

## **Wyoming Department of Insurance**

### **General Information**

Agency name

Wyoming Department of Insurance

Director's name and official title

Ken Vines, Insurance Commissioner

Agency contact person

Cheryl Fiechtner

Agency contact phone

(307) 777-7401 or 1-800-438-5768 (Wyoming only)

Mailing address

106 East 6<sup>th</sup> Avenue

Cheyenne, WY 82002

Web address (URL)

<http://insurance.state.wy.us>

Other Locations

Does not apply

Statutory References

W.S. § 26-1-101 et seq.

Clients Served

The department regulates the business of insurance in the state of Wyoming and serves Wyoming citizens, their families and their children with regard to insurance issues.

Budget Information – Expenditures

Department Operations (Administrative Budget) \$2,257,376

Wyoming Health Insurance Pool \$8,627,676

State Board of Insurance Agent Examiners \$4,063

Wyoming Small Employer Health Reinsurance Pool \$10,313,867

### **Report Narrative**

Wyoming Department of Insurance

**Report Period:** FY 09 – July 1, 2008 through June 30, 2009

**Wyoming Quality of Life Result:**

Wyoming residents have affordable and accessible health care and insurance.

Wyoming state government is a responsible steward of state assets and effectively responds to the needs of residents and guests.

### **Contribution to Wyoming Quality of Life:**

The department contributes to the Wyoming quality of life through a combination of regulation, examination, licensing, enforcement and oversight activities which protect and assist Wyoming citizens with regard to insurance issues and problems.

### **Basic Facts:**

This agency has 27 employees. The 2009-2010 biennium administrative budget of the department is \$5,416,012 which includes no state general funds. The 1,100+ insurance companies licensed in Wyoming are each assessed annually an equal amount which funds the department's budget. The department also oversees the budgets of the Board of Insurance Agent Examiners (\$16,013 for the 2009-2010 biennium) and the Wyoming Health Insurance Pool (\$29,362,277 for the 2009-2010 biennium). The Wyoming Health Insurance Pool budget contains \$6,000,000 in general fund monies for the current biennium. In 2006, the department became responsible for overseeing the budget of the Wyoming Small Employer Health Reinsurance Plan (\$17,349,380 for the 2009-2010 biennium).

Five primary functions of the department include:

Regulation – providing fair and consistent regulation of the insurance industry in order to assure that consumers receive assistance, protection and information regarding insurance issues.

Examination – conducting examinations of domestic insurers, producers (agents) and other licensees, and pre-need funeral and cemetery trust funds to assure financial solvency and compliance with the Insurance Code and other Wyoming law.

Licensing – assuring that insurers, producers and others licensed by the department meet the minimum standards contained in the Insurance Code.

Enforcement – taking enforcement action when necessary to ensure compliance with the Insurance Code.

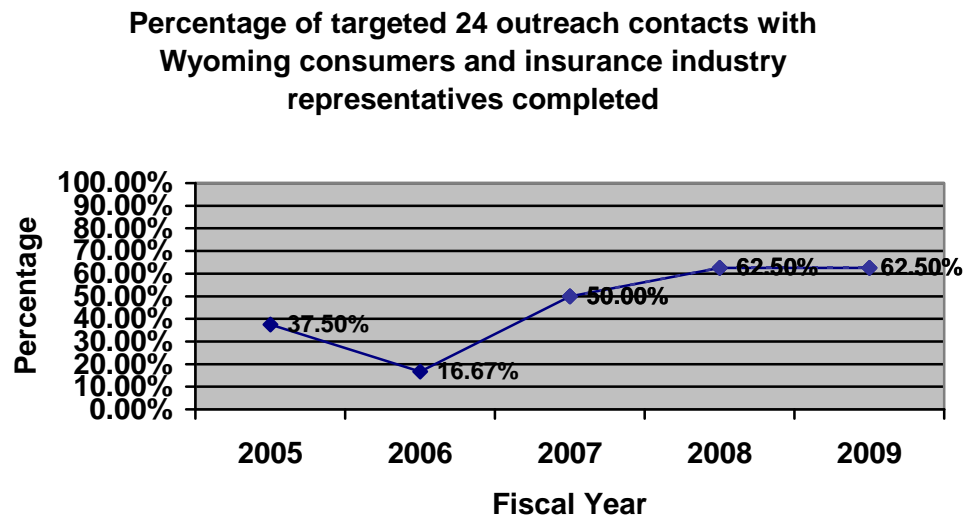
Oversight – providing administrative oversight of insurance related programs created under Wyoming law.

