Maine Bureau of Insurance

Consumer Health Care Division
Annual Report to the Legislature for 2020, Incorporating the Division's Annual Report on External Reviews

August 2021

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I. Overview

Pursuant to Title 24-A M.R.S.A. § 4321(J), this report details the 2020 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 2020 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);
- Licenses pharmacy benefits managers (PBMs);
- 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) for additional information, and mail issue-related brochures as needed. They also respond to written inquiries including emails, in-person visits by consumers (although in-person visits were curtailed starting in March due to COVID-19 safety measures), 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 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 was one request for a Long-term Care external review in 2020.

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 2020, all in-person outreach events were cancelled due to the COVID-19 pandemic, however CHCD staff did participate in several virtual outreach and education efforts:

- Aroostook Area Agency on Aging, *Medicare Supplement Insurance Volunteer Training*
- BOI Public Informational Meeting, *2021 Individual and Small Group Health Insurance Rates*
- State-wide Area Agencies on Aging, *Medicare Supplement Insurance Volunteer Training*
- Main Public Radio, Maine Calling Program, *2021 ACA Open Enrollment*

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 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 2020 there were 60 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.

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 and regulations regarding provider accessibility/network adequacy, utilization review, grievance and appeal procedures, consumer notification, benefit level differential, and emergency service access requirements.

In 2020, no new arrangements applied for registration. The total number of arrangements is 57. 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.

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.

d. Pharmacy Benefits Managers (PBM)

The 129th Legislature enacted 2019 P.L. 469, An Act to Protect Consumers from Unfair Practices Related to Pharmacy Benefit Management. This law requires PBMs to be licensed to do business in Maine. In 2020, the BOI promulgated Rule 210 to govern the PBM application process and developed forms to examine a PBM's operations, contractual arrangements, and financial viability before licensing. The licensing process replaced the prior requirement for PMBs to merely register with the BOI. In 2020, there were 42 licensed PBMs in Maine.

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 long-term care, Medicare supplement and health insurance rates for compliance with Maine law. The unit disapproves rate increases that are excessive, inadequate, or unfairly discriminatory.

In 2020, CHCD and Life & Health Actuarial staff managed the review of forms and rates associated with the seventh year (2020) 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 46 U.S. jurisdictions, including Maine.

7. Independent Dispute Resolution (IDR)

The 129th Legislature enacted 2019 P.L. Chapter 668, An Act to Protect Consumers from Surprise Emergency Bills. The law directed the BOI to contract with an independent dispute entity to preside over out-of-network emergency services billing disputes between insurance carriers, providers and certain uninsured persons. The BOI sent out a Request for Proposals over the summer, reviewed submission materials, and chose to contract with Maximus Federal Services. Working closely with BOI staff, Maximus implemented a portal by which parties could enter their information directly and proceed to independent dispute resolution once eligibility was determined. The BOI promulgated Rule 365, effective October 24, 2020, to govern the dispute resolution process. The IDR process applied to bills for covered emergency services rendered on or after October 1, 2020.

In 2020, the BOI did not receive any eligible requests for IDR. Although the portal was not operational until March 5, 2021, the Bureau was prepared to manually process eligible IDR requests as of October 1, 2020.

8. COVID-19

On March 12, 2020, Governor Mills declared that the anticipated impact of COVID-19 in Maine created a state of insurance emergency as defined in 24-A M.R.S. § 471, and authorized and directed the Superintendent of Insurance, for the duration of the emergency, to exercise the emergency powers conferred by 24-A M.R.S. §§471- 479. In response, pursuant to 24-A M.R.S. § 478 and Bureau of Insurance Rule 765, Section 5, also on March 12, 2020, the Superintendent ordered, effective immediately, various emergency measures that all carriers offering health plans subject to the Maine Health Plan Improvement Act must follow. These measures include first dollar coverage for Covid-19 screening and testing, Covid-19 vaccination coverage without cost-sharing, measures to ensure network adequacy, coverage for telehealth visits, and prescription drug coverage for refills during the duration of the pandemic.

The Superintendent issued supplemental orders in 2020, regarding provider credentialing (March 19), parity for coverage for clinically appropriate remote delivery of medically necessary health care services, including office visits conducted by non-public-facing telephone communication methods (March 20), regarding continuation of group health coverage (March 27), and requiring deferral of premiums until June 1, 2020, to any policyholder who certifies that their inability to make timely premium payments was due to the pandemic (April 6).

