

COLORADO DEPARTMENT OF REGULATORY AGENCIES
OFFICE OF POLICY AND RESEARCH

COLORADO DIVISION OF INSURANCE

2001 SUNSET REVIEW



STATE OF COLORADO

DEPARTMENT OF REGULATORY AGENCIES
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Bill Owens
Governor

October 15, 2001

Members of the Colorado General Assembly
c/o the Office of Legislative Legal Services
State Capitol Building
Denver, Colorado 80203

Dear Members of the General Assembly:

The Colorado Department of Regulatory Agencies has completed the evaluation of the Colorado Division of Insurance. I am pleased to submit this written report, which will be the basis for my office's oral testimony before the 2001 Legislative Committees of Reference. The report is submitted pursuant to §24-34-104(8)(a), of the Colorado Revised Statutes (C.R.S.), which states in part:

"The department of regulatory agencies shall conduct an analysis of the performance of each division, board or agency or each function scheduled for termination under this section..."

The department of regulatory agencies shall submit a report and supporting materials to the office of legislative legal services no later than October 15 of the year preceding the date established for termination...."

The report discusses the question of whether there is a need for the regulation provided under Title 10, C.R.S. The report also discusses the effectiveness of the Division and staff in carrying out the intent of the statutes and makes recommendations for statutory and administrative changes in the event this regulatory program is continued by the General Assembly.

Sincerely,

A handwritten signature in black ink that reads "M. Michael Cooke".

M. Michael Cooke
Executive Director

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Background

The Sunset Process

The regulatory functions of the Colorado Division of Insurance (DOI) in accordance with Title 10, Colorado Revised Statutes (C.R.S.), shall terminate on July 1, 2002 unless continued by the General Assembly. During the year prior to this date, it is the duty of the Department of Regulatory Agencies (DORA) to conduct an analysis and evaluation of the Division of Insurance pursuant to §24-34-104 (9)(b), C.R.S.

The purpose of this review is to determine whether the agency should be continued for the protection of the public and to evaluate the performance of the DOI. During this review, the DOI must demonstrate that there is still a need for the regulation and that the regulation is the least restrictive regulation consistent with the public interest. DORA's findings and recommendations are submitted via this report to the Legislative Committee of Reference of the Colorado General Assembly. Statutory criteria used in sunset reviews may be found in Appendix A on page 60.

The central question this report seeks to answer is whether the continuation of this agency is necessary to protect the public health safety, and welfare of the citizens of Colorado. If it is determined that the regulation of insurance practices is necessary, the next step in the sunset process is to determine if statutory or regulatory changes are warranted to improve the agency operations and enhance the public interest.

Methodology

Research for this report consisted of a review of relevant state statutes and regulations, publications produced by the DOI for industry and consumer use, complaint and disciplinary procedures and outcomes, licensing procedures, examination procedures, and a comparison of DOI operations to guidelines promoted by the National Association of Insurance Commissioners (NAIC). DORA also conducted literature searches and contacted other state insurance departments for comparisons of procedures and policies. In addition, industry and consumer stakeholders were contacted and their input solicited. Stakeholders who responded were interviewed and follow-up interviews were conducted when appropriate. DOI managers were also surveyed and interviewed.

History of Regulation

Insurance regulation has been a matter of state concern since the U.S. Supreme Court decision Paul v. Virginia, (8 Wall. 168, 1869). The Supreme Court held that transactions in commerce did not include the issuance of insurance policies. Therefore, transactions in insurance would not fall under the Interstate Commerce Clause of the United States Constitution. As a result, insurance regulation became the responsibility of the states. Reacting to the Paul decision, several states, led by New York and Maryland, formalized insurance regulation by creating state regulatory agencies.

In 1871 the existing state insurance regulatory authorities formed what became the National Association of Insurance Commissioners (NAIC). Originally designed to assist state insurance regulators, it coordinated the supervision of multi-state companies. Today, the NAIC is the national repository of insurance policy and statistical information, and provides valuable support services to state insurance regulators. The scope of these services is discussed later in various sections of this report.

In 1944, the U.S. Supreme Court reversed Paul v. Virginia in U.S. v. South-Eastern Underwriters Association, 322 U.S. 533, (1944). The decision that insurance was commerce and therefore subject to interstate regulation by the federal government raised concerns in the insurance industry of a new federal bureaucracy. Congress responded to these concerns with the passage of the McCarran - Ferguson Act in 1945. This act acknowledged the authority of Congress to regulate insurance as interstate commerce. However, it recognized that each state already regulated insurance and that the exercise of federal power in this area was unnecessary. Under the McCarran - Ferguson Act, the federal government's authority to regulate insurance is held in abeyance as long as the states effectively regulate the industry.

Colorado began to regulate insurance through the State Auditor's Office in 1883. The Colorado Department of Insurance was formed in 1913 in response to widespread growth in the industry. In the mid-1960s the Insurance Department became part of the Colorado Department of Regulatory Agencies (DORA) as the Division of Insurance (DOI). The head of the DOI is the Commissioner of Insurance, appointed by the Governor and confirmed by the Colorado Senate.

In 1999 the US Congress enacted the Gramm-Leach-Bliley Act (GLBA) that repealed depression era restrictions against affiliations between banks, insurance companies and securities firms, while affirming the functional regulation of insurance by the states. The Act also contained provisions requiring the states to achieve reciprocity or uniformity as it relates to insurance producer licensing by November 12, 2002 or face the pre-emption of non-resident licensing by the National Association of Registered Agents and Brokers (NARAB). Since the passage of GLBA the NAIC has been focused on responding to the call for increased uniformity as it relates to the regulation of insurance by the states and in assisting states in meeting the deadlines established in GLBA as they relate to producer licensing and in creating the standards for uniformity in company and producer licensing.

While there has not been a substantial volume of consolidation of financial services, including insurance, into single holding companies, both a bank and an insurance trade organization have floated proposals for federal regulation of insurance as a means of promoting consolidation. This issue will be a significant source of discussion and research in the coming years.

The following timeline provides a brief history of significant dates within the State of Colorado's regulation of insurance.

1883	Colorado begins to regulate insurance companies through the State Auditor's Office.
1913	Department of Insurance is created; Commissioner position created.
1947	Colorado General Assembly establishes rate regulation standard of "not excessive, inadequate, or discriminatory."
1953	Insurance Commissioner is authorized to regulate preneed funeral sales.
1963	Proof of financial responsibility at the time of a personal passenger automobile accident is mandatory.
1995	Single producer license act enacted.
1999	Gramm-Leach-Bliley Act enacted by Congress and signed into law
2001	Producer Licensing Model Act (PLMA) adopted in Colorado

Summary of Statute

Title 10 of the Colorado Revised Statutes encompasses most of the controlling statutes governing insurance in Colorado. Title 10, C.R.S. delineates the powers and duties of the Division of Insurance (DOI) and identifies the requirements and responsibilities of insurers by lines of insurance. The following segments outline each of the 21 articles under Title 10, C.R.S., including the various types of insurance sold and regulated in the state of Colorado. Articles 9, 16.5, and 17 have been repealed.

General Provisions - Article 1, §10-1-101 to §10-1-207, C.R.S.

This article establishes the qualifications and duties of the Commissioner of Insurance and the Actuary. It grants the Commissioner rule-making authority and authorizes the Commissioner or designees to conduct examinations of insurance companies. Companies underwriting specifically identified malpractice insurance are required to report claims to professional licensing boards under this article. This article also enumerates the grounds and procedure for suspension or revocation of the certificate of authority of an insurance company to do business in Colorado.

Licenses - Article 2, §10-2-101 to §10-2-1101, C.R.S.

Article 2 contains the education and examination requirements individuals must comply with to be licensed to sell any type of insurance in Colorado. The DOI issues a single license to insurance producers (agents) with individual authorizations to sell different types or lines of insurance. Article 2 also addresses precensure requirements and exemptions, continuing education, licensing of insurance producers and bail bonding agents, nonresident licenses, authority of banks and bank holding companies to sell insurance, business conduct of licensees, disciplinary actions, reinsurance intermediaries, and managing general agents.

Regulation of Insurance Companies - Article 3, §10-3-101 to §10-3-1403, C.R.S.

Article 3 and the regulations adopted to implement it are the most important and complex public protection aspect of the insurance code. This article governs the formation of insurance companies and regulates the officers therein, defines investment limitations and valuation, prohibits certain high-risk investments, and authorizes the collection of premium taxes. Uniform guaranty deposit provisions require some foreign and alien insurers to place a deposit with the Commissioner to provide some security to Colorado policyholders.

Part 2 of Article 3 governs the financial affairs of insurance companies. More specifically, minimum capital or guaranty fund requirements and accumulated surplus requirements are set out based on the line of insurance sold. In addition, financial statement requirements are enumerated in §10-3-208, C.R.S. and the rate of tax on premiums is established. Parts 4 and 5 authorize the Commissioner to implement remedial action on delinquent or insolvent insurers. These actions can include placing a company on probation, direct supervision, receivership, or liquidation.

Article 3 contains the Commissioner's authority to regulate reinsurance, insurance holding companies, and the exchange of insurance securities, including the acquisition or merger of insurance companies. This article also identifies unauthorized insurance practices and remedies for violations. Key components in the article are the unfair competition and deceptive practices provisions. The final provisions are the model quality replacement parts act, concerning auto repairs, and the model risk retention act, dealing with risk retention and purchasing groups.

Certified Capital Companies - Article 3.5, §10-3.5-101 to §10-3.5-110, C.R.S.

The entire article consists of the “Certified Capital Company Act”. A certified capital company is a business entity that has its principal office in Colorado and engages primarily in the investment of cash in qualified businesses and is certified according to criteria set out in the article. The primary purpose of the Certified Capital Company Act is to provide assistance in the formation of new business and the expansion of existing businesses by providing an incentive for insurance companies to invest in certified capital companies. The main incentive is credit that can be applied against state premium tax liability in any one year according to aggregate limitations and established timeframes.

Property and Casualty Insurance - Article 4, §10-4-101 to §10-4-1404, C.R.S.

Property and casualty insurance includes automobile, homeowners, title, renters, malpractice, product liability, commercial liability, workers’ compensation, and others. To protect consumers, the general provisions of Article 4 require prior notice of cancellation for certain policies. Colorado requires prior approval for certain insurance policy rates. However, rates for most lines of insurance may be used after filing required information with the Commissioner. Part 4 of Article 4 details criteria for review and approval of insurance rates. In general, the purpose of Part 4 is to promote price competition among insurers, and to uphold rates that are not excessive or discriminatory.

Article 4 establishes the requirements for bonds for surety companies, medical malpractice, and commercial liability joint underwriting associations. The Colorado Auto Accident Reparations Act which includes mandatory automobile insurance coverage is also contained in this article. Section 10-4-706, C.R.S. sets out the required personal injury coverage and authorizes the Commissioner to establish a personal injury protection (PIP) examination program. Part 10 of Article 4 consists of the “Fraudulent Claims and Arson Information Reporting Act.” This act delineates confidentiality and disclosure of information requirements regarding instances of fire loss arising from causes other than accidents. One of the most

significant consumer protection features of Article 4 is the “Colorado Insurance Guaranty Association Act,” which provides a safety net for policyholders in the event insurers become insolvent. All insurance companies are required to be members of the association as a condition of their authority to conduct business in Colorado.

Nonadmitted Insurance - Article 5, §10-5-101 to §10-5-119, C.R.S.

The purpose of Article 5 is to regulate property and casualty insurance transactions with nonadmitted insurers. “Nonadmitted insurers” refers to those companies not directly authorized to do business in Colorado but which “export” insurance products to Colorado. If certain insurance coverages known as “surplus lines” cannot be procured from admitted insurers, nonadmitted insurers may be utilized provided transactions are carried out through a licensed broker. Nonadmitted insurance companies must comply with Colorado insurance laws regarding capital, surplus, and reserves. The Commissioner prepares on an annual basis a list of approved nonadmitted insurers.

