

# MAINE STATE LEGISLATURE

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**Maine Bureau of Insurance  
Consumer Health Care Division  
Annual Report to the Legislature for 2016,  
Incorporating the Division's Annual Report  
on External Reviews**

April 2017

Paul R. LePage  
Governor

Eric A. Cioppa  
Superintendent

Anne L. Head  
Commissioner



STATE OF MAINE  
DEPARTMENT OF PROFESSIONAL  
AND FINANCIAL REGULATION  
BUREAU OF INSURANCE  
34 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0034

Paul R. LePage  
GOVERNOR

Eric A. Cioppa  
Superintendent

April 28, 2017

Senator Rodney L. Whittemore, Chair  
Representative Mark W. Lawrence, Chair  
Joint Standing Committee on Insurance and Financial Services  
100 State House Station  
Augusta, ME 04333-0100

RE: Bureau of Insurance 2016 Consumer Health Care Division Annual Report and Report on External Reviews

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

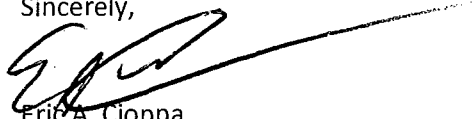
Please accept this annual report of the Consumer Health Care Division in the Maine Bureau of Insurance in the Department of Professional and Financial Regulation.

This report is being issued pursuant to 24-A M.R.S.A. §4321(J): "The duties of the Division include...submitting 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."

This report also incorporates 2016 External Review details as required by § 4312 (7-A): "The superintendent shall disseminate to the Legislature and to the public aggregate information related to external reviews conducted by independent review organizations on an annual basis..."

Individuals with questions about the report are encouraged to contact Joanne Rawlings-Sekunda, Director of the Consumer Health Care Division at 800-300-5000.

Sincerely,



Eric A. Cioppa  
Superintendent of Insurance



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## **I. Overview**

Pursuant to Title 24-A M.R.S.A. § 4321(J), this report details the 2016 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 2016 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 health, long-term care, disability and life insurance forms;
- Licensing medical utilization review entities (UREs);
- 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**

#### *a. Consumer Inquiries*

One of the CHCD's most important duties is to provide assistance and information to consumers. Staff members provide information to callers, referring them to the Bureau's website ([www.maine.gov/insurance](http://www.maine.gov/insurance)) and mailing issue-related brochures as needed. They also respond to 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.

#### *b. Consumer Complaints*

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 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 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, law, or regulation.

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 contractual obligation. If the insurer has acted properly, staff explains the basis and rationale for this conclusion to the consumer.

#### *c. Appeals*

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. 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.

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.

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

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 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**

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.

## **4. Outreach and Education**

An ongoing CHCD priority is to educate Maine consumers about their rights under our insurance laws, and services available through the Bureau of Insurance. The CHCD does this through public speaking engagements and participation in outreach events. In 2016, CHCD participated in the following outreach and education efforts:

- Meeting of Physical Therapists/Billing Administration, Freeport
- Southern Maine Area Agency on Aging Volunteer Training, Portland
- Maine Insurance Agents Association, South Portland
- US Department Of Labor Producer Training, Bangor



- Healthcare Advocacy, Portsmouth
- Spectrum Generations Volunteer Training, Augusta
- Association of Insurance Compliance Professionals Conference, Portsmouth
- Eastern Maine Medical, Bangor
- Fostering Financial Education in Maine Schools Conference, Augusta
- BOI Long-Term Care Forum, Augusta\*
- Elder Abuse Summit, Augusta
- Aroostook Area Agency on Aging - Aging Well Living Well , Presque Isle
- Seniors Plus Volunteer Training, Lewiston
- Senior Expo, Bangor
- MeRTEC Symposium, Portland
- Senior Spectrum Volunteer Training, Augusta
- Maine Association of Retirees Annual Meeting, Augusta
- UNE Geriatrics Conference, Bar Harbor
- Senior Spectrum – Healthy Aging Expo, Hallowell
- Southern Maine Area Agency on Aging Volunteer Training, Scarborough
- Potato Blossom Festival, Presque Isle
- Mollycodd Day, Bethel
- Winter Harbor Lobsterfest, Winter Harbor
- Wild Blueberry Festival, Machias
- Summit on Aging, Augusta
- Senior Expo, Ellsworth
- Common Ground Country Fair, Unity
- Health Care For Maine (HC4ME) Conference, Augusta
- Seniors Plus - Aging Well Living Well Expo, Newry
- Senior Spectrum/People Plus - Senior Expo, Brunswick
- State Farm Biannual Agent Training, Portland
- Maine Primary Care Association Conference, Bar Harbor
- Lincoln County TRIAD Senior Appreciation Day, Bar Harbor
- USM Law School Legislation and Administration class, Portland
- Annual Infectious Diseases Conference, Augusta
- American Association of Healthcare Administrative Management Conference, Augusta
- UMaine Cooperative Extension Farmer's Financial Workshop, Falmouth

