

**AMERICAN FAMILY MUTUAL INSURANCE COMPANY**

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**EXAM LOCATION**

**9110 E.NICHOLS AVENUE, SUITE 310  
ENGLEWOOD, COLORADO 80155**

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**PREPARED BY INDEPENDENT CONTRACTORS FOR  
COLORADO DEPARTMENT OF REGULATORY AGENCIES**

**DIVISION OF INSURANCE (10-20-97)**

LARRY N. CAMPBELL, CIE

LUCILLE E. WHITTLE, CIE

JAMES T. AXMAN, AIE

Independent Market Conduct Examiners

Working in Coordination with

Colorado Division of Insurance

1560 Broadway, Suite 850

Denver, Colorado 80202

(303) 894-7499

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October 20, 1997

The Honorable Jack Ehnes

Commissioner of Insurance

State of Colorado

1560 Broadway Suite 850

Denver, Colorado 80202

Commissioner:

In accordance with Sections 10-1-203 and 10-3-1106, C.R.S., an examination of selected Claims practices of the private passenger automobile Insurance business of American Family Mutual Insurance Company, hereinafter referred to as the "Company", has been conducted. The Company's records were examined at its Regional office located at 9110 E. Nichols Avenue, Suite 310, Englewood, Colorado 80155.

The examination covered the period from January 1, 1996 to December 31, 1996.

A report of the examination is herein respectfully submitted.

Larry N. Campbell, CIE

Lucille E. Whittle, CIE

James T. Axman, AIE

Independent Market Conduct Examiners

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### COMPANY PROFILE

American Family Mutual Insurance Company is a Wisconsin mutual insurance corporation organized in 1927. It is currently licensed as a multiple-line carrier and engaged in the principal business of underwriting a full range of property and liability risks in the following thirteen states: Arizona, Colorado, Illinois, Indiana, Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota and Wisconsin. According to the Company's records, it was licensed initially in Colorado on June 1, 1946.

According to the NAIC, the Company reported \$87,802,000 in total written premiums in 1996 for its automobile market. This volume represented a 4.68% market share of all Private Passenger Automobile insurance written in the State of Colorado.

### PURPOSE AND SCOPE OF EXAMINATION

This market conduct report was prepared by independent examiners contracting with the Colorado Division of Insurance for the purpose of auditing certain business practices of insurers licensed to conduct the business of insurance in the State of Colorado. This examination is in accordance with Colorado Insurance Law Section 10-1-204, C.R.S., which empowers the Commissioner to supplement his resources to conduct market conduct exams. The findings in this report, including all work product developed in the production of this report, are the sole property of the Colorado Division of Insurance.

The market conduct examination covered by this report was performed on a routine basis to assist the Colorado Commissioner of Insurance to meet statutory requirements, by determining Company compliance with the Colorado Insurance Code and generally accepted operating principles. Additionally, findings of a market conduct examination serve as an aid to the Division of Insurance's early warning system. The intent of the information contained in this report is to serve only those purposes.

This examination was governed by, and performed in accordance with, procedures developed by the National Association of Insurance Commissioners, the Colorado Division of Insurance, and the Insurance Regulatory Examiners Society. In reviewing material for this report the examiners relied primarily on records and material maintained by the Company. The examination period covered one calendar year of the Company's operations, from January 1, 1996 to December 31, 1996.

File sampling was based on review of systematically selected samples of claim files by category. Sample sizes were chosen based on guidance from procedures developed by the National Association of Insurance Commissioners. Upon review of each file, any concerns or discrepancies were noted on comment forms. These comment forms were delivered to the Company for review. Once the Company was advised of a finding contained in a comment

form, the Company had the opportunity to respond. For each finding the Company was requested to agree, disagree or otherwise justify the Company's noted action. At the conclusion of each sample, the Company was provided a summary of the findings for that sample. The report of the examination is, in general, a report by exception. Therefore, much of the material reviewed will not be contained in this written report, as references to any practices, procedures, or files which manifested no errors were omitted.

