizations (ERO). 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 medical 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 External Review**

The Bureau finalized amendments to Rules 420 and 425 in response to 2013 Maine Public Law Chapter 278 § 2, *An Act to Create Uniform Claims Paying Practices in Long-Term Care Insurance Policies*. The amendments provide for a simplified long-term care insurance claims filing process and a consumer's right to appeal certain denied claims to external review. The right to external review applies to claim denials involving benefit triggers and certain policy limitations and exclusions that require the exercise of professional judgment within the scope of practice of a health care professional. The Bureau oversees the external review process and has contracted with two EROs specifically for long-term care appeals.

## **4. Outreach and Education**

An ongoing CHCD priority is to educate Maine consumers about their rights under Maine's insurance laws and the federal Affordable Care Act (ACA), as well as services available through the Bureau of Insurance. The CHCD does this through public speaking engagements and participation in outreach events. In 2015, CHCD participated in many outreach and education efforts:

- Lewiston Adult Education, Lewiston
- Fostering Financial Education in Maine Schools Conference, Bangor
- Elder Abuse Prevention Summit, Augusta

- Senior Expo, Bangor
- Maine Association of Retirees Annual Meeting, Augusta
- University of New England Geriatrics Conference, Bar Harbor
- Portland Senior Expo, Portland
- Molly Ockett Day, Bethel
- Potato Blossom Festival, Fort Fairfield
- Machias Blueberry Festival, Machias
- Second Annual Summit on Aging, Augusta
- Common Ground Fair, Unity
- Aging Well/Living Well Conference, Newry
- Damariscotta Pumpkinfest, Damariscotta
- Lincoln County TRIAD Senior Appreciation Day, Damariscotta
- Spectrum Generations/PeoplePlus Senior Expo, Brunswick
- Maine Primary Care Association, Bar Harbor
- New Ventures Entrepreneurship Training, UMA, Augusta
- American Association of Healthcare Administrative Management, Augusta
- American Nurses Association, Maine Chapter, Portland

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 "Consumer Tools."

#### **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 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 2015, there were 68 active licensed utilization review entities in Maine.

A list of Maine licensed medical utilization review entities can be found on the Bureau’s website at [www.maine.gov/insurance/company/licensee\\_list.htm](http://www.maine.gov/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.

#### ***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 2015, 7 new arrangements applied for registration, with all meeting the registration requirements, bringing the total number of arrangements to 60. A list of Maine licensed PPAs can be accessed at the Bureau’s website at [www.maine.gov/insurance/company/licensee\\_list.htm](http://www.maine.gov/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.

#### ***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.

Staff also reviews managed care entities’ applications to expand their geographic service area to determine if the entity has an adequate network of providers in the expanded area. A carrier must notify the CHCD 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 providers. The CHCD staff closely monitors the situation to assure that carriers comply with Maine law. Carriers must provide consumers with adequate notice and opportunity to find alternative providers. They must also ensure that consumers currently receiving medical services receive the necessary continuity of care.

### **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 2015, CHCD received 1,752 insurance contract form filings: 55 failed to meet legal requirements; insurers withdrew 35 after CHCD staff raised questions; and the CHCD reviewed and approved the remaining 1,662 form filings subject to modifications, when necessary.

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.

CHCD and Life & Health Actuarial staff managed the review of forms associated with the fourth year of federal Affordable Care Act implementation, 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 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 44 states, including Maine.