Captive Insurance Companies - Article 6, §10-6-101 to §10-6-130, C.R.S.

A captive insurance company is an enterprise established by a company or group to write insurance for that specific entity. Large employers may create these companies to underwrite benefit plans for their employees. It is a more elaborate form of self-insurance for large employers. Captive insurance companies are not required to participate in guarantee pools, nor are they eligible to receive relief from a guarantee pool. Every captive insurance company is required to have its principal and home office in Colorado. The certificate of authority to do business expires on June 30 of each year and must be renewed annually upon payment of all required fees and the filing of necessary reports.

Life Insurance - Article 7, §10-7-101 to §10-7-510, C.R.S.

Section 10-7-102, C.R.S., identifies requirements for life insurance policies sold in Colorado. One of the key requirements is that an insurance policy contains a provision stipulating that the policy represents the entire contract and is incontestable after it has been in force two years. Exceptions to the preceding include nonpayment of premiums, military service, death by accident, and other prohibited risks. In general, an insured pays a premium with the understanding that his or her named beneficiaries will receive a specific lump sum payment upon the death of the insured. There are many types of life insurance products: term, whole life, universal life, and annuities. Term life insurance is the basic product. The other products have value-added features such as cash value or equity building that give them value as “savings” plans.

Sickness and Accident Insurance - Article 8, §10-8-401 to §10-8-607, C.R.S.

The primary purpose of Article 8, as enumerated in Part 5, is to provide access to health insurance for those Colorado residents deemed to be “high risk” because they are unable to obtain health insurance; or can only obtain insurance at prohibitive rates, or with restrictive exclusions. Section 10-8-504, C.R.S. creates *CoverColorado*. *CoverColorado* is a safety net plan established by statute to provide health insurance to those individuals who are unable to access coverage through the individual market due to health conditions. People can also qualify for *CoverColorado* if they are accepted for coverage in the individual market but at a premium rate higher than that of *CoverColorado*, if the individual carrier excludes their health condition from coverage, or if the applicant has any of *CoverColorado*'s list of presumptive conditions.

Part 6 of Article 8 is the “Small Employer Health Insurance Availability Program Act.” This act requires insurance companies writing health insurance plans for small businesses to offer specific benefit packages to groups as small as one and limits the ability of insurance companies to deny coverage to individuals in the group.

Credit Insurance - Article 10, §10-10-101 to §10-10-119, C.R.S.

“Credit insurance means insurance on a debtor to provide indemnity for payments or loan balance, or any combination thereof, becoming due on a specific loan or other credit transaction upon the occurrence of a contingency for which insurance is obtained” (§10-10-103(2), C.R.S.). A common form of credit insurance is a declining benefit term life policy to pay a home mortgage in full upon the death of the mortgagee. Credit insurance is also available for automobile loans and credit card balances. The product can be a death benefit, or structured to make loan payments in the event of disability, illness, or unemployment. In general, the initial amount of credit insurance cannot exceed the total amount repayable under the contract of indebtedness.

Title Insurance Code of Colorado - Article 11, §10-11-101 to §10-11-123, C.R.S.

Title insurance is a specialized product designed to indemnify, or protect, purchasers of real property from defects or claims against the title to the property. Title companies research assessor and court records for liens and other interests against the property, provide the prospective purchaser with the information, and are involved in the “closing” of the real estate transaction. Title insurance rates and fees are regulated, and laws governing insurance companies apply to the business of title insurance and to title insurance companies.

Mutual Insurance - Article 12, §10-12-101 to §10-12-411, C.R.S.

Article 12 consists of four parts. Part 3 (Mutual Benefit Associations) has been repealed. Part 1 deals with mutual insurance companies and mutual protective associations. A mutual insurance company may be formed by an association of 100 or more individuals for the purpose of providing insurance to members. Mutuels operate in a manner similar to credit unions, in that policyholders become voting members of the mutual insurer. Members share in the profits of the insurer and select the board of directors, who are responsible for hiring the insurance management staff.

Part 2 of Article 12 addresses employer's mutual liability insurance. Any 15 or more individuals, partnerships, associations, or corporations who have associated themselves together by certificate or articles of incorporation may become a body corporate for the purpose of insuring members against liability, loss, or damage resulting from accident or injury suffered by an employee or other qualifying individual. Part 4 addresses mutual insurance companies. The primary purpose of this legislation is to recognize in law mutual insurance companies that operate outside of Colorado under Section 1 of Article IV of the Constitution of the United States.

Interinsurance - Article 13, §10-13-101 to §10-13-114, C.R.S.

Article 13 regulates the formation of a reciprocal insurance exchange. This unique type of entity is an unincorporated group of individuals, called subscribers, who mutually insure one another and assume a portion of each others' risks by means of interinsurance contracts. Such contracts may be executed by an attorney, agent, or other representative authorized to act for such subscribers. Each subscriber must file with the Commissioner a declaration to include, among other things, the type of insurance to be exchanged, a copy of the contract or agreement governing the exchange, and a financial statement as required by the Commissioner. The Commissioner issues a certificate of authority to conduct business on an annual basis, and may, for cause, revoke or suspend such certificate after providing reasonable notice.

Fraternal Benefit Societies - Article 14, §10-14-101 to §10-14-705, C.R.S.

§10-14-102, C.R.S., defines "any incorporated society, order, or supreme lodge, without capital stock, conducted solely for the benefit of its members and their beneficiaries and not for profit, operated on a lodge system with ritualistic form of work, having a representative form of government, and which provides any of the benefits enumerated in §10-14-401, C.R.S., is hereby declared to be a fraternal benefit society." Section 10-14-103, C.R.S. defines "lodge system," while §10-14-104, C.R.S. defines "representative form of government." Fraternal benefit societies differ from mutual associations in that they may have different classes of members and not all members necessarily have the ability to vote on issues relating to insurance benefits.

Preneed Funeral Contracts - Article 15, §10-15-101 to §10-15-121, C.R.S.

Preneed contracts are not insurance; they are essentially trusts, regulated by the DOI. Preneed contracts are agreements to provide funeral, interment, entombment, or cremation merchandise or services in the future for an agreed-upon fee. The legislative declaration of §10-14-101, C.R.S., indicates the General Assembly desires to protect the public from unconscionable dealings by individuals in this field, and Article 15 establishes the authority for the DOI to regulate this activity. The Commissioner has a variety of disciplinary options at his or her disposal, including imposing an administrative fine of one thousand dollars or less per offense, and suspending or revoking the license of any contract seller. Section 10-15-105, C.R.S. establishes at some length preneed contract requirements.

Health Care Coverage - Article 16, §10-16-101 to §10-16-708, C.R.S.

Article 16 is the Colorado Health Care Coverage Act. Part 1 of Article 16 contains the general provisions including mandatory coverages, small group guarantee issues, marketing standards, and limitations on exclusions for preexisting conditions. In addition, Part 1 addresses rate regulation and directs the Commissioner to promulgate rules and regulations to require rate filings with the aim of assuring that rates are not excessive, inadequate, or unfairly discriminatory. There is also a provision for independent external review of certain benefit denials. Access to prescription drugs is addressed in §10-16-122, C.R.S.

Part 2 of Article 16 contains the provisions for the regulation of individual sickness and accident insurance policies. Section 10-16-201.5, C.R.S. sets out the requirements under which health benefit plans can be discontinued. Part 3 of Article 16 deals with nonprofit hospital and health service corporations. Requirements for filing articles of incorporation and establishing a board of directors or trustees are detailed in Part 3.

Part 4 of Article 16 provides for the establishment and regulation of Health Maintenance Organizations (HMOs). HMOs are required to have a certificate of authority to operate in Colorado. The Commissioner may suspend or revoke any certificate of authority for failure to furnish health care services as provided for in an HMO's health care plan, as well as any of the other conditions set out in §10-16-417, C.R.S. Every health maintenance organization must provide reasonable procedures for the resolution of written complaints initiated by enrollees concerning health care services. HMOs are prohibited from engaging in deceptive advertising or any form of evidence of coverage which is deceptive. The Commissioner may undertake an examination of the affairs of any HMO as often as he or she deems necessary, but not less frequently than once every five years.

Part 5 of Article 16 authorizes and regulates prepaid dental care plans. These plans are also required to have a certificate of authority and are subject to periodic examinations by the Commissioner.

Medicare Supplement Insurance - Article 18, §10-18-101 to §10-18-109, C.R.S.

Medicare supplement insurance is "gap" insurance. That is, it indemnifies policyholders against expenses in excess of the benefits provided by the federal Medicare program. Policies are regulated in Colorado to prevent duplication of coverage and termination of coverage should a policyholder's health deteriorate. Medicare supplement policies are standardized to a great degree under this act. Disclosure standards and policy refund conditions are also detailed in Article 18.

Long-Term Care Insurance - Article 19, §10-19-101 to §10-19-115, C.R.S.

Article 19 consists in its entirety of the “Long-term Care Insurance Act”. Long-term care insurance as defined in §10-19-103(5), C.R.S., as any insurance policy or rider advertised, marketed, offered, or designed to provide coverage for not less than 12 consecutive months for each covered person on an expense-incurred, indemnity, prepaid, or other basis for one or more necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance, or personal care services provided in a setting other than an acute care unit of a hospital. “Long-term care insurance” includes group and individual annuities and life insurance policies or riders that provide directly or that supplement long-term care insurance....” All companies writing long term care insurance must offer both a basic and a standard policy containing benefits approved by the Commissioner.

Life and Health Insurance Protection Association - Article 20, §10-20-101 to §10-20-120, C.R.S.

Article 20 consists in its entirety of the “Life and Health Insurance Protection Association Act.” This article was established in 1991 to create the Life and Health Insurance Protection Association, a state guarantee pool. Membership in the association is mandatory for all life and/or health insurance companies licensed in Colorado. The association's purpose is to provide a safety net for policyholders of insurance companies that become insolvent. The association is funded by fee assessments made on each member. Assessments are used to cover operating expenses of the association and to provide financial relief to policyholders of insolvent insurance companies, subject to the limits imposed by the statute and the members of the association.

The Colorado Care Health Insurance Program - Article 21, §10-21-101 to §10-21-106, C.R.S.

Article 21 consists in its entirety of “The Colorado Care Health Insurance Program.” This program was authorized first as a study of the cost and availability of health insurance to Colorado citizens. Access to affordable health insurance is a serious and growing problem for Colorado residents. The purpose of the program is to build on the existing private health insurance system with the view to assuring universal, portable health coverage for all residents and equitably dividing the burden of health care financing between the government, the individual, and employers. Among its other provisions, the Colorado Care program eliminates any preexisting or waiting period limitations. Article 21 authorizes the Executive Director of the Department of Health Care Policy and Financing to establish pilot programs implementing the recommendations of the Colorado Care study. The article is contingent on receipt of grants or donations.

Program Description and Administration

Organizational Overview

The Division of Insurance (DOI) is an agency within the Department of Regulatory Agencies (DORA). The Governor, with Senate confirmation, appoints the Commissioner of Insurance (Commissioner) to oversee the operations of the DOI. In 12 of the 55 states and territories, however, Insurance Commissioners are elected to their positions by the vote of the general public.¹ The Commissioner has broad responsibility and authority to enforce the insurance laws of Colorado.

In July 2001, The Commissioner established a 12-member advisory council (Council), known as the Consumer Insurance Council, as a forum to obtain consumer feedback on regulations and initiatives developed by the DOI. The Council discusses issues affecting consumers in Colorado related to health, life, homeowners, and automobile insurance. Meetings are held quarterly in the Denver-metro area.

