



State of Maryland
OFFICE OF THE ATTORNEY GENERAL

ANNUAL REPORT OF THE PEOPLE'S INSURANCE COUNSEL DIVISION

Fiscal Year 2019

I. INTRODUCTION

The People's Insurance Counsel Division in the Office of the Attorney General (hereinafter referred to as the "Division" or "PICD") submits this annual report as required by the Maryland General Assembly.¹ On or before the first of January of each year, the Division reports on its activities for the prior fiscal year. This report covers the time period from July 1, 2018, through June 30, 2019.

A. Statutory Basis and Funding

The Division was created in 2005 with the enactment of the Maryland Patients' Access to Quality Health Care Act of 2004 (hereinafter referred to as "Act").² The provisions of the Act relating to the Division have been codified in Md. Code Ann., State Government Section 6-301 through 6-308.

Funding of the Division is provided through a People's Insurance Counsel Fund consisting of funds collected by the Maryland Insurance Commissioner (hereinafter referred to as the "Commissioner") through an annual assessment from each medical professional liability insurer and homeowners insurer issuing policies in the State. The purpose of the Fund is to pay the costs and expenses of the Division in carrying out its duties.³

B. Statutory Duties

The duties of the Division include evaluation of each medical professional liability insurance and homeowners insurance matter pending before the Commissioner to determine whether the interests of insurance consumers are affected.⁴ The Division has explicit statutory authority to conduct investigations and request the Commissioner to initiate an action or proceeding to protect the interests of insurance consumers. If the Division determines that a rate increase is adverse to the interests of consumers, its representative shall appear before the Commissioner at any hearing on the rate filing. At any time, the Division may conduct

¹ Md. Code Ann., State Government § 6-308.

² The Act was introduced as an emergency measure as House Bill 2 in a 2004 Special Session of the Maryland General Assembly convened on December 28, 2004. The Bill passed and was enacted in 2005 over the Governor's veto with an effective date of January 11, 2005. The Act was amended in 2005, effective March 31, 2005, by another emergency measure, House Bill 836.

³ Md. Code Ann., State Government §§ 6-304 and 6-305. Because the duties of the Division only involve two types of insurance, homeowners insurance and medical professional liability insurance, the insurers who are assessed for the Fund are limited to the insurers issuing those types of policies in Maryland.

⁴ Md. Code Ann., State Government § 6-306(a). The Act defines insurance consumers as those insured under homeowners policies or medical professional liability insurance policies.

investigations and request the Commissioner to initiate an action or proceeding to protect the interests of insurance consumers.⁵

In any appearance before the Commissioner or the courts, the Division has the rights of counsel for a party to the proceeding, including summoning witnesses, cross-examination of witnesses, presenting evidence and argument.⁶ The Division may also take depositions in proceedings before the Commissioner and in proceedings in court, in accordance with applicable law and procedure.

The Division “shall have full access to the Commissioner’s records,” including rate filings, and shall have the benefit of all other information of the Commissioner.⁷ The Division is entitled to the assistance of the Commissioner’s staff provided that the assistance is consistent with the staff’s responsibilities and with the respective interests of the staff and the Division.⁸

The Division may recommend legislation on matters that promote the interests of insurance consumers in Maryland.⁹

In 2011, Counsel was granted access to vendor explanations of catastrophe models but also required to maintain the confidentiality of them.¹⁰

II. DIVISION STAFF AND BUDGET

In Fiscal Year 2019 (FY19), the Division was staffed by the People’s Insurance Counsel Ilene J. Nathan and Assistant Attorney General John P. McLane.¹¹ Additional staff members include an analyst/investigator, whose primary responsibilities include review of homeowners and medical liability insurance filings, and a management associate who provides office support.

Three actuarial firms provided consulting services to the Division by reviewing rates and other documents that are filed by insurers issuing policies in Maryland. The following consultants

⁵ The Division’s duties are described in Md. Code Ann., State Government § 6-306.

⁶ Md. Code Ann., State Government § 6-307.

⁷ Md. Code Ann., State Government § 6-307(c). The Division’s access to information is only limited by applicable statutes in the Insurance Article and the Maryland Public Information Act, General Provisions Article, §§ 4-101 to 4-601.

⁸ Md. Code Ann., State Government § 6-307 (c)(2).

⁹ Md. Code Ann., State Government § 6-307(d).

¹⁰ 2011, chapter 154 —see Md. Code Ann., Insurance §19-211.

