

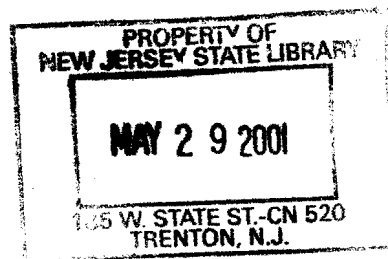
New Jersey Department of Banking & Insurance

Office of the Insurance Claims Ombudsman

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Christine Todd Whitman
Governor

Karen L. Suter
Commissioner

1999-2000
Annual Report

Throughout the first year and as outlined in this report, the Office of the Insurance Ombudsman has focused on identifying systemic issues and practices that result in consumer dissatisfaction about insurance-related matters.

Issues identification and corrective action remain our basic means to help the Governor, the Legislature, and the Department in our joint efforts to serve New Jersey citizens well in their interactions with a fair and productive insurance industry.

New Jersey Department of Banking & Insurance

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Overview

Staffing

This first full year of implementing the applicable provisions of AICRA included staffing the Office of the Insurance Ombudsman with experienced investigators,

Introduction

This is the second Annual Report of the Office of the Insurance Claims Ombudsman, which completed its first full year of operation on August 1, 2000.

When we issued our first Report, on a partial year of activity in 1999, we were able to outline the Office's mandate as established by its enabling legislation, the Automobile Insurance Cost Reduction Act (AICRA) of 1998. In this second Report, we are pleased to be able to describe several important successes in fulfilling that mandate.

Our charge has been clear:

- ◆ Investigate consumer complaints regarding policies of insurance and the payment of claims;
- ◆ Monitor the implementation of various insurance regulating laws;
- ◆ Respond to consumer inquiries about policy provisions and coverage availability;
- ◆ Publish and disseminate buyers' guides and comparative rates.

The following details the ways in which we upheld that charge.

One piece of data from the first year of operation is particularly telling: The Ombudsman's Office recovered more than \$935,000 on behalf of consumers.

consumer advocates, technicians with regulatory backgrounds, and professionals with current industry experience. Continuity of effort was provided by selecting staff who had handled Consumer Protection complaints during the 1998-1999 initial year of activity, prior to the appointment of Michael Harrigan as first Ombudsman.

A dozen full-time employees are now available to address the mandates of the statute and have contributed to the efforts outlined in this report.

Investigating Consumer Complaints

Data provided in this report demonstrates the legitimacy of many consumer complaints as well as the

importance and effectiveness of a coordinated government response. One piece of data from the first year of operation is particularly telling: The Ombudsman's Office recovered approximately \$935,100 on behalf of consumers.

But vigorous advocacy for wronged consumers is not enough. A comprehensive approach includes efforts that lower consumer dissatisfaction by raising the quantity and quality of information available to consumers. The more insurance buyers know and understand, the better the choices they make, and the more comfortable they are with those choices.

By preventing both misunderstandings and actual problems, high levels of consumer awareness also mean more efficiency at all levels of the system, from the individual company agent to the state regulator.

This perspective is what drives us in our development of problem prevention techniques – from speaking with individual consumers about specific complaints to examining trends industry-wide, to meeting with consumer and industry groups.

Identifying and Investigating Trends in Consumer Complaints

For special handling and overall monitoring, the Ombudsman's Office works closely with the Department's Enforcement and Consumer Protection Unit to identify consumer complaint issues regarding the payment of claims on policies of insurance.

In addition to cases forwarded to the Ombudsman directly by consumers, the Department's Enforcement and Consumer Protection Unit forwards targeted complaint

issues to the Ombudsman's Office to pursue directly with consumers and companies.

The Insurance Ombudsman staff and the Enforcement/ Consumer Protection staff coordinate in efforts to identify complaint trends that can benefit from in-depth, on-site investigations or have critical time constraints with the need for rapid turn-around action - a need that the Ombudsman Office is designed to address.

