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December 29, 2017

The Honorable Thomas V. Mike Miller
President of the Senate of Maryland
State House, H-107
Annapolis, Maryland 21401

Re: Annual Report of the People's Insurance Counsel Division – Fiscal Year 2017

Dear Mr. President:

In accordance with Maryland Annotated Code, State Government Section 6-308, the People's Insurance Counsel Division of the Office of the Attorney General is submitting its Annual Report for Fiscal Year 2017. Five (5) copies have been transmitted to the Department of Legislative Services.

Yours truly,

Ilene J. Nathan
Counsel
People's Insurance Counsel Division

Enclosure

cc: Honorable Michael E. Busch (w/enclosure)
Ms. Sarah T. Albert (w/5 copies), MLIS



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Speaker of the House of Delegates
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**State of Maryland
OFFICE OF THE ATTORNEY GENERAL**

ANNUAL REPORT OF THE PEOPLE'S INSURANCE COUNSEL DIVISION

Fiscal Year 2017

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 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, 2016, through June 30, 2017.

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 homeowner’s 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 homeowner’s 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, homeowner’s 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 homeowner’s 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 2017, the Division was staffed by the People’s Insurance Counsel Peter K. Killough for the first half of the fiscal year and by People’s Insurance Counsel Ilene J. Nathan for the second half of the fiscal year.¹¹ Additionally, there was turnover in the Assistant Attorney General position, and John McLane assumed that position in March 2017. Additional staff members include an analyst/investigator, whose primary responsibilities include review of

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

¹¹ Ms. Nathan was appointed by Attorney General Brian Frosh and the appointment was confirmed by the Senate on April 11, 2017 as required by Md. Code Ann., State Government § 302(a)(2).

homeowner's 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 were 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.

III. DIVISION RESPONSIBILITIES

The Division concentrates its efforts in five areas:¹²

- Review of consumer complaints filed with the Maryland Insurance Administration (hereinafter "MIA") relating to homeowner's 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 "lack of good faith complaints" under Insurance Article Section 27-1001¹⁴; and
- Review of proposed legislation and participation in the legislative process, as required, to represent consumer interests.

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

¹² The Division has interpreted its statutory authority to include the review of any matter before MIA that impacts homeowner's and medical professional liability policyholders. This decision derives from the Division's broad mandate to review "each medical professional liability insurance and homeowner's 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 homeowner's 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 Md. Code Ann., Ins. Art. § 27-1001, Effective October 1, 2007.

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, 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 an MIA determination letter.¹⁵ 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, although the Division attorneys will give guidance to consumers about the administrative hearing process. Additionally, the Division will assist consumers in filing their requests for hearings and assists consumers in understanding the process for using Maryland's Public Information Act to obtain the relevant MIA files regarding their complaints.

As in the past fiscal year, the Division has found that there are significantly more homeowner's insurance complaints than medical professional liability insurance-related complaints. Most homeowner's 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 497 homeowner's insurance complaint determination letters issued by MIA between July 1, 2016 and June 30, 2017. Of the complaints it reviewed, MIA found one insurance company in violation of the insurance laws in relation to one specific complaint regarding a denied claim. Of the follow-up letters issued by the Division to consumers, sixty-four (64) 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 fiscal year 2017, all of these calls concerned homeowner's insurance and issues similar to those addressed to the MIA in complaints.¹⁶ Division attorneys have responded to these

¹⁵ 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.

¹⁶ Consumers calling the Office are the Attorney General are often directed to the Division regarding insurance complaints other than homeowner's or medical malpractice. The Division attorneys respond to those calls also, redirecting the consumers to other resources that may be of assistance to them.

calls with information about filing complaints with the MIA and explanations about applicable statutes and regulations. When appropriate, the PICD has exercised its statutory authority to request review by the MIA. The Division did respond to thirty (30) consumer calls during the fiscal year.

C. Division Review of Rate Filings

Insurance companies issuing homeowner's 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.¹⁷ Homeowner's insurance is subject to the competitive ratings laws. Insurers are allowed to use the filed rates without obtaining the prior approval of the Commissioner.¹⁸ 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.¹⁹ These filings may not take effect until 30 working days after filing with the Commissioner.²⁰

The Division reviewed a total of 499 insurance filings for FY 2017. 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 FY 2017 on these filings.

