



**State of Maryland
OFFICE OF THE ATTORNEY GENERAL**

ANNUAL REPORT OF THE PEOPLE'S INSURANCE COUNSEL DIVISION

Fiscal Year 2008

Submitted to the Governor and General Assembly

I. Introduction

The People's Insurance Counsel Division in the Office of the Attorney General (hereinafter referred to as "PICD" or "Division") submits this annual report as required by the Maryland General Assembly.¹ On or before January 1 of each year, PICD is required to issue a report on the activities of the Division in the prior fiscal year. This report covers the time period from July 1, 2007 through June 30, 2008.

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 §§ 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 also reviews any rate increase of 10% or more filed with the Commissioner by a medical professional liability insurer or homeowners insurer. 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,

¹Md. 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 relate to 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.

the Division may conduct 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. The Division may also take depositions in proceedings before the Commissioner and in proceedings in court, in accordance with applicable law and procedure.⁶

The Division is given 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

II. Division Staff and Budget

At the commencement of the fiscal year, the Division was staffed by the People's Insurance Counsel Ilene J. Nathan,¹⁰ an Assistant Attorney General, an analyst/investigator, a part-time management associate and a part-time student law clerk. Ilene J. Nathan left the Division in March 2008 for another position in the Office of the Attorney General. Efforts commenced immediately to fill the vacancy, but the position was not filled by the conclusion of FY 2008. The Division's management associate became a full time employee on July 2, 2008. In May, 2008, two law students began part-time summer internships with the Division following the April departure of the part-time law clerk.¹¹

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, State Government Article, §§ 10-611 to 10-630.

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

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

¹⁰ The People's Insurance Counsel was appointed by former Attorney General J. Joseph Curran, Jr. and the appointment was confirmed by the Senate on February 13, 2006, as required by Md. Code Ann., State Government 6-302(a)(2).

¹¹ In the last quarter of FY08 and during the first two quarters of FY09 the Division was not fully staffed as recruiting efforts had not resulted in a qualified individual with the specialized

Three actuarial firms provided consulting services to the Division reviewing rates and other documents that were filed by insurers issuing policies in Maryland. The consultants were selected for their expertise in property and casualty rate filings. Prior to the conclusion of the fiscal year, their contracts were extended to December 31, 2008.

III. Division Responsibilities

Since it was established, the Division has concentrated its efforts in three areas: review of consumer complaints filed with the Maryland Insurance Administration (hereinafter “MIA”) relating to homeowners insurance and medical professional liability insurance; review of rate filings in those two lines of insurance; and review of proposed legislation. The passage of Senate Bill 389 in the 2007 legislative session created an additional area of concern for the Division. Effective October 1, 2007, § 27-1001¹² of the Insurance Article allows first-party insureds under property and casualty insurance policies to institute a civil action against an insurer on the basis of the insurance company’s refusal to settle a claim in good faith. The Division reviews MIA decisions on complaints filed under § 27-1001 that relate to homeowners insurance claims.¹³

A. Division Review of Complaint Determination Letters

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 complainant and insurer at the completion of its investigation. The Division reviews all complaint determination letters to assess if any patterns of insurer conduct contrary to the insurance code exist. The complaints primarily relate to the cancellation or non-renewal of coverage, increase in premiums, modification of coverage, or claim settlements.¹⁴

It has become the practice of the Division to issue its own explanatory letter and printed

knowledge required to fill the Peoples’s Insurance Counsel position.

¹² Md. Code Ann., Insurance § 27-1001.

¹³ The Division has interpreted its statutory authority to include the review of any MIA proceeding which 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% or more filed with the Commissioner by a medical professional liability insurer or homeowners insurer”. Md. Code Ann., State Government § 6-306(a).

¹⁴ The Annual Report for the MIA for Fiscal Year 2007 states that the Property and Casualty Consumer Complaint Section handled 9,838 complaints from consumers. The complaints that did not relate to personal automobile insurance totaled 3,004. Homeowners insurance complaints and those related to medical professional liability insurance are included in this number but are not specifically broken out in the Report.

materials to the majority of individuals who have received the MIA determination letters.¹⁵ The Division's letter explains that a staff member is available to advise consumers on their rights to hearings before the Commissioner and explain applicable statutory and regulatory frameworks for hearings. Through calls from consumers who have received the Division's letter, additional information about company practices is gathered beyond the information detailed in the determination letters themselves. The Division's review of the determination letters has provided an opportunity to understand the procedures and policies of insurers in making underwriting and claim decisions that, at times, adversely affect consumers.

