



STATE OF WEST VIRGINIA

Offices of the Insurance Commissioner

Allan L. McVey
Insurance Commissioner

January 10, 2023

The Honorable James C. Justice, III
Governor, State of West Virginia
Office of the Governor
1900 Kanawha Boulevard, East
Charleston, WV 25305

Dear Governor Justice:

Pursuant to W.Va. Code §33-2-16 (d), I am pleased to submit the annual report on the activities of the Office of the Consumer Advocate at the WV Insurance Commission for calendar year 2022. Should you have any questions please contact me at 304-558-3864.

Respectfully,

Dennis V. Garrison III, Director
Office of the Consumer Advocate

DVG/vms

cc: Legislative Auditor (via post on Auditor's Agency Report site)
West Virginia Insurance Commissioner
Clerk of the Senate (via email senate.clerk@wvsenate.gov)
Clerk of the House of Delegates (via email house.clerk@wvhouse.gov)



West Virginia Office of Consumer Advocate Offices of the WV Insurance Commissioner 2022 Annual Report

To the Honorable Governor James C. Justice II:

The purpose of this Annual Report is to comply with W.Va. Code §33-2-16 (d) which reads:

(d) On or before the first day of each regular session of the Legislature, the Director [Office of Consumer Advocacy] shall file with the Governor, the Clerk of the Senate and the Clerk of the House of Delegates a report detailing the actions taken by the division in the preceding calendar year.

Until 2008, the Office of the Consumer Advocate was fully staffed. Since 2008, the Office of the Consumer Advocate has not been fully staffed due to the untimely death of a staff member, retirements and statewide governmental budget cuts and belt tightening. The Nurse III position, Secretary II and the Financial Analyst positions are vacant. In addition, the Attorney II retired in 2022.

The Office of the Consumer Advocate is presently staffed with the Director, Paralegal and Investigator. The Office of the Consumer Advocate has interviewed Attorney II job candidates and currently has an employment offer pending with a qualified individual. The Attorney II position is vital at the Office of the Consumer Advocate and the Director hopes to have it filled in the very near future.

Even with staff shortages, the Office of the Consumer Advocate has maintained a good working relationship with the West Virginia Offices of the Insurance Commissioner while still providing zealous representation for numerous West Virginia insurance consumers.

In 2022, the Office of Consumer Advocate served the interests of the West Virginia insurance consumer and fulfilled the expanded duties conferred upon the Office in the tort reform measures passed in 2005 in Senate Bill 418. A large portion of the Office of the Consumer Advocate's time and resources was devoted to first- and third-party administrative cases.

During 2022, the efforts of the Office of the Consumer Advocate on behalf of West Virginia insurance consumers yielded financial awards totaling \$395,169.25 which went directly into the pocket of the consumer as well as several other important actions directly benefiting the West Virginia insurance consumer.

During the entirety of the undersigned's tenure¹, the Office of the Consumer Advocate has been involved in obtaining financial settlements totaling \$4,342,459.19 on behalf of West Virginia insurance consumers. These awards go directly into the pocket of the consumer. The Office of the Consumer Advocate is very proud of this accomplishment.

In the healthcare arena in 2022, the Office of the Consumer Advocate reviewed 34 Certificate of Need Applications. The Office of the Consumer Advocate was also previously charged with reviewing Rate Review Applications before the West Virginia Health Care Authority. After passage of SB 68, the WV Health Care Authority's ability to establish and regulate hospital rates ceased in 2017. As such, the Office of the Consumer Advocate did not review Rate Review Applications.

Normally, the Office of the Consumer Advocate along with other Departments in the WVOIC would attend a number of State festivals as a means of interacting with and disseminating information to West Virginia insurance consumers. Prior to the Covid Outbreak, the Office of the Consumer Advocate would try to attend the Consumer Advocate State

¹ The undersigned has been the Director since November 2007.

conferences and State festivals such as WV Social Workers Conference, Older American Event, the State Fair, the Pumpkin Festival, the Forest Festival, and the WV Hunting and Fishing Show. The attendance at festivals was curtailed some in 2022, because of things still getting back to “normal” from the Coronavirus epidemic. In 2022, the Office of the Consumer Advocate was only able to attend the WV State Fair and the WV Forest Festival. The Director and other Office of the Consumer Advocate employees were able to directly interact with attendees and answer questions or make referrals regarding insurance related issues. The Office of the Consumer Advocate hopes that it can attend more Conferences and Festivals in 2023.