To fulfill its stated mission of protecting the state's insurance customers, the DOI licenses and oversees the activities of Colorado's 87 domestic and 1,445 foreign insurance companies, 27 chartered self-insured groups/pools, and 23 chartered purchasing groups.² A foreign insurance company is one whose state of domicile is other than the state in which it does business. A total of 528 licensed bail bonding agents, and 69,029 insurance producers (agents and brokers) also fall under the authority of the Division of Insurance. In addition to the regulation of insurance companies and producers, the DOI has several programs not directly associated with insurance industry oversight, such as preneed funeral contracts, and premium tax collections. Companies may also write insurance in the state as an authorized but unlicensed company by submitting financial information to the DOI Corporate Affairs section and receiving approval.³

¹ National Association of Insurance Commissioners, *1999 Insurance Department Resources Report*, p.1.

² National Association of Insurance Commissioners, *1999 Insurance Department Resources Report*, p. 39.

³ Authorized companies usually provide a surplus insurance product offered only by a few companies and do not have offices in the state.

Since 1990 the Division of Insurance has been organized according to three key functions: Administration, Consumer Affairs, and Financial Regulation. The overall day-to-day supervision of the DOI is the responsibility of the Deputy Commissioner. Two Assistant Commissioners supervise the financial and consumer areas, which are further subdivided into sections. The major organizational units that comprise the Financial Regulation subdivision include financial affairs, financial examination, corporate affairs, and premium tax collection. The major units that comprise the Consumer Affairs subdivision, include consumer assistance, rates and forms, investigations, market conduct, actuarial, and consumer affairs compliance. Each of these units is discussed in more detail as set out on the organizational chart on page 17.

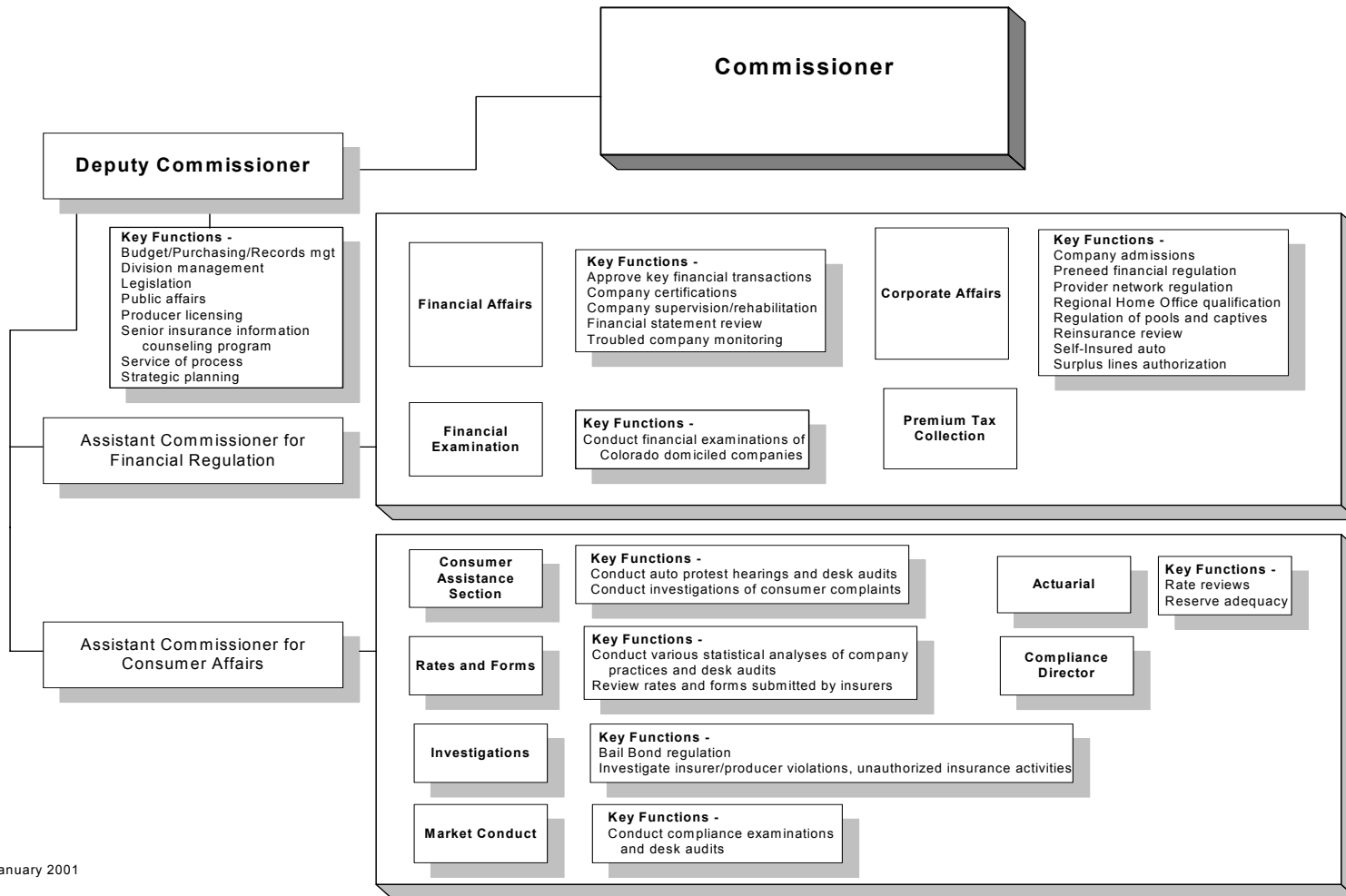
Budget

The DOI's budget for FY2001 was \$7,572,142. This represents a 21.06% increase over its FY1997 budget. The average increase for all states and territories in the same period was 22.98%. Colorado ranked 26 among the states and territories by the size of its FY2001 budget.

The Colorado Division of Insurance is almost entirely cash-funded through taxes on insurance premiums and fees from business registrations and licenses.

Chart 1

Division of Insurance Organizational Chart



January 2001

The essential functions of the Commissioner's office are to provide leadership, policy direction, and overall management of the Division of Insurance. As an active member of the National Association of Insurance Commissioners (NAIC), this unit contributes to the development of national policy positions to make state insurance regulation more uniform and efficient.

Producer licensing, the Senior Insurance Information Counseling Program, as well as traditional management functions such as budgeting and strategic planning, are the responsibility of the Commissioner's office. Legislative and public affairs issues are addressed through the Commissioner's Office and departmental legislative liaison staff. Special task forces are established as needed to address specific issues of concern.

Historically, large portions of insurance department staff have been used for solvency monitoring and financial examinations. As the number of insurance companies and the complexity of their business dealings have increased, insurance departments across the country have enhanced the number and training of financial examiners and analysts. Other important responsibilities include the licensing of companies, agents, and brokers.

In Colorado, besides the Commissioner of Insurance, the DOI is managed by the Deputy Commissioner and two Assistant Commissioners with specific areas of responsibility: Financial Regulation, and Consumer Affairs. In 1999, DOI employed 92 full-time equivalent staff (FTE). This was a 7.23% increase from 1995 staffing levels. For the same period, total full-time equivalent contractual staff increased from two to 19. In 1999, Colorado ranked 21 among the 50 states and the District of Columbia in terms of staffing levels.

Supervisory and support (22 FTE), financial examiners (17 FTE), and complaint analysts (14 FTE) were the three largest categories of regular staff in 1999. Other categories of staff (with corresponding numbers in brackets) include actuaries (3); rate/form analysts (5); market conduct examiners (8); financial analysts (5); investigators (3); public information personnel (1); producer licensing personnel (2); company licensing personnel (1); statistical reporting (1); and "other" (7).

Financial Affairs Section

The essential function of the Financial Affairs Section is to preserve a safe and sound insurance marketplace for Colorado policyholders through review and analysis of financial statements and other filings made with the Division of Insurance pursuant to the requirements of Sections 10-3-201, et seq. and 10-3-801, et seq. C.R.S. More specifically, the Financial Affairs Section has the overall responsibility for monitoring, through the Financial Analysis System, the financial solvency of the 87 Colorado domiciled insurers. The Financial Analysis System is designed to monitor a variety of licensed entities including life, accident and health, multiple-line, casualty, county mutual, fraternal, health maintenance organization, non-profit hospital, medical-surgical, and health service corporations, title, and quasi-state agencies such as the CoverColorado and Pinnacol Assurance Company (formerly the Colorado Compensation Insurance Authority).

A key objective of the Financial Affairs Section is to detect errors in financial reporting, solvency concerns, or negative financial trends affecting domestic insurers. Once errors or solvency issues are identified, the Financial Affairs Section addresses the issues with the company, obtains corrective plans, assesses the feasibility of the plan, monitors the company's compliance with the corrective plan, and recommends appropriate administrative action to the Commissioner.

Financial Examinations Section

The essential function of the Financial Examination Section is to conduct financial condition examinations of insurers as required by Section 10-1-201 et seq., C.R.S. The purpose of financial examinations is the early detection of financially unstable insurers, the evaluation of operating policies and overall performance levels, and data gathering to ensure the financial stability of insurers.

The Financial Affairs and Financial Examinations Sections are subject to operational reviews every five years (accreditation reviews) to determine whether they are meeting solvency surveillance standards established by the NAIC. Colorado received initial accreditation in 1992, was reaccredited for an additional five years in 1997 and is scheduled for its third five year accreditation review in 2002.

Corporate Affairs Section

The Corporate Affairs Section is responsible for performing pre-licensure reviews of the financial viability and statutory compliance of all new domestic and foreign entities regulated by DOI. This includes the traditional insurance companies (life, property, casualty, title, health maintenance organizations), as well as non-traditional insurance entities. This section reviews all non-traditional entities annually to assure that each meets minimum financial solvency and compliance requirements. Non-traditional entities include government pools, captive insurers, preneed funeral sellers, motor vehicle self-insurance plans, "financial responsibility" medical malpractice coverage plans, and managed care entities (such as limited service licensed provider networks, and prepaid dental plans).

The Corporate Affairs Section also reviews annual applications for regional home office eligibility and the financial solvency and compliance of approved surplus line carriers, non-admitted reinsurers, and alien (non U.S.) insurers. In addition to the above, the section also maintains the ongoing accuracy of the DOI's company Fines, Regulatory actions etc. Database (FRED). This includes daily maintenance for corporate changes such as name changes, foreign insurer redomestications, mergers, changes of control for licensed insurers, and address changes of all companies. This section also registers risk retention groups and purchasing groups, and monitors liquidations and transfers of business between insurers.

The Corporate Affairs Section recently assumed the responsibility of monitoring foreign insurers' financial solvency. These reviews are performed on a priority basis for those companies determined to have high-risk financial profiles.

Premium Tax Section

The primary function of the Premium Tax Section is to establish procedures and maintain a system for the collection of approximately \$122 million dollars in annual tax premiums. Administering the premium tax function includes reviewing changes to and interpreting the premium tax laws, updating and modifying the premium tax procedures and database, preparing instructions and tax forms to be mailed to licensed companies, processing cash receipt data and refunds, auditing tax returns for compliance, and responding to insurance company and other customer requests for information.

Consumer Affairs Section

The Consumer Affairs Section is the main contact point between consumers and the Division of Insurance. The section handles incoming phone calls concerning general inquiries and complaints, as well as clarification of statutory and regulatory requirements. The section processes complaints from individual consumers, producers, and providers. Areas of expertise include, but are not limited to, dental/vision plans, health insurance, life insurance, annuities, automobile, homeowners, and title insurance.

Upon encountering a situation or procedure that is clearly in violation of the law, the Consumer Affairs Section takes appropriate steps to ensure that the problem is corrected and to bring the insurance company or producer into compliance. At times, this section is also called upon to make presentations to producers, providers, or consumer groups.

The Consumer Affairs Section has the additional responsibility of conducting auto protest hearings and desk audits, which are focused reviews of an individual insurer's policies, procedures, and practices and a specific area of concern.