As in the past fiscal year, the Division has found that there are significantly more homeowner insurance complaints than medical professional liability insurance related complaints. Most homeowner insurance complaints involve 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 Division reviewed 398 homeowners determination letters and 6 medical professional liability insurance determination letters issued by MIA between July 1, 2007 and June 30, 2008. (See Appendix A). The Division routinely advises consumers that it does not provide legal representation for individuals in their disputes with insurers, although the Division attorneys will give guidance to consumers about the administrative hearing process.

B. Division Review of Rate Filings

Insurance companies issuing homeowners policies in Maryland are required by statute to file with the Commissioner all rates, supplementary rate information, policy forms, endorsements and modifications of any of these documents.¹⁶ Homeowners insurance is subject to the competitive rating laws. Insurers are allowed to use the filed rates without obtaining the prior approval of the Commissioner.¹⁷ All policy forms must be approved by the Commissioner before use in Maryland.¹⁸

¹⁵ PICD letters are not sent to individuals 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.

¹⁶ Md. Code Ann., Ins. Art. § 11-206.

¹⁷ Md. Code Ann., Ins. Art. § 11-307.

¹⁸ The enactment of House Bill 1353 in 2008 added several new statutes to the Insurance Article requiring homeowner's insurers to make filings with the Insurance Commissioner. One new law requiring policyholder notices applies to policies issued on or after October 1, 2008 that include a percentage deductible for damage caused by hurricanes and storms. See Md. Code Ann., Ins. Art. § 19-208. For policies issued on or after June 1, 2009, insurers are required to offer a premium discount for home improvements to mitigate loss from a hurricane or storm. See Md. Code Ann., Ins. Art. § 19-209. Although these provisions apply to policies issued in FY 2009, the Division began to see insurer filings made under these new laws in the last few months of FY 2008. These

The Division reviewed all homeowners rate 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.¹⁹ The services of three actuarial consulting firms, under contract with the Division, were used to analyze the filings that included actuarial data. In some instances, the Division's consultants determined that filings did not include adequate supporting actuarial data and questions on the documentation and requests for additional supporting information were generated by the Division's consultants. Following review and approval by the Division, these requests were forwarded to the insurers. The Division, through its consultants, advised the MIA of all inquiries being forwarded to the insurers. With only a few exceptions, the PICD consultants received responses from the insurers' actuaries.

Still under review by the Division from FY 2007 is a group of filings from insurers who notified the MIA, pursuant to Md. Code Ann., Ins. Art. § 19-107, that new homeowners policies would not be written in designated geographic areas, particularly coastal areas. The Division's consultants reviewed all supporting data initially supplied by these insurers and supplemental information provided to the MIA in response to MIA requests and requests from the Division. In the case of two such filings made in December 2006, following the Insurance Commissioner's decision on May 31, 2007 to allow the insurer, Allstate Insurance Company, to implement its underwriting plan effective June 4, 2007, the Insurance Commissioner granted the Division's June 1, 2007 request for a hearing on the filings.²⁰ Following the hearing, the Insurance Commissioner issued a Final Order in favor of Allstate and PICD filed a Petition for Judicial Review with the Circuit Court on February 29, 2008.²¹ Judge Carol Smith of the Circuit Court For Baltimore City granted Allstate's Motion to Dismiss the Division's Petition on June 23, 2008 on the grounds that PICD lacked

laws require advance submission to the Commissioner, and in some cases, approval, before use by the insurer.

¹⁹ The effect of a rate, rule or form change on consumers is not easily ascertained without in-depth analysis of the filing.

²⁰ A hearing was held in this matter, In re Allstate Insurance Company, on December 13 and December 14, 2007 before Associate Deputy Commissioner Thomas Paul Raimondi, sitting on behalf of the Commissioner. On February 2, 2008, the MIA issued a Final Order in favor of Allstate, finding that the requirements of § 19-107 were met and there was no violation of § 27-501 of the Insurance Article.

