

MARKET CONDUCT EXAMINATION REPORT
AS OF DECEMBER 31, 1996

ALLSTATE INSURANCE COMPANY

2775 SANDERS ROAD
NORTHBROOK, ILLINOIS 60062

PREPARED BY INDEPENDENT CONTRACTORS FOR
COLORADO DEPARTMENT OF REGULATORY AGENCIES
DIVISIONS OF INSURANCE

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(7/23/98)

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June 23, 1998

The Honorable Jack Ehnes
Commissioner of Insurance
State of Colorado
1560 Broadway Suite 850
Denver, Colorado 80202

Commissioner:

In accordance with §§ 10-1-203 and 10-3-1106, C.R.S., an examination of selected underwriting and claims practices of the Private Passenger Automobile and Homeowners insurance business of Allstate Insurance Company has been conducted. The company's records were examined at its regional office located at 5500 So. Quebec St., Englewood, CO 80111.

The examination covered a one-year period from January 1, 1996, to December 31, 1996.

A report of the examination of Allstate Insurance Company is herein respectfully submitted.

Gary L. Domer, CIE.,
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Duane G. Rogers, Esq.

Independent Market Conduct Examiners

**MARKET CONDUCT
EXAMINATION REPORT
OF
ALLSTATE INSURANCE COMPANY**

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COMPANY PROFILE

Allstate Insurance Company was incorporated in Illinois on February 9, 1931, and began business on April 17, 1931. Charter powers permitted the company to write all forms of insurance throughout the United States, Puerto Rico, and the Virgin Islands. The company is one of the largest capital stock company writers of automobile insurance coverage in the United States. The company was admitted in Colorado to write property/casualty business on September 18, 1934. Allstate operations in the state of Colorado in 1996 represented 11.2% of the auto insurance market, making Allstate the third largest writer in the state. In homeowners insurance, Allstate was also the third largest writer with 9.9% of the premium written in the state.¹

In Colorado, Allstate employed 252 full time, captive agencies and 73 independent agencies the end of 1996. Those agencies issued 26,334 preferred auto and 25,247 homeowners new business policies during the year. The auto policy endorsement activity (additional cars) totaled an additional 25,532 items in 1996. The resulting new business premium from this activity was \$20,900,534. The auto renewal ratio was 91.89% and the homeowners renewal ratio was 85.68% in 1996. Automobile written premium for 1996 in Colorado was \$151,136,000, and the Homeowners written premium was \$47,092,000. This represents an 8.05% share of the Private Passenger Automobile market and a 9.68% share of the homeowners market.²

¹ Data as reported by the Company

² Data as reported by NAIC 1996 Detail and Market Share Ratio report.

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 procedure is in accordance with Colorado Insurance Law § 10-1-204, C.R.S., which empowers the Commissioner to supplement his resources to conduct market conduct examinations. 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 covers one calendar year of the Company's operations, from January 1, 1996, to December 31, 1996.

File sampling was based on a review of systematically selected samples of underwriting and 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 reference to any practices, procedures, or files which manifested no improprieties 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.

Additionally, a \$0 tolerance level was applied in instances where there appeared to be a consistent pattern of deviation from the Company's rates on file with the Colorado Division of Insurance.

The report is separated into three major subject areas: 1) General, which contains issues applying to both Homeowners and Automobile coverages, 2) Automobile issues and 3) Homeowner issues. The report contains information regarding exceptions to the Colorado Insurance Code. The examination included review of the following six Company operations:

1. Advertising
2. Complaint Handling
3. Agent Licensing
4. Underwriting Practices
5. Rating
6. Claims Practices

Some unacceptable or non-complying practices may not have been discovered in 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.

