



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

ANNUAL REPORT OF THE PEOPLE'S INSURANCE COUNSEL DIVISION

Fiscal Year 2018

I. INTRODUCTION

The People’s Insurance Counsel Division in the Office of the Attorney General (hereinafter referred to as the “Division”) 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, 2017, through June 30, 2018.

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

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.

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

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 2018 (FY18), the Division was staffed by the People’s Insurance Counsel Ilene J. Nathan and Assistant Attorney General John P. McLane. Additional staff members include an analyst/investigator,¹¹ 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 were selected for their expertise in property and casualty rate filings: Kufera Consulting, Inc., Madison Consulting Group, Inc. and Taylor and Mulder, Inc.

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

¹¹ This position remained vacant from August 2017 through mid-January 2018.

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;
- Respond 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;
- Investigate 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 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

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% 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.

contrary to the insurance laws. The complaints primarily relate to the cancellation or non-renewal of coverage, increase in premiums, modification 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 has provided an opportunity to understand the procedures and policies of insurers in making underwriting and claims decisions that, at times, appear to have broader impact on consumers than just the complainant. 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.

During FY18, the Division originated an additional letter for distribution to consumers who have received MIA determination letters regarding their complaints. When the Division is notified by the MIA that a complainant has sought and been granted a hearing, the Division issues another letter offering to assist the complainant in understanding the hearing process. 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 getting 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 FY18, the MIA advised the Division that it reviewed no medical professional liability insurance-related complaints. In FY18, the Division reviewed 449 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 no violations of insurance laws in any of the complaints. Of the follow-up letters issued by the Division to consumers, sixty-one (61) contacted the Division to discuss their complaints further.

B. Response to consumers who initiate their complaints to the Division

Periodically consumers contact the Division to discuss their concerns with their insurance companies. In FY18, all of these calls concerned homeowners insurance issues similar to those

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.

addressed to the MIA in complaints.¹⁷ 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 PICD 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, PICD has exercised its statutory authority to request review by the MIA. The Division did respond to fifty-nine (59) 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.¹⁸ 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.¹⁹ 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.²⁰ These filings may not take effect until 30 working days after filing with the Commissioner.²¹

The Division reviewed a total of 512 insurance filings for FY18. The Division expressed concern about several filings to the MIA who, in response, either rejected the filing or persuaded the company to withdraw or modify the filing. Accordingly, the Division did not initiate any hearings in FY18 on these filings.

Homeowners Insurance

The Division reviewed 408 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

¹⁷ 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.

¹⁸ Md. Code Ann., Ins. Art. § 11-206.

¹⁹ Md. Code Ann., Ins. Art. § 11-307.

²⁰ Md. Code Ann., Ins. Art. § 11-206(a).

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

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) per cent 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 last year's Annual Report, 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.²² In light of the models increased use by insurers, staff members engage in continuing education given by Division actuaries to better understand the issues presented by modelling.

During the fiscal year, 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 not obligated to do so. MIA has disclosed several filings when, and if, PICD sees reference to the PRRI 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 confidential information. The PICD actuaries have submitted questions to companies when MIA has disclosed PRRI, but the process has proved to be lengthy and cumbersome for PICD to access some very important data for analysis.

Rating Factors

A significant number of companies use 'age of insured' and 'marital status' as factors in calculating their rates. The marital status factor first came to the Division's attention in FY17 when a consumer complaint was made by a widow who realized her homeowners premium increased when her husband died.²³ Although the MIA has never responded to PICD's request made in FY17 to review the use of these factors with a critical eye, PICD's 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. What is very interesting about the

²² Division attorneys met with the Associate Commissioner for Property and Casualty in early FY18 and discussed concerns about the models at that time.

