Maine Bureau of Insurance

Consumer Health Care Division
Annual Report to the Legislature for 2021, Incorporating the Division's Annual Report on External Reviews

May 2022

Janet T. Mills
Governor

Anne L. Head
Commissioner

Timothy N. Schott
Acting Superintendent

Consumer Health Care Division

Joanne Rawlings-Sekunda	Director
Kim Davis	Deputy Director
Pamela Stutch	Attorney
Thomas Bell	Attorney
Violet Hyatt	Nurse Consultant
Cynthia Barre	Senior Insurance Analyst
Lisa Lewis	Senior Insurance Analyst
Amanda Maley-Alley	Senior Insurance Analyst
Julie Gagne	Insurance Contract Examiner
Trish Nadeau	Insurance Contract Examiner
Justin Whalen	Insurance Contract Examiner
Vacant	Consumer Assistance Specialist

Telephone Numbers:
Toll Free (in-state): 800-300-5000
Out-of-state: 207-624-8475
TTY: Please Call Maine Relay 711
Fax: 207-624-8599

Website: www.maine.gov/pfr/insurance

E-mail: Insurance.PFR@maine.gov

Mailing Address:
34 State House Station
Augusta, Maine 04333

Physical Location:
76 Northern Avenue
Gardiner, Maine 04345

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I. Overview

Pursuant to Title 24-A M.R.S.A. § 4321(J), this report details the 2021 activities of the Consumer Health Care Division (CHCD) of the 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 (Titles 24 and 24-A) and Bureau regulations. This report also incorporates 2021 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 include:

- 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 medical and long-term care external review processes and contracts with independent review entities;
- Oversees an Independent Dispute Resolution (IDR) process and contracts with an independent IDR entity;
- 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, in-person visits by consumers (done pre-COVID, and will again once State buildings reopen to the public), and constituent referrals from legislators and the Governor's Office.

For topics not within the Bureau's jurisdiction, CHCD staff refer consumers to the appropriate agency. For example, if consumers have questions about MaineCare, staff refer 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, signed 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 within statutory deadlines. 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 explain 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. Consumer Appeals

The Bureau ensures that carriers provide consumers with information about their appeal rights in their forms. Some consumer 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. Maine Rule Chapter 850 spells out the specifics of how these appeal levels are to be conducted, as well as providing deadlines for responding to consumers. 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 randomly 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 long-term care policy 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 2021, and the independent reviewer upheld the company's decision.

4. Outreach and Education

An ongoing CHCD priority is to educate 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 2021, CHCD participated in the following outreach and education efforts:

Maine Area Agencies on Aging, *Medicare Supplement Training* (Virtual)
University of Southern Maine Risk Management Course (Virtual)
University of Maine, Augusta Early College course, *Life Insurance* (Virtual/Recorded)
University of Maine, Augusta Early College course, *Health Insurance* (Virtual/Recorded)
University of Maine, Augusta Early College course, *Disability Insurance* (Virtual/Recorded)
University of Maine, Augusta Early College course, *Annuities* (Virtual/Recorded)
Maine Area Agencies on Aging, *Medicare Supplement Training* (Virtual)
Maine Area Agencies on Aging, *Medicare Supplement Training* (Virtual)
MainePublic, *Maine Calling re: Open Enrollment for Health Insurance* (Statewide/Radio)
Aroostook Area Agency on Aging, *Medicare Supplement Training* (Virtual)

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" 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 fully-insured plans providing coverage to Maine residents.

Each applicant must provide CHCD a detailed description of the 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 2021, there were 89 active licensed MURs in Maine. Maine's licensed MURs can be found through the "Licensee Lookup" tool on 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 review 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 2021, 7 new arrangements applied for registration. All 7 have been reviewed and approved, bringing the total number of arrangements to 64. Maine's registered preferred provider arrangements can be found by using the "Licensee Lookup" tool on the Bureau's website at www.maine.gov/insurance.

c. Managed Care Provider Networks

CHCD staff review 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. CHCD staff closely monitor the situation to assure that carriers comply.