¹¹ Ms. Nathan retired from the Office of the Attorney General effective November 27, 2019. She served as People’s Insurance Counsel from its inception in 2005 to March 2008 and again from January 2017 to November 2019.

were selected for their expertise in property and casualty rate filings: Kufera Consulting, Inc., Madison Consulting Group, Inc. and Taylor and Mulder, Inc.

III. DIVISION RESPONSIBILITIES

The Division concentrates its efforts in six areas:¹²

- Review of consumer complaints filed with the Maryland Insurance Administration (hereinafter “MIA”) relating to homeowners insurance and medical professional liability insurance;
- Response to concerns of consumers who contact the Unit;
- Review of rate, rule and form filings in those two lines of insurance;¹³
- Review of proposed legislation and participation in the legislative process, as required, to represent consumer interests;
- Investigation of issues generated by patterns identified in consumer complaints and rate filings;¹⁴ and
- Review of “lack of good faith complaints” under Insurance Article Section 27-1001.¹⁵

A. Review of Consumer Complaints filed with the MIA

After a consumer has initiated a complaint with the MIA regarding the action of an insurance company, the MIA conducts an investigation and issues a determination letter to the

¹² The Division has interpreted its statutory authority to include the review of any matter before MIA that impacts homeowners and medical professional liability policyholders. This decision derives from the Division’s broad mandate to review “each medical professional liability insurance and homeowners insurance matter pending before the Commissioner.” Md. Code Ann., State Government § 6-306(a). Rate filings are reviewed pursuant to a specific mandate to “review any rate increase of 10 percent or more filed with the Commissioner by a medical professional liability insurer or homeowners insurer.” Md. Code Ann., State Government § 6-306(a).

¹³ In this Report, references to “Rate Filings” shall mean all filings made under Insurance Article, Title 11, including new and revised rates, rating rules, policy forms and supplementary rate information.

¹⁴ Several of these are discussed in greater detail later in the Report.

¹⁵ Md. Code Ann., Ins. Art. § 27-1001, effective October 1, 2007. The Division has only been involved in one homeowner matter in the last year. MIA has not forwarded any other similar matters reviewed by the Commissioner in the last two years.

complainant and insurer at the completion of its investigation. MIA supplies the letters to the Division weekly, enabling the Division to do timely reviews of all the letters to identify issues that potentially impact a number of consumers and to assess the existence of patterns of insurer conduct contrary to the insurance laws. The complaints primarily relate to the cancellation or non-renewal of coverage, increase in premiums, modifications of coverage, claim denials or claim settlements.

It has become the practice of the Division to issue its own explanatory letter and printed materials to the majority of individuals who have received MIA determination letters.¹⁶ The Division's letter explains that a staff member is available to discuss a consumer's right to an administrative hearing and explains applicable statutory and regulatory frameworks for hearings. Through calls from consumers who have received the Division's letter, the Division obtains additional information about company practices beyond the information detailed in the determination letters themselves. The Division's review of the determination letters and its conversations with affected consumers has provided an opportunity to understand the broader impact of insurers' procedures and policies in making underwriting and claims decisions.¹⁷

The Division routinely advises consumers that it does not provide legal representation for individuals in their disputes with insurers. The Division does assist consumers in filing their requests for hearings and aids consumers in understanding the process for using Maryland's Public Information Act to obtain the relevant MIA files regarding their complaints.

In addition to the initial explanatory letter, the Division, upon being notified by the MIA that a complainant has sought and been granted a hearing, sends a letter offering to assist the complainant in understanding the hearing process; this practice began in Fiscal Year 2018. The Division has developed a handout about the process so that complainants may better understand how the hearings are conducted. Additionally, the Division has sample subpoena and discovery forms for complainants' use in summoning witnesses and obtaining additional documents for their hearings. The Division attorneys now also review Final Orders issued by the Commissioner after hearings held at the MIA or delegated to hearing officers at the Office of Administrative Hearings.

In FY19, the MIA advised the Division that it had not reviewed any medical professional liability insurance-related complaints. In FY19, the Division reviewed 455 homeowners insurance complaint determination letters issued by MIA. Most of those complaints involved either consumer dissatisfaction with the handling or payment of a claim, or with the action taken by an insurer to cancel insurance coverage or decline to renew coverage. The MIA found violations of

¹⁶ Division letters are not sent to all individuals. Among those who do not receive letters are those whose complaints have been resolved in their favor, who have withdrawn their complaints, or who have replaced their coverage resulting in an MIA letter stating that the issue is rendered moot and no remedy is available.