\*The Bureau held a public Long-Term Care Insurance (LTCi) Forum on May 9, 2016 in Augusta, which was streamed live over the internet. The forum featured Bureau presentations about the rate review process, Maine's LTCi Partnership Program and new claims processing requirements that protect consumers. Consumers submitted written and in-person comments about their experiences as policyholders. Individuals representing the insurance industry, MaineCare, and consumer advocate organizations presented their views on the challenges presented by the long-term care situation in Maine. Forum presentations and video can be found at [www.maine.gov/insurance/consumer/individuals\\_families/longterm\\_care/index.html](http://www.maine.gov/insurance/consumer/individuals_families/longterm_care/index.html).

Prior to the Forum, the Superintendent participated in an hour-long discussion about long-term care insurance hosted by Maine Public Radio's "Maine Calling" program.

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."

## **5. 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 2016, there were 70 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 2016, 9 new arrangements applied for registration; all met the registration requirements, bringing the total number of arrangements to 65.

Maine's licensed 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.

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 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 the necessary 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).

In 2016, CHCD received 1,607 insurance contract form filings: 34 failed to meet legal requirements; insurers withdrew 30 after CHCD staff raised questions; and CHCD reviewed and approved 1,517 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.

In 2016, CHCD and Life & Health Actuarial staff managed the review of forms associated with the fourth year (2017) of federal Affordable Care Act 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.

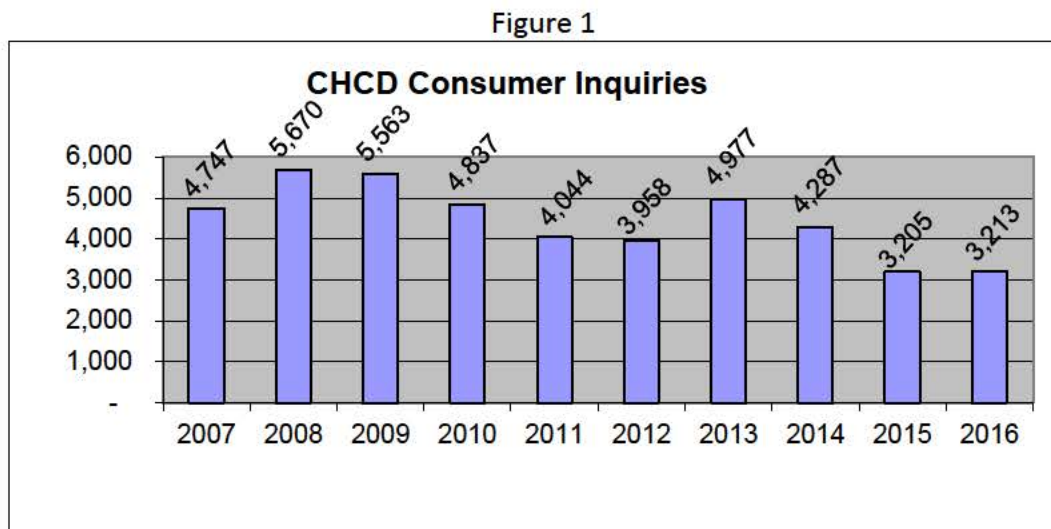
## II. Statistics

### 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 3,213 telephone and written inquiries during 2016. 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 2007 – 2016.