II. Statistics

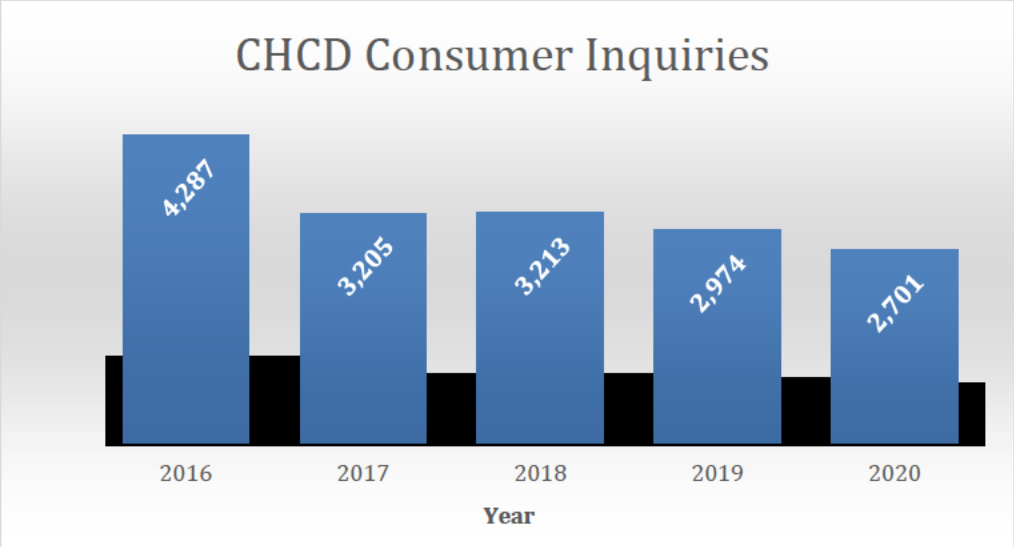
A. Consumer Inquiries and Complaints

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 2,773 telephone and written inquiries during 2020. 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 annually between 2016 and 2020.

Figure 1



CHCD staff also answered 98 requests for constituent assistance from state and federal officials.

Approximately $818,000 in life insurance policies was matched to Mainers in 2020 through the National Association of Insurance Commissioner's Life Insurance Policy Locator, bringing the total matched to Maine consumers since the service began in 2017 to $2,389,970.

The Locator can be found under the "Consumer" tab at www.naic.org. Individuals who believe they are beneficiaries, executors or legal representatives of a deceased person may submit a search request form free of charge. Many Mainers call the CHCD to learn about this locator service.

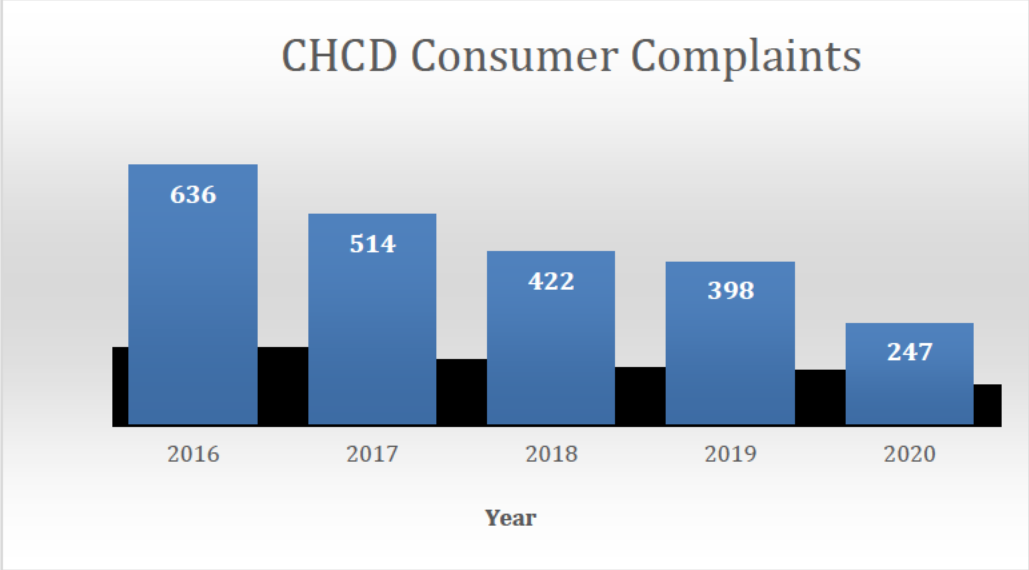
2. Complaints

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 2020, the CHCD responded to 247 new written health, disability, annuity, and life insurance complaints. At the beginning of the pandemic in early 2020, many elective procedures were cancelled by Maine providers to free up staff and facilities for the anticipated influx of COVID-19 patients, and to reduce potential spread of infection in clinics and hospitals. In addition to some procedures being canceled, many individuals chose to avoid routine care. These adjustments resulted in a significant drop in overall health services sought and delivered, which in turn very likely reduced the number of complaints received in 2020.