These activities promote a well-regulated insurance market which provides Wyoming citizens and their families with important protections through life, health, homeowner, auto and other types of insurance. These activities benefit all Wyoming citizens in addition to the specific

businesses and individuals served by the consumer, licensing, examination and regulatory functions of the department.

### **Performance:**

The following performance measures have been important to the department's work over the past fiscal year.



### **Story behind the last year of performance:**

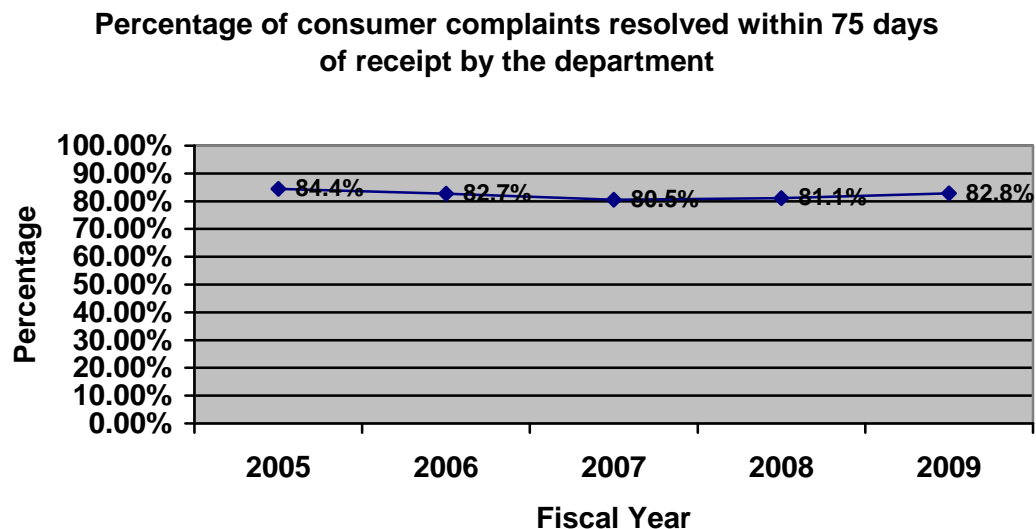
The department maintained its percentage of targeted outreach contacts completed in FY 09 at 62.5 percent. The department previously set a goal of having a minimum of 24 outreach contacts per fiscal year with Wyoming consumers and insurance industry representatives. The department staff has been focusing on outreach efforts in order to assure that consumers know of, and take advantage of, the department's services. The department maintained its percentage of targeted outreach contacts completed last fiscal year while working toward its outreach goal of 24 contacts. The Department must continue to strive to increase its outreach efforts in FY 10 in order to meet its goal of 24 contacts.

The department staff conducted its outreach through media contacts, live presentations to appropriate groups, website postings, and distributions of educational and informational pamphlets and publications. These outreach efforts were done at low or no cost to the department.

### **What has been accomplished?**

Outreach contact levels with consumers and insurance industry representatives were maintained during fiscal year 2009. The filling of two new staff positions in FY07 which focus on consumer issues, helped the department during FY08 to increase its expertise with regard to consumer issues and to conduct more outreach to Wyoming citizens. However, the market conduct

position of the Department became vacant during FY09 and remains vacant because of a hiring freeze. This impacted the Department's ability to focus on needed outreach.