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 February 2021, BOI Rule Chapter 210 went into effect to govern the PBM application process and to provide forms for each applying PBM to describe its operations, contractual arrangements, and financial viability before licensing. The licensing process replaced the prior requirement for PBMs to register with the BOI.
In 2021, 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), a nationwide system developed by the National Association of Insurance Commissioners (NAIC).

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

In 2021, CHCD and Life & Health Actuarial staff managed the review of forms and rates associated with Maine's transition from a Federally Facilitated Marketplace under the ACA to a State Based Marketplace. Our staff coordinated closely with DHHS staff in charge of the State Based Marketplace in order to ensure a smooth transition.

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. Maine is one of 47 jurisdictions that recognize IIPRC's approval of forms.

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 BOI to contract with an independent dispute resolution entity to preside over out-of-network emergency services billing disputes between insurance carriers, providers and certain uninsured persons. Working closely with BOI staff, Maximus Federal Services, the Bureau's contracted vendor for IDR, implemented a portal by which parties could enter their information directly and proceed to independent dispute resolution once eligibility was determined. 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.

In 2021, there were 19 requests for independent dispute resolution: 16 decisions were in favor of the health plan and 3 requests were withdrawn. Each involved emergency medicine. The services in dispute were all emergency room evaluation and patient management charges.

8. Covid-19

On June 11, 2021, the Governor issued a proclamation extending the State of Civil Emergency relating to Covid-19 until June 30, at which time the emergency would end. The Governor then issued an Order Providing an Orderly Transition Following the Termination of the State of Civil Emergency, which in part ordered that the COVID-19 Insurance Emergency proclaimed on March 12, 2020 would expire at midnight on July 31, 2021.

In response, on June 30, 2021, the Superintendent issued the Repeal of Insurance Emergency Response Orders: Coronavirus Public Health Emergency. This Order rescinded the following pandemic-related Orders and Bulletins involving the CHCD:

- Coronavirus Public Health Emergency, dated March 12, 2020
- Supplemental Order Regarding Credentialing, dated March 19, 2020
- Supplemental Order Regarding Continuation of Group Health Coverage, dated March 27, 2020
- Supplemental Order Regarding Deferral of Premium Deadlines, dated April 6, 2020
- Supplemental Order Regarding Roster Billing, dated March 25, 2021
- Bulletin 446, Updated Uniform Deadlines for Rate, Form, and QHP Filings for Non-Grandfathered Individuals and Small Group Health Plans With Effective Dates of Coverage During 2021
- Bulletin 447, Coronavirus Pandemic: Regulatory Filing Deadlines
- Bulletin 453, State Epidemiologist's Standing Order for Covid-19 Testing

II. Statistics

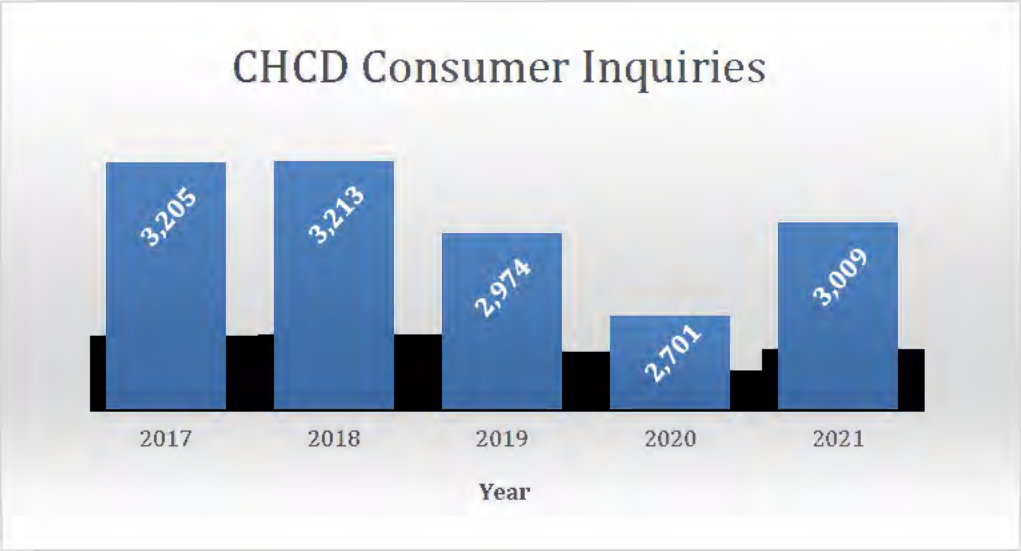
A. Consumer Inquiries and Complaints

1. Inquiries

An "inquiry" is a consumer call or written/electronic request for general information on insurance issues, or to complain generally about a regulated person or entity, but not regarding a specific dispute.