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 twenty two issues, arising from the Company's apparent noncompliance with Colorado statutes and regulations concerning all property and casualty insurers operating in Colorado. These twenty two issues fell into five categories of Company operations examined as follows:

Advertising: In the area of advertising , one compliance issue is addressed in this report. This issue arises from Colorado statutory and regulatory requirements which proscribe unfair or deceptive acts and false information and advertising. With regard to these advertising practices it is recommended that the Company withdraw misleading advertising from use and provide evidence to substantiate claims made in advertising materials regarding the frequency of risk.

Complaint Handling:

In the area of complaint handling, one compliance issue is addressed in this report. This issue arises from Colorado statutory and regulatory requirements related to Company maintenance of complaints and, specifically, the recording of all complaints received. Regarding the compliance issue in this area, it is recommended that the Company review its internal complaint handling procedures and make the necessary changes to assure future compliance with applicable statutes and regulations.

Agent Licensing:

In the area of agents licensing and appointments, no compliance issue are addressed in this report.

Underwriting Practices:

In the area of underwriting, nine compliance issues are addressed in this report. These issues arise from Colorado statutory and regulatory requirements which must be followed whenever policies are issued, canceled, or non-renewed or the premiums increased or decreased. The incidence of noncompliance in the area of Automobile underwriting exhibits a frequency range of 0.9% to 78.4% and in the area of Homeowners a frequency range of 3.9% to 50.9%. With regard to these underwriting practices, it is recommended that the Company review its underwriting procedures and make the necessary changes to assure future compliance with applicable statutes and regulations as to all eleven issues.

Rating:

In the area of rating, two compliance issues are addressed in this report. These issues arise from Colorado statutory and regulatory requirements which must be followed whenever policies are issued, canceled, or non-renewed or the premiums increased or decreased. The incidence of noncompliance in the area of rating demonstrates a frequency range 2.8% to 4%. Regarding the two compliance issues in this area, it is recommended that the Company review its rating manuals and procedures and make the necessary changes to assure future compliance with applicable statutes and regulations as to all three issues.

Claims Practices:

In the area of claim practices, four compliance issues are addressed. These issues arise from Colorado statutory and regulatory requirements dealing with the fair and equitable settlement of claims, payment of claims checks, maintenance of records, timeliness of payments, accuracy of claim payment calculations, and delay of claims. The incidence of noncompliance in the Automobile area of claims practices shows a frequency range of error between 4.5% and 63%. Regarding the four compliance issues in this area, it is recommended that the Company review its claims handling procedures and make the necessary changes to assure future compliance with applicable statutes and regulations as to all six issues.

PERTINENT FACTUAL FINDINGS

GENERAL ISSUES

MARKET CONDUCT EXAMINATION REPORT **ALLSTATE INSURANCE COMPANY**

PERTINENT FACTUAL FINDINGS

COMPLAINT HANDLING

Issue A: Failure to maintain a complete record of written complaints

Section 10-3-1104(1)(i), C.R.S., requires all insurance companies operating in Colorado to provide complaint handling procedures and states:

Failure to maintain complaint handling procedures: Failure 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.

Examination of the Company’s complaint record used in Colorado during 1996 demonstrated the Company did not comply with all of the requirements of Section 10-3-1104(1)(i). Specifically, the company failed to record a written complaint regarding a claim made under a homeowners policy. The complaint was found in a claim file during the examination of claims.

Recommendation #1:

Within 30 days the Company should demonstrate why it should not be considered in violation of the requirements set forth in Section 10-3-1104(1)(i). In the event the company is unable to provide such documentation, it should demonstrate that a procedure has been put in place to assure compliance with applicable Colorado statutes.

PERTINENT FACTUAL FINDINGS

ADVERTISING

Issue B: Making false or misleading statements in product advertising

Sections 10-3-1104(1)(a) and (b) C.R.S. define the following as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:

- (a) Misrepresentations and false advertising of insurance policies: Making, issuing, circulation, or causing to be made, issued, or circulated, any estimate, circular, statement, sales presentation, mission, or comparison which:
 - (I) Misrepresents the benefits, advantages, conditions, or terms of any insurance policy; . . .
- (b) False information and advertising generally: Making, publishing, disseminating, circulating or placing before the public or causing, directly or indirectly to be make, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio or television station, or in any other way, an advertisement, announcement, or statement containing any assertion, representation, or statement with respect to the business of insurance, or with respect to any person in the conduct of his insurance business, which in untrue, deceptive, or misleading; . . .