The areas identified by the Ombudsman's Office during the past year for direct investigation and tracking include:

- ◆ Automobile first and third party physical damage claims where percentages of liability according to New Jersey's Comparative

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Negligence law were perceived as unfairly or inconsistently assessed;

- ◆ Health insurance complaints involving, among other factors, the denial or delay of claims by a third-party claims administrator used primarily by managed care plans, including health maintenance organizations (HMOs);

- ◆ Issues that might be expedited and resolved in less than 30 days rather than through a sometimes longer complaint process.

During this initial year, several striking

situations pointed up the benefit of expedited investigations of time-sensitive complaints. These successes, some of which are outlined below, underscore ways in which the Ombudsman's Office can continue to intervene on behalf of consumers.

◆ Provided a 24-hour turn-around intervention for parents who were severely frustrated by their inability to replace the wheelchair to which their son was confined and had long outgrown. While their health insurer allegedly repeatedly refused to cover costs beyond a minimum substantially below actual expenses, the family identified an opportunity for a grant to supplement replacement costs and needed a letter from the insurer in several days to meet a deadline.

After discussions with the Ombudsman's staff, the insurer decided to pay 100 percent of the full costs for replacing the wheelchair and said they never meant to communicate otherwise.

◆ Arranged a 24-hour turn-around resolution for a frantic urban area homeowner who received notice of the cancellation of her homeowner's policy. As a result of small claims over a four-year period, the company notified her of the upcoming cancellation despite her agreeing to raise her deductible to \$1,000. In response to inquiries by the Ombudsman Office, the insurer agreed to reinstate the policy. This situation surfaced additional areas for educating consumers on the potential consequences of 4-year-old claims as modest as \$35 and on discussing issues more fully with agents.

◆ Supplied a 24-hour turn-around solution for a consumer who had experienced considerable delays in getting his car insurance company to provide a settlement check for collision repairs. After speaking with the insurer, the Ombudsman's Office was advised that a check for \$3,045.43 was immediately sent by overnight delivery that same afternoon to the insured.

The Ombudsman's Office will continue to focus on complaints in need of rapid action, particularly those with critical time constraints. Additionally, complaints that require in-depth investigations and may benefit from field visits or on-site assessments are a counterpart means to address consumer dissatisfaction.

Automobile Comparative Negligence Claims Complaints

These complaints arise when an individual's automobile is damaged in

Since the initial tracking of Comparative Negligence cases in February 2000, the Ombudsman's Office has recovered approximately \$10,000 in additional payments on behalf of aggrieved consumers.

a motor vehicle accident because of another person's negligence, but the liable party's

insurance company reduces the amount of negligence assigned to their insured. In some cases, this can result in the not-at-fault party's being assigned as much as 49 percent liability.

When consumers believe they did not cause the accident, they often expect a settlement of 100 percent of their damages. New Jersey's Comparative Negligence statute, NJSA 2A:15-15.1 et seq., permits insurance carriers to allocate responsibility in proportion to fault. Insurers may, therefore, attempt to assign a percentage of negligence to all parties in the accident.

Except for rear-end collisions, the industry's position is that most accidents normally involve some degree of negligence by all drivers. A classic example of why negligence is assigned to the not-at-fault party is the driver's failure to observe the actions of the other driver and initiate evasive actions.

While the statute clearly permits insurers to reduce the settlement by the claimant's percentage of liability, the Ombudsman staff will conduct on-site field work and retain outside experts wherever appropriate to ensure the most objective decision-making in these contentious cases.

Although complaints of this nature are not easily resolved, we have experienced some success in gaining more favorable settlements in the form of a higher percentage offer from the adverse insurer. Since the initial tracking of Comparative Negligence cases in February 2000, the Ombudsman's Office has recovered approximately \$10,000 in additional payments on behalf of aggrieved consumers.

Resolving Complaints about Territorial Rating/Garage Location

While investigating consumer complaints in Fall 1999, the Ombudsman's Office found instances in

specific areas of the State where consumers had been overcharged premiums for their automobile insurance because their company incorrectly rated their policy. One of the factors used in determining automobile rates in New Jersey involves where one resides in the State. When underwriting policies, insurers need to assign the policyholder to the appropriate rating territory based on the garage address of the covered vehicles.