An error tolerance level of plus or minus \$10.00 was allowed in most cases where monetary values were involved; however, in cases where monetary values were generated by computer, a \$0 tolerance level was applied in order to identify possible system errors. This report contains information regarding exceptions to the Colorado Insurance Laws. The examination included review of the following two Company operations:

1. Complaint Handling.
2. Claims Settlement Issues.

All unacceptable or non-complying practices may not have been discovered throughout the course of this examination. Additionally, findings may not be material to all areas which would serve to assist the Commissioner. Failure to identify or criticize specific Company practices does not constitute acceptance by the Colorado Division of Insurance of such practices. This report should not be construed to endorse nor discredit any insurance company or insurance product. Statutory cites and regulation references are as of the period under examination unless otherwise noted. Examination report recommendations which do not reference specific insurance laws, regulations, or bulletins are presented to encourage improvement of company practices and operations and ensure consumer protection. Examination findings may result in administrative action by the Division of Insurance.

### EXAMINATION REPORT SUMMARY

The examination resulted in a total of six (6) issues, arising from the Company's apparent noncompliance with Colorado statutes and regulations related to all property and casualty insurance. These issues encompassed the following Company operations.

#### **Complaint Handling Procedures**

In the area of complaint handling, one (1) compliance issue was addressed in this report. This issue arose from a Colorado statutory requirement for companies to maintain a complete record of all complaints which it has received since the date of its last examination. It is recommended that the Company review its complaint handling procedures and make the necessary changes to ensure future compliance with applicable statutes.

#### **Claims Practices**

In the area of claim practices, five (5) compliance issues were addressed. These issues arose from Colorado statutory and regulatory requirements dealing with the fair and equitable settlement of claims, payment of claim checks, maintenance of records, timeliness of payments, accuracy of claim payment calculations and delay of claims. The incidence of

noncompliance in the area of claims practices showed a frequency range of error between 1% and 76%. In regard to the five (5) compliance issues in this area, it is recommended that the Company review its claims handling procedures and make the necessary changes to ensure future compliance with applicable statutes and regulations.

[PERTINENT FACTUAL FINDINGS](#)

**PRIVATE PASSENGER AUTOMOBILE**

**PERTINENT FACTUAL FINDINGS**

for

[COMPLAINT HANDLING](#)

**Issue A: Failure of the Company to maintain a complete record of all complaints received in 1996.**

Section 10-3-1104(1)(i), C.R.S., defines an unfair practice:

- ○ Failure to maintain complaint handling procedures: Failing of any insurer to maintain a complete record of all the complaints which it has received since the date of its last examination. This record shall indicate the total number of complaints, their classification by line of insurance, the nature of each complaint, the disposition of these complaints, and the time it took to process each complaint. For purposes of this paragraph (i), "complaint" shall mean any written communication primarily expressing a grievance.

Colorado Regulation 6-2-1, COMPLAINT RECORD MAINTANCE, states:

- I. I. Maintenance of record
  - ○ The complaint record shall be kept on a calendar year basis and the number of complaints by line of insurance, function, reason, deposition, and state of origin shall be compiled not less frequently than annually.

The following chart illustrates the significance of error versus the population and sample examined:

**PRIVATE PASSENGER AUTOMOBILE COMPLAINT HANDLING -1996**

Population	Sample Size	Number of Exceptions	Percentage to Sample
68	68	5	7.4%

An examination of 68 systematically selected claim files, representing 100% of all complaints handled by the Company in 1996, showed five (5) complaints (7.4% of the sample) that were not on the Company's complaint register.

**Recommendation # 1:**

Within 30 days, the Company should provide written documentation demonstrating why it should not be considered in violation of Section 10-3-1104(1)(i), C.R.S., and Colorado Insurance Regulation 6-2-1. In the event the Company is unable to provide such documentation, it should be required to provide written procedures to ensure that all complaints received by the Company are entered into their complaint register.