## II. Statistics

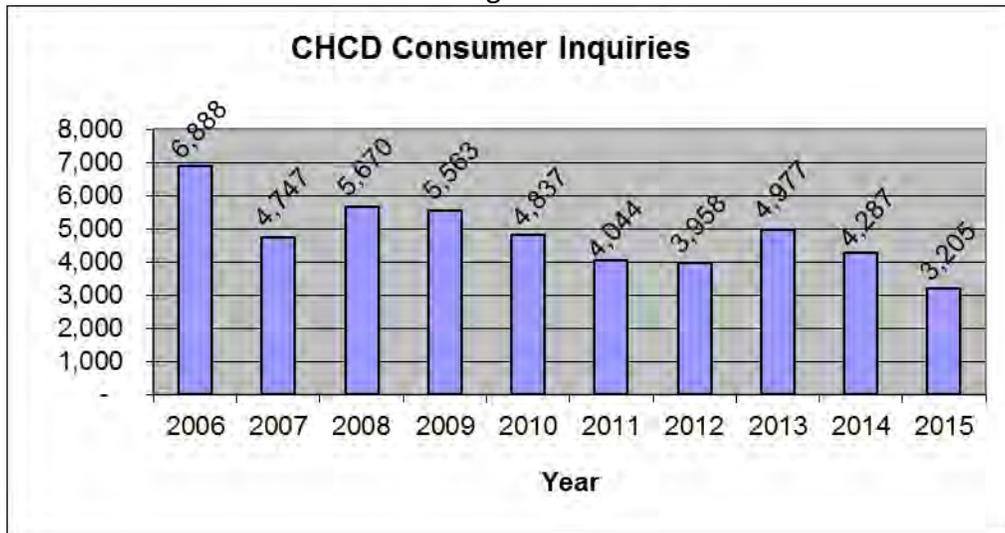
### A. Consumer Inquiries and Complaints

#### 1. Inquiries

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

CHCD staff answered 3,205 telephone and written inquiries during 2015. The most frequent inquiries related to individual insurance, Medicare, and claim denials. Figure 1 illustrates the number of telephone and written inquiries received from 2006 – 2015.

Figure 1



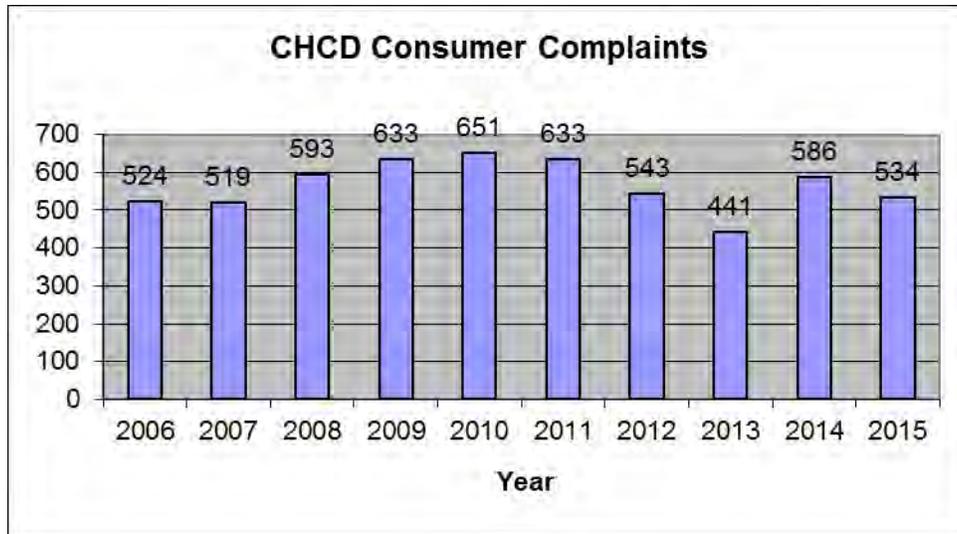
CHCD staff also answered requests for constituent assistance from state and federal officials.

#### 2. Complaints

A “complaint” is defined in Title 24-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.”