...the Ombudsman's Office was successful in having insurers issue refunds totaling more than \$11,000 to New Jersey residents, notably of Evesham Township, whose policies had been overcharged.

Through complaint investigations, the Ombudsman's Office determined instances where insurers were assigning rating territories based solely on the mailing address of the insured. In some cases, that address did not correspond to where the insured's vehicle was being garaged. While zip codes are widely used by the insurance industry to assign policyholders to rating territories, this practice is not 100 percent accurate in all areas of the State.

Problems arise in relying on zip codes to assign rating territories in those areas of the State where zip code designations transcend boundary lines of political subdivisions that are also being used to distinguish between two rating territories.

As these situations are most likely to occur in predominately rural areas of the State

where residents are required to use a mailing address of a nearby town or borough to receive their mail, insurance companies have been known to assign rating territories based on a mailing address that may not reflect the actual garage location of the automobile. This causes a problem if the insured resides in a different rating territory than what is evident from the mailing address. In most cases, consumers are not even aware that they have been assigned to an incorrect rating territory until the U.S. Postal Service assigns a new mailing address designation.

The Ombudsman initiated a project to identify policyholders in the State who may have been adversely affected by the incorrect rating of their automobile policy. On January 31, 2000, the Office in coordination with the Burlington County Division of Consumer Affairs, alerted residents in southern Evesham Township, Burlington County, to the possibility of overcharges on their automobile insurance because of incorrect territory assignments.

As a result of the issuance of the Bulletin (by Banking and Insurance Commissioner Karen L. Suter), and insurers' subsequent reviews of their practices, an additional \$19,100 in refunds has been issued to New Jersey consumers.

◆ As a result of the complaints process and related publicity, the Ombudsman's Office has been successful in having insurers issue

refunds totaling more than \$11,000 to New Jersey residents, notably of Evesham Township, whose policies had been overcharged.

◆ In one instance, a consumer received a refund of \$3,570 because her policy had been assigned to an incorrect rating territory since 1965.

◆ Then-Acting Commissioner Karen L. Suter issued Bulletin 00-02 on February 23, 2000, requiring automobile insurers doing business in the State to review their underwriting practices to ensure that correct territory assignments were made based on location of the insured's residence. The Bulletin further required insurers to advise the Ombudsman of the safeguards that have been in place to address this problem, as well as the steps taken to prevent these occurrences in the future. In addition to analyzing company responses to the Bulletin, the Ombudsman's Office continues to monitor refunds issued to policyholders resulting from incorrect territory assignments.

◆ As a result of the issuance of the Bulletin and insurers' subsequent reviews of their practices, an additional \$19,100 in refunds has been issued to New Jersey consumers.

◆ Thus the total refunds recovered for consumers was \$30,400.

◆ With the information provided to the Office of the Ombudsman in response to Bulletin 00-02, our Office has gained first hand knowledge of the issues and challenges to the insurance industry in assigning rating territories to policies. The Ombudsman will continue to work closely with the Commissioner to offer recommendations for use by the Automobile Insurance Territorial Rating Plan Commission charged with reassessing the State's rating territories.

Handling Third-Party Administrators and Managed Care Complaints

A typical third-party administrator (TPA) is currently under contract with several health insurance carriers, as well as managed care and HMO plans, to provide claims administration as a claims administrator and adjudication service for various medical specialties, including mental health and substance abuse. This typical TPA also maintains a network of specialty providers that must be used by managed care or HMO members to obtain coverage under the policy or contract. In recognizing the adverse effects that outsourcing of the claims process and the "downstreaming" of risk has had on other health plans in the past, the Ombudsman staff will continue to handle and track complaints involving this TPA for the immediate future with an eye toward patterns of practice requiring a regulatory response.

Many complaints involving TPAs are filed by medical providers who allege a pattern and practice of improperly denying claims or delaying payment either by general incompetence in claims receipt and processing or by "downcoding" medical procedures to lesser codes that result in lower reimbursements. Providers consistently complain that they are required to resubmit claims and medical documentation on numerous occasions due to the apparent loss of the information by the medical plan administrators.