Rates and Forms Section

The Rates and Forms Section has the primary responsibility for processing and maintaining policy form and rate filings as required by statute. For policy forms, only a few lines remain under statutory requirements for “prior approval”. The section reviews such filings in depth for compliance prior to issuance. For most lines, subject to “file and use” or “certification” requirements under the statute, the section is responsible for receiving filings or certifications and performing targeted reviews (or desk audits) to verify that policy forms issued by the company comply with statute. Another primary duty of the section is to process and maintain rate filings and to perform reviews as necessary. This oversight function is important to consumers as well, since most rates are “file and use” (companies may simultaneously use the rates, when they have been filed with the DOI). Rate filings with significant consumer impact are selected for review upon receipt. The section also performs targeted desk audits of rate filings for selected product lines, domestic companies and companies with significant market share in the state. A database is maintained to track all rate and policy form filings received and to ensure compliance with statutory and regulatory timeliness standards.

This section also generates industry information by means of consumer guides (homeowners, private passenger automobile, and workers’ compensation), conducts surveys (individual, private passenger auto, personal injury protection, and small group), and generates complaint ratios and statistical reports.

Investigations Section

The Investigations Section helps to enforce Colorado’s insurance laws through the processing and investigation of alleged violations. This section refers cases to the Office of the Attorney General for criminal proceedings and recommends civil or administrative action to the Commissioner when appropriate. Another key function of this section is regulation of bail bonding agents. In addition, the Investigations Section provides assistance and information regarding statutes, regulations, and other insurance issues to the public and enforcement agencies.

The Investigations Section consists of four staff members, one criminal investigator, one general professional investigator, and one clerical assistant, all supervised by a Criminal Investigator II. The unit is responsible for investigating allegations of unauthorized insurance practices, deceptive sales practices, and complaints of illegal actions by insurance producers. The section works with the Antifraud Unit of the Attorney General's office as well as local, state, and federal law enforcement agencies. The section is also responsible for the licensing and regulatory functions associated with the bail bond industry.

Most consumer issues are directed to the Consumer Affairs Section in DOI for an initial review and response. Issues which appear to involve fraud, unauthorized insurance sales, and bail bond issues are referred directly to the Investigations Section.

Telephone and written complaints from consumers against insurance producers (agents) are immediately referred to the Investigations Section. Complaints against companies are resolved in the Consumer Affairs Section of DOI. If the Consumer Affairs Section has reason to believe the company in question is unauthorized in Colorado, or discovers the complaint is actually the responsibility of a producer, the complaint is forwarded to the Investigations Section.

Any individual or company that markets insurance in Colorado is required to be licensed or authorized. The DOI may issue an emergency cease and desist order against entities selling insurance products in the state without the proper license or authorization. Violations of a cease and desist order carry a \$25,000 fine and restitution under the provisions of §10-3-904.6, C.R.S. Under the provisions of §10-3-1107, C.R.S., the Commissioner may conduct an administrative hearing for any violation of Title 10. If after a hearing, the Commissioner finds that a violation such as the unauthorized sale of insurance has occurred, the individual in violation can be fined \$1,000 for each act up to a total of \$10,000. Violations of an order issued under this section are subject to a monetary penalty of \$500 per violation.

The Investigations Section utilizes a system that divides cases under review into two categories. The first is classified as an inquiry. An inquiry is a request for information that does not involve intensive investigation. The second category is a complaint. A complaint is an allegation that appears to be a violation of insurance statutes or regulations.

The initial contact in the Investigations Section is documented on a case assignment sheet. The assignment sheet identifies the complainant, the respondent, a brief description of the issue and is used by the lead investigator to assign cases. Details on the Assignment Sheet are entered into a computerized complaint system, the Fines, Regulatory actions etc. Database (FRED).

Some issues, such as miscommunication between the producer and the company which result in a policy not being activated, can be resolved in relatively short periods of time. These are classified as inquiries. According to statistics provided by DOI, the Investigations Section opened 213 inquiry files during calendar year 2000 and closed 194 files during the same time period.

Cases that are more complex in nature, such as an allegation of sales by an unauthorized insurer, may be classified as a complaint. Inquiries that become complex can also be classified as complaints. According to DOI statistics, the Investigation Section opened 110 complaint files in calendar year 2000 and closed 251 files.

In January of 1999, the State Auditor released its performance audit of the Division of Insurance. The report documented several issues related to the Investigation Section and made a series of recommendations for improvement. One recommendation in the report was for an objective system for prioritizing complaints. The DOI agreed with this recommendation and has included a methodology for prioritization of complaints in the investigations policy and procedures manual. However, in practice, complaints are not formally prioritized and there is no differentiation noted on internal periodic case or complaint reports.

According to the audit report, in 1997 the average length of time an investigation was open was 178 days. The report called for improvements in communication between the various units in DOI as well as the Department of Law to reduce this time. As of this review, the Investigation Section had 49 complaint files open with an average time of 640 days. There were also 87 inquiry files open with an average of 108 days.

Some of the complaint files are complex cases that take time to resolve. It is not unusual for an initial investigation in a complex case to result in additional complaints being discovered and investigated. For example, DOI opened an investigation of a producer suspected of selling unauthorized insurance products in December of 1997. Since that time, an additional 17 complaint investigations have been opened against the same producer. Adjusting for these 18 cases, the average length of time a complaint investigation is open is reduced to 382 days.

During the past two fiscal years the Investigations Section has closed an average of 478 complaint and inquiry cases each year. Therefore, each investigator closed an average of 159 cases. This compares to an average of 94 cases per year in the peer states selected for comparison purposes. DOI tracking records indicate that for cases closed, the average length of time from initial opening to closure was 242 days. Resources have been an issue for the Investigations Section.

DOI has a new, sophisticated computerized tracking system for complaints and investigations that is not being utilized to its full capacity as it relates to its enforcement component. This is, at least partially, explained by the turnover and training issues. However, an improvement has been noted in terms of enforcement actions obtained by the section. Table 1 denotes the enforcement actions taken over the past two years. It can be seen that actions increased during fiscal year 2000-2001 when the Section was fully staffed. In addition to the enforcement actions taken by DOI, 26 cases in fiscal year 1999-2000 and 90 cases in 2000-01 were referred to the Attorney General's Office for criminal prosecution.

Table 1

Investigations Section Enforcement Actions

	Fiscal Year 1999-2000	Fiscal Year 2000-2001
Cases Closed	504	453
Enforcement Actions	22	35
Fines	14	13
Fine Dollars	\$38,500	\$141,525
Cease & Desist	0	13
Deny	1	2
Revoke	5	4
Suspend	5	3
Probation	4	4

Bail Bond Regulation

Colorado currently has two separate forms of bail bonding agents. The majority of bail bonding agents in the state are surety bonding agents. These individuals act as agents for an insurance company. The insurance company authorizes surety agents to issue bonds in the name of the company to guarantee the appearance of a defendant at a hearing. If the defendant fails to appear, the insurance company is liable to the court for the amount of the bond.

The second type of bail bonding agent is a cash bail bonding agent. Cash agents have posted a bond with the DOI to allow them to guarantee the defendants appearance without the backing of an insurance company. Essentially, cash agents are their own insurance company.

In the 1995 sunset review of the bail bond program, DORA recommended eliminating cash bail bonding agents. As a compromise, the Colorado General Assembly passed legislation to prohibit the licensure of new cash bail bonding agents but allowed those with licenses to continue operations. In 2000, the General Assembly repealed the prohibition against the licensure of new cash bail bonding agents. There are now two types of Cash Agents, those that were grandfathered in 1992 and have no limits placed on the amount of bail that they can write and Professional Cash Agents, created in 2000, who are limited to writing bonds in the amount of twice the deposit on file with DOI. The number of cash bail bonding agents has increased from nine in 1999 to 25 in 2001.

According to the investigation unit, an inordinate amount of resources are devoted to issues related to bail bonding agents. An analysis of complaints by producer type reveals that there are significantly more complaints per bail bonding agent than for other producers. Table 2 compares the complaint ratios between bail bonding agents and producers.

Table 2

Producer Complaint Data

	Fiscal Year 1999-2000	Fiscal Year 2000-2001
Bail Bonding Agents	536	558
Bail Bond Complaints	190	136
Bail Bond Complaint Ratio	.35	.24
Producers	63,741	70493
Producer Complaints	396	155
Producer Complaint Ratio	.006	.002

There are one domestic and 17 foreign insurance companies authorized to issue bail bond sureties in the state. It is the intent of DOI to hold the insurance companies responsible for the actions of its agents to reduce the number of bail bond complaints.

At least one insurance company has resisted this practice. This company maintains that bonding agents are independent businesses and the insurance company merely grants them limited power of attorney to bind the insurance company's bond. Because of this dispute, several bail bonding agents and this insurance company are proposing an alternative regulatory structure for bail bonding agents. Recommendation four of this review addresses this issue.

Market Conduct Section

The Market Conduct Section assists DOI in its oversight of Colorado's insurance industry. This is accomplished by means of market conduct examinations of insurance carriers. The overall purpose of market conduct examinations is to ensure that insurance carriers are operating within the parameters of Colorado law to ensure consumers and providers receive equitable treatment, services, and benefits from insurance carriers.

Market conduct examinations are periodic reviews of an insurance companies operational procedures, claims and underwriting practices, conducted either by DOI staff or contract employees. Examinations are conducted in accordance with procedures developed by DOI, based on model procedures developed by the National Association of Insurance Commissioners (NAIC). Examinations typically include on-site visits, and may involve considerable periods of time. An exam may involve a review of management and administrative controls, the Certificate of Authority, Board of Directors meeting minutes, internal/external auditing functions, record retention, and provider contracts. The conclusions and findings of examinations are public records.

Actuarial Section

The Actuarial Section is involved in the regulation of life, health, property and casualty insurers, as well as HMOs, pools, captives, and Limited Service Licensed Provider Networks. The DOI's actuaries provide a broad range of services, which generally mirror those found in the insurance industry. This section serves as a DOI resource when it comes to numerical and financial analyses. The unit supports the DOI objective of assuring the adequacy of licensee reserves and appropriateness of rates. In addition, the Actuarial Section evaluates innovations in product design and corporate actuarial systems. The unit promotes uniformity of actuarial standards and regulation, unless uniformity is contrary to the interests of Colorado policyholders.

The Actuarial Section's primary customers are internal. Major tasks performed for other DOI sections include review of rate filings for the Rates and Forms Section, participation or coordination in domestic financial examinations for the Financial Examinations Section, report and actuarial review for the Financial Affairs Section, actuarial aspects of admissions/expansions and reinsurance for the Corporate Affairs Section, participation in examinations for the Market Conduct Section, and analysis of complaints for the Consumer Affairs Section.

Outside stakeholders may include domestic and foreign insurers, consulting actuaries, and the general public. The Actuarial Section also participates in surveys and studies, and NAIC actuarial issue identification and problem solving.

Director of Consumer Affairs Compliance

The duties and responsibilities of the Director of Consumer Affairs Compliance are to ensure that all regulated insurance entities comply with Colorado’s insurance laws. The Director identifies significant compliance issues and addresses them in a variety of ways, including proposing legislation, drafting appropriate regulations, drafting bulletins, educating consumers and industry representatives by means of speaking engagements, and convening industry or consumer committees, or both.

In addition, the Director of Consumer Affairs Compliance assists the market conduct examination section by evaluating the legality of market conduct examinations, drafting orders, setting fines, and entering into negotiations with affected regulated entities. The Director confers with the DOI’s life and health, property and casualty, rates and forms, and investigations sections to address compliance issues. These consultations often result in negotiations and stipulated agreements with regulated entities.

License/Registration

DOI is involved in regulating a wide variety of insurance and non-traditional insurance products and activities. Approximately 30 percent of the DOI budget is made up of fees for the various licenses and certificates insured by DOI. Table 3 depicts current fees for producer licensing.