The Office of the Consumer Advocate participated in mandatory continuing legal education with a focus on insurance and consumer related education.

The Office of the Consumer Advocate kept abreast of any legislation that would affect West Virginia Consumers. When needed, representatives from the Office of the Consumer Advocate reviewed legislation and attended or watched via live web camera legislative hearings in both the House of Representatives and the Senate.

The Office of the Consumer Advocate also kept abreast of any cases before both the West Virginia Supreme Court of Appeals and the West Virginia Intermediate Court of Appeals regarding insurance law issues. The Consumer Advocate read any pertinent opinions and attended or watched via live web camera oral arguments at the Supreme Court and Intermediate Court when insurance related cases were on either Court’s docket.

Finally, the Office of the Consumer Advocate maintained progress toward the ongoing goal of consumer outreach and education. The Office achieved progress by fielding hundreds of calls and contacts from consumers. These contacts were responded to directly and/or referred to the proper agency for response.

Representing Consumers in First and Third-Party Administrative Hearings

In 2022, the Office of the Consumer Advocate provided formal representation to insurance consumers in thirty-six (36) consumer complaints before the West Virginia Insurance Commission. Also, the Office of the Consumer Advocate provided formal representation to insurance consumers in two (2) WVOIC administrative appeals filed at the West Virginia Intermediate Court of Appeals.

Twenty-Five (25) of these consumer complaints were third party complaints and the remaining eleven (11) consumer complaints were first party complaints. First party complaints are complaints filed by a consumer against their own insurer, while third party complaints are complaints filed by a consumer against another person's insurer. In addition to formal representation, the Office of the Consumer Advocate assisted and advised hundreds of West Virginia consumers throughout the year, be it via email inquiries, telephonic inquiries, office visits, or other means. This assistance has directly benefited those consumers and in many cases has resolved the consumers' insurance issues or queries without requiring the filing of an actual consumer complaint with the WVOIC.

Whenever a case is received by the Office of the Consumer Advocate, it is evaluated carefully. A number of different things can occur at this time including, but not limited to; the consumer can opt to not request representation; a consumer can request representation, but after careful review of the case the Office of the Consumer Advocate can decline to represent; the consumer can request representation and the Office of the Consumer Advocate can accept; or the Office of the Consumer Advocate can assist the consumer in deciding whether or not they want to obtain private counsel because the damages in the matter merit a civil lawsuit.

The Office of the Consumer Advocate is proud of the representation that it has provided to consumers. Further, the Office of the Consumer Advocate is also proud of the countless hours

that have been spent assisting consumers in evaluating their claims and assisting them in exploring all their options including possibly retaining private counsel when it is in their best interests. This assistance has directly benefited hundreds of consumers every year and in many cases has resolved the consumer's insurance issuers or queries without requiring the filing of a formal consumer complaint.²

Third Party Complaints

The Office of the Consumer Advocate worked twenty-five (25) third party cases in 2022. The results of said cases are as follows:

A total of \$30,300.00 was awarded directly to West Virginia Consumers in the form of settlements in three (3) of the consumer complaints.

In eight (8) consumer complaint cases, the consumer opted to obtain private counsel for representation.

Three (3) consumer cases went to hearing and the consumer prevailed at hearing. In those cases, the hearing examiner found multiple violations of the Unfair Trade Practices Act. In one case, the hearing examiner fined the insurance company \$5000 and also fined the Agent \$1000.

In four (4) cases the WVOIC investigated the matters further and decided to not set the case for hearing.

In three (3) consumer complaint cases, the Consumer failed or declined to request representation.

² A detailed breakdown of the work performed by the Office of the Consumer Advocate each week is available for review.