¹⁷ Although the Division routinely advises consumers that it does not provide legal representation in their disputes with insurers, it does assist consumers in filing their requests for hearings and aids consumers in understanding the process for using Maryland's Public Information Act to obtain the relevant MIA files regarding their complaints.

insurance laws in three (3) of the complaints. Of the follow-up letters issued by the Division to consumers, seventy-one (71) contacted the Division to discuss their complaints further.

B. Response to Consumers who Initiate their Complaints with the Division

Periodically, consumers contact the Division to discuss their concerns with their insurance companies. In FY19, all of these calls concerned homeowners insurance issues similar to those addressed to the MIA in complaints.¹⁸ Division attorneys advise callers about options that are available for resolution of their complaints, including policy appraisal procedures and use of public adjusters for claims resolution. The attorneys also often refer consumers to the MIA website for further information about resolving claims through the Rapid Response Program, how to file a formal complaint and/or how to file a lack of good faith complaint. Because Division attorneys do not represent individual consumers, the Division has referred callers to the Maryland Courts Self-Help Centers for limited no-cost legal advice in civil matters. When appropriate, the Division has exercised its statutory authority to request review by the MIA. The Division responded to seventy-four (74) consumer calls during the fiscal year.

C. Division Review of Rate Filings

Insurance companies issuing homeowners policies in Maryland are required by Title 11 of the Insurance Article to file with the Commissioner all rates, supplementary rate information, policy forms, endorsements and modifications of any of these documents.¹⁹ Homeowners insurance is subject to the competitive ratings laws. Insurers are allowed to use the filed rates without obtaining the prior approval of the Commissioner.²⁰ All policy forms must be approved by the Commissioner before use in Maryland.

Insurance companies issuing medical professional liability insurance policies in Maryland are required by statute to obtain the approval of the Commissioner before using rates, rules, policy forms and any modifications of such documents.²¹ These filings may not take effect until 30 working days after filing with the Commissioner.²²

The Division reviewed a total of 396 insurance filings for FY19. The Division expressed concern about several filings to the MIA who, in response, either rejected the filing or persuaded

¹⁸ Consumers calling the Office are the Attorney General are often directed to the Division regarding insurance complaints other than homeowners or medical malpractice. The Division attorneys respond to those calls also, redirecting the consumers to other resources that may be of assistance to them.

¹⁹ Md. Code Ann., Ins. Art. § 11-206.

²⁰ Md. Code Ann., Ins. Art. § 11-307.

²¹ Md. Code Ann., Ins. Art. § 11-206(a).

²² Md. Code Ann. Ins. Art. § 11-206(g).

the company to withdraw or modify the filing. Accordingly, the Division did not initiate any hearings in FY19 on these filings.

Homeowners Insurance

The Division reviewed 303 new homeowners filings made with the MIA during the fiscal year. These filings included rate increases and decreases, new rating rules, rule changes, new policy forms, and revisions to policy forms. Typically, the effect of a rate, rule or form change on consumers is not easily ascertained without in-depth analysis of the filing. The three actuarial consulting firms previously mentioned, each under contract with the Division, are referred significant filings that require actuarial review. The Division selects for review filings in which the insurers are requesting increases or decreases of over ten (10) percent on all or some policyholders, or when significant increases or decreases have been requested in successive years.

As found in prior years, the Division's consultants determined that multiple filings did not include adequate supporting actuarial data; therefore, the Division's consultants generated questions on the filed documents and made requests for additional supporting information. The Division, through its staff or consulting actuaries, advised the MIA of all inquiries forwarded to the insurers. With few exceptions, the Division consultants received satisfactory responses from the insurers' actuaries.

Significant Homeowners Filing Issues

Predictive Modeling

As noted in the Fiscal Year 2017 and 2018 Annual Reports, a large number of insurers are now using non-catastrophe predictive models (known as generalized linear models) in setting their rates. The data used in these models is extensive and difficult to evaluate.²³ In light of insurers' increased use of these models, staff members engage in continuing education given by Division actuaries to better understand the issues presented by modelling.

During Fiscal Year 2018, the MIA Associate Commissioner for Property and Casualty notified the Division that it was implementing procedures to disclose proprietary rate-related information ("PRRI"), pursuant to Md. Code Ann., Ins. Art. §11-307(c)(3)(iii), although it was not obligated to do so. Generally, MIA has disclosed PRRI when the Division sees reference to it in the public section of a filing and requests it. The Division has no knowledge which filings have confidential information unless the public sections available to the Division make reference to it. Although Division actuaries have submitted questions to companies when MIA has disclosed PRRI, the process has proved to be a lengthy and cumbersome way for the Division to access very important data for analysis.