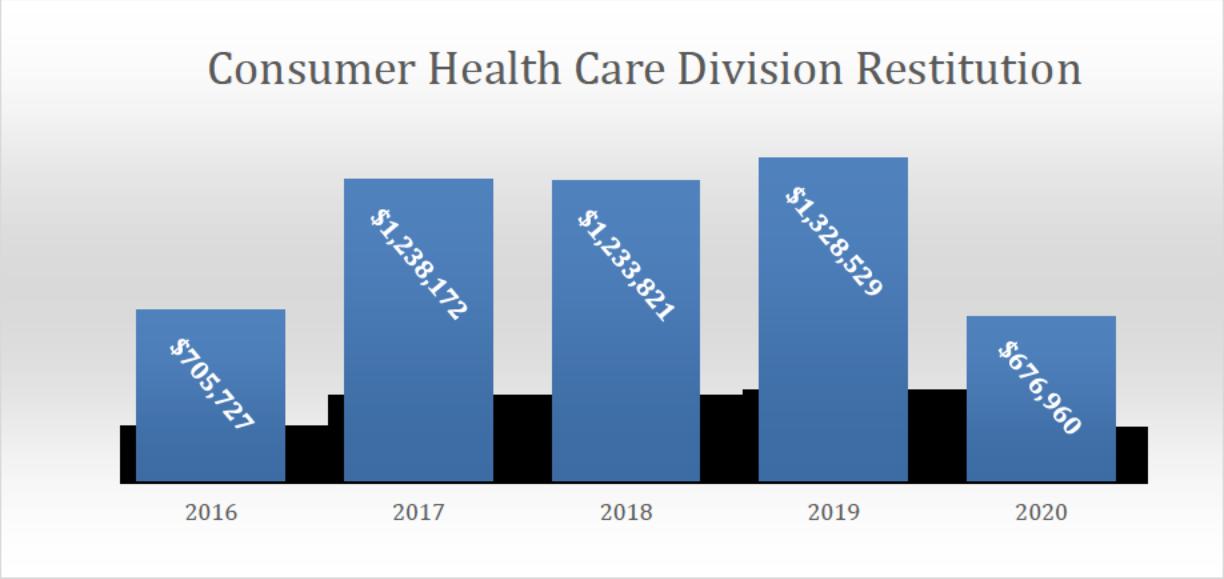
Figure 2 illustrates the number of written complaints filed annually with the CHCD from 2016 to 2020.

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 $676,960 for complainants during 2020. Most often, the recovered funds were from previously denied claims. Figure 3 illustrates the amount of restitution annually from 2016 to 2020.

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

B. External Review

The Bureau currently has contracts with three independent external review organizations: National Medical Review, Maximus Federal Services, Inc., and Island Peer Review Organization (IPRO). After a thorough RFP process, these contracts were renewed and approved to begin July 1, 2018, and continue to be in effect.

In 2020, the CHCD received fourteen (14) qualified requests for external review:

Twelve (12) of these requests were completed prior to January 1, 2021. Two were completed that were initiated in 2019. Of the completed requests, eight (8) were upheld, five (5) were overturned, and one (1) was partially overturned. There were no expedited external review cases.

Seven (7) cases were based on medical necessity of treatment:

- Three (3) for mental health decisions/substance abuse treatment,
- One (1) for medication therapy,
- One (1) for air ambulance services, and
- Two (2) for general treatment decisions.

Six (6) cases were based on the treatments being experimental or investigational:

- Three (3) for genetic lab tests, and
- Three (3) for general treatment decisions.

One (1) case was heard for decisions based on both medical and experimental for a general treatment 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.