Four (4) consumer complaint cases are still pending and/or are still pending and/or awaiting hearing and/or awaiting final order or are appealed to the West Virginia Intermediate Court of Appeals.

THIRD PARTY COMPLAINTS

HANDLED BY THE OFFICE OF THE CONSUMER ADVOCATE IN 2022

RESPONDENT	THIRD PARTY COMPLAINANT	RESOLUTION
Atlantic Specialty Insurance Company	William Garrison	Ruled in favor of consumer.UTPA violation found against the insurance company.
Atlantic Specialty Insurance Company	William Garrison	Commissioner did not set for hearing
Cincinnati Insurance Company	William Garrison	Commissioner did not set for hearing
Atlantic Specialty Insurance Company	Harry Bohon	Company 3 violations of the UTPA
Liberty Mutual Insurance Company	Catherine Exline	Consumer failed to request representation
Nationwide Insurance Company of America	Jonathan Mani, Esq.	Consumer retained private counsel
Western & Southern Life Assurance Company	Paulette Graham	Market Conduct Ordered. Agent 2 violations and fined \$1,000. Company 3 violations and fined \$5,000.
GEICO Secure Insurance Company	Larry Riley	Settled
USAA Casualty Insurance Company	Kasondra Jones	Settled
USAA General Indemnity Company	Paul Gould	Commissioner denied hearing
USAA General Indemnity Company	Paul Gould	Commissioner denied hearing
Safeco Insurance Company of America	Robert Berthold, III	Consumer retained private counsel
State Farm Mutual Automobile Insurance Company	Vickie Nichols	Consumer retained private counsel
USAA General Indemnity Company	Gary Gano	Consumer failed to request representation
State Farm Mutual Automobile Insurance Company	Ryan Jett	Settled

Erie Insurance Property & Casualty Company	Catherine Chapman	Consumer retained private counsel
Allstate Property & Casualty Insurance Company	Cory Leonard	Pending
Liberty Mutual General Insurance Company	Stephanie Facemyer	Consumer retained private counsel
Zurich American Insurance Company	Richard Culler	Consumer retained private counsel
Midvale Indemnity Company	Greg Hovey	Consumer failed to request representation
Allstate Property & Casualty Insurance Company	Bryan Blankenship	Consumer retained private counsel
Ace American Insurance Company	Laura Smedley	Consumer retained private counsel
Safeco Insurance Company of America	Anthony Lovejoy	Pending
Farmers Direct Property & Casualty Insurance Company	Anthony Gentry	Pending
National Union Fire Insurance Company of Pittsburgh, Pa	Betty Gravely	Pending

First Party Complaints

The Office of the Consumer Advocate worked eleven (11) first party cases in 2022. The results of said cases are as follows:

A total of \$350,869.25 was awarded directly to West Virginia Consumers in the form of settlements in four (4) of the consumer complaints.

In three (3) consumer complaint cases, the consumers did not prevail at hearing.

In two (2) consumer complaint cases, the Consumer failed or declined to request representation.

In two (2) consumer complaint cases, the matters are still pending and/or awaiting hearing and/or awaiting final order or are appealed to the West Virginia Intermediate Court of Appeals.

FIRST PARTY COMPLAINTS
HANDLED BY THE OFFICE OF THE CONSUMER ADVOCATE IN 2022

RESPONDENT	FIRST PARTY COMPLAINANT	RESOLUTION
Nationwide Agribusiness Insurance Company	Charles Burkhart	Hearing Examiner ruled against consumer
Lincoln Financial	Cheryl Sutyak	Settled
Erie Insurance Property & Casualty Company	Paul Adkins	Hearing Examiner ruled against consumer
American General Life Insurance Company	Carol Lee	Settled
Lincoln National Life Insurance Company	Arthur F. Rice, III	Settled
Transamerica Premier Life Insurance Company	Merri Williamson	Hearing Examiner ruled against consumer
National Mutual	Heather Miller	Consumer failed to request representation
GEICO Advantage Insurance Company	William Reilly	Consumer failed to request representation
Salvasen Health	Melody Pourfarhadi	Pending
Modern Woodmen Fraternal Financial	Neil Roth	Policy was canceled and a settlement
Randy Young and Western & Southern Life Assurance Company	Paulette Graham	Pending

Appeals to the West Virginia Intermediate Court of Appeals

The Office of the Consumer Advocate represented consumers in (2) cases appealed to the West Virginia Court of Appeals in 2022. The results of said cases are as follows:

A total of \$14,000 was awarded directly to West Virginia Consumers in the form of settlements in one (1) of the appeals.