Table 3

Producer Licensing Fee Schedule

New License - Resident (per authority)	\$53.00
New License - Nonresident (per authority)	\$94.00
New License - Surplus Lines	\$360.00
New License - Bonding Agent	\$289.00
Exam Fee	\$70.00

Insurance companies must meet the capital and surplus requirements contained in the statute for the line(s) of business for which the company is seeking authorization as well as the risk-based capital standards developed by the NAIC. Fees for most insurance companies are graduated based on the previous years premium collections. Table 4 identifies the fees an insurer obtaining a certificate of authority in Colorado would be required to pay.

Table 4
Samples of Company Fees

With initial application, <u>NONREFUNDABLE</u> , for investigating and processing	\$500.00
Prior year's direct written premiums in Colorado not exceeding \$1,000,000	\$670.00
Prior year's direct written premiums in Colorado in excess of \$1,000,000 but not exceeding \$10,000,000	\$2,010.00
Prior year's direct written premiums in Colorado In excess of \$10,000,000	\$3,345.00

In addition, insurance companies may be required to maintain deposits with the Commissioner or surpluses dependent upon the type of business they are in. The Commissioner bases surplus requirements on formulas developed by the NAIC. Table 5 shows the amounts of surpluses for various lines of business.

Table 5
Capital/Guaranty Fund Plus Surplus Requirements

Type of Company	Capital/Guaranty Fund Plus Surplus
Life	\$1,500,000
Fire	\$1,500,000
Casualty	\$1,500,000
Multiple Line	\$2,000,000
Title	\$750,000

Colorado requires an insurance producer license for anyone who solicits, negotiates, effects, procures, delivers, renews, continues or binds policies of insurance for risks residing, located, or to be performed in Colorado pursuant to §10-2-103 (6), C.R.S.

DOI regulates resident producers, non-resident producers, bail bonding agents, and public adjusters. The DOI website contains information on the requirements for licensure as well as the fees associated with each license. The following requirements are excerpts from that material.

Resident Producer

Requirements for a resident producer license include:

- a) Colorado residency
- b) Be at least 18 years of age
- c) Be trustworthy, competent, financially responsible, and of good personal and business reputation and
- d) Satisfactorily complete the required hours of training through an approved Pre-Licensure Education Course prior to taking the examination with ASI

The required hours and educational areas are depicted in Table 6.

Table 6

Producer Education Requirements

Life Insurance	Health Insurance	Property & Casualty Insurance
50 hours	50 hours	50 hours
40 hours - Life Insurance	40 hours - Health Insurance	20 hours - Property Insurance
3 hours - Ethics	3 hours - Ethics	20 hours - Casualty Insurance
3 hours - Principles of Insurance	3 hours - Principles of Insurance	3 hours - Ethics
4 hours - Legal Concepts and Regulation	4 hours - Legal Concepts and Regulation	3 hours - Principles of Insurance
		4 hours - Legal Concepts and Regulation

The Principles of Insurance, Legal Concepts and Regulations and Ethics need be taken only once if an applicant seeks multiple authorities.

Non-Resident Producer

The same licenses are required of non-residents that are required of residents in order to conduct insurance business in Colorado. However, non-residents are exempt from pre-licensing education requirements if they have been licensed in a state that requires pre-licensing training.

The Colorado Division of Insurance has reciprocal agreements relating to the licensing of individuals, with all 49 other states, the District of Columbia, Puerto Rico, Virgin Islands, Ontario, and Manitoba for the issuance of non-resident licenses. Licensed non-resident producers may enter Colorado to solicit, inspect and service. Unlicensed non-resident producers may not enter the state for any of these purposes. The area of reciprocal licensing for non-residents is a focus of the producer licensing requirements of GLBA and will be greatly facilitated when the new producer licensing statute becomes effective January 1, 2002.

Exemptions

Following are instances in which an exemption to the licensing examination requirement would be made.

- The applicant holds a CLU or CPCU designation or is a new resident in Colorado and held a resident license in another state during the last 12 months. The applicant may be eligible for licensure by passing only Part 2 of the appropriate examination (Colorado law).
- Applicants for travel ticket authority, HMO or NonProfit Hospital Representative are exempt from the examination requirement.
- Applicants for a credit authority who hold a life, health, property, or casualty authority are exempt from the examination.
- Applicants for a crop hail authority who hold a property or casualty authority are exempt from the examination.
- An attorney-at-law who applies for a title authority is exempt from the examination.

Bail Bonding Agents

Traditional surety agents must obtain eight hours of pre-licensure education and pass an examination administered by a private examination company to obtain a limited producer license. Cash bail bonding agents must demonstrate four consecutive years of experience and submit cash or approved securities to the Commissioner.

Public Adjusters

All applicants must pass a written examination approved by the DOI and administered through ASI. Exemptions from the examination requirement include:

- 1) Experience in the investigation or adjustment of losses arising from insurance contracts during the three-year period proceeding date of application;
- 2) Applying for reinstatement of a license that has been inactive for one year or less;
- 3) Individuals licensed as public insurance adjusters on December 31, 1994. Such individuals are "grandfathered" for a new license.

Examinations

Insurance producers (agents) must achieve a passing score on an examination administered by a private vendor, Assessment Systems Incorporated (ASI). Examination sites are located around the state and applicants who meet the pre-licensure examination requirements may schedule examinations at their convenience.

Complaints/Disciplinary Actions

The Colorado Division of Insurance tracks complaints on an individual company basis and makes these available on its web site, which enables consumers to be better informed when it comes to selecting an insurance company.⁴ The data in Table 7 have been compiled from this information.

⁴ <http://www.dora.state.co.us/Insurance/>

Table 7

Complaint Numbers by Industry Sector: 1996-1999

Complaints by Industry Sector	1996	1997	1998	1999
Accident & Health Insurance (non-HMO)	656	892	829	782
Health Maintenance Organization (HMO)	234	389	589	633
Life Insurance & Annuity	94	117	88	79
Private Passenger Auto Insurance	3713	3391	3791	3169
Homeowners & Farmowners Insurance	271	226	310	320

Source: Division of Insurance

Based on the data in Table 7, it is also possible to calculate consumer complaint ratios by insurance industry sector. The consumer complaint ratios of Colorado's insurance industry show how some sectors of the industry generate more complaints per \$1 million of premiums than others. In Table 8, a complaint ratio of 2.09, for example, means that the private passenger auto insurance sector had approximately 2.09 complaints per \$1 million worth of business. For purposes of this report, a complaint is defined as a written correspondence expressing a grievance against an insurer (no judgment is made in the ratios as to whether the complaint is justified).

Table 8

Complaint Ratios By Industry Sector, 1996-1999

Complaints by Industry Sector	1996	1997	1998	1999
Accident and Health Insurance (non-HMO)	0.62	0.78	0.75	0.57
Health Maintenance Organization (HMO)	0.21	0.19	0.29	0.23
Life Insurance and Annuity	0.09	0.10	0.06	0.04
Private Passenger Auto Insurance	2.09	1.79	2.00	1.52
Homeowners and Farmowners Insurance	0.65	0.52	0.71	0.62

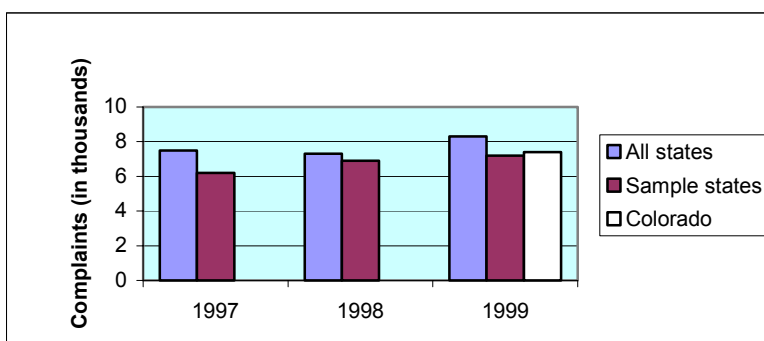
Source: Division of Insurance

All numbers have been rounded to two (2) decimal places

Complaints reported to NAIC by all of the states totaled just over 365,000 in 1997, nearly 374,000 in 1998 and 441,000 in 1999. Graph 1 compares complaints for Colorado with national averages and 10 sample states selected based on geographic location and premium size comparable to Colorado. Colorado and Maryland have a unique automobile protest provision in law that inflates complaints in that area. Automobile protests have been adjusted out of the data for this reason.

Graph 1

Average Annual Complaints By State



Source: NAIC Insurance Department Resources Reports, 1997, 1998. 1999: Division of Insurance

The average number of complaints per state for all the states was 7,450 in 1997 and 7,332 in 1998. Colorado's complaint figures were not averaged in because comparable totals could not be provided. The averages for the sample states for those years were 6,195 and 6,898, respectively, considerably less than the averages of all the states. The states included in the sample states category were Alabama, Arizona, Colorado, Kansas, Louisiana, Nebraska, New Mexico, Oklahoma, Tennessee and Texas. The Western states were selected because of their location and similarities with Colorado, while the others corresponded closely in other NAIC comparisons for premium volume for companies licensed in the state. Table 9 shows that Colorado had more complaints filed than eight of the other sample states. The ratio of complaints to premium volume in Colorado for 1999, however, showed Colorado at .55, clearly in the middle of the range of ratios figured.

Table 9

Consumer Affairs, 1999 - Sample States

Ratio of Complaints to Premium Volume			
State	Consumer Complaints	Premium Volume (in Billions)	Ratio
AL	670	\$11,354	.06
AZ	3,465	17,104	.20
CO	7,381	13,332	.55
KS	4,962	6,565	.76
LA	5,039	11,429	.44
NE	2,432	5,055	.48
NM	1,923	3,658	.53
OK	6,696	6,558	1.02
TN	4,122	18,059	.23
TX	35,067	59,693	.59

Sources: NAIC Insurance Department Resources Report, 1999; Division of Insurance

Disciplinary Actions

Table 10 depicts actions against Colorado insurance companies for the period 1995-1999. Two trends are worth noting in Table 10. These include the cluster of Consent Orders in 1997 and 1998, and the “all other” category in 1999. The former may be explained by the initiation of the market conduct exam program in 1997. This led the Commissioner to issue the consent orders reflected in the table. In 1999 the “all other” figure of 161 actions is large because it includes final agency orders, which should have been reported to the NAIC separately.

Table 10

Actions Against Colorado Companies: 1995-1999

Actions Against Companies	1995	1996	1997	1998	1999
Certificate Denied	n/a	0	0	0	1
Certificate Suspended	n/a	3	2	4	3
Certificate Revoked	n/a	0	0	0	0
Certificate Reinstated	n/a	0	0	0	0
Cease & Desist Order	n/a	4	3	0	0
Consent Order	n/a	8	71	61	0
Temporary Restraining Order	n/a	0	0	0	0
Supervision/Suspension	n/a	0	1	0	1
Placed in Receivership	n/a	0	0	0	0
All Other	n/a	2	0	0	161
Totals	n/a	17	77	65	166

Source: NAIC Insurance Department Resources Reports, 1995-1999.

Table 11 depicts Division of Insurance actions against Colorado producers for the 5-year period 1995-1999. Producers are licensed to sell insurance products and services. During the time period in question, fines were clearly the favored means of discipline.

Table 11

Actions Against Colorado Producers: 1995-1999.

Actions Against Producers	1995	1996	1997	1998	1999
Suspensions	20	15	n/a	19	5
Revocations	1	6	n/a	5	5
Cancellations	2	21	n/a	0	0
Fines	45	58	n/a	58	14
Other	2	17	n/a	73*	4
Totals	70	117	0	155	28

Source: NAIC Insurance Department Resources Reports, 1995-1999.

*The 1998 NAIC report contained an error for the other category of discipline, the actual number was 17.