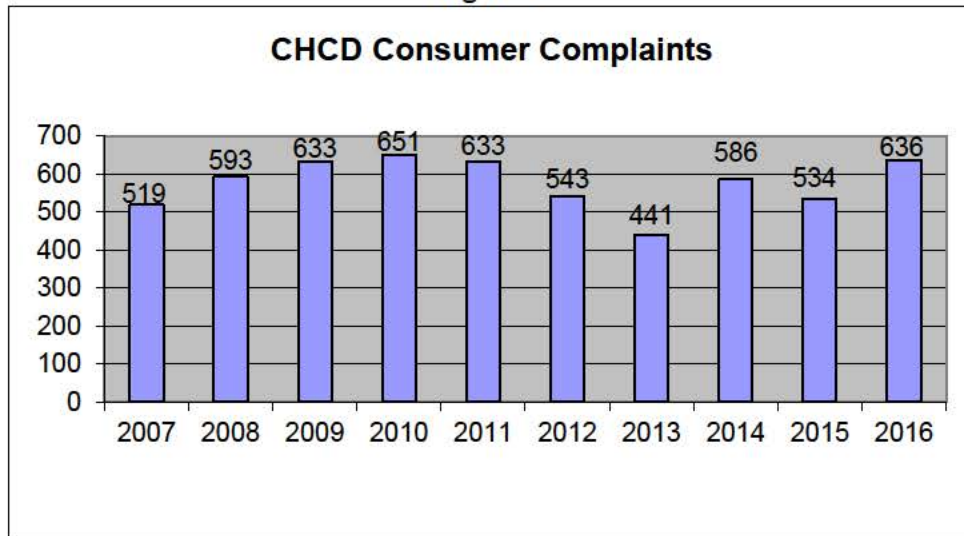
CHCD staff also answered requests for constituent assistance from state and federal officials.

#### 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.”

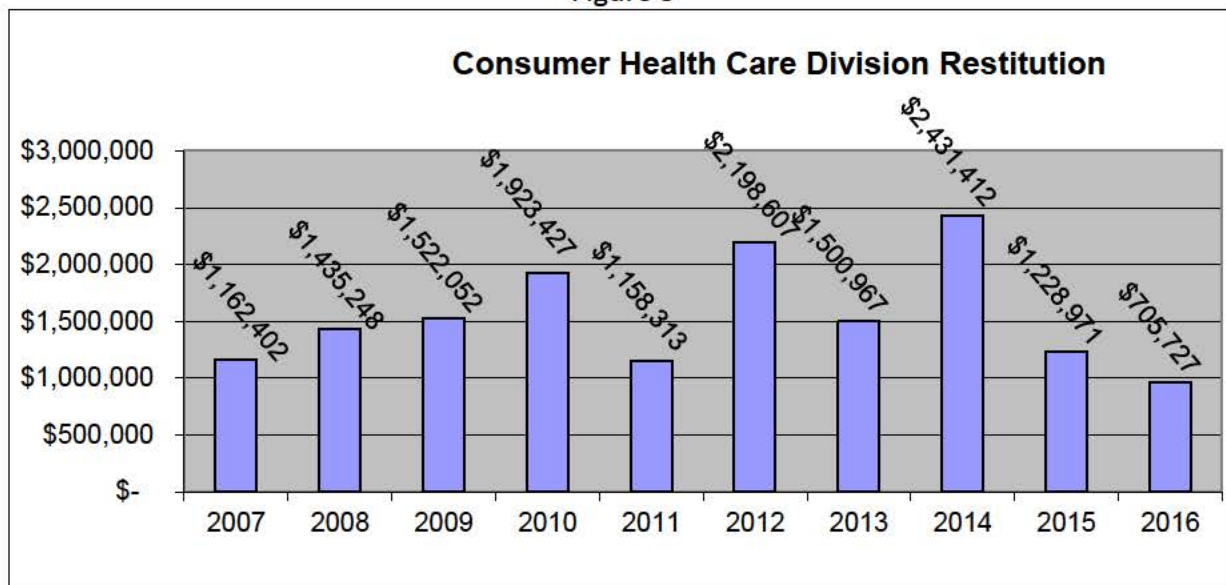
During 2016, the CHCD responded to 636 written health, disability, annuity, and life insurance complaints filed by health plan enrollees, insurance producers, and health care providers. Figure 2 illustrates the number of written complaints filed with the CHCD from 2007-2016.