More importantly, delays in authorizing care to members due to questions of medical necessity are a common complaint and our office tries to expedite resolution of such issues on a priority basis in conjunction with the Department of Health and Senior Services. For example:

◆ A parent contacted the Ombudsman's Office on behalf of

her daughter who was being treated for a severe eating disorder and was to be discharged from a hospital on the orders of the TPA within days. However, Ombudsman staff provided liaison a between the treating doctor and the TPA's physician reviewer, resulting in further treatment immediately at the inpatient level. Traditional complaints processing may have taken upwards of 30 days just to notify the insurer/ administrator initially of a consumer concern.

*O m b u d s m a n
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With the recent passage of the Organized Delivery Systems Act and of the Health Information Network Technology (HINT) Legislation, those organizations that contract with carriers to provide certain health care services will be subject to stringent guidelines. Tight claims processing requirements are being imposed, including the requirement that electronically submitted "clean" claims must be paid within 30 days of receipt. Along with the Department, the Ombudsman's Office will monitor the implementation of these important new laws, tracking complaints and searching for patterns and practices that might require regulatory intervention.

Addressing Other Complaints

Since the Ombudsman statute specifies that any person who has reasonable cause to believe that an insurer

has failed or refuses to settle a claim in accordance with the provisions of the insurance contract may file an application with the Ombudsman for review, our office coordinates our activities with the Department of Banking and Insurance to avoid duplication of efforts. Examples of other complaint issues pursued by the Ombudsman's Office include homeowners claims, general health insurance claims and automobile premium disputes.

Informing the Consumer

After reviewing available consumer information for timeliness and relevance, the Ombudsman's Office developed consumer publications during this initial year. As promised, consumer guides are being prepared for the purchase of homeowner's insurance, life insurance and small business insurance.

Several additional publications were developed to guide consumers through specific needs, such as auto accident claims under varying circumstances.

Consumer Guide to Homeowner's Insurance

This Guide to Homeowner's Insurance will equip homeowners, renters, and condominium owners with the tools necessary to make informed selections for their insurance protection. A comprehensive reference document, the guide will enable anyone with specific needs to turn immediately to the appropriate section of the guide. References will be included to ease access to additional resources. The guide will be available via the Internet on the Department's web site, www.njdobi.org. Hard copies of the guide will be available at Department-staffed public

events, at presentations to first-time homebuyers and other interested groups, or by individual request.

Life Insurance Buyer's Guide

Life insurance is one of the more complex insurance products a consumer can purchase. Given the recent issues surrounding agent and company misconduct and the importance of this product to individual consumers, the Ombudsman's Office revamped last year's plans to provide an update of the National Association of Insurance Commissioners (NAIC) model. We are expanding this overall project to provide a one-stop, comprehensive reference guide that is a readable reference for the expert consumer and the least informed purchaser of life insurance products.

The first element of this project will be a Guide to Term Life Insurance. Included are frequently asked consumer questions and answers, a glossary of terms, and detailed explanations of term life insurance and its various features.

Insurance Buying Guide for the Small Business Owner

The Ombudsman's Office is developing a Small Business Owner Guide that will be a comprehensive, basic explanation of the insurance needs and requirements that affect small businesses. As promised, this guide will provide "everything you always wanted to know about..." property and liability, commercial automobile, life, health, surety, and workers' compensation insurance issues. The same easy access to information is provided for all of these consumer guides through a simple list of contents, availability on the Department's web site, in hard copy at group presentations, and to interested individuals.

What You Should Know About ... Series

The Ombudsman's Office has developed three initial brochures in a "What You Should Know About ..." series to give consumers information and guidance about the automobile property damage claims process. The three brochures give consumers guidance and tips when filing a property damage claim with their own company, filing a property damage claim with another insurance company, and filing an uninsured/underinsured motorist claim for property damage.

The information in the brochures was compiled from staff investigators with 25 years of combined experience handling consumer inquiries and complaints. Each brochure includes answers to the most commonly asked questions and misunderstood items in automobile property damage claims.