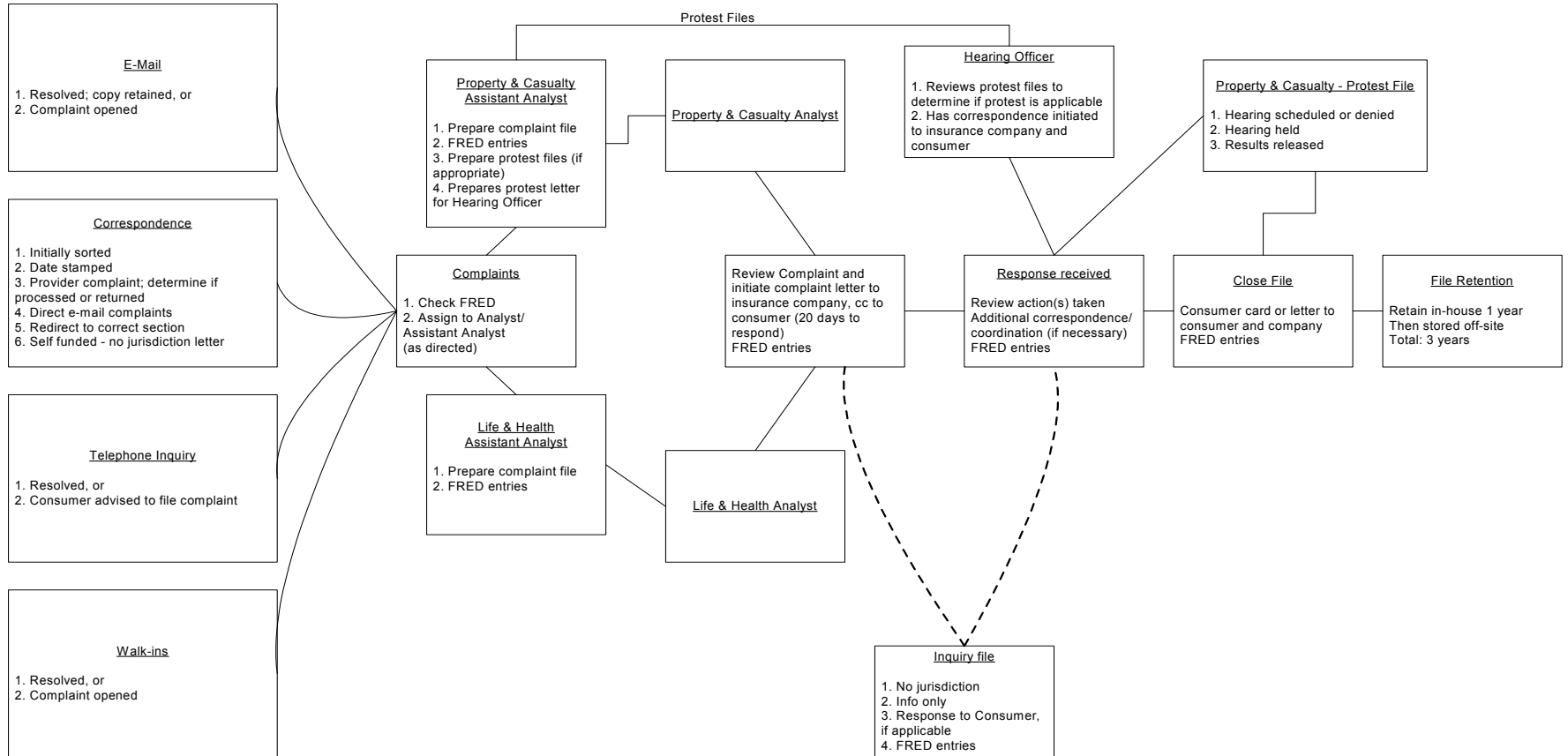
Consumer Affairs Section

The Consumer Affairs Section of the Division of Insurance is responsible for receiving consumer inquiries, complaints and protests and directing them to the appropriate area for handling. The section tracks telephone calls, e-mail contacts, correspondence, and contacts by citizen "walk-ins" who take their cases personally to the section's offices. The Consumer Affairs Section's complaint flow chart on the following page illustrates the process used to track inquiries, complaints, and protests. Inquiries sent by e-mail receive immediate responses, as do telephone callers and walk-ins seeking readily available information. Correspondence is sorted and distributed to the different units, and analysts from the appropriate areas are assigned to handle the cases.

Chart 2

Colorado Division of Insurance
Consumer Affairs Complaint Flow Chart

gr1/mcomplaint flow vtd



July 20, 2001

A file is created whenever a complaint is received and all information is entered into the computer database within one day of receipt. Within three days of receipt, each complaint file is reviewed and an initial letter is sent to the company against which the complaint was filed. DOI Regulation 6-2-2 specifies that the company has 20 calendar days to respond or a fine up to \$1,000 may be imposed. The company's response is reviewed and a determination is made regarding the issue based on law, case law, or other factors. Some cases require further analysis and action. Table 12 details the consumer complaint results for the Consumer Affairs Section of DOI.

Table 12

Consumer Assistance Complaint Data

Fiscal Year	# Complaints	Resolved Company	Resolved Consumer	Other	Average Days To Resolution
1998-1999	4360	1315	2131	925	80
1999-2000	3913	1243	1862	821	69

The most common reason for a complaint in the Consumer Affairs Section relates to denial of a claim. Analysts in the section review complaints for compliance with statutes, regulations, and company underwriting guidelines. While a finding in favor of the consumer may result in an administrative penalty against the company, that is rarely the case. In fact, for the two years reviewed for complaint resolutions, only \$4,000 in fines for issues not related to late, or non-filing of complaint responses were administered by this section.

However, resolution of a consumer complaint may include an order for restitution as opposed to an administrative penalty. In fact, when the section finds that a company has misapplied underwriting criteria or misinterpreted a statute or regulation, it may request that the company conduct an audit of all similar cases and make restitution. Table 13 details the restitution paid to consumers obtained by the Consumer Affairs Section.

Table 13

Restitution Paid to Consumers

Fiscal Year	Total Refunded to Consumers
1998-1999	\$11,142,729
1999-2000	\$9,297,632
2000-2001	\$7,954,384
Total	\$28,394,745

When a file is closed, letters or cards requesting assessments of the services provided are sent to the consumers and to the companies. All of the responses that come back to the unit are tabulated. The survey results for the most recent fiscal year showed 67% rated the service received as excellent, 21% were satisfied and 12% were unsatisfied. All unsatisfactory responses are reviewed to determine the reason. Closed files are retained in-house for one year, then stored off-site for two additional years.

Analysis and Recommendations

Statutory Recommendations

Recommendation 1 - Continue the Colorado Division of Insurance and establish subsequent sunset reviews by Division function.

Colorado's insurance industry in terms of premium volume was a \$13 billion enterprise in 1999. This placed Colorado 23rd among the 55 jurisdictions of the United States. The Division of Insurance (DOI) collected approximately \$122,000,000 in insurance premium taxes. The DOI performs pre-licensure financial reviews and statutory compliance analysis of all new domestic and foreign insurance entities. It functions to preserve a safe and sound insurance marketplace for Colorado policyholders by means of analysis and review of financial statements and other filings. It seeks the early detection of financially unstable insurers and engages in the evaluation of operating policies as well as data collection to enforce regulations against insurers that pose a financial hazard. The DOI investigates and identifies violations, presents findings, makes recommendations, and works directly with the Insurance Fraud Unit in the Colorado Attorney General's Office. It takes disciplinary actions against insurance producers and companies as needed.

The DOI assists consumers by processing complaints, answering inquiries, and by providing clarification concerning statutory and regulatory requirements. It produces consumer information brochures on auto, home, health, medicare supplement, long-term care, workers' compensation, and other subjects. The DOI reviews insurance carriers by means of market conduct exams to help consumers and providers receive equitable treatment, services, and benefits from insurance carriers. The DOI also enforces certain health-related statutory provisions, such as mandated treatment for newborn children, treatment for alcohol abuse, and the provision for mammography services. In the words of one stakeholder:

“The business of insurance is exceedingly complex and issues around health coverage, in particular, are often emotionally charged. A body such as the Division of Insurance is necessary in order to promote consistency and equity; to facilitate the creation of market-driven, legislative and/or regulatory solutions to environmental and industry challenges; and to ensure that requirements are upheld.”⁵

⁵ Correspondence on file with the Office of Policy and Research.

Insurance, especially forms such as property and casualty, health, life, and auto are more often than not a necessity of modern-day living. In the absence of federal regulation, the DOI is the state agency that ensures the smooth functioning of this important sector of Colorado's economy within its stated mission of protecting the public. Consequently, the DOI should be continued. It has also become apparent as a result of this sunset review that the DOI is too large and complex for performance evaluation purposes to review effectively under current guidelines and requirements. Therefore a review schedule that accommodates the complexity of the DOI would lead to better targeted and effective regulatory reforms. To effect this recommendation the following DOI of Insurance functions should be subject to sunset review according to Table 14.

Table 14

Proposed Sunset Dates

	2003	2004	2005	2006
Division of Insurance producer licensing functions			✓	
Division of Insurance certificate of authority issuance to:				
Health and life insurers		✓		
Property and casualty insurers				✓
Automobile insurers				✓
Any insurer that is not a health, life, property, casualty, or automobile insurer.				✓
Division of Insurance bail bond licensing functions	✓			

Recommendation 2 - Advance the sunset date for the bail bond program in the Division of Insurance (DOI) to July 1, 2003.

It is obvious from an analysis of complaints, investigations, and disciplinary actions that the regulation of bail bonding agents is resource intensive for the DOI. The General Assembly has recognized the unique nature of this industry by establishing a sunset review of this program separate from the overall DOI sunset date.

The Department of Law and the DOI have pointed out conflicts with the disciplinary and enforcement options available through the licensing of producers in Title 10 and the licensing of bail bonding agents in Title 12. These conflicts create loopholes for some bondsmen to avoid sanctions against their license.

The bail bond industry has changed significantly from the last review. The increase in the number of cash bail bonding agents and the "On the Board" program established by the General Assembly in 1999 are examples. Industry proponents are requesting legislative action to further modify the regulatory structure. Sunset reviews are intended to analyze regulatory programs thoroughly, and make recommendations for statutory changes that are consistent with the public interest. The licensing of bail bonding agents is currently scheduled for sunset in 2006. Because of the concerns of the industry as well as DOI it would be in the best interest of all parties if the review was moved up to 2003 as suggested in the recommendation to continue the Division of Insurance.

Recommendation 3 - Clarify the ability of bail bonding agents to collateralize unpaid premium or other costs associated with the bond.

It is common practice for individuals in need of a bail bond to leave something of value with the bonding agent as collateral. Bonding agents are required to release the collateral when the bond is released. The bond agreement calls for the consumer to be responsible for other expenses related to the bond, such as bounty expenses.

The DOI has a policy allowing an agent to hold collateral for expenses, however, it is not clear that the statute allows for this. The General Assembly should clearly authorize bonding agents to hold collateral for all expenses related to the issuance of the bond. Appropriate disclosures and agreements between the agent and the consumer should be required. The statute should be amended to read:

§12-7-108, Bonding agreement-requirements-payment schedule. (4) The bail bonding agent may use collateral received from the principal under this Article to secure the following obligations provided each obligation has a separate written agreement:

- (a) compliance with the bond issued on behalf of that principal;
- (b) any balance due on the fee for the bond; and
- (c) any related costs incurred by the agent as a result of issuing the bond.

§12-7-109, Prohibited activities – penalties. (1) It is unlawful for any licensee under this article to engage in any of the following activities:

- (d.5) Except for the fee received for the bond, to fail to return any collateral or security within ten working days after receipt of a copy of the court order that results in a release of the bond by the court, unless the collateral also secures other obligations identified in section 12-7-108(4), C.R.S. A copy of the court order shall be provided to the bonding agent in Colorado or the company, if any, for whom the bonding agent works whether in Colorado or out-of-state, or both, by the person for whom the bond was written.