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 \$705,727 for complainants during 2016. 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.



On a yearly basis, the CHCD compiles a “complaint index” comparison for 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](http://www.maine.gov/insurance/consumer/consumer_guides).

## **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).

In 2016

The CHCD received 77 requests for external review:

- 6 were not completed because the consumer did not return the necessary signed releases to continue the process.
- Of the 71 remaining requests, 61 were completed by January 1, 2017.
- Of the 61 completed requests, 37 were overturned (60%) and 24 (40%) upheld the carrier’s decision.

Thirty-two cases were heard regarding medical necessity of treatment:

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

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

- 27 lab tests;
- 1 medical equipment; and
- 1 general treatment decisions

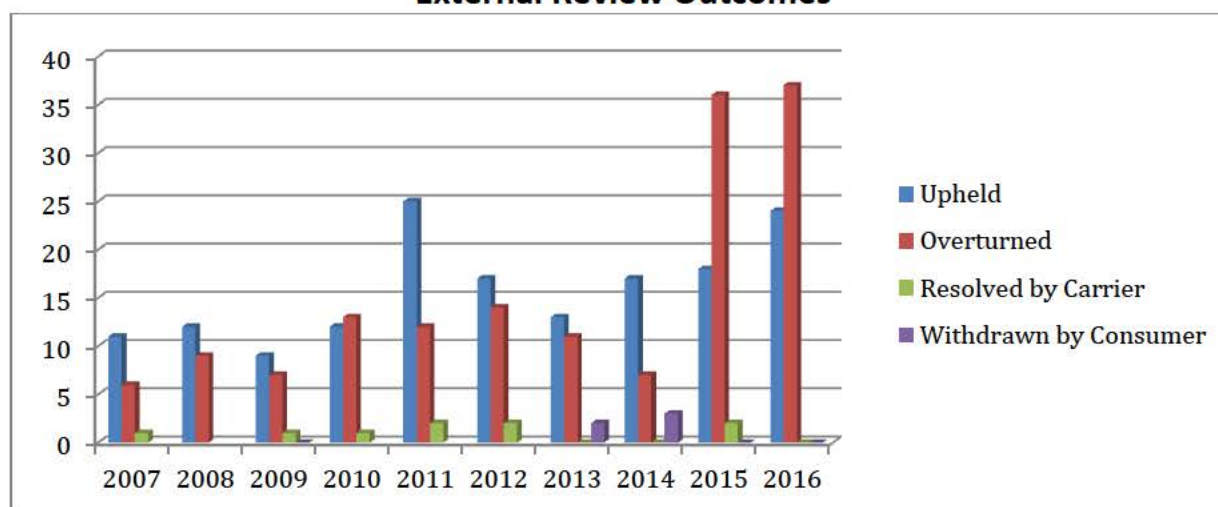
The CHCD reviewed additional requests for external review that did not qualify under the statutes, either because the internal appeal process was not utilized prior to requesting external review or because the denial was based on issues other than the validity of the carrier’s medical decisions.

Pursuant to Title 24-A, §4312 (7-A) the following table illustrates the status of external reviews by insurance carrier for 2016:

2016 External Reviews								
	Anthem	Aetna	CIGNA	CHO	Harvard	HCC	Patient Advocate	Total
<b>Review Completed by 1/1/17</b>	27	17	3	3	2	1	1	61
Upheld	10	3	1	1	1	1	1	24
Overturned	17	13	2	2	1	0	0	37
Partially Overturned	0	1	0	0	0	0	0	0
<b>Breakdown by Qualifying Issue</b>								
Experimental/Investigational	14	5	3	1	0	0	0	29
Pre-Existing Condition	0	0	0	0	0	1	0	0
Care/Treatment/Diagnosis	0	0	0	1	0	0	0	0
Medical Necessity	13	12	0	1	2	0	1	32

Figure 4 illustrates the number of external reviews overturned, upheld, or withdrawn by either the insurance carrier or consumer prior to the review for 2007-2016.