Designed so the average person without an insurance background can understand and apply the information presented in the course of their claim settlement with the insurance company, the brochures are easily readable without a lot of technical jargon.

Over the years, issues included in the brochures have come up repeatedly from consumers who are often frustrated by the complexity of the claim settlement process. By eliminating the technical language from those brochures, the Ombudsman's Office hopes the insured public will gain a better understanding of how claims are settled, as well as what they can expect when filing a claim. In many instances, an answer to a question early in the claim settlement process, or a point of simple clarification, will prevent additional financial hardship or frustration for the consumer.

The brochures address such issues as:

- ◆ How long a company has to settle a claim;
- ◆ Who will pay for car rental, and how much;
- ◆ How it is decided who is at fault for an accident;
- ◆ Who decides if a vehicle is repairable or a total loss;
- ◆ How the value of a vehicle is calculated if it is determined to be a total loss;
- ◆ When an uninsured or underinsured motorist claim can be filed; and what avenues are available if settlement with the insurance company cannot be reached.

Information in the brochures was compiled from staff investigators with 25 years of combined experience handling consumer inquiries and complaints.

The brochures will be available on the Department's web site (www.njdobi.org) and will be available at presentations and as requested.

Educating Consumers Through Presentations

The Ombudsman's Office developed a general insurance information slide program to use in public presentations. The program can be selectively tailored to address

specific interest groups and provides a basis for public outreach by the Department through the Ombudsman staff.

At the request of the Capital Area Housing Resource Center (CAHRC), the Ombudsman staff presented a homeowners' insurance general information program to a group of potential first-time home buyers in the Capital city area. As a result of this well-received seminar, the Ombudsman's Office was invited to be charter members of this organization's Homeowner Insurance Partnerships Committee that seeks to offer housing and insurance information to capital area residents.

The Ombudsman's Office is coordinating with the Division of Banking staff to develop and implement financial and insurance programs in conjunction with national and statewide financial education efforts.

The New Jersey Coalition for Financial Education, an affiliate of the national Jump\$tart Coalition for Personal Financial Literacy, is spearheading a project to increase financial education throughout New Jersey. The Ombudsman's participation in the coalition includes developing an insurance presentation to dovetail with financial education programs.

The Ombudsman staff is serving as a resource for a pilot program initiated by the Vineland, New Jersey "Abbot School District," to provide financial and insurance education to the community through the schools and families of students.

The Ombudsman's Office provided an overview of insurance issues to the Bergen County Technical School District and Bergen County Special Services. Other districts have requested presentations for the 2000-2001 school year as part of their ongoing financial education curricula.

Monitoring Implementation of Appeals Systems and Other Insurance Laws and Regulations

N.J.S.A. 17:29E-9 requires that:

Every insurer writing property and casualty insurance or life insurance in this State shall establish an internal appeals procedure for the review of disputed claims ...

As was noted last year, this is a critical element in any effort to improve the climate for more favorable resolutions of disputed claims.

In order to gauge the extent of insurance company adherence to this provision, the Department issued Order A99-158 directing all companies writing property, casualty, and life insurance to report to the Ombudsman on how they are meeting their obligation to establish an internal appeals process. Staff of the Ombudsman's Office contacted all companies to review their response to the Order and to guide compliance where needed.

Each company was individually alerted in advance by Ombudsman staff to Bulletin 00-04 issued by Commissioner Karen L. Suter and requiring compilation of Internal Appeals complaints information in anticipation of reporting requirements to be initiated in 2001. Staff discussions and feedback to the companies included an overview of proposed regulations on the Internal Appeals procedures.

The Ombudsman's Office has confirmed that most insurers already have procedures and a panel in place, as well as external notifications to insureds with basic information about the availability and means to appeal an unsatisfactory claims decision. Any insurers not meeting the minimum threshold for an

internal appeals process were monitored individually until they were in compliance.