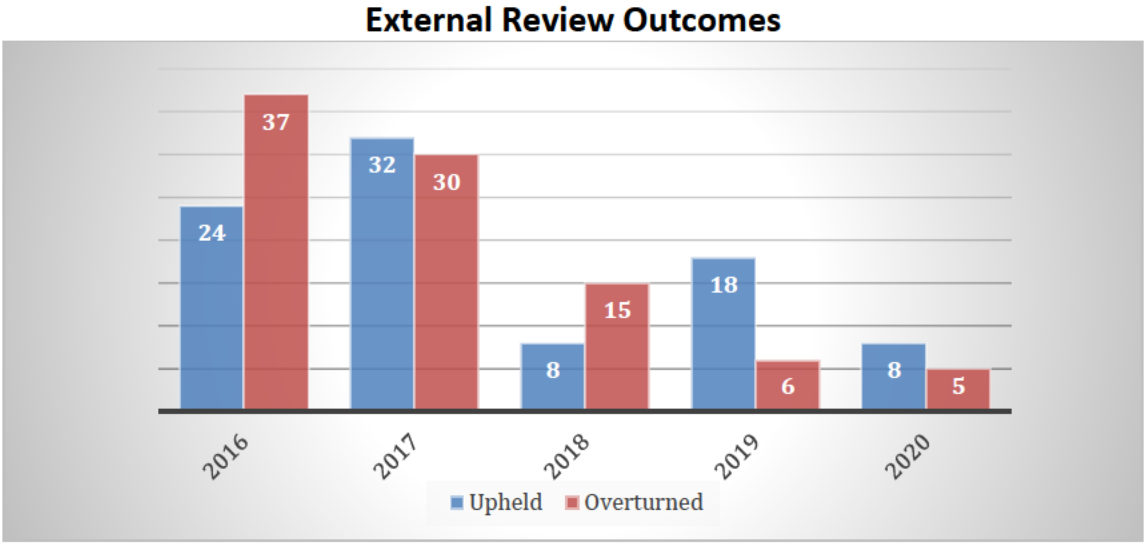
Pursuant to Title 24-A M.R.S. § 4312 (7-A) the following table illustrates the status of external reviews by insurance carrier for 2020:

	Anthem	Aetna	CIGNA	CHO	Harvard	Other	Total
42 External Review Requests:							
Total Requests - by Carrier	**24**	**7**	**3**	**4**	**2**	**2**	**42**
Not qualified	11	2	0	1	0	0	14
Consumer didn't complete process	6	2	2	1	1	2	14
Submitted for External Review:	7	3	1	2	1	0	14
Withdrawn prior to hearing	0	0	0	0	0	0	0
14 Reviews Completed by 1/1/21 – Breakdown by Qualifying Issue							
Experimental/Investigational	5	1	0	0	1	0	7
Pre-Existing Condition	0	0	0	0	0	0	0
Care/Treatment/Diagnosis	0	0	0	0	0	0	0
Medical Necessity	1	3	0	3	1	0	8

* Please note that because 1 case fits into both medical necessity and experimental/investigational categories, the total is 15, though only 14 reviews were completed

Figure 4 illustrates the number of external reviews upheld or overturned each year from 2016-2020.

Figure 4

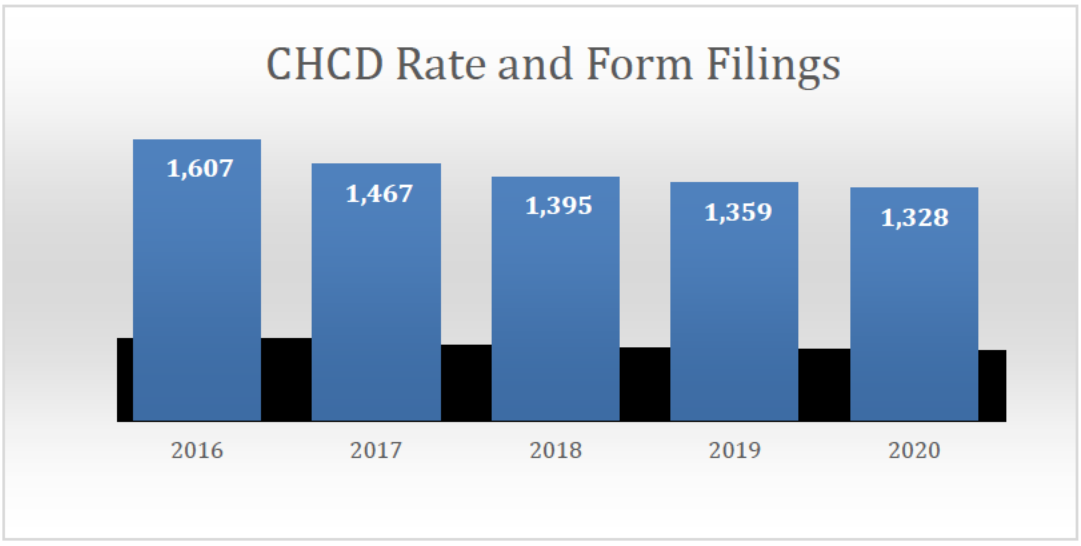


*Note that the total of the two outcomes for 2020 is 13 rather than 14; an additional review resulted in being partially upheld/partially overturned.