1. Homeowner's Insurance

The Division reviewed 387 homeowner's 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) per cent on all or some policyholders.

In many instances, the Division's consultants determined that filings did not include adequate supporting actuarial data and the Division's consultants generated questions on the filed documents and made requests for additional supporting information. Following review and

¹⁷ Md. Code Ann., Ins. Art. § 11-206.

¹⁸ Md. Code Ann., Ins. Art. § 11-307.

¹⁹ Md. Code Ann., Ins. Art. § 11-206(a).

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

approval by the Division, these questions and requests were forwarded to the filing insurer. The Division, through its staff or consulting actuaries, advised the MIA of inquiries being forwarded to the insurers. With a few exceptions, the Division consultants received satisfactory responses from the insurers' actuaries. In a few cases, the Division expressed concern about policy language and the MIA requested revised language.

Significant Rate and Rule Filings

Use of Auto Driving History

In Fiscal Year 2016, Allstate Insurance Group made two filings that indicated that the company would commence using driving histories of policyholders as factors in setting their homeowner's premiums. The Division asserted in last year's report that it has significant concerns that the use of auto history in determining homeowner's insurance rates is anti-consumer and discriminatory. Although a bill to prohibit the practice did not pass in the 2016 session, the Senate requested a summer study be completed. Allstate did remove the rating factor from the filings in early FY17, and no summer study was ever commenced. This issue remains a major concern for the Division, and it will continue to review filings to determine if Allstate or any other insurer wishes to introduce the use of driving records in homeowner's insurance rate-making.

Predictive Modeling

As noted in last year's Annual Report, a large number of insurers are now using non-catastrophe predictive models (known as general linear models) in their rate setting. The data used in these models is extensive and difficult to evaluate. The Division continues to express its concerns to the MIA about the need for extensive review of these models by actuaries. The Division has added an additional actuarial consultant who is an expert in modeling and will be contributing his expertise to the reviews of filings.²¹ During the fiscal year, if there was confidential modeling information in a filing, it was not disclosed to the Division although legislation that went into effect in 2016 permitted access to the Division.²²

²¹ Division attorneys met with the Associate Commissioner for Property and Casualty in early FY18 and discussed concerns about the models at that time.

²² The Division realized in November 2017 that it was not privy to the confidential information via its access to rate filings and made repeated requests for it. Ultimately in mid-December, the MIA Associate Commissioner for Property and Casualty notified the Division that it was implementing procedures to disclose confidential information pursuant to Md. Code Ann., Ins. Art. §11-307 (c) (3) (iii) although not obligated to do so. As of the date of the submission of this report, the MIA has disclosed one filing with confidential information although acknowledging that several others have confidential information included in the filings. The Division has no knowledge which filings have confidential information unless the public sections of the filings disclose that there is additional confidential information in the filing. Section (c) of the Act went into effect October 1, 2016.

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 when a consumer complaint was made by a widow who realized her homeowner’s premium increased when her husband died. The Division noted in filings that the ‘age of insured’ factor is often used although companies’ use of it varies widely from increases in premium at age forty (40) to a reduction in rates at retirement age. At the end of the fiscal year, the Division asked the MIA if it had reviewed the actuarial bases for these factors.²³

2. Medical Professional Liability Insurance

There are significantly fewer medical professional liability insurance filings received each year by MIA as compared to homeowner’s insurance filings. The Division reviewed 112 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 homeowner’s filings, with requests for additional documentation being sent to insurers with copies to MIA actuaries.

D. 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 27-1001²⁴ and regulations adopted by the Insurance Administration in October 2007²⁵ 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. After the insurer submits its opposition and supporting documentation, the MIA issues its finding based only on the documents. 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. The Division is unaware of any MIA-issued Section 27-1001 decisions involving homeowner’s insurance policies.²⁶

²³ As of the date of this report, the MIA has not responded about its review.

²⁴ Md. Code Ann., Ins. Art. § 27-1001.

²⁵ COMAR 31.08.11.

²⁶ 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 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.

E. 2017 Legislative Session

During the 2017 Legislative Session the Division drafted, provided testimony, or monitored the following bills:

House Bill 136 - Insurance – Public Adjusters

The Division provided written support for this bill, which was intended to strengthen Maryland's laws against the unauthorized practice of public adjusting. The bill added significant contract and disclosure requirements. It passed both houses and was signed into law by the Governor.