**Story behind the last year of performance:**

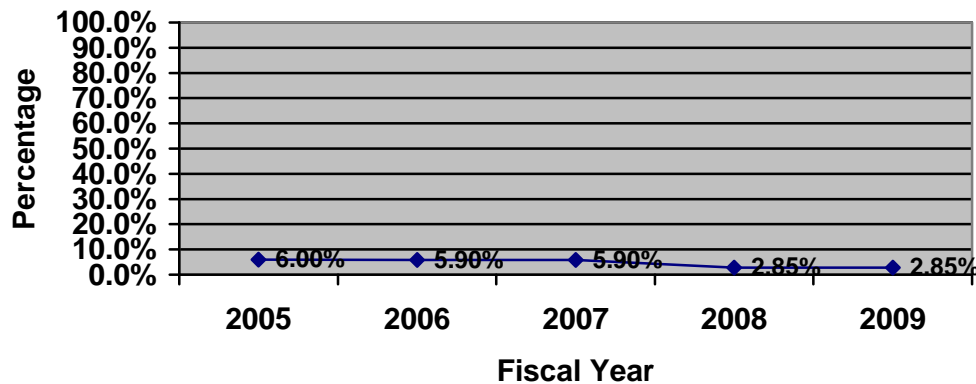
The department continued to resolve over 80 percent of consumer complaints within 75 days of receipt in FY09. It is important that the department staff provide timely assistance to Wyoming citizens seeking help with insurance problems and issues so that those needing assistance are not discouraged from contacting the department.

The department helped Wyoming people recover \$418,698 from insurance companies during FY 09. Without assistance these consumers might not otherwise have received these monies. The department continued to resolve consumer problems in a timely manner so that Wyoming people received their appropriate insurance benefits in a timely manner.

**What has been accomplished?**

The percentage of consumer complaints resolved within 75 days of receipt by the Department in FY09 increased from the previous fiscal year. The addition of another consumer advocate during FY07 has continued to help the Department provide better service to Wyoming citizens with insurance problems.

**Percentage of funeral homes and cemeteries offering pre-need services which received an examination of their pre-need trusts**



**Story behind the last year of performance:**

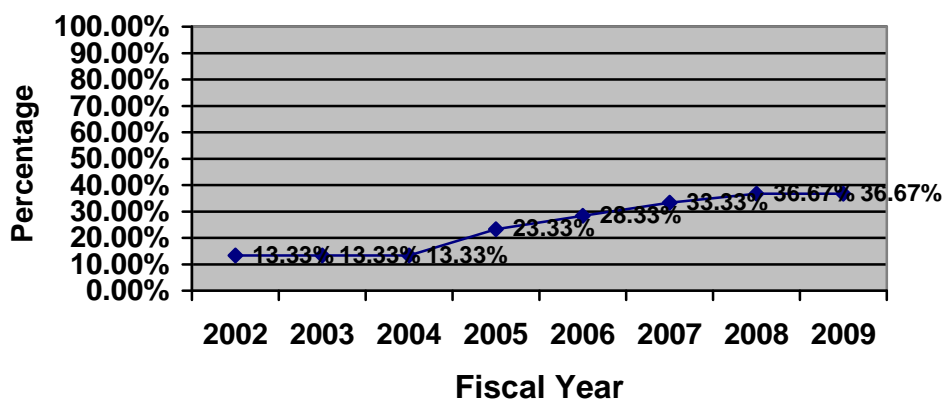
The department examined one of the 35 entities offering pre-need funeral and cemetery services in Wyoming in FY 09. It is important that the department staff provide timely examinations of funeral homes and cemeteries that hold trust monies from Wyoming people who have prepaid for their funerals and burials. The examination conducted by department staff in FY09 assured that funds held in trust until use at time of need are appropriately protected.