²³ See 2018 Legislative Session below for the Division's attempts to address this disparity.

correlations though is that they are not consistent across the industry as one might expect.²⁴ 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 104 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. 2018 Legislative Session

During the 2018 Legislative Session the Division endorsed legislation intended to close a loophole regarding homeowners insurance rates for individuals whose spouses have died. In 2017, legislation was passed that prohibited increases in auto insurance rates for surviving spouses based solely on their new status as single. Sponsored by Delegate Charles E. Sydnor III, House Bill 1748 which would also prohibit increased homeowners insurance rates for surviving spouses was introduced late in the Session and therefore never made it to a vote.²⁵

E. Division Review of Section 27-1001 Complaints

In 2007, the General Assembly amended the Insurance Article to provide policyholders, who believe that their insurer has failed to act with good faith, with a procedure for review of the matter. The provisions in Section 27-1001²⁶ and regulations adopted by the Insurance Administration in October 2007²⁷ require a policyholder to file a complaint with the MIA, with supporting documentation, stating the facts of the matter where the insurer is alleged to have acted without 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 27-1001.²⁸ The Division is

²⁴ For example, 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.

²⁵ The Division is seeking introduction of a similar bill in the 2019 legislative session.

²⁶ Md. Code Ann., Ins. Art. § 27-1001.

²⁷ COMAR 31.08.11.

²⁸ As an alternative to filing under Section 27-1001, consumers may file a 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

unaware of any MIA-issued Section 27-1001 decisions involving homeowners insurance policies in FY18.²⁹

IV. INVESTIGATIONS

During FY 2018, the Division investigated 149 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. A few investigations are commenced from a pattern or practice noted by the Division following review of numerous determination letters from particular insurance companies. Although Division personnel assist consumers in a variety of ways, investigations are more intensive than simply responding to complainants' inquiries about MIA complaint and hearing practices. Division personnel often obtain MIA investigative files, 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.

Lastly, the Division considers in-depth reviews of filings by PICD consulting actuaries to be investigations. In FY18 there were thirty-nine (39) new filings reviewed by the actuarial consultants, twelve (12) were investigated by PICD internally and twenty-seven (27) were continuing filing investigations from FY17. PICD investigated fifty-nine (59) allegations raised in determination letters and twelve (12) prompted by cold calls by consumers directly to the Division. As indicated previously, the Division has three (3) continuing projects regarding homeowners insurance practices affecting consumers.³⁰

As described in last year's annual report, the Division investigated a complaint concerning a water back-up claim denial by the insurer after the homeowners' sump pump was overwhelmed by the massive rainfall during the 2015 Ellicott City flood. The homeowner filed a complaint with the MIA, which found a violation of Maryland law by the insurer, who then requested a hearing. The Division filed a Motion to Intervene in the matter; the Motion was granted by the Office of Administration Hearings judge. In August 2017 the insurer withdrew its request for a hearing and settled the homeowners' claim. Shortly thereafter, the Division requested that the MIA review other similar practices of denial of claims by the insurer.³¹

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 (a third party claim) is not the policyholder of the insurer.

²⁹ 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.

³⁰ Age of insured and marital status rating factors; policy availability

³¹ The MIA has never notified the Division whether it did review other similar practices and if so, what the result was.

In another matter commenced in FY17, a consumer filed a complaint regarding the imposition of a percentage wind and hail deductible placed on a prior year's policy without his or his agent's request and without the statutorily required notice.³² He requested a hearing and PICD filed a Motion to Intervene in the hearing, filed requests for production of documents and witness subpoenas in preparation for the hearing.³³ Prior to the hearing, the insurer agreed to reimpose the prior fixed dollar amount deductible on a claim filed after the percentage deductible had been added to the complainant's policy. The three parties filed a Joint Motion of Dismissal, thereby resolving the case.