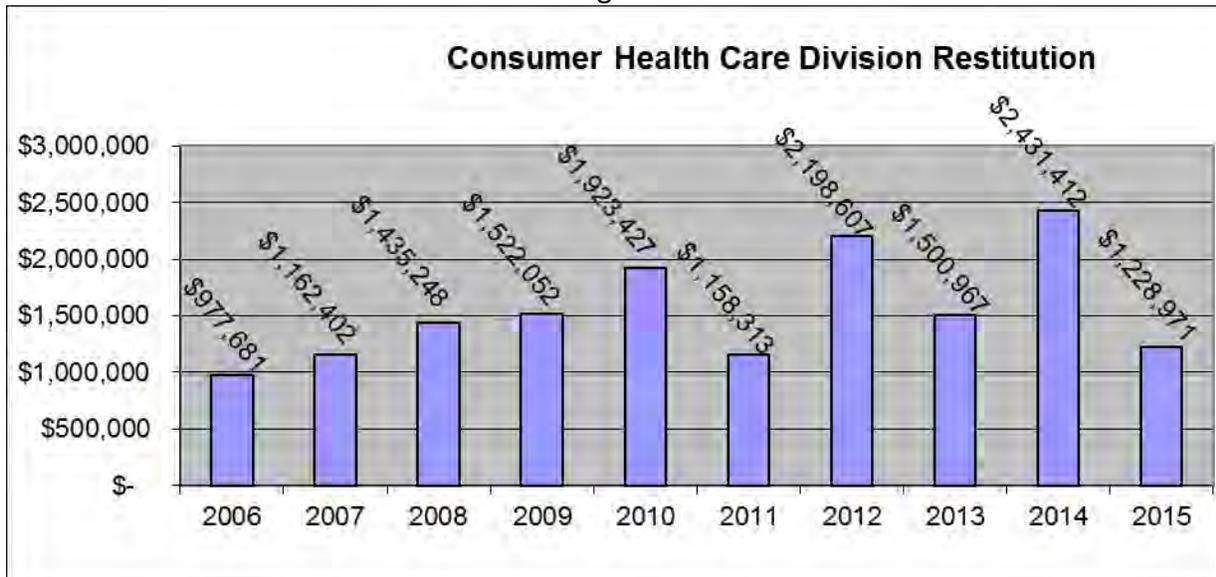
During 2015, the CHCD responded to 534 written or emailed health, disability, annuity, and life insurance complaints filed by health plan enrollees, policyholders, insurance producers, and health care providers. Figure 2 illustrates the number of written complaints filed with the CHCD from 2006-2015.

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 \$1,228,971 for complainants during 2015. 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. The CHCD holds quarterly meetings with insurance carriers that write a significant volume of coverage for Maine residents. CHCD staff also 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.

On a yearly basis, the CHCD compiles a “complaint index” comparison for Maine health insurance companies. Complaints are used to calculate 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). Health complaint index reports are available on the Bureau’s website at [www.maine.gov/insurance/consumer/Health\\_Complaint\\_Comparison.pdf](http://www.maine.gov/insurance/consumer/Health_Complaint_Comparison.pdf).

## **B. External Review**

The CHCD has contracts with three independent external review organizations: National Medical Review, Maximus Federal Services, Inc., and Island Peer Review Organization (IPRO).

The CHCD received 80 requests for external review:

- 2 were resolved by the insurance carrier prior to the external review.
- 15 were not completed because the consumer did not return the necessary signed releases to continue the process.
- Of the 63 remaining requests, 54 were completed by January 1, 2016.
- Of the 54 completed requests, 35 were overturned (65%), 18 (33%) upheld the carrier’s decision, and one was partially overturned (2%).

Twenty-nine cases were heard regarding medical necessity of treatment:

- 4 mental/behavioral health;
- 7 physical therapy/chiropractic care;
- 2 substance abuse treatment;
- 4 medical devices or equipment;
- 2 medication therapy;
- 3 lab tests; and
- 7 general treatment decisions.

Twenty-three decisions were related to whether the treatment provided was experimental or investigational:

- 18 lab tests;
- 2 medical equipment; and
- 3 general treatment decisions

In addition, one case reviewed was based upon a pre-existing condition and one was based on a care/treatment/diagnosis decision.

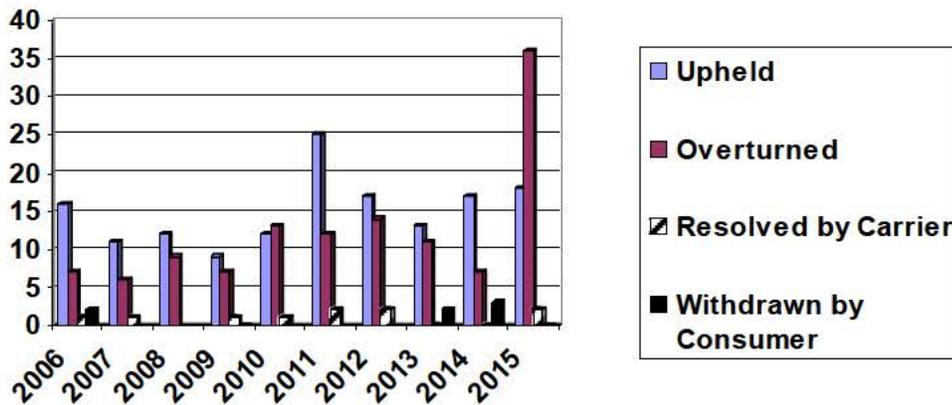
The CHCD received and reviewed additional requests for external review that did not qualify under the statutes, either because the internal appeal process was not utilized prior to requesting external review or because the denial was based on issues other than the validity of the carrier’s medical decisions.