CHCD staff answered 3,009 telephone and written inquiries during 2021. The most frequent inquiries were related to individual insurance, Medicare Supplement insurance, and claim denials. Figure 1 illustrates the number of telephone and written inquiries received from 2017 to 2021.

Figure 1



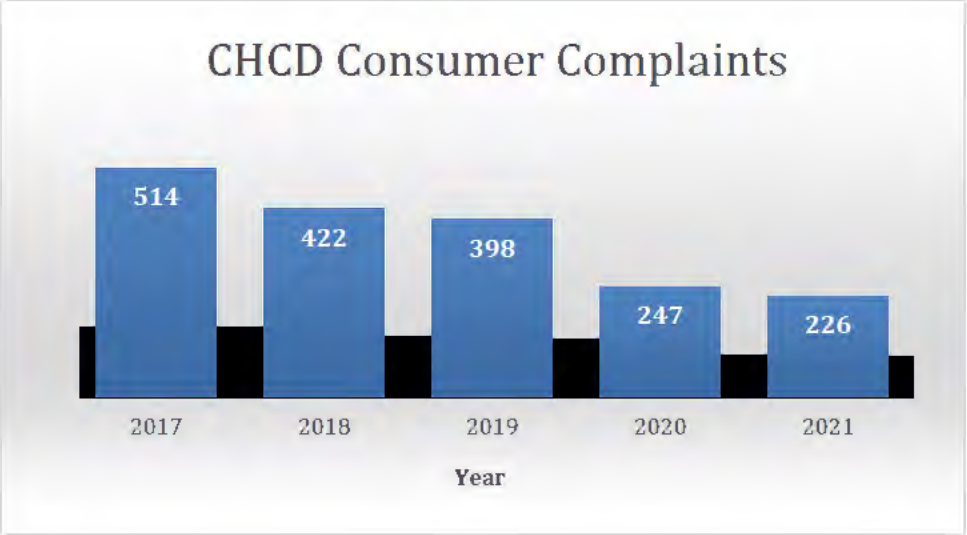
CHCD staff also answered 40 requests for constituent assistance from state and federal officials.

2. Complaints

A "complaint" is defined in Title 24-A M.R.S. § 216 (2) as "any written complaint that results in the need for the Bureau to conduct further investigation or to communicate in writing with a regulated entity for a response or resolution to the complaint."

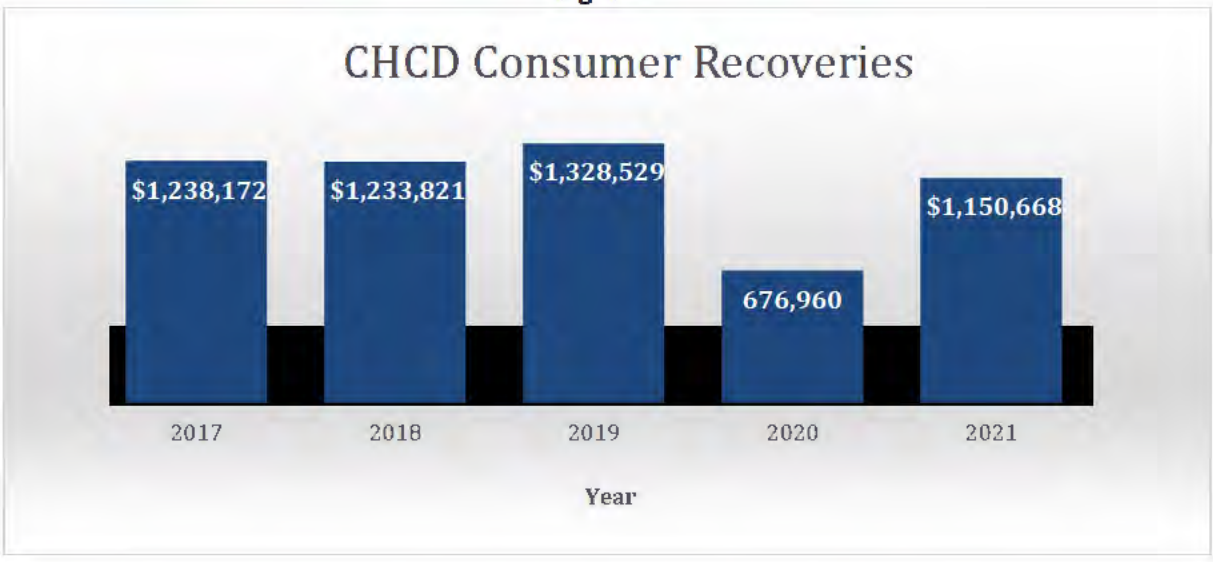
During 2021, the CHCD responded to 226 new written health, disability, annuity, and life insurance complaints. Figure 2 illustrates the number of written complaints filed with the CHCD from 2017 to 2021.