One (1) of the appeals is still pending.

**APPEALS TO THE WEST VIRGINIA INTERMEDIATE COURT OF APPEALS
HANDLED BY THE OFFICE OF THE CONSUMER ADVOCATE IN 2022**

COMPLAINANT	RESPONDENT	RESOLUTION
Atlantic Specialty Insurance Company	Harry Bohon (the consumer)	Settled
Randy Young and Western & Southern Life Assurance Company	Paulette Graham	Pending

Certificate of Need Review

The Office of the Consumer Advocate participated in the review of Certificate of Need (CON) applications before the Health Care Authority. All health care providers must obtain a CON from the West Virginia Health Care Authority to develop, add, or acquire new health care facilities and equipment. The Office of the Consumer Advocate reviews all CON applications and may intervene for the interests of West Virginia residents in the Health Care Authority's CON review process. The Office of the Consumer Advocate carefully reviewed and considered the following 34 CON applications:

CERTIFICATE OF NEED - February 2022

FACILITY	CON NO.	REQUEST	CAPITAL EXPENDITURE
Akumin Corp.	22-3-12344-A/P V	Corporate indirect acquisition	\$22,250,954.00
Pocahontas Memorial Hospital	22-4-12352-P	Ambulatory care center	\$75,000.00
Diversified Assessment & Therapy Services	22-6/7-12355-B/ H	Addition of counties to existing office	\$0
Jackson General Hospital	22-5-12356-H	Construction of new wing to existing hospital	\$30,271,000.00

CERTIFICATE OF NEED – March 2022

FACILITY	CON NO.	REQUEST	CAPITAL EXPENDITURE
Lotus Recovery Centers of Berkeley Spring LLC	22-9-12364-H	Addition of acute care beds	\$1,001,500.00

CERTIFICATE OF NEED – April 2022

FACILITY	CON NO.	REQUEST	CAPITAL EXPENDITURE
Berkeley Surgery Center, Inc. Joseph Jefferds Sinclair, MD	22-1/2/3/4-1238 2-A	Purchase of existing facility w/o modification to services/procedures	\$2,200,000.00
CAMC Health System, Inc. d/b/a Vandalia Health	22-6-12383-A	Acquisition of Mon Health System, Inc.	\$251,823,000.00
Orchard Park Hospital, LLC	22-10-12384-H	Adolescent psychiatric hospital	\$4,900,000.00
West Virginia United Health System, Inc. d/b/a West Virginia University Health System	22-3-12385-A	Acquisition of Thomas Health System	\$250,000,000.00

CERTIFICATE OF NEED – May 2022

FACILITY	CON NO.	REQUEST	CAPITAL EXPENDITURE
West Virginia University Hospitals, Inc.	22-6-12402-H	University Town Centre Clinic Expansion	\$30,000,000.00
United Hospital Center, Inc.	22-6-12437-H	OR expansion	\$1,800,000.00
SR HC Holdings, LLC Stonerise at Home Holdings, LLC	22-WV-12439-A	Acquisition of Stonerise at Home Holdings, LLC	\$4,000,000.00

CERTIFICATE OF NEED - June 2022

FACILITY	CON NO.	REQUEST	CAPITAL EXPENDITURE
Kindred Healthcare Operating, LLC	22-2-12438-A	Agreement and plan of merger transaction	\$4,905,000.00
Appalachian Regional Healthcare, Inc. d/b/a Beckley ARH Hospital	22-1-12444-H	Initiation of Elective Therapeutic Cardiac Catheterization Services	\$41,000.00