Rating Factors

²³ Division attorneys met with the Associate Commissioner for Property and Casualty in early FY18 and discussed concerns about the models at that time.

A significant number of companies use ‘age of insured’ and ‘marital status’ as factors in calculating their rates.^{24 25} Although the MIA has never responded to the Division’s request made in Fiscal Year 2017 to review the use of these factors with a critical eye, Division actuaries have been analyzing the use of the factors in the filings of multiple companies. Thus far, PICD actuaries have noted that the generalized linear models currently employed by companies do generate correlations between age of insured and insurance losses. The correlations, however, are not consistent across the industry as one might expect.²⁶ Some companies’ models reveal higher losses for individuals over forty (40) and therefore have rating factors increase with age of insured. Others decrease the factors for individuals of retirement age. PICD continues to survey companies about the actuarial bases for their use of these factors, anticipating that more industry data will assist PICD in the evaluation of the validity of these factors.

Medical Professional Liability Insurance

There are significantly fewer medical professional liability insurance filings received each year by MIA as compared to homeowners insurance filings. The Division reviewed 93 new filings made by medical professional liability insurers during the fiscal year. The Division’s consultants reviewed the medical professional liability filings in the same manner as the homeowners filings; requests for additional documentation were sent to the insurers with copies to MIA actuaries.

D. 2019 Legislative Session

During the 2019 Legislative Session, the Division endorsed legislation intended to close a loophole regarding homeowners insurance rates for individuals whose spouses have died. House Bill 191, sponsored by Delegate Charles E. Sydnor III, and cross-filed as Senate Bill 607, sponsored by Senator Katie Fry Hester, prohibit an insurer from increasing the homeowner’s insurance premium on an insured who becomes a surviving spouse based solely on the insured’s change in marital status. The bills passed both chambers of the General Assembly and the measure was signed into law by Governor Larry Hogan.

E. Division Review of Section 27-1001 Complaints

In 2007, the General Assembly amended the Insurance Article to provide policyholders a procedure for review when they believe their insurer has not acted in good faith. The provisions,

²⁴ The marital status factor first came to the Division’s attention in Fiscal Year 2017 when a consumer complaint was made by a widow who realized her homeowners premium increased when her husband died.

²⁵ See 2019 Legislative Session below for the Division’s efforts to address this disparity.

²⁶ For example, when it comes to fire risk, there is agreement in the industry that the older a home, a roof, or the greater distance to a fire hydrant, the higher the risk.

codified in Section 27-1001 of the Insurance Article,²⁷ and accompanying regulations,²⁸ require a policyholder to file a complaint with the MIA, with supporting documentation, stating the facts underlying the allegation that the insurer failed to act in good faith. This procedure is only available to a policyholder. Injured third parties--*e.g.*, a neighbor with damage to their home—may not file under Section 27-1001.²⁹ The Division is unaware of any MIA-issued Section 27-1001 decisions involving homeowners insurance policies in FY19.³⁰

IV. INVESTIGATIONS

During FY19, the Division investigated 129 matters. Investigations are commenced when the Division identifies an issue in an insurance complaint that potentially affects a broad number of consumers. These investigations are usually prompted by contact from the consumer who filed the complaint, but sometimes arise from consumers who contact the Division before a complaint is filed with the MIA. Additionally, a few investigations are commenced from a pattern or practice noted by the Division following review of numerous determination letters from particular insurance companies.

Investigations are more intensive than much of the Division's other consumer-assistance practices, such as responding to complainants' inquiries about MIA complaint and hearing practices. For example, investigations often require Division personnel to obtain MIA investigative files, request additional documents from insurers, conduct interviews and do additional background and legal research in order to fully assess an MIA decision's impact on consumers.

In FY19, PICD investigated twenty-three (23) allegations raised in determination letters and seven (7) prompted by cold calls by consumers directly to the Division. In addition, as indicated previously, the Division has three (3) continuing projects regarding homeowners insurance practices affecting consumers.³¹

²⁷ Md. Code Ann., Ins. Art. § 27-1001.

²⁸ COMAR 31.08.11.