House Bill 291/Senate Bill 279 - Homeowner's Insurance – Notice

These bills require insurers to produce renewal notices that comply with certain requirements and to permit e-delivery if specified requirements are met and homeowners request it. The Division was intimately involved in collaboration with the MIA and industry representatives in the development of this legislation and a draft notice that would satisfy the statutory requirements. Multiple workgroup meetings in FY17 led to successful passage of the legislation in both houses and approval by the Governor.

IV. INVESTIGATIONS

During FY 2017, the Division investigated fifty-eight (58) matters.²⁷ Investigations are commenced when the Division identifies an issue in an insurance complaint matter 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. Details provided by the consumer that are not apparent from the determination letter are obtained and often the Division requests MIA's investigative file. Some investigations are commenced following contact from a consumer who has not filed a complaint with the MIA. A few investigations are commenced from a pattern or practice noted by the Division as a result of review of numerous determination letters from particular insurance companies. Additionally, the Division considers an in-depth review of a filing by a consulting actuary to be an investigation. In FY 2017 there were thirty-four (34) filings reviewed by the actuarial consultants, eighteen (18) investigations into the allegations raised in determination letters, two (2) investigations prompted by cold calls by consumers directly to the Division and four (4) investigations into homeowner's insurance practices affecting consumers.

²⁷ Previous Counsel included the number of consumer PIA files requested in this count even if only requested as a courtesy for the complainant. Current counsel is only including those reviewed and investigated by the Division.

As described in last year's annual report, the Division investigated a complaint concerning a water back-up claim denial by Standard Fire Insurance Company after the homeowners' sump pump was overwhelmed by the massive rainfall amount 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.²⁸

In another matter commenced in a prior year and described in prior annual reports, the Division filed a Motion for Judicial Review regarding the non-renewal by Brethren Mutual of a homeowner's insurance. The Court ruled in favor of Brethren after a January 2017 hearing on the record.

In November 2016, the MIA issued a determination letter in favor of an insurer after a homeowner complained that the insurer denied her sufficient additional living expenses (ALE) after a fire did significant damage to her home. She was entitled to ALE to cover the costs of living above her normal expenses prior to the loss. In this particular case, the major ALE costs were her family's additional costs of housing while the house was uninhabitable. The insurance company started the clock running on its predicted time to fully repair the home when it made its first payment to the homeowner, expecting the homeowner to be able to commence work as soon as the payment was made. It therefore stopped the ALE payment when the predicted time was over even though final settlement on the claim was still not resolved. The Division intervened asserting that the timing of an ALE payment cannot be dependent on when an insurer makes first payment. That is not when a homeowner can commence work on demolition or rebuilding because every county requires permitting with submitted plans first. Therefore, the Division's position was that the amount of the claim must be resolved sufficiently to enable the homeowner to determine the extent of repair and get the proper permitting to do it. Then and only then can the insurer determine the time that the repairs should take and therefore the length of time that ALE should be extended. Ultimately, the insurer paid additional ALE; the homeowner withdrew her request for a hearing and the Division withdrew its request to intervene.

The Division did not intervene in any other consumer hearings although it did extensive investigation into cases involving resolution of condominium claims, siding damage claims, non-renewals of policies and changes in policy coverages not requested by homeowners.

The Division has also launched several long-term investigations as noted above. In particular, the Division has been requesting 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-making and how current their data is. One of the Division's consulting actuaries will be 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.

²⁸ In August 2017 (FY 2018) 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.

V. CONSUMER ASSISTANCE EFFORTS

In addition to assisting the consumers who contact the Division, the Division maintained its website and participated in two 'Buying into Baltimore' outreach events in Baltimore City.

VI. FY 2018 ACTIVITIES

The Division closes FY 2017 with several goals for FY 2018:

- Obtain data on ratios of consumer complaints to number of policyholders for homeowner's insurance companies.
- Continue to examine the use of 'marital status' and 'age of insured' as factors used by insurers in homeowner's insurance rate-making.
- 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 homeowner's 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 homeowner's insurance.
- Participate in additional community programs to educate consumers about insurance topics and address consumer misunderstandings that result in cancellation, non-renewal or claim denials.
- Broaden expertise on hurricane catastrophe planning models and general linear models.

VII. CONCLUSION

The Division will continue its efforts to advocate on behalf of consumers regarding homeowner's 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.