C. Policy Form and Rate Review

In 2020, CHCD received 1,328 insurance contract form filings: 426 were filed for information only, 777 were either approved or deemed acceptable, and the balance were either disapproved or in process at year's end.

Figure 5



III. Legislative and Regulatory Activities

A. Regulatory Changes

In 2020, the Bureau worked with the Governor's Office and Maine Department of Health and Human Services on actions to support the emergency testing, billing, treatment, telehealth and other needs of Mainers in relation to the COVID-19 pandemic. Following the declaration of an insurance emergency by the Governor, which authorized the Superintendent of Insurance to take emergency actions on behalf of Maine consumers (as described on page 6 above). CHCD staff assisted in drafting and implementing several orders and bulletins that were issued by the Superintendent, as listed below.

The CHCD also worked to implement the insurance-related requirements of the Governor's Made for Maine Health Coverage Act. Standardized health benefits called "Clear Choice" were developed for the individual and small group markets, through a stakeholder process using public forums and submitted comments. The goal of the Clear Choice plans, as prescribed by the Act, is to reduce consumer confusion and provide meaningful choices, by promoting a level playing field on which carriers compete on price and quality.

Orders and Bulletins - The Superintendent issued the following orders and bulletins related to the provision of health coverage:

<u>COVID-19 Related</u>
Insurance Emergency Response Order - Coronavirus Public Health Emergency (issued 3.12.20)

- Supplemental Order Regarding Credentialing (issued 3.19.20)
- Supplemental Order Regarding Continuation of Group Health Coverage (issued 3.27.20)
- Supplemental Order Regarding Deferral of Premium Deadlines (issued 4.6.20)
- Supplemental Order Regarding Remote Delivery of Health Services (issued 3.20.20)
- Bulletin 453—State Epidemiologist's Standing Order For Covid-19 Testing (Supersedes Bulletin 451)
- Bulletin 451—State Epidemiologist's Standing Order For Covid-19 Testing (Updated) (Supersedes Bulletin 450)
- Bulletin 450—State Epidemiologist's Standing Order For Covid-19 Testing (Superseded by Bulletin 451)
- Bulletin 447—Coronavirus Pandemic: Regulatory Filing Deadlines
- Bulletin 442—Emergency Measures Responding to the Coronavirus Pandemic

Additional Bulletins

- Bulletin 449—Newborn Coverage
- Bulletin 446—Updated Uniform Deadlines for Rate, Form, and QHP Filings for Non-Grandfathered Individual and Small Group Health Plans With Effective Dates of Coverage During 2021(Supersedes Bulletin 441)
- Bulletin 441—Uniform Deadlines for Rate, Form, and QHP Filings for Non-Grandfathered Individual and Small Group Health Plans With Effective Dates of Coverage During 2021 (Superseded by Bulletin 446)
- Bulletin 440 – Interaction Between Medicare and Small Group Plans

Rules - In 2020, CHCD also assisted in the development of the following rules issued by the Superintendent, which included holding two rule hearings:

- Rule 210 – Standards for Pharmacy Benefits Managers, hearing held August 20, 2020.
- Rule 365—Standards for Independent Dispute Resolution of Emergency Medical Service Bills, hearing held August 4, 2020, rule effective October 24, 2020.
- Rule 850—Health Plan Accountability, amendments effective May 20, 2020.
- Rule 917—Suitability in Annuity Transactions, hearing held December 10, 2020.

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

The CHCD staff participated in the following 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.
- *The Pharmacy Benefit Manager Subgroup* considers policy issues and development of a new NAIC model to establish a licensing or registration process for pharmacy benefit managers.

IV. Conclusion

The Bureau works to ensure that carriers operate in compliance with our laws and regulations. The CHCD assists 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 2020, CHCD helped address numerous challenges posed by the COVID-19 pandemic. In addition, the CHCD continued to implement both state laws and the federal Affordable Care Act, including performing federally facilitated health insurance marketplace plan management functions. 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.