**PERTINENT FACTUAL FINDINGS**

for\_

**CLAIMS PRACTICES**

**Issue B: Failure to obtain specific written authorization from the insured before issuing drafts to any person other than the insured.**

Colorado Regulation 5-1-5(III), Unfair Claims Settlement Practices, under the authority of Section 10-1-109, C.R.S., requires that:

- ○ No insurer shall attempt to settle any claim made by their insured by means of ordering claim checks, drafts or other choice-in-action payable to any person other than their insured (s), without specific written assignment thereof by the insured.

The following chart illustrates the significance of error versus the population and sample examined:

**PRIVATE PASSENGER AUTOMOBILE 1ST PARTY COMPREHENSIVE & COLLISION CLAIMS PAID-1996**

<b>Population</b>	<b>Sample Size</b>	<b>Number of Exceptions</b>	<b>Percentage to Sample</b>
18,905	100	2	2%

An examination of 100 systematically selected claim files, representing .53% of all comprehensive and collision claims paid by the Company in 1996, showed two (2) instances (2% of the sample) in which the Company issued a check made payable to a third-party without a specific written assignment from the insured.

**Recommendation # 2:**

Within 30 days, the Company should provide written documentation demonstrating why the Company should not be considered in violation of Section 10-1-109, C.R.S., and Colorado Insurance Regulation 5-1-5(III). In the event the Company is unable to provide such documentation, it should be required to provide written procedures showing that prior written assignment from the insured is required before checks are issued to a third party ensuring compliance with Colorado Insurance Law.

**Issue C: Failure to pay insurance claims in accordance with written Company claims handling procedures.**

Section 10-3-1104(1)(h)( VI ), C.R.S., defines an unfair claims settlement practice :

- ○ Not attempting in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear.

The following chart illustrates the significance of error versus the population and sample examined:

**PRIVATE PASSENGER AUTOMOBILE CLAIMS IN WHICH A VEHICLE WAS DECLARED A TOTAL LOSS IN 1996**

<b>Population</b>	<b>Sample Size</b>	<b>Number of Exceptions</b>	<b>Percentage to Sample</b>
921	51	2	3.9%

An examination of 51 files, representing 5.5% of claims paid by the Company in 1996 in which a vehicle was declared a total loss, showed 2 instances (3.9% of the sample) wherein the Company failed to pay the claims in accordance with their written claims handling procedures.

In both instances, the Company failed to pay the sales tax on the total loss paid to the insured or claimant which is not in accordance with Company claim procedures. These refunds amounted to \$1,207.50 and \$206.25.

**Recommendation # 3:**

Within 30 days, the Company should provide documentation demonstrating why it should not be considered to be in violation of Section 10-3-1104(1)(h)(VI), C.R.S. In the event the Company is unable to provide such documentation, the Company should be required to provide evidence that it has reviewed its procedures concerning total losses in order to ensure compliance with the Colorado Insurance Law.

**Issue D: Failure to provide the appropriate statement setting forth coverage under which payments were made to the insured.**

Section 10-3-1104(1)(h)(X), C.R.S., Unfair methods of competition and unfair or deceptive acts or practices: (1) The following are defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:

- ○ (h) Committing or performing, either in willful violation of this part 11, or with such frequency as to indicate a tendency to engage in a general business practice, any of the following:

(X) Making claims payments to insureds or beneficiaries not accompanied by a statement setting forth the coverage under which the payments are being made;

The following charts illustrate the significance of error versus the population and sample examined:

**PRIVATE PASSENGER AUTOMOBILE 1<sup>st</sup> PARTY COMP/COLL**

**CLAIMS PAID IN 1996**

<b>Population</b>	<b>Sample Size</b>	<b>Number of Exceptions</b>	<b>Percentage to Sample</b>
18,905	100	1	1%

An examination of 100 files, representing .53% of all claims paid by the Company in Colorado during 1996, showed 1 instance (1% of the sample) wherein the Company failed to provide the appropriate statement setting forth coverage under which payments were made to the insured.