In January 2018, the MIA found in favor of an insurer's non-renewal of a homeowner's insurance based on its underwriting guideline that one is ineligible for renewal if there has been any liability loss due to negligence in the prior three years. The insurer relied on an engineer's report made after a roommate was injured when a deck railing gave way. PICD discovered in its review of the file that the insurer, the United States Department of Housing and Urban Development and local zoning authorities had done a physical inspection of the deck prior to the commencement of the policy. None had cited the deck construction as deficient. Additionally, there had been no substantive change in the condition of the deck since those inspections. The circumstances of the roommate's injury and other facts revealed in the MIA investigative file supported PICD's concerns that there was insufficient evidence to prove negligence sufficient for non-renewal of the policy. PICD presented its analysis to the insurer prior to filing a Motion to Intervene, and the insurer withdrew its non-renewal. The consumer then withdrew his request for a hearing.

The Division did not intervene in any other consumer hearings in FY18 although it did extensive investigation into cases involving resolution of claims, non-renewals of policies and policyholder access to policy documents.

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. While reviewing several rate filings, PICD noted that an insurer included bad debt as the primary actuarial basis for its implementation of a late fee. PICD raised an objection with MIA, but MIA rejected PICD's analysis that the basis of a late fee should be the costs associated with recovering premium payments later than their due date. Ultimately, PICD's actuaries reached out to the insurer with its concerns. The company then revised its actuarial basis consistent with PICD's analysis.

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 questionnaires that go to insurers include inquiries into the length of time that the factors have been employed in rate-

³² The MIA found the insurer had not violated any Maryland insurance laws.

³³ Although the consumer's hearing was granted in FY2017, the pre-hearing discovery and motions were filed in FY18.

making and how current their data is. One of the Division's consulting actuaries is reviewing the results to assist the Division in assessing whether these factors generate rates that are unfairly discriminatory in violation of Maryland's insurance laws.

After reviewing multiple complaints by policyholders that they are unable to get their complete policies for review,³⁴ this Division submitted a questionnaire to selected companies as to availability of policies online and frequency with which companies distribute full policies with notifications. Most companies have responded but a few have not. In the coming year, the Division will continue to examine responses and hopes to determine if any regulatory or statutory recommendations are appropriate.

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 on-line. The Division intends to complete its revamp of its section on the OAG website in FY19.

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 also met with the Deputy Commissioner and Principal Counsel in FY18 to discuss how PICD can better access matters before the Commissioner that it is statutorily authorized to review. The Division also requested the MIA's position on a communication by a former Commissioner about the Division's right to request review of issues in MIA determination letters regardless of the policyholders' requests for hearings³⁵. The Division also requested that it be advised of the scheduling of consumer hearings.³⁶

VI. FY 2019 ACTIVITIES

The Division closes FY18 with several goals for FY19:

³⁴ In one particular case in which the policyholder and People's Insurance Counsel made repeated requests for the policy documents, MIA's Rapid Response Unit ultimately became involved and was able to procure a copy for the policyholder.

³⁵ As of the writing of this report, the MIA has not responded with an official position regarding the letter from the former Commissioner, and PICD has not had occasion since the meeting to renew its request for MIA to take a formal position on it. This issue arose in early FY18 when PICD sought a meeting with the Associate Commissioner for Property and Casualty about its concerns with the MIA's analysis in a determination letter. The Associate Commissioner declined to review what PICD wanted to present, indicating that the policyholder could argue her position in a hearing. Although PICD was concerned with MIA's analysis, other factors in the case dissuaded PICD from filing a Motion to Intervene. The issue of PICD's right to request review remained.

³⁶ 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.

- Obtain data on ratios of consumer complaints to number of policyholders for homeowners insurance companies.³⁷
- 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 policyholders of homeowners insurance and medical professional liability insurance.
- Review and advocate for consumer interests for all proposed bills filed in the legislative session and advocate for the legislation proposed by the Division.
- Produce additional educational materials, adding information to the website on specific topics relating to homeowners insurance.

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.

³⁷ PICD was unable to commence this project in FY18 due to limited personnel and time spent on the implementation of a new case management system.