Boone Memorial Hospital, Inc.	22-3-12446-H	Renovation and construction of a health services clinic	\$14,135,572.80
Boone Memorial Hospital, Inc.	22-2-12445-P	Development of an ambulatory care center .	\$82,000.00
Charleston Area Medical Center, Inc	22-1-12452-A	Ambulatory health care facility	\$150,000.00
Cabell Huntington Hospital, Inc.	22-2-12454-A	Acquisition of Pleasant Valley Hospital, Inc.	\$49,600,000.00

CERTIFICATE OF NEED – July 2022

FACILITY	CON NO.	REQUEST	CAPITAL EXPENDITURE
Kanawha Hospice Care, Inc. d/b/a Home Health of West Virginia	22-3-12467-A	Acquisition of Lots of Hearts Homecare LLC	\$734,000.00

CERTIFICATE OF NEED - August 2022

FACILITY	CON NO.	REQUEST	CAPITAL EXPENDITURE
Berkeley Medical Center	22-9-12470-P	Outpatient rehabilitation services relocation	\$295,000.00
Charleston Area Medical Center, Inc.	22-3-12471-P	Ambulatory health care facility	\$150,000.00

CERTIFICATE OF NEED - September 2022

FACILITY	CON NO.	REQUEST	CAPITAL EXPENDITURE
Fayette Physician Network, Inc. d/b/a WVUHS Medical Group	22-11-12490-P	Acquisition of Weirton Physician Practice	\$662,000.00
Akkary Center for Weight Management & Surgical Services LLC	22-6-12492-P	Ambulatory care center	\$25,000.00
Charleston Area Medical Center, Inc.	22-4-12493-A	Acquisition of Greenbrier Valley Medical Center	\$86,235,000.00
Select Physical Therapy Holdings, Inc.	22-6/7-12494-A	Acquisition of a healthcare facility	\$169,220.00
Mon Health Marion Neighborhood Hospital, Inc.	22-6-12464-H	Develop small format hospital in Harrison County	\$22,500,000.00

CERTIFICATE OF NEED - October 2022

FACILITY	CON NO.	REQUEST	CAPITAL EXPENDITURE
Charleston Area Medical Center, Inc.	22-3-12504-P	Ambulatory healthcare facility	\$300,000.00
Thomas Memorial Hospital	22-3-12525-P	South Charleston physician practice	\$2,780,000.00
West Virginia University Hospitals, Inc.	22-6-12526-A/E	Acquisition of MRI & PET services	\$11,265,000.00

CERTIFICATE OF NEED - November 2022

FACILITY	CON NO.	REQUEST	CAPITAL EXPENDITURE
Charleston Area Medical Center, Inc.	22-5-12530-A	Acquisition of Ohio Valley Sleep Diagnostics, LLC	\$225,000.00
Tender Loving Care Health Care Services of West Virginia, LLC d/b/a Amedisys Home Health Care	22-11-12531-A	Home Health Services Asset Acquisition Project	\$500,000.00

CERTIFICATE OF NEED - December 2022

FACILITY	CON NO.	REQUEST	CAPITAL EXPENDITURE
Lotus Recovery Center of Berkeley Springs	22-9-12465-H	Addition of beds for substance use disorder	\$1,100,000.00
LTACH Morgantown, LLC dba Select Specialty Hospital - Morgantown	22-6-12594-H	Addition of LTACH beds	\$900,000.00
Raleigh General Hospital	22-4-12592-P	Bariatric surgery clinic	\$30,000.00

Conclusion

The Office of the Consumer Advocate continues to remain dedicated to providing consumer protection and promoting consumer awareness. Further, the Office of the Consumer Advocate will track trends in the insurance industry and educate West Virginia insurance consumers regarding insurance issues and practices. The Office of Consumer Advocate remains a remarkable resource for West Virginia insurance consumers and will continue to do everything possible to protect citizens and advocate for a fair and accessible insurance marketplace for everyone.



Dennis V. Garrison, III, Director (State Bar No. 8546)
Office of the Consumer Advocate
Offices of the Insurance Commissioner
Post Office Box 11685
Charleston, WV 25339-1685
(304) 558-3864