Recommendation 4 – Make the licensing standards for bail bonding agents and insurance producers consistent with other licensed professionals.

Most professional licensing statutes, such as acupuncturists (§12-29.5-106(1)(n)), C.R.S., chiropractors (§12-33-117(1)(c)), C.R.S., pharmacists §12-22-125(1)(b), C.R.S., electricians (§12-23-118(1)(g)), C.R.S., engineers (§12-25-108(1)(c)), C.R.S., and podiatrists (§12-32-117(3)(e)), C.R.S., contain provisions to deny, suspend and revoke license based on a felony conviction, a plea of nolo contendere or a deferred sentence. The bail bond and producer licensing statutes only mention conviction of a felony.

It is common in felony cases for pleas to be accepted and deferred sentences to be imposed. Under the current grounds for discipline in the bail bond and producer licensing statutes individuals who utilize these options are not subject to enforcement action by DOI. The enforcement provisions in titles 10 and 12 should be updated to allow the Commissioner to consider alternative outcomes related to felony charges.

Recommendation 5 - Repeal the statutory requirement that provider networks file annual statements with the Division of Insurance.

In 1994, the General Assembly authorized licensed health care providers to conduct business collaboratively as provider networks. Section 6-18-302(1)(b)(II), C.R.S., states that provider networks contracting with insurance carriers under a capitation plan are not necessarily in the business of insurance. The provision goes on to require an officer of the provider network to annually file a statement with the Commissioner certifying that the network or provider is not engaged in the business of insurance.

While the General Assembly authorized the establishment of provider networks, the legislation did not provide for a regulatory structure for the authorized entities. Provider networks assuming risk are required to be licensed as insurance companies under the provisions of Title 10. However, there is no mechanism in place to identify provider networks.

Therefore, unless a provider network becomes licensed as an insurance company, the provision requiring a statement that the network is not providing insurance is unenforceable. In fact, there is no penalty for noncompliance identified in the statute. The only penalty clearly defined is for unauthorized operation of an insurance business.

The removal of unnecessary or outdated statutory language is one of the purposes of a sunset review. The deletion of the following language in §6-18-302(1)(b)(II), C.R.S., including: “...*So long as an officer of the provider network of individual provider annually files a statement certifying that the network or provider is not engaged in the transaction or insurance business, as defined in §10-3-903, C.R.S.*” would maintain the intent of the statute to authorize provider networks and eliminate an unnecessary statutory requirement.

Recommendation 6 - Transfer regulatory oversight of health care coverage cooperatives from the Department of Health Care Policy and Financing (HCPF) to the Division of Insurance.

The General Assembly authorized the creation of health care coverage cooperatives (HIPCs) in 1994 through the passage of HB 94-1193. This legislation established regulatory authority over HIPCs in the Department of Health Care Policy and Financing (HCPF) in §6-18-101, et seq., C.R.S. HCPF has the authority to promulgate regulations to implement the provision of the article.

HCPF was created in 1993 primarily to address the fragmentation of health care and social services delivery in the state. This newly established department pulled together functional elements of several departments including: the Department of Social Services, Department of Regulatory Agencies, the Department of Local Affairs and the University of Colorado Health Sciences Center concerning health care for the medically indigent. HCPF is the primary state agency for funding health care related expenses for Medicaid eligible persons.

It was the intent of the General Assembly to allow businesses to pool resources, purchasing power, and economies of scale to control the cost of health care insurance for employees. After the initial authorizing legislation was passed several HIPCs were licensed. There is currently only one licensee operating in the state. HIPCs and HCPF have utilized the DOI recently to provide technical support and regulatory interpretations regarding the application of small group insurance laws for the changes in the operation of the HIPC.

It is more appropriate for HIPCs to be regulated by DOI. HIPCs are required to comply with many of the same laws as small group insurers. Additionally, the DOI regulates the carriers that contract with HIPCs. Currently, DOI devotes resources to assist HIPCs with technical questions and interpretation of regulatory requirements that are beyond the technical expertise of HCPF. It would be more efficient for HIPCs to be directly regulated by DOI.

Recommendation 7 - Modify the provisions for the deposit and safekeeping of securities contained in §10-3-210 and 211, C.R.S.

Insurance companies may be required to maintain securities on file with the Commissioner. In most situations, securities will be held electronically through the provisions of §10-3-210(2), C.R.S. However, there are instances in which companies deposit physical certificates with the Commissioner. The language in §10-3-210(1)(II), C.R.S., is outdated and unnecessary.

This provision requires the Commissioner to place securities in a strong iron box, which requires two distinct and different keys, in the presence of an authorized agent of the company. In practice, securities are kept in a safe deposit box at a financial institution. In addition, removal of the certificates require the presence of an agent of the company which is not always cost effective for companies located out of state.

In addition, the statute does not specifically address how the Commissioner is to refund deposits to insurance companies that are in the process of “unwinding” business in the state. The current practice at this time is for companies to file a lawsuit in district court and obtain a court order to receive the deposit back. This process is expensive and time consuming for the DOI as well as the insurance company. The provisions of §10-3-211(2) and (3), C.R.S., should be amended to delete the reference to a court order being required to withdraw securities.

If a company makes a business decision to pull out of the Colorado market and ceases to write business, it is entitled to the return of all statutory deposits with the Commissioner. However, the only mechanism in statute for the company to apply for the return of the deposits is to file a lawsuit and obtain a judgment in district court. This is time consuming, expensive to both the insurer and the state, and unnecessary.

There are three scenarios where this situation applies: 1) a solvent company which reinsures all of its business but doesn't dissolve the company; 2) a solvent company which elects to dissolve and is required to make provisions for its liabilities before DOI will approve the dissolution; 3) a company which has been adjudged insolvent.

As a practical matter, securities are maintained electronically on the books of a trust company. This provision should be updated to reflect modern practices. To eliminate the unnecessary legal proceedings, the statute should be amended to read:

10-3-210(1)(b) If the company depositing securities in accordance with paragraph (a) of this subsection (1) is adjudged insolvent, ~~or is dissolved, any court of competent jurisdiction may make and enforce the necessary orders to place such securities, or any part of them, at the sole disposal of the court or the commissioner.~~ such deposit shall be released only upon the entry of an order of a court acting in accordance with the provisions of part 5 of article 3 of this title. If a company which has not been adjudged insolvent elects to dissolve, the commissioner may release securities under joint control upon a showing satisfactory to the commissioner that all debts, obligations, and liabilities of the insurance company have been paid and discharged, or adequate provisions for payment and discharge have been made therefor, and the company's certificate of authority has been returned to the commissioner.

10-3-210(2)(f) If the company depositing securities in accordance with paragraph (a) of this subsection (2) is adjudged insolvent, ~~or is dissolved, any court of competent jurisdiction may make and enforce the necessary orders to place such securities, or any part of them, at the sole disposal of the court or the commissioner.~~ such deposit shall be released only upon the entry of an order of a court acting in accordance with the provisions of part 5 of article 3 of this title. If a

company which has not been adjudged insolvent elects to dissolve, the commissioner may release securities under joint control upon a showing satisfactory to the commissioner that all debts, obligations, and liabilities of the insurance company have been paid and discharged, or adequate provisions for payment and discharge have been made therefore, and the company's certificate of authority has been returned to the commissioner.

10-3-211(2) When a domestic insurance company reinsures all of its business in another company, the securities deposited by the reinsured company with the commissioner or the division of insurance, subject to any existing liens against and restrictions upon them, may be assigned or transferred to the reinsuring company, and the latter company shall thereupon acquire all the right, title, and interest of the reinsured company in and to such securities and shall be entitled to all the rights, benefits, and privileges of the reinsured company pertaining thereto. If a domestic company, having securities on deposit with the commissioner, reinsures all of its business, such securities may only be withdrawn, ~~through an order of a court of competent jurisdiction,~~ upon a showing satisfactory to the commissioner that all debts, obligations, and liabilities of the insurance company have been paid and discharged, or adequate provisions for payment and discharge have been made therefore and the company's certificate of authority has been returned to the commissioner. ~~except that, in the case of domestic fire or casualty insurance companies, the company, upon ceasing to do further business, shall be permitted to withdraw the securities so deposited by filing a certified statement with the commissioner: That the company has ceased doing business and desires to surrender its charter; that all of its business has been reinsured in a company qualified to do such business in the state of Colorado; that all known debts or liabilities of the company have been paid.~~

Technical/Housekeeping Recommendations

Recommendation 8 - Add §10-4-110.5, C.R.S., to the list of provisions exempted under §10-4-1403, C.R.S.

In the 1999 the General Assembly approved legislation intended to reduce the regulatory burden for insurers interacting with sophisticated commercial entities. The reasoning behind this legislation is that large commercial enterprises, which generally employ experienced risk managers and attorneys do not require the same level of protection as individual consumers who do not have the same level of knowledge in the insurance industry.

Section 10-4-1403, C.R.S., exempts insurance companies from several reporting requirements, such as notification of premium increases that are intended to inform consumers about the impending actions of the insurance companies. Several of these required notices include notices of intent to cancel, change coverage, or increase premiums. It appears that §10-4-110.5, C.R.S., which falls into this same category of notices was inadvertently left off the list of exemptions. Since the exemption only applies to sophisticated commercial consumers, it would be beneficial to include this additional exemption to reduce the regulatory burden on insurers.

Recommendation 9 - Amend the small group health insurance statutes to repeal unnecessary and outdated language and to clean up provisions that conflict with more recent legislation.

The implementation of HB 94-1210 contained several provisions which were phased in over a period of time. The phase in period has been completed and references to these provisions are no longer necessary. For clarity, these provisions should be repealed.

Subsequent legislation has resulted in changes and conflicts with some of the provisions of these statutes. Some of these conflicts were oversights when conforming amendments to legislation were made. Technical changes to the statute should be made to address conflicts and incorrect language.

Recommendation 10 – Clarify the options available to the Commissioner in addressing issues raised during insurance company examinations.

The statute gives the Commissioner four options after reviewing examination findings: order the company to cure violations (including suspending operations); order the examiners to reopen the examination and collect additional information; order a formal investigation; or issue a fine conforming to statutory limitations. However, it has been argued the language does not permit the Commissioner to combine the separate remedies. For example, the Commissioner may not fine the company for violations and order procedural changes to prevent public harm.

This is inconsistent with the public interest. The public reasonably expects that a regulatory authority like the Commissioner has the ability to both punish a company for inappropriate practices and to order procedural changes. Curing violations is an important factor in the regulatory process. However, punitive measures provide a necessary deterrent from harmful practices. It is appropriate for the Commissioner to have the ability to blend remedial measures with punitive measures to achieve the greatest public protection. Section 10-1-205, C.R.S., should be amended to read:

3) Within thirty days after the end of the period allowed for the receipt of written submissions or rebuttals, the commissioner shall fully consider and review the report, any written submissions or rebuttals, and any relevant portions of the examiner's workpapers and shall enter an order which:

~~(a) Adopts the examination report as filed or with specified modifications or corrections; and if the examination report reveals that the company is operating in violation of any law, regulation, or prior order of the commissioner, the commissioner may order the company to take any action the commissioner considers necessary and appropriate to cure such violation; or~~

~~(b)~~ (a) Rejects the examination report and directs the examiners to reopen the examination for purposes of obtaining additional data, documentation, or information and to refile the report pursuant to subsection (1) of this section; or

(e)-(b) Calls for an investigatory hearing, upon no less than twenty days' notice to the company, for purposes of obtaining additional documentation, data, information, and testimony; or

(c) Adopts the examination report as filed or with specified modifications or corrections; and if the examination report reveals that the company is operating in violation of any law, regulation, or prior order of the commissioner, the commissioner may order the company to take any action the commissioner considers necessary and appropriate to cure such violation; and/or

(d) May impose a monetary penalty of not more than one thousand dollars for every act in violation of any law, rule, or prior lawful order of the commissioner described in the report of examination, but not to exceed an aggregate penalty of ten thousand dollars, unless the company knew or reasonably should have known that its conduct was in violation of any law, rule, or prior lawful order of the commissioner, in which case the penalty shall not be more than ten thousand dollars for every act or violation, but not to exceed an aggregate penalty of one hundred fifty thousand dollars in any six-month period.