Figure 2



As part of the complaint investigation process, CHCD staff works to obtain appropriate restitution for consumers who have suffered a financial loss due to improperly denied claims or claims which were not paid in accordance with the policy. As indicated in Figure 3, the CHCD recovered $1,150,668 for complainants during 2021. Most often, the recovered funds were from previously denied claims.

Figure 3



In addition to *investigating* consumer complaints, CHCD works with insurance carriers to *identify trends* in consumer complaints, in an effort to remedy problems before they result in violations of the Insurance Code, including through quarterly meetings with each carrier. 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

Medical Reviews

Pursuant to Title 24-A M.R.S. § 4312 (7-A), 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 going through the RFP process and review, these contracts were renewed and approved to begin July 1, 2018, and continue to be in effect.

In 2021, the CHCD received fifty requests for external review, though 13 did not qualify under the statutes for the following reasons:

- the internal appeal process was not utilized prior to requesting external review
- the denial was based on issues other than the validity of the carrier's medical decisions
- the consumer's plan was not regulated by the State of Maine.

Of the thirty-seven qualified requests for medical external review received in 2021, thirty-six were completed prior to January 1, 2022 and another two were completed that had been initiated in 2020, for a total of 38 completed reviews in 2021.

Of the completed requests

- Sixteen were upheld, twenty were overturned, one was partially overturned, and one was withdrawn prior to review.
- Eleven were expedited external review cases.

Twenty-three cases related to medical necessity of treatment

- Five for mental health decisions/substance abuse treatment,
- Six for medication therapy,
- Twelve for general treatment decisions.

Fifteen cases related to the treatments being experimental or investigational:

- Thirteen for genetic lab tests, and
- Two for general treatment decisions.

The following table illustrates the status of external reviews by insurance carrier for 2021:

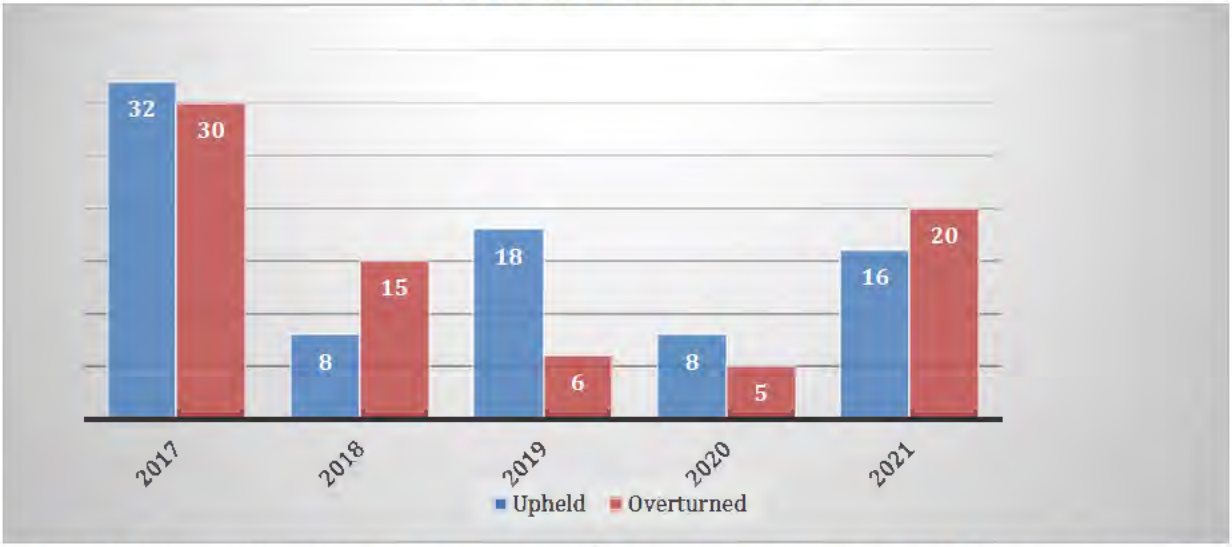
	Anthem	Aetna	CIGNA	CHO	Harvard	Other	Total
38 Qualified External Review Requests*:							
Total Requests – by Carrier	46	4	2	1	5	5	63
Not qualified	5	2	0	1	3	2	13
Consumer didn't complete process	15	0	0	0	2	3	20
Submitted for External Review:	26	2	2	1	7	0	38*
Withdrawn prior to hearing	0	0	0	1	0	0	1
38 Reviews Completed by 1/1/22 – Breakdown by Qualifying Issue							
Experimental/Investigational	12	1	0	0	2	0	15
Pre-Existing Condition	0	0	0	0	0	0	0
Care/Treatment/Diagnosis	0	0	0	0	0	0	0
Medical Necessity	14	1	2	1	5	0	23

*As noted in narrative above, this number includes 2 external review requests that were in process from 2020.

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

Figure 4

External Review Outcomes



Note that the total of the two outcomes for 2021 is 36 rather than 38; an additional review resulted in being partially overturned, and one withdrew prior to review.

Long-term Care Reviews

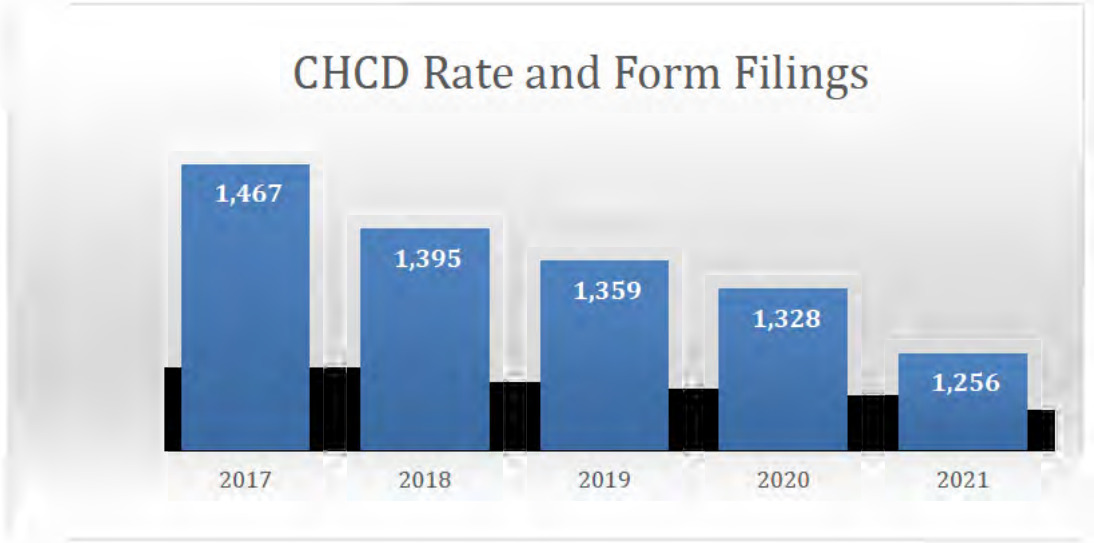
In 2021, the Bureau received one request for a long-term care external review. In this case, the independent reviewer's decision upheld the insurer's denial of benefit on the grounds that the member did not demonstrate, through argument or documentation provided for the review, that the member met the carrier's criteria for long-term care benefits.