²⁹ As an alternative to filing under Section 27-1001, consumers may file a regular complaint with MIA alleging that an insurer has failed to act in good faith. The list of unfair claim settlement practices in Section 27-303 was amended in 2007 to add "fail to act in good faith." Like Section 27-1001, an insurer can be found in violation of failing to act in good faith when the consumer who makes the allegation is the policyholder of that insurer (first party claims). An insurer cannot be held in violation of the law for failing to act in good faith if the person who suffered a loss and filed a claim is not the policyholder of the insurer (a third party claim).

³⁰ MIA does not routinely advise the Division if there are any pending Section 27-1001 matters before the Commissioner. The Division has commenced the process of requesting these matters via the Maryland Public Information Act.

³¹ Age of insured and marital status rating factors; policy availability.

Finally, the Division considers in-depth reviews of rate filings by PICD consulting actuaries to be investigations. In FY19, actuarial consultants reviewed fifty-eight (58) new filings, twenty-three (23) of which were continuing filing investigations from FY18. PICD investigated an additional eighteen (18) rate filings internally in FY19.

The Division did not intervene in any consumer hearings in FY19, although it conducted extensive investigation into cases involving resolution of claims, non-renewals of policies and policyholder access to policy documents.³² The Division also monitored several matters in which a homeowner requested an administrative hearing, and observed several administrative hearings.

As noted previously in this report, PICD actuaries routinely contact companies regarding the insufficiency of the actuarial bases for their filings or apparent errors in calculations. In the vast majority of cases, the companies supply PICD with the additional and/or corrected information sufficient for PICD actuaries to do a complete analysis of the filing.

The Division has also launched several long-term investigations as noted above. In particular, the Division continues to request data from insurers who employ 'age of insured' and 'marital status' as rating factors in the determination of premium rates. The Division's requests to insurers often include inquiries into the length of time the factors have been employed in rate-making, and the currentness of their data. One of the Division's consulting actuaries is available to assist the Division in assessing whether these factors generate rates that are unfairly discriminatory in violation of Maryland's insurance laws.

V. CONSUMER ASSISTANCE EFFORTS

The Division has moved away from participating in consumer events that reach limited numbers of people in favor of developing educational materials to be posted online. The Division intends to refine and supplement its section on the OAG website in FY20.

The Division has continued dialogue with MIA representatives in order to better represent consumer interests. The Associate Commissioner for Consumer Advocacy and Education has advised PICD on efforts by MIA to assist consumers. This has resulted in PICD's increased referral of consumers to the Rapid Response Program for claims resolution. Division attorneys continue to discuss with MIA personnel how PICD can better access matters before the Commissioner that PICD is statutorily authorized to review. The Division also requested that it be advised of the scheduling of consumer hearings.³³

³² The Division intervened in one homeowners matter that originated in FY19, but will not have an administrative hearing until later in Fiscal Year 2020.

³³ MIA has indicated that its tracking system (one case number at the complaint stage and another at the hearing stage) makes it difficult to give PICD information easily. The Associate Commissioner for Hearings has been most cooperative in FY19 to determine if MIA's procedures can be modified in some way in order that PICD be notified regarding scheduled hearings.

VI. FY 2020 ACTIVITIES

The Division closes FY19 with several goals for FY20:

- Obtain data on ratios of consumer complaints to number of policyholders for homeowners insurance companies.³⁴
- Continue to examine the use of ‘marital status’ and ‘age of insured’ as factors used by insurers in homeowners insurance rate-making.
- Continue to examine issues of policy availability for policyholders.
- Continue to monitor insurer filings to ensure thorough review and meaningful feedback to the MIA to protect consumer interests.
- Ensure that the MIA gives the Division access to confidential information in filings in a timely manner.
- Monitor trends and issues facing homeowners insurance and medical professional liability insurance policyholders.
- Review and advocate for consumer interests in all proposed bills filed in the legislative session, and advocate for the legislation proposed by the Division.
- Produce additional educational materials and add specific information on topics relating to homeowners insurance to the Division’s website.

VII. CONCLUSION

The Division will continue its efforts to advocate on behalf of consumers regarding homeowners insurance and medical professional liability insurance matters pending before the MIA. The Division will continue its review of all insurance filings in those two areas and will evaluate any impact on consumers. As in past years, the Division will represent consumer interests before the House and Senate committees, reviewing insurance bills and supporting legislation that will protect consumer interests.

³⁴ PICD was unable to commence this project in FY19 due to limited personnel and time spent on the implementation of a new case management system.