Recommendation 11 – Amend the market conduct provisions for Health Maintenance Organizations (HMO) to be consistent with those for other insurers.

When the statute was amended to allow for the establishment of HMO plans, care was made to exempt HMOs from provisions of the insurance statute that were inconsistent with the way the plans operate. The General Assembly did mandate that HMO plans were to undergo mandatory market conduct examinations every five years under guidelines established in the statute.

When the statute was amended in 1996 to create the market conduct program, conforming amendments were not made to the HMO market conduct requirements. As a result, HMOs have separate market conduct provisions which are not completely consistent with the provisions contained in §10-1-201 to 207, C.R.S.

The provisions in the HMO statute require the Commissioner to provide notice and hold an informal conference with the HMO prior to taking administrative action. The only appeal allowed under the HMO statute is to the Colorado Court of Appeals. Under the market conduct provisions, the Commissioner issues an order, which the company may appeal through the District Court in the City and County of Denver. These inconsistencies can be resolved by amending §10-16-421(1), C.R.S., to read:

“Except for sections 10-1-102, 10-1-121, 10-3-118, 10-3-128, ~~and~~ 10-3-208(7), and part 2 of article 1 of this title and parts 4 to 8 of article 3 of this title...”

This change would place HMO examinations under the same remedy provisions as other insurance companies as discussed in the previous recommendation. It would benefit consumers, the regulated entities and the DOI if the statute were amended to bring HMO plans under the same standards as other insurance companies for market conduct examinations.

Recommendation 12 – Extend the deadline for holding automobile protest hearings in §10-4-720(6), C.R.S. from 30 to 45 days.

Colorado and Maryland are the only states whose statutes allow consumers to protest actions by auto insurers. In Colorado, the insured may file a protest for actions of the company to cancel, non-renew, increase premium, or decrease coverage. Colorado's protests were 18% of its complaints total for the period reviewed while Maryland's protests make up 32% of its complaint totals.

The procedure for filing a protest with the Division of Insurance is spelled out in §10-4-720, C.R.S. A policyholder has the right to protest a proposed action by his/her auto insurer and request a hearing before the Commissioner by signing two copies of the insurer's notice and sending them to the Commissioner within ten days of receipt of the notice. The Commissioner shall, upon receipt of a protest, notify the insurer of the filing. The Commissioner must then hold a hearing within 30 days.

The Commissioner delegates a hearing officer in DOI to review the protest and makes an evaluation as to whether or not the protested action is in compliance with statutes, regulations, and the company's underwriting guidelines. The hearing officer can render a judgment based on the information supplied by the insured and the company or hold a hearing to gather additional information. Table 15 identifies the results of the automobile protest process for the previous two fiscal years.

Table 15

Automobile Protest Results

Fiscal Year	Protests	No Action Taken	Judgment for Company	Judgment for Consumer	Percentage for Consumer
1999-2000	1,827	26	1,134	667	37%
2000-2001	1,741	19	1,038	684	40%
Totals	3,568	45	2,172	1,351	38%

According to DOI, hearings are not always conducted within the statutory 30 day timeframe. The current statutory time frame does not allow for adequate time for the Division staff to initiate the protest, for the company and the consumer to respond, and for staff review of the information provided in time to determine if a hearing is necessary. Carriers and consumers may not respond timely due to mailing delays and other factors.

DOI is initiating processes with larger carriers for communicating protest information via the Internet to expedite the company responses, however, consumer responses will still be received primarily via traditional mail. Even with the electronic transfer of information it is still difficult to adhere to the 30 day requirement. It would benefit both consumers and carriers if the time for a hearing were extended to 45 days.

Administrative Recommendations

Administrative Recommendation 1 - The Division of Insurance should develop, based on NAIC guidelines, an objective system for scheduling market conduct examinations.

A major recommendation from the previous sunset review supported by the General Assembly was an increase in resources devoted to market conduct examinations. Market conduct examinations are a review of actual insurance company practices, a post experience regulatory function. The statutory authorization and requirements for market conduct examinations are contained in §10-1-203 et seq., C.R.S.

Market conduct examinations are viewed by most major stakeholders, insurance companies, NAIC, consumers, and DOI as a cost effective, efficient tool to achieve regulatory compliance and protect the public. Examinations serve multiple purposes. They educate not only the company being examined but also other companies in the same product lines regarding insurance statutes and regulations. It allows the company an opportunity to provide feedback to DOI regarding actual experiences and perhaps unintended consequences of specific regulations. When errors are corrected, consumers benefit both directly and indirectly.

The methodology for selecting companies varies slightly from year to year. However, the basic criteria are intended to objectively identify those companies with the largest potential impact on consumers. The following is an example of the methodology used to select automobile insurance companies for examination.

Company Selection Methodology

1. Request examination recommendations and input from DOI staff.
2. Pull the statistical reports on all companies writing automobile insurance in Colorado. Companies are ranked according to premium volume.
3. Identify and eliminate companies that have been examined in the past three years.
4. Identify group numbers in order to consider companies with common ownership.
5. Calculate complaint ratios per million dollars of premium written for the product line.
6. Run complaint detail report for companies with highest complaint ratios.

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7. Calculate the percentage of underwriting and claims complaints upheld for the company.
 8. Select companies for examination based on rankings in the above categories and staff input for special objectives for examinations. Special objectives are based on recent trends in specific consumer complaint categories.
 9. Determine domestic status of companies. Assign examiners giving domestic companies priority for in house examiners.

Complete documentation rankings of companies develop the lists during the planning process were not retained and therefore were not available for review. However, using the criteria noted earlier, it was possible to rank the companies that were examined during the past two years, essentially recreating the list. While the primary factors used are objective, some less objective information, such as input from DOI staff on recent complaint trends was also used.

An NAIC committee is presently working on standardizing several aspects of market conduct examinations. While all of the task forces and working groups have not finalized their findings and recommendations, some information is available. One specific recommendation related to the scheduling of examinations is the development of a system of priority weighting of the factors used to develop an examination schedule. This is a formalization of the system currently used by DOI and should continue in future examination scheduling.

However, DOI does not specifically rank companies being considered and justification for the inclusion of some companies over others when scheduling changes is necessary is not always apparent. The NAIC has suggested a matrix type format be used with specific weights assigned to the individual criteria being considered. That way all companies could be ranked and the list maintained for the fiscal year. If a scheduled company is deleted from the list for some reason, the next company on the list could be moved up, or a re-ranking of remaining companies could be performed. Individual criterion and weights could be changed annually as needed by DOI.

Administrative Recommendation 2 - The Division of Insurance should reevaluate the definition of inquiry as it relates to the investigations section. DOI should consider reallocating resources to the investigations section to resolve inquiries more expediently.

The Investigation Section definition of inquiry implies that inquiries are not resource intensive and should be resolved in a relatively short period of time. However, the average length of time to close an inquiry case is over 62 days. Part of this is accounted for by the fact that producers and companies are allowed 20 days to respond to written requests for information.

In the case of an inquiry, it is reasonable to assume that written documentation is not necessary. In any case, 62 days seems like an unacceptable length of time to resolve a request for information which does not involve intensive investigation. There are at least two possible explanations for this. One explanation is that more complex issues are being misclassified as inquiries. The second is that even though the issues are simple, they are low priority and are not being addressed in a timely manner.

Criminal investigators in the Investigation Section should be trained and devoted to complex cases involving harm to consumers. Simple requests for information should be delegated to other DOI staff members. If the inquiry cases are actually complex cases involving harm to the public, they should be reclassified to accurately reflect the workload of the section.

Administrative Recommendation 3 - The Commissioner should clarify to the regulated community the purpose of interpretive rules (bulletins).

The Commissioner has broad rule making authority under the provisions of §10-1-109(1), C.R.S. “The Commissioner may establish, and from time to time amend, such reasonable rules and regulations as are necessary to enable the Commissioner to carry out the Commissioner’s duties under the laws of the state of Colorado.” Several industry representatives have expressed concern that this authority is vague and overly broad, allowing the Commissioner to go beyond legislative intent in promulgating regulations.

All regulations issued by the Commissioner must comply with the rule making provisions of the Administrative Procedure Act (APA) contained in §24-4-103, C.R.S. Basically, the APA requires agencies considering passing a new, amending an existing, or repealing a regulation to follow specific procedures to inform the public of the proposal. The public, including the regulated community are afforded the opportunity to review the proposal and make comments in writing or at a public hearing that must be conducted.

The authority of the Commissioner to promulgate regulations is a valid concern. However, the APA contains provisions to ensure an agency has the authority to promulgate proposed rules. Section 24-4-103(8)(b), C.R.S. requires any agency promulgating a new, or amending an existing regulation to submit the proposal to the Attorney General for an opinion on its statutory and constitutional compliance. In addition, §24-4-103(8)(d), C.R.S., requires all promulgated rules to be submitted to the staff of the Legislative Legal Services Committee for a review to determine if the rules are within the agency's rule making authority.

A review of the regulations promulgated by the DOI found that all rulemaking processes complied with the provisions of the APA in that the statement of basis and purpose identified the statutory authority for the regulation. The DOI has on file opinions from the Attorney General stating the regulation as drafted has a basis in statute. The Legislative Legal Services Committee has never rescinded regulations promulgated by the Commissioner.

An additional concern expressed by some members of the regulated community relates to the issuance of bulletins by the DOI. DOI has had a policy of issuing bulletins to the regulated community for informational purposes. Bulletins range in content from announcements for address changes and updates on legislative changes, to clarification of statutory or regulatory language. It is the contention of some members of the regulated community that the issuance of bulletins constitutes the promulgation of regulations without compliance with the APA.

The position of DOI is that bulletins are interpretations of statutes or regulations and do not have the force of law, only the underlying law can be enforced. The APA provides that agencies may issue interpretive rules or general statements of policy that are not meant to be as binding as regulations. These interpretive rules are not subject to the public notice and hearing provisions of the APA. However, the APA does require, in §24-4-103(1.5), C.R.S., that if an agency interprets an existing rule in a manner that is substantially different than previous agency interpretations that the rule should be forwarded to the Office of Legislative Legal Services for review in the same manner as a newly adopted regulation.

The regulated community expressed a great deal of concern over the authority of the Commissioner to issue bulletins as well as the effect bulletins have on the business operations of insurers. The Commissioner has committed to changes in the bulletin review process. However, it is still possible for bulletins to be misinterpreted as regulations.

Therefore, it is recommended that all bulletins contain a notice, indicating that a bulletin is an interpretation of a specific statute or regulation. The notice should indicate that the bulletin does not have the force of law and may not be used solely as a basis for an enforcement action.

Appendix A - Sunset Statutory Evaluation Criteria

- (I) Whether regulation by the agency is necessary to protect the public health, safety and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen which would warrant more, less or the same degree of regulation;
- (II) If regulation is necessary, whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms and whether agency rules enhance the public interest and are within the scope of legislative intent;
- (III) Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures and practices and any other circumstances, including budgetary, resource and personnel matters;
- (IV) Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively;
- (V) Whether the composition of the agency's board or commission adequately represents the public interest and whether the agency encourages public participation in its decisions rather than participation only by the people it regulates;
- (VI) The economic impact of regulation and, if national economic information is not available, whether the agency stimulates or restricts competition;
- (VII) Whether complaint, investigation and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession;
- (VIII) Whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action; and
- (IX) Whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.