Additional staff hired during FY07 was intended to put the department in a position to examine any given pre-need trust fund on a more frequent basis which, in turn, helps assure that the money in the trust fund is adequately protected. However, the staff position assigned this duty became vacant during FY09 and remains vacant because of a hiring freeze. This, together with the undertaking of more complex exams, negatively impacts the Department's ability to conduct more exams. The market conduct and financial examination staff are continuing to work to coordinate more examinations in FY10 and to streamline and improve examination methods.

**What has been accomplished?**

One pre-need trust fund examination was completed in FY 09. The exam assured that trust funds held for future funerals are in place and that pre-need funeral contract regulations are being adhered to. The market conduct position with the department, when filled, will continue to work with the financial examination staff to conduct pre-need trust fund examinations. By using the market conduct staff person to help with these exams, the department can increase the number of pre-need trust fund examinations completed in the future.

### Percent of transactions for all types of licenses that can be processed electronically



#### Story behind the last year of performance:

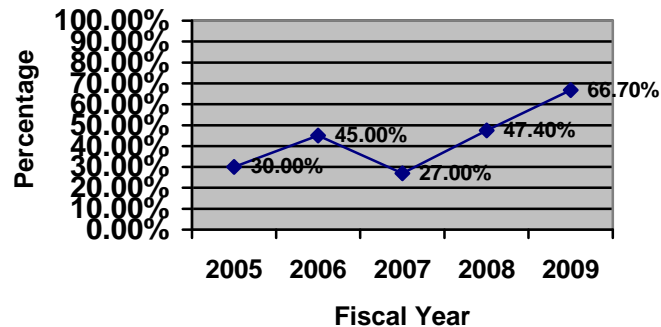
The department has used more and more electronic processes in completing its licensing duties over the past several years. In FY09 the percentage of transactions completed electronically remained level at 36.67 percent. It is necessary to process transactions electronically in order to keep pace with the volume of licensing transactions. The licensing section of the department deals with over 53,000 individual licensees and 5,300 business entities licensees on an annual basis.

Proper licensing of insurance providers is essential to protecting Wyoming people by assuring that only qualified individuals are engaged in the business of insurance. The department's increase in the percentage of licensing processes that can be done electronically over the past several years allows licensing transactions to be processed more efficiently and quickly.

#### What has been accomplished?

Over the past several years the department has increased the percentage of transactions for all types of licenses that can be processed electronically to 36.67 percent, up from 13.33 percent in FY02. Department staff developed forms, procedures and electronic formats so that more of the licensing processes could be completed electronically. The staff continued to work on these processes in FY09.

**Percentage of corrective action taken on significant  
issues identified by the department based upon consumer  
complaint trends**



**Story behind the last year of performance:**

In FY 09, the department took additional corrective action with regard to 66.7 percent of the significant issues identified by staff based upon relevant consumer complaint trends. The additional action included further market conduct reviews or investigations regarding the issues raised by the complaint trends. The department must continue to increase this percentage by analyzing Wyoming and national trends regarding consumer insurance issues and determining what follow-up action is necessary. These issues relate to such things as claims payments, policyholder service, underwriting and marketing and sales practices that directly affect Wyoming citizens. It is important that insurers treat Wyoming insurance consumers fairly in these areas pursuant to the Wyoming Insurance Code.

**What has been accomplished?**

During FY 09, the department increased its percentage of corrective action taken on significant issues identified through consumer complaint trends. The addition of a market conduct position has helped the department focus on these important consumer issues. This position allows the department to increase its percentage of significant consumer complaint trends receiving further action. However, this position is currently vacant and cannot be filled because of a hiring freeze. The market conduct staff position, when filled, will continue to focus on analyzing complaint data and will determine which complaint categories are receiving unusually high numbers of complaints. These categories will then be prioritized and appropriate action taken as needed.