The availability of this appeals mechanism may impact on the number of property, casualty, and life insurance claim complaints as consumers learn that they have a viable alternative to redress their grievances about denials of claims or settlement offers perceived as unsatisfactory. The Ombudsman's Office will continue to track the effect of the appeals panels by analyzing reports from the insurers and determining if regulatory modifications are needed in implementing this aspect of the statute.

In addressing another regulatory area,

...the Department issued Order A99-158 directing all companies writing property, casualty, and life insurance to report to the Ombudsman on how they are meeting their obligation to establish an internal appeals process.

Ombudsman staff have been reviewing companies' insurance Buyer's Guides and Coverage Selection Forms as they are being revised by companies and submitted to the Department as required in N.J.S.A. 17:29E-11 and related Regulations. Insurance companies are now getting direct feedback from staff to revise submissions where needed and are receiving "affirmative authorization" to publish and disseminate information.

Lead Hazards Task Force

The Ombudsman's Office joined the New Jersey Lead Hazards Task Force this year to serve as a resource and provide the Department's positions on insurance policies and insurance industry responses to lead hazards in the environment. Incorporating these issues into homeowners and renters presentations is on-going as needed.

Initiatives and Plans for 2000-2001

Addressing Complaints, Considering Related Regulatory Initiatives

Continued trend analysis

We will continue to conduct trend analyses by reviewing complaint files closed by the Enforcement and Consumer Protection Unit to determine if any insurer is generating a disproportionate volume of complaints and, if so, the causative issues involved. This will help to identify sources of consumer dissatisfaction in order to recommend corrective action through coordination with market conduct surveys and/or the regulatory process.

Review of trends in health insurance complaints during the past year has highlighted problems with health care providers who bill members of a managed care or HMO plan for services that are covered by the health plan, a practice that is normally prohibited by the terms and conditions of the provider's participating contract with the health plan. The Ombudsman's Office plans to con-

tinue to seek opportunities to alleviate this situation through educating consumers and the industry, as well as monitoring patterns and practices that will need regulatory action.

Providing Options for Electronic Complaints Submission

Continue developing easy access to complaints filing through technology, as a supplement to the Department's toll-free hot line telephone number with 24-hour voice mail availability publicized in all insurance companies' Buyer's Guides. An insurance consumer complaint form is available on the Department's web site for downloading, printing, and mailing.

However, more options to file complaints through standard e-mail systems and real-time/on-line submissions are planned for this year. Consumers should be able to send detailed complaints, questions, or requests for guides and information any time convenient for them from their computers.

Assessing Regulatory Needs and Informing the Consumer

- ◆ Conclude preliminary research under way as the basis for a larger project on the policy implications of long term care insurance. A long term care insurance comprehensive consumer guidebook is planned for early 2001.

- ◆ Develop a seminar on long term care (LTC) insurance for presentation and as a basis for web site information in early 2001. Long-term care insurance is currently the fastest growing product in the accident and health

insurance market in the United States. With two out of five seniors over 70 requiring LTC, the need to inform an aging consumer population on this issue became apparent. The long-term care materials will address such issues as how much coverage Medicare and Medicaid provide for LTC benefits; how one qualifies for LTC provided by Medicare and Medicaid; the types of LTC insurance products available, and what types of benefits and eligibility requirements exist in these policies.

- ◆ Develop consumer Buyer's Guides for Cash Value Life Insurance and Annuities for availability in early 2001.

- ◆ Complete a comprehensive Life Insurance Buyer's Guide as the basis of an interactive guidebook web page by the first quarter of 2001.

- ◆ Complete a Buyer's Guide on insurance for first-time automobile owners by the first quarter of 2001, as part of a comprehensive forum at high schools. Topics will include how different types of automobiles such as sports cars and SUVs affect insurance premiums; the difference between comprehensive and collision, and the significance of deductibles.

Conclusion

Throughout the first year and as outlined in this report, the Office of the Insurance Ombudsman has focused on identifying systemic issues and practices that result in consumer dissatisfaction.

Issues identification and corrective action remain our basic means to help the Governor, the Legislature, and the Department in our joint efforts to serve New Jersey citizens well in their interactions with a fair and productive insurance industry.