**PRIVATE PASSENGER UNINSURED/UNDERINSURED MOTORIST BI & PD CLAIMS PAID IN 1996**

<b>Population</b>	<b>Sample Size</b>	<b>Number of Exceptions</b>	<b>Percentage to Sample</b>
152	50	2	4%

An examination of 50 files, representing 32.9% of all uninsured/underinsured claims for the Company in Colorado during 1996, showed 2 instances (4% of the sample) wherein the Company failed to provide the appropriate statement setting forth coverage under which payments were made to the insured.

**Recommendation # 4:**

Within 30 days, the Company should provide written documentation demonstrating why it should not be considered in violation of Section 10-3-1104(1)(h)(X), C.R.S. In the event the Company is unable to provide such documentation, it should be required to provide evidence demonstrating that the Company has reviewed its procedures to provide the appropriate statement setting forth coverage under which payments were made to the insured and is in compliance with Colorado Insurance Law.

**Issue E: Failure to obtain specific written assignment from insureds authorizing direct payment of PIP benefits to health care providers.**

Section 10-4-708.4(1)(a), C.R.S., provides for the direct payment of benefits as follows:

- ○ A policy of motor vehicle insurance which provides coverage pursuant to this part 7 shall allow, but not require, an insured under the policy to assign, in writing, payments due under the policy to a licensed hospital or other licensed health care provider for services provided to the insured which are covered under the policy.

Section 10-4-708.4(2), C.R.S., provides in part:

- ○ When a licensed hospital or other licensed health care provider receives an assignment from an insured, it is the responsibility of the provider to bill the insurer, including a copy of the assignment. The provider shall also provide a copy of such bill to the insured, stating on such copy that it is for informational purposes only and that the insurer has been billed for covered benefits. The provider shall also furnish to the insurer a current taxpayer identification number as part of the initial bill and each subsequent billing. Subsequent billing to an insurer need not include a copy of the assignment unless required by the insurer so long as it is clearly noted on each such subsequent billing that the benefits have been assigned. The insurer shall honor such assignment and make payment of covered benefits directly to such licensed hospital or other licensed health care provider.

The following charts illustrates the significance of error versus the population and sample examined:

**PRIVATE PASSENGER AUTOMOBILE PERSONAL INJURY PROTECTION BENEFITS PAID IN 1996**

<b>Population</b>	<b>Sample Size</b>	<b>Number of Exceptions</b>	<b>Percentage to Sample</b>
2,391	50	38	76%

An examination of 50 systematically selected files, representing 2.1% of all personal injury

protection benefit claims paid by the Company in 1996, showed 38 instances (76% of the sample) wherein the Company failed to obtain written assignments from insureds authorizing direct payment of PIP benefits to health care providers.

**PRIVATE PASSENGER AUTOMOBILE CANCELLED DRAFTS FOR PERSONAL INJURY PROTECTION PAID IN 1996**

<b>Population</b>	<b>Sample Size</b>	<b>Number of Exceptions</b>	<b>Percentage to Sample</b>
9,109	100	52	52%

An examination of 100 systematically selected drafts, representing 1.1% of all personal injury protection benefit drafts paid by the Company in 1996, showed 52 instances (52% of the sample) wherein the Company failed to obtain written assignments from insureds authorizing direct payment of PIP benefits to health care providers.

**Recommendation # 5:**

Within 30 days, the Company should provide written documentation demonstrating why it should not be considered in violation of Section 10-4-708.4, C.R.S. In the event the Company is unable to provide such documentation, it should be required to provide written procedures showing that it will acquire a copy of the written assignment from the insureds authorizing direct payment of personal injury protection benefits to health care providers.