²¹ The Division's Petition was filed with the Circuit Court For Baltimore City. Subsequently, Allstate filed a Cross Petition For Judicial Review on March 10, 2008 and a Motion to Dismiss Petition for Judicial Review on April 11, 2008.

standing under its statutes to request judicial review of the Commissioner's Final Order.²² The Circuit Court Order was appealed by all parties²³ and is currently pending in the Court of Appeals.²⁴

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.²⁵ These filings may not take effect until thirty (30) working days after filing with the Commissioner.²⁶ There are significantly fewer medical professional liability insurance filings received each year by MIA as compared to homeowners insurance filings. As with homeowners filings, the Division reviewed all 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, with requests for additional documentation being sent to insurers with copies to MIA actuaries.

The Division reviewed 440 homeowner's insurance filings and 94 medical professional liability insurance filings for FY 2008 (See Appendix B). The Insurance Commissioner did not hold any FY 2008 rate hearings regarding medical professional liability insurance filings and one hearing was held on a homeowner's insurance filing in FY 2008 concerning two homeowner's insurance filings submitted by Allstate Insurance Company. (See above for a full discussion of this case.)

C. Division Review of Filings Under § 27-1001

The procedures established in § 27-1001²⁷ and the emergency regulations adopted by the Insurance Administration in October 2007 require a policyholder to file a complaint with the MIA, with supporting documentation, stating the facts of the claim matter where the insurer is alleged to have acted without good faith. After the insurer submits its opposition and supporting documentation, the MIA issues its finding based only on the written record. If the finding is adverse, the policyholder can either appeal the finding by requesting a de novo hearing at the Office of Administrative Hearings or file a request for judicial review with the appropriate circuit court. During FY 2008 there were few filings under § 27-1001 and none of them involved claims under homeowner's policies.

²² The Motion Hearing before Judge Carol Smith was conducted on June 4, 2008. The Division filed a Notice of Appeal on July 18, 2008 with the Court of Special Appeals and MIA also followed by filing its appeal on July 22, 2008 with the Court.

²³ On August 6, 2008, Allstate file a Petition For Writ of Certiorari with the Court of Appeals of Maryland and the Petition was granted on September 10, 2008.

²⁴ The case is scheduled for argument on February 6, 2009.

²⁵ Md. Code Ann., Ins. Art. § 11-206(a)

²⁶ Md. Code Ann., Ins. Art. § 11-206(g).

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

D. Pending Legislation

The Division reviewed pending legislation filed in the 2008 legislative session to determine the impact on insurance consumers. Reviewing and recommending prospective legislation is an integral part of the Division's mandate. The Division proposed amendments to House Bill 1353 allowing the Division access to information filed with the MIA on catastrophe models used by homeowners insurers in setting rates.²⁸ Although the amendments to §§19-211 were not accepted, following the October 1, 2008 effective date for House Bill 1353, the Division has monitored filings made by insurers under §§19-208 and 19-209.

IV. Cases

During FY 2007, the Division opened 23 new cases. (See Appendix C). Cases are opened by the Division when:

- (a) there is a request for assistance by a consumer who makes contact first with the Division, rather than filing a complaint with the MIA;
- (b) there is a request for assistance by an individual in response to the Division's letter sent subsequent to the MIA's determination letter and the People's Insurance Counsel believes that further investigation is required to determine if there are violations of the insurance laws of Maryland; or
- (c) the People's Insurance Counsel reviews an MIA-issued determination letter or series of letters and determines, without request by the original complainant(s), that further investigation is required to determine if there are violations of the insurance laws of Maryland.

V. Consumer Assistance Efforts

As in FY 2007, the Division worked to increase consumer awareness of the Division. Consumers can find information on the Division at the web page at the website of the Office of the Attorney General and can communicate with the Division by an email address (PIC@oag.state.md.us) for use by consumers. The Division's brochure describing the Division's mission and a brochure relating to the use of insurance underwriting guidelines are provided to consumers receiving correspondence from the Division. By the conclusion of FY 08, research was nearing completion for two additional brochures. One explains the contractual relationship between the consumer and restoration companies providing fire and water clean up services after a major loss

²⁸ House Bill 1353, Omnibus Coastal Property Insurance Reform Act, added new sections to the Insurance Article, §§ 19-208 through 19-211. Sections 19-208 addresses percentage deductibles applicable to damage caused by hurricanes or storms and requires a notice and explanation to the policyholder of the deductible. Section 19-209 relates to premium discounts for home improvements that would mitigate loss from a hurricane or storm.

and the other addresses determination of a home's replacement cost or value. The Division has noted numerous consumer complaints arise out of lack of understanding in these areas.