Pursuant to Title 24-A, §4312 (7-A) the following table illustrates the status of external reviews by insurance carrier for 2015:

| 2015 External Reviews                |        |       |       |     |         |     |                  |       |
|--------------------------------------|--------|-------|-------|-----|---------|-----|------------------|-------|
|                                      | Anthem | Aetna | CIGNA | CHO | Harvard | HCC | Patient Advocate | Total |
| <b>Requested</b>                     | 41     | 24    | 6     | 6   | 2       | 1   | 1                | 80    |
| Not qualified                        | 0      | 0     | 0     | 0   | 0       | 0   | 0                | 0     |
| Consumer didn't complete process     | 6      | 5     | 3     | 1   | 0       | 0   | 0                | 15    |
| <b>Submitted for External Review</b> | 35     | 19    | 3     | 4   | 2       | 1   | 1                | 65    |
| Withdrawn prior to hearing           | 0      | 1     | 0     | 1   | 0       | 0   | 0                | 2     |
| <b>Review Completed by 1/1/16</b>    | 27     | 17    | 3     | 3   | 2       | 1   | 1                | 54    |
| Upheld                               | 10     | 3     | 1     | 1   | 1       | 1   | 1                | 18    |
| Overtured                            | 17     | 13    | 2     | 2   | 1       | 0   | 0                | 35    |
| Partially Overtured                  | 0      | 1     | 0     | 0   | 0       | 0   | 0                | 1     |
| <b>Breakdown by Qualifying Issue</b> |        |       |       |     |         |     |                  |       |
| Experimental/Investigational         | 14     | 5     | 3     | 1   | 0       | 0   | 0                | 23    |
| Pre-Existing Condition               | 0      | 0     | 0     | 0   | 0       | 1   | 0                | 1     |
| Care/Treatment/Diagnosis             | 0      | 0     | 0     | 1   | 0       | 0   | 0                | 1     |
| Medical Necessity                    | 13     | 12    | 0     | 1   | 2       | 0   | 1                | 29    |

Figure 4 illustrates the number of external reviews overturned, upheld, or withdrawn by either the insurance carrier or consumer prior to the review for 2006-2015.

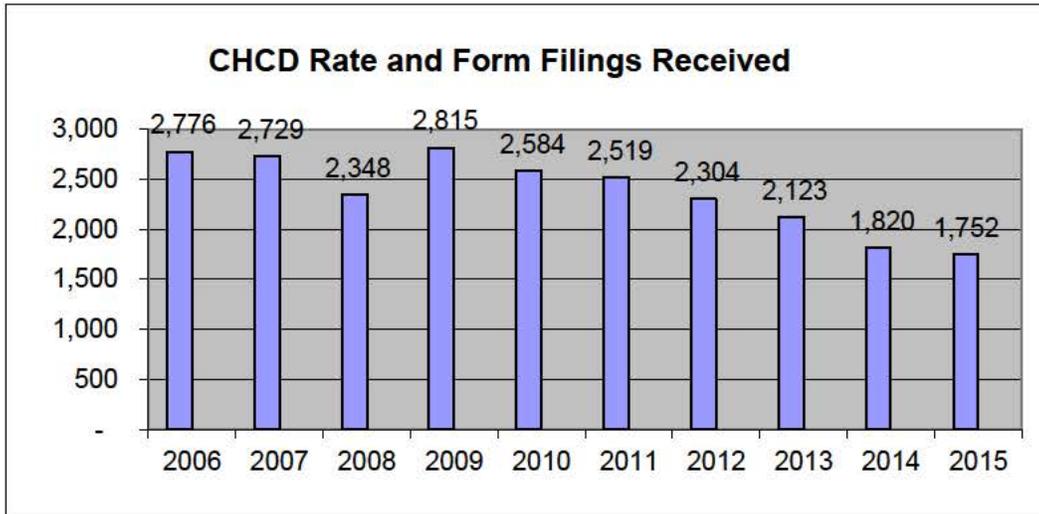
Figure 4  
External Review Outcomes



### C. Policy Form and Rate Review

During 2015, the CHCD received 1,752 rate and form filings and approved 1,010. Some filings were disapproved, placed on file for information, or withdrawn by the insurance company. The 441 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.