**Issue F: Delay of PIP benefit payments.**

Section 10-4-708(1), C.R.S., requires:

- ○ Payment of benefits under the coverage enumerated in section 10-4-706 shall be made on a monthly basis. Benefits for any period are overdue if not paid within thirty days after insurer receives reasonable proof of the fact and amount of expenses incurred during that period; except that an insurer may accumulate claims for periods not exceeding one month, and benefits are not overdue if paid within fifteen days after the period of accumulation. If reasonable proof is not supplied as to the entire claim, the amount supported by reasonable proof is overdue if not paid within thirty days after such proof is received by the insurer. Any part or all of the remainder of the claim that is later supported by reasonable proof is overdue if not paid within thirty days after such proof is received by the insurer. In the event that the insurer fails to pay such benefits when due, the person entitled to such benefits may bring action in contract to recover the same.

Colorado Regulation 5-2-8(III), Timely Payment of Personal Injury Benefits, (A)(B), Rules, states:

- A. Section 10-4-708(1), C.R.S., provides that benefits under the coverages enumerated in Section 10-4-706 are overdue if not paid within thirty days after the insurer receives reasonable proof of the fact and amount of expenses incurred.

B. In the usual case, for purposes of triggering the thirty-day time period in section 10-4-708(1), C.R.S., the following documents are sufficient to establish reasonable proof of the fact and amount of the expenses incurred:

1. A properly executed application for benefits from the PIP claimant;
2. A notice to an insurer which meets the requirements of Section 10-4-708.7, C.R.S.; and
3. A billing statement for a procedure or treatment, which is subject to the obligations of Section 10-4-708.6, C.R.S.

The following charts illustrates the significance of error versus the population and sample examined:

**PRIVATE PASSENGER AUTOMOBILE PERSONAL INJURY PROTECTION BENEFITS PAID IN 1996**

Population	Sample Size	Number of Exceptions	Percentage to Sample
2,391	50	8	16%

An examination of 50 systematically selected files, representing 2.1% of all personal injury protection benefit claims paid by the Company in 1996, showed 8 instances (16% of sample) wherein the Company failed to pay PIP claims within the statutory standard of 30 days.

**PRIVATE PASSENGER AUTOMOBILE CANCELLED DRAFTS FOR PERSONAL INJURY PROTECTION PAID IN 1996**

Population	Sample Size	Number of Exceptions	Percentage to Sample
9,109	100	6	6%

An examination of 100 systematically selected drafts, representing 1.1% of all personal injury protection benefit drafts paid by the Company in 1996, showed 6 instances (6% of sample) wherein the Company failed to pay PIP claims within the statutory standard of 30 days.

**Recommendation # 6:**

Within 30 days, the Company should provide written documentation demonstrating why it should not be considered in violation of Section 10-4-708(1), C.R.S., and Colorado Regulation 5-2-8(III). In the event the Company is unable to provide such documentation, it should be required to provide evidence demonstrating the Company has reviewed its procedures pertaining to timely PIP benefit payments and show that the Company has implemented procedures which will ensure future compliance with the Colorado Insurance Law.

[SUMMARY OF RECOMMENDATIONS LOCATOR](#)

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<b>A</b>	Failure to maintain a complete record of all complaints received in 1996.	1	12
<b>B</b>	Failure to obtain specific written authorization from the insured before issuing drafts to any person other than the insured.	2	14
<b>C</b>	Failure to pay insurance claims in accordance with written Company claims handling procedures.	3	15
<b>D</b>	Failure to provide the appropriate statement setting forth coverage under which payments were made to the insured.	4	17
<b>E</b>	Failure to obtain specific written assignment from insureds authorizing direct payments of PIP benefits to health care providers.	5	19
<b>F</b>	Delay of PIP benefit payments	6	21

[EXAMINATION REPORT SUBMISSION](#)

Independent Market Conduct Examiners

LARRY N. CAMPBELL, CIE

LUCILLE E. WHITTLE, CIE

JAMES T. AXMAN, AIE

participated in this examination and in the preparation of this report

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