VI. FY 2008 Activities

The Division closes FY 2008 with several goals for FY 2009. They include:

- Continued litigation of the Allstate case interpreting the statutes creating the Division and stating its duties and responsibilities;
- Continued review of insurer practices that designate coastal areas and other geographic areas for underwriting standards and deductibles differing from those in the rest of the state and monitoring the implementation of HB 1353 from the 2008 legislative session;
- Review of anticipated legislation amending the Maryland Condominium Act to address the interpretation of the insurance requirements in the April 2008 decision from the Court of Appeals Decision in *Anderson v. Gables on Tuckerman Condominium*, 404 MD. 560 (2008);
- Production of additional educational materials and publication of all brochures in Spanish.
- Participation in more community programs to educate consumers about homeowner's policies and their rights and responsibilities following an insurance loss.

VII. Conclusion

The Division will continue its efforts to advocate on behalf of consumers regarding homeowner insurance and medical professional liability insurance matters before the Maryland Insurance Administration. In light of the Circuit Court Order denying the Division's standing to request Commissioner action on insurer rate and rule filings and the appeal of that order pending in the appellate court, the Division has deferred taking action on filings until an order is obtained in FY 2009. The Division will increase its efforts to initiate investigations and forward requests to the Commissioner to take action based on the Division's investigations. Proposed legislation will continue to be reviewed to safeguard consumer interests. Feedback from consumers will continue to be used as a catalyst for the development of new educational materials and presentations.

APPENDIX A

**PEOPLE’S INSURANCE COUNSEL DIVISION REVIEW OF
DETERMINATION LETTERS ISSUED BY MARYLAND INSURANCE
ADMINISTRATION**

DETERMINATION LETTER INFORMATION	
NUMBER OF DETERMINATION LETTERS REVIEWED BY PICD	376 Homeowners 12 Medical Malpractice
NUMBER OF TIMES MIA DETERMINED NO INSURANCE CODE VIOLATION **	286
NUMBER OF INSURANCE CODE VIOLATIONS CITED	7
NUMBER OF CONSUMERS WHO CONTACTED PICK AFTER RECEIVING PICD’S LETTER	59

** In seventy cases the insurance company changed its position vis-a-vis the complaint or the complainant withdrew his/her complaint. Seventeen cases were considered moot because the consumer purchased other insurance. In eight cases, the MIA had no authority.

INSURANCE COMPANIES WITH THE MOST COMPLAINTS IN DETERMINATION LETTERS REVIEWED BY PICD	
NAME OF COMPANY	NUMBER OF COMPLAINTS
Standard Insurance Company/ St. Paul Travelers	62/12
Allstate Insurance Company/ Encompass Insurance	54/10
Nationwide Insurance Company	39
State Farm Insurance Company	34
Erie Insurance Company	16
Liberty Mutual Insurance Company	18
Baltimore Equitable Society	12

APPENDIX B

PEOPLE'S INSURANCE COUNSEL DIVISION'S REVIEW OF INSURER FILINGS

HOMEOWNER INSURANCE FILINGS		
FORMS	RATES/RULES	TOTAL
172	268	440
MEDICAL PROFESSIONAL LIABILITY INSURANCE FILINGS		
FORMS	RATES/RULES	TOTAL
61	33	94

FORMS filings contain examples of insurance policy forms, including endorsements and required policyholder notifications, that insurance companies wish to introduce or use as replacements for previously approved forms.

RATES/RULES filings contain the insurer's proposed costs of insurance to the policyholder and the actuarial data to support those costs and also contain factors and underwriting guidelines that explain the rates for different types of risks.

APPENDIX C

**PEOPLE'S INSURANCE COUNSEL DIVISION
CASES – FY 2008**

FY 2008 CASE STATUS	
CASE STATUS	NUMBER OF CASES
OPENED	24
CLOSED FY 2008	15

Note: Two cases from FY 2007 remained open at the beginning of FY 2008 but were closed during FY 2008 . The *Finney* and *Stevenson* cases from FY 2006 remain open.

CASE TYPES	
CASE TYPES	NUMBER OF CASES
CONSUMER REQUESTED ASSISTANCE FROM PICD (PRIOR TO ANY COMPLAINT TO MIA)	4
CONSUMER REQUESTED ASSISTANCE SUBSEQUENT TO MIA DETERMINATION IN FAVOR OF INSURER	14
PICD INVESTIGATIONS BASED ON MIA DETERMINATION LETTERS	3