C. Policy Form and Rate Review

In 2021, CHCD reviewed 2,506 insurance contract form filings:

- 466 were filed for information only,
- 1,196 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

1. New Rules and Bulletins

In 2021, CHCD staff issued the following rules:

- Rule 735 – Term and Universal Life Insurance Reserve Financing, hearing held November 18, 2021, effective date January 1, 2022.
- Rule 740 Amendment (2021) – Credit for Reinsurance, hearing held October 21, 2021.
- Rule 851 – Clear Choice Designs for Individual and Small Group Health Plans, hearing held March 12, 2021, rule effective June 8, 2021.
- Rule 856 – Combination of the Individual and Small Group Business Health Insurance Risk Pools, hearing held October 12, 2021, effective date January 24, 2022.

The CHCD also assisted in issuing the following bulletins:

- Bulletin 460 – Changes to laws Governing Payment for Emergency Services (Supercedes Bulleting 454)
- Bulletin 459 – Insurance Coverage for Services Provided Through Telehealth
- Bulletin 458 – Clear Choice Designs for the 2022 Individual Health Insurance Market
- Bulletin 456 – Uniform Deadlines for Rate, Form, and QHP Filings for Non-Grandfathered Individual and Small Group Health Plans With Effective Dates of Coverage During 2022
- Bulletin 455 – Coronavirus Pandemic: Discontinuation of Temporary Licensure (Supercedes Bulletin 445) Rescinded by Order Issued June 30, 2021
- Bulletin 454 – Out-of-Network Ambulance Services

2. Clear Choice Designs for Individual and Small Group Health Plans

Pursuant to a Notice of Rulemaking issued on February 9, 2021, Superintendent Cioppa held a public hearing on March 12, 2021, regarding Bureau of Insurance Rule 851. After the public comment period the new rule went into effect on June 8, 2021. The primary purpose of the new rule was to develop standardized health plan cost-sharing designs as set out in 24-A M.R.S. §2793. Clear Choice Designs have been implemented for the Individual Market in 2022.

3. Federal Section 1332 Waiver

Maine currently has an approved section 1332 waiver that waived Section 1312(c)(1) of the federal Patient Protection and Affordable Care Act ("PPACA") for a period of five years beginning January 1, 2019, to permit reinstatement of the Maine Guaranteed Access Reinsurance Association ("MGARA") reinsurance program for the individual health insurance market. BOI has taken steps to amend its section 1332 waiver to permit extension of the MGARA reinsurance program to a pooled individual and small group market and transition to a retrospective claims cost-based reinsurance program. However, on March 25, 2021, the State made the decision to delay pooling the individual and small group markets and extending MGARA reinsurance to that pooled market until 2023, and to proceed with transitioning to a retrospective claims cost-based reinsurance program for 2022. As advised by the Department of the Treasury and the Department of Health and Human Services ("the Departments"), Maine has proceeded with a technical change to its existing section 1332 waiver to transition MGARA reinsurance to a retrospective model beginning January 1, 2022. The 1332 waiver amendment application as originally drafted was revised to reflect these developments and has been submitted for approval by the Departments.

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.

- **The Life Actuarial Task Force** identifies, investigates and develops solutions to actuarial problems in the life insurance industry.

IV. Conclusion

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

In 2021, in addition to addressing numerous challenges posed by the Covid-19 pandemic, the CHCD continued to implement both state laws and the federal Affordable Care Act, including performing federally-facilitated health insurance marketplace plan management functions. The ACA has required staff to familiarize themselves with changes in federal regulations and to coordinate with insurance carriers to meet strict filing timeframes that are set at the Federal level. Insurance carrier representatives and consumers rely on the Bureau to interpret the new statutes and regulations. In the fall of 2021, Maine transitioned away from the federal exchange, Healthcare.gov, to the state-run exchange, CoverME.gov, after CMS granted approval of the change in September.

For additional information on any of the topics discussed in this report, please contact the Consumer Health Care Division at the Maine Bureau of Insurance by calling (207) 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.