**SUMMARY OF 2008 REPORTS ON CLAIMS  
AGAINST WYOMING HEALTH CARE PROVIDERS  
AS REQUIRED BY WYO. STAT. § 26-3-124**

**Introduction**

This report is submitted in response to Wyo. Stat. § 26-3-124 which requires any insurer writing coverage for health care malpractice in Wyoming to file with the Insurance Commissioner a report of all claims against a health care provider and a report of all awards or settlements given in cases against health care providers by March 1 of each year.

The statute requires that any information provided to the Commissioner under the law shall be confidential including the names of health care providers and any records pertaining thereto. The Commissioner is to prepare a summary of the information, in the aggregate if necessary to protect the identity of the health care provider or claimant.

The information contained in the reports is to be included in the Department's annual report to the Governor.

Fifty-two companies reported direct written premium in their annual financial statements for coverage of health care providers for professional liability in 2008. Aggregate reports were received from 44 of those companies. The remaining 8 companies reporting premium are risk retention groups which are generally subject to federal and not state law. Although none of the 8 risk retention groups filed aggregate reports with the Department, 1 of those groups did file several individual reports which will be commented on later in this report.

### **AGGREGATE REPORTS**

Information from the reports of the 44 companies who filed aggregate reports is summarized as follows: The companies reported insuring 4005 health care providers identified as follows: 557 physicians, surgeons and osteopaths; 20 hospitals; 16 physician's assistants or nurse practitioners; 2140 nurses; 6 nursing homes; 218 dentists; 11 pharmacies; 65 pharmacists; 107 chiropractors; 112 clinics or corporate facilities; 3 laboratories; 1 dietician/nutritionist; 15 podiatrists; 11 psychologists/psychiatrists; 5 physical/rehabilitative therapists; and 718 other providers not specifically identified.

The companies reported 126 claims for which a reserve had been established and total awards and settlements, including costs of defense, of \$8,201,544.86.

### **INDIVIDUAL REPORTS**

One hundred forty-eight individual claims reports were filed for 2008, 91 of which were status reports on claims which remained open at the end of 2007.

### **Specialty Coverage**

The specialty coverage of the claims reported for 2008 were described as follows: internal medicine - 7; family physician/general practitioner - 13; emergency medicine - 8; obstetrics/gynecology - 9; surgery (neurosurgeon) - 2; surgery (orthopedic) - 17; surgery (plastic) - 1; surgery (general/other) - 16; radiology/oncology - 13; anesthesiology - 2; cardiovascular disease - 3; gastroenterology - 2; urology - 4; other - 41; and, 10 reports did not identify the type of claim.



## **Nature and Substance of Claims**

The following malpractice codes were reported in the numbers stated: mistakes in performance, improper performance - 54; delayed - 3; not performed - 11; wrong procedure - 4; better alternative available - 1; other procedural errors, including erroneous prescription of medication - 4; failure to diagnose - 19; delayed diagnosis - 12; wrong diagnosis - 5; failure to inform, lack of informed consent - 3; lack of supervision - 5; failure to prevent harm - 11; other causes not listed above - 14; and not identified - 2.

The following injury codes were reported in the numbers stated: death - 29; non-physical (e.g., abandonment, breach of contract, deposition, emotional distress, defamation, negligent referral, subrogation, loss of consortium, sexual misconduct) - 9; bone damage (e.g., fracture) - 1; circulatory injury (e.g., heart failure, hemorrhage) - 3; disease (e.g., AIDS, cancer) - 18; diminished life expectancy (e.g., usually from a failure to diagnose) - 1; disfigurement (e.g., scars) - 2; dermal injury (e.g., burns) - 2; dental injury (e.g., broken tooth) - 4; diminished use/loss of use (e.g., disablement of a limb, but not loss of the limb) - 5; foreign body (e.g., left after surgery); infection (e.g., usually resulting from surgery) - 15; loss of limb/organ (e.g., amputation, removal) - 3; muscular/limb injury (e.g. atrophy) - 2; nervous system (e.g., paralysis, nerve damage) - 11; organ injury (e.g., perforation, rupture) - 5; optical/sensory injury (e.g., vision, hearing) - 2; pain - 14; prolonged (e.g., additional care, delayed recovery) - 16; side effects (e.g., reactions) - 4; and 2 reports did not identify an injury code.