Figure 4  
External Review Outcomes

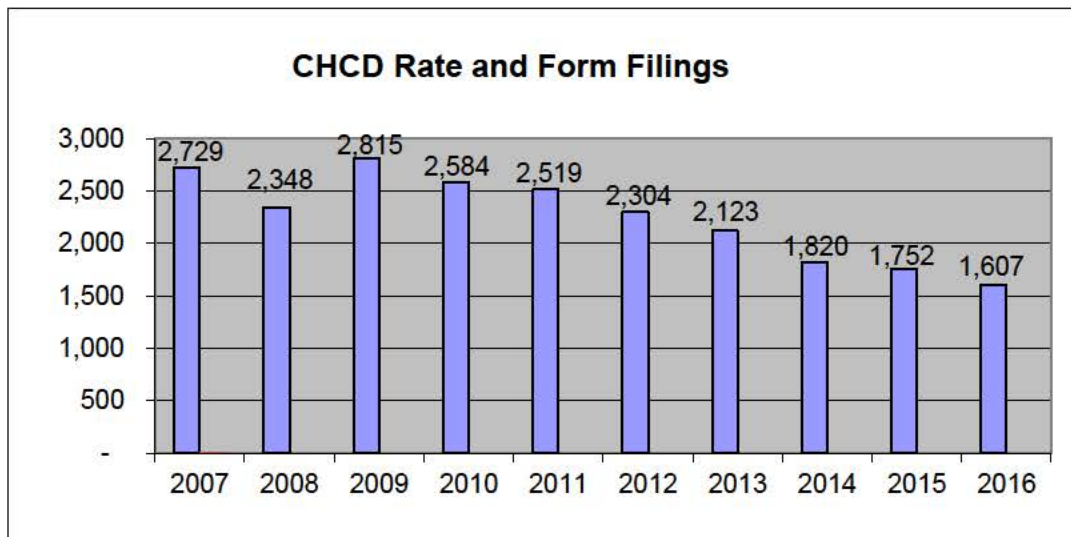


The spike in external reviews and overturned decisions in 2015 and 2016 were due to certain requested labs that are considered experimental by some carriers.

### C. Policy Form and Rate Review

During 2016, the CHCD received 1,607 rate and form filings and approved 1,517. Some filings were disapproved, placed on file for information, or withdrawn by the insurance company. The 546 filings closed 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 2016, CHCD staff drafted a revision to one new rule and repealed one rule.

CHCD activity regarding rules is as follows:

Ch. 191 Health Maintenance Organizations, hearing held July 7, 2016; hearing held, Amendments Provisionally Adopted December 24, 2016.

Ch. 750 Standardized Health Plans, hearing held July 7, 2016; Provisionally Repealed December 24, 2016.

Ch. 380 Provider Profiling Disclosures, New Rule, Final Adoption March 12, 2016.

The CHCD also assisted in issuing the following bulletin:

Bulletin 411, Extension of Transitional Authorization to Renew Small Group and Individual Health Plans.

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

CHCD staff actively participates in the NAIC working groups and subgroups described below:

- **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 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 Actuarial Value Subgroup** seeks to develop guidelines for the review of actuarial value certifications.
- **The Network Adequacy Model Review Subgroup** seeks 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 Accident and Sickness Insurance Minimum Standards Subgroup** reviews and considers revisions to the Accident and Sickness Insurance Minimum Standards Model Act and its companion regulation, the Model Regulation to Implement the Accident and Sickness Insurance Minimum Standards Model Act.
- **The State Rate Review Subgroup** seeks to address issues related to implementation of the ACA.

## IV. Conclusion

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 our laws and regulations. The CHCD staff regularly communicates with insurance carriers -- during complaint investigations, through meetings, and when providing regulatory interpretations of the Insurance Code.

In 2016, the CHCD continued to implement the federal Affordable Care Act, including performing federally-facilitated health insurance marketplace plan management functions. The ACA has required staff to familiarize themselves with new federal regulations and to coordinate with insurance carriers to meet strict filing timeframes that are beyond the control of the Bureau of Insurance. Insurance carrier representatives and consumers rely on the Bureau to interpret the new 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).