Figure 5



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

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

In 2015, CHCD staff drafted one new rule and revisions to five others and also held a stakeholder meeting to solicit ideas for a new rule to establish uniformity among explanations of benefits forms utilized by health carriers. CHCD activity regarding rules is as follows:

Ch. 940 Requirements for Health Insurance Rate Filings and Data Reporting. Proposed Amendments; hearing held November 3, 2015, Amendment Adopted April 19, 2016.

Ch. 380 Provider Profiling Disclosures, New Rule, hearing held September 29, 2015, Final Adoption March 12, 2016.

Ch. 915 Annuity Disclosure, Amendments, New Rule Adopted April 24, 2015

Ch. 917 Suitability in Annuity Transactions, Amendment Adopted April 24, 2015

Ch. 420 Nursing Home Care Insurance and Long Term Care Insurance, Amendment Adopted February 20, 2015

Ch. 425 Long Term Care Insurance, Amendment Adopted February 20, 2015

Explanation of Benefits. A stakeholder meeting held on December 15, 2015. A formal proposed rule has not yet been issued.

The CHCD also assisted in issuing the following 5 bulletins:

Bulletin 401, Transitional Renewal of Large Group Health Insurance Policies for Groups with 51 to 100 Employees

Bulletin 402, Uniform Deadlines for Rate, Form, and QHP Filings for Non-Grandfathered Individual and Small Group Health Plans With Effective Dates of Coverage During 2016

Bulletin 404, Maine Composite Premium Methodology for Small Group Health Benefit Plans Issued or Renewed on or after January 1, 2016

Bulletin 407, Medicare Supplement Requirements, as Updated by the 2014 Amendments to Rule 275

Bulletin 409, Counting Employees in the Group Health Insurance Market

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

CHCD staff actively participates in several NAIC working groups, including the Regulatory Framework (B) Task Force, the ERISA Working Group, the Health Actuarial Task Force, the Senior Issues Task Force, and the Consumer Disclosures Working Group. It also participates in various subgroups including the Long-Term Care Consumer Disclosure Subgroup, the Actuarial Value Subgroup, the Network Adequacy Model Review Subgroup, and the State Rate Review Subgroup.

- The Regulatory Framework (B) Task Force seeks to develop NAIC model acts and regulations for state health care initiatives and considers policy issues affecting state health insurance regulation.
- The ERISA Working Group seeks to monitor, report and analyze developments related to ERISA, and make recommendations regarding NAIC strategy and policy with respect to those developments.
- The Health Actuarial Task Force seeks to identify, investigate and develop 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 Consumer Disclosures Working Group develops best practices and guidelines for use by states in creating information disclosures for consumers.
- The Long-Term Care Consumer Disclosure Subgroup seeks to review requirements for consumer disclosures for long-term care insurance.
- The Actuarial Value Subgroup seeks to develop guidelines for the review of actuarial value certifications.
- The Network Adequacy Model Review Subgroup sought to revise standards for determining whether a carrier's provider network would adequately meet the needs of its membership. Its work is now complete.
- The State Rate Review Subgroup seeks to address issues related to implementation of the ACA.

## IV. Conclusion

The continuing implementation of the federal ACA, including the federally-facilitated health insurance marketplace plan management functions, was again the biggest challenge for the CHCD in 2015. The ACA required staff to familiarize themselves with new federal regulations 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 regulations.

The CHCD continues to assist consumers, and 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 operate in compliance with Maine law. The CHCD staff is in regular communication with insurance carriers during complaint investigations, through quarterly meetings, and when providing regulatory interpretations of the Insurance Code.

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).