## **Ages of Claimants**

Claimants fell into the following age ranges: infant or newborn, 3; between 1 and 10, 5; between 11 and 20, 7; between 21 and 30, 12; between 31 and 40, 29; between 41 and 50, 31; between 51 and 60, 27; between 61 and 70, 8; between 71 and 80, 4; between 81 and 90, 3; and age was listed as unknown or was not listed on 19 reports.

## **Manner of Disposition**

Insurers reported closing claims during 2008 in the following manner: arbitration - 0; mediation - 5; settlement - 29; verdict - 3 in the total amount of \$443,873; judgment in favor of plaintiff - 0; judgment in favor of defendant - 3; and other - 31 (mostly dismissed or not followed up on by claimant). Seventy-seven claims were reported as open at the end of 2008.

The insurers identified the amounts paid on claims closed in 2008 as follows: medical and prescription costs - \$93,072.33; economic damages - \$302,000.00; non-economic damages -- \$10,938,900.34; defense attorney fees, costs and expenses -- \$2,502,249.81; other - \$108,777.00; and \$1,440,000.00 was not broken down. The total amount reported paid on closed claims during 2008 was \$15,384,999.48.

## **Major Insurers:**

Because of the interest in professional liability insurance for physicians and surgeons over past years, this summary contains specific information on the results for the two admitted insurers covering the majority of the doctors in the state for malpractice.

**Utah Medical Insurance Association (UMIA)** reported insuring 348 health care providers, 345 of whom were identified as physicians or surgeons. UMIA filed reports on 51 claims, 34 of which were status reports on claims remaining open at the end of 2007. Thirteen of those claims resulted in payments to claimants. Eight claims were reported settled in the total amount of \$833,837.33 and 5 claims were reported as having settled as the result of mediation in the total amount of \$1,385,000.00. UMIA reported paying \$596,224.95 for defense attorney fees, costs and expenses on claims closed during 2008. UMIA reported 30 claims remained pending at the end of 2008.

**The Doctors Company (TDC)** reported insuring 304 healthcare providers, 182 of whom were identified as physicians or surgeons. TDC filed reports on 45 individual claims, 25 of which were status reports on claims remaining open at the end of 2007. Eight of those claims resulted in payment to claimants, all by settlement prior to trial, in the total amount of \$1,389,235. TDC reported paying \$1,282,486.13 for defense attorney fees, costs and expenses on claims closed during 2008. TDC reported 17 claims remained pending at the end of 2008.

## **Notes**

It should be noted that one large settlement accounted for more than half of the nearly \$15.4 million paid on closed claims in 2008.

As mentioned above, risk retention groups, which are generally subject to federal and not state law, did not provide all, or in most cases any, of the information requested by the Department. With limited exceptions, Wyoming law with respect to risk retention groups is preempted by the federal Liability Risk Retention Act of 1986. Therefore, the Department does not have regulatory authority to compel these entities to file the reports required under Wyo. Stat. § 26-3-124. However, the company which wrote the third largest amount of premium for medical malpractice coverage in Wyoming in 2008 is a risk retention group and while it failed to file an aggregate report identifying the numbers or categories of its insureds, it did file reports on 20 individual claims, 10 of which were status reports on claims remaining open at the end of 2007. Seven of those claims resulted in payments to claimants, all by settlement, in the total amount of \$1,464,524.24. In addition, the company reported paying \$318,099.96 in defense attorney fees, costs and expenses on claims closed during 2008.