Specifically, the company failed to comply with all the requirements of Sections 10-3-1104 (1)(a) and (b) in the following instances:

- (1) Company mailer CD2 ed. 1995 states:
 - [T]he Allstate Condominium Owners Policy offers the Loss Assessment Coverage option, which will pay your share of the covered losses, up to your policy limits, when your association's coverage runs out.

The Company's Loss assessment option actually provides:

Allstate will only pay when the assessment levied against the insured person, as a result of any one loss, for bodily injury or property damage exceeds \$250 and then only for the amount of such excess. This coverage is not subject to any deductible applying to Section I of this policy.

The claim made in the mailer appears misleading. The advertisement does not address any deductible amounts. According to the company's Loss Assessment option, however, the Company will only pay covered loses in excess of \$250.

- (2) Advertising Form R10 states:

[D]rowning is the second leading cause of accidental death for children under age 14. And of the 600 victims under age 5, half drown in backyard pools.

A staggering 3 million burglaries are reported each year in the United States . . . 20 to 30 percent of all burglars enter through unlocked windows and doors.

(3) Advertising form R12 States:

Thousands of motor vehicles collide with trains each year. And the death toll for pedestrians is high, as well. About 500 people are struck and killed each year as they walk along or across railroad tracks.

To avoid using statistical data that might be construed as false or misleading, insurers should include sources for statistical data used in company advertising materials. The captioned brochures do not contain citations to support the statistical data cited.

(4) Advertising Forms D2659-9 ed. 1993, Check Out Our New House Discount, and P10, ed. 1994, Condominium Owners Mailer, each state:

The following discount to the package premium is applicable for all dwellings 9 years of age or less. Age of the dwelling is defined as the difference between the year for which the policy is being rated and the year in which the house was built.

Age of Dwelling	Discount Factor*
0 Year	.75
1 year	.78
2 Year	.81
3 Year	.84
4 Year	.87
5 Year	.90
6 Year	.92
7 Year	.94
8 Year	.96
9 Year	.98

Allstate Homeowners Rating Manual, Rule 6 (B) at page 13 (ed. 1994).

The Claim made in the mailer is misleading. The advertisement states that the maximum New House discount offered by the Company is 20%. According to the Company's filed Colorado rating rule the New House Discount could be as high as 25%.

*This is the rating factor, the reciprocal of the discount factor.

Recommendation #2.

Within 30 days the company should demonstrate why it should not be considered in violation of the requirements set forth in Section 10-3-1104(1)(a) and (b) C.R.S. Additionally, the Company should, within 30 days, be required to withdraw from use Condominium Owners Mailer, company form CD2 ed. 1995 or reword it to comply with policy provisions; submit supporting data to validate the statistical claims in advertising forms R10 and R12; withdraw from use the company advertisement Check Out Our New House Discount form D2659-9 ed. 1993 or reword it to comply with company rating rules.

PERTINENT FACTUAL FINDINGS

RATING

Issue C: Using rates not on file with the Colorado Division of Insurance

Section 10-4-401(3)(b), C.R.S. provides:

Type II kinds of insurance, regulated by open competition between insurers, including fire, casualty, inland marine, title insurance, and all other kinds of insurance subject to this part 4 and not specified in paragraph (a) of this subsection (3), including the expense and profit components of workers' compensation insurance, which shall be subject to all the provisions of this part 4 except for sections 10-4-405 and 10-4-406. Concurrent with the effective date of new rates, type II insurers shall file rating data, as provided in section 10-4-403, with the commissioner.

Additionally, Section 10-3-1104(1)(f)(II), C.R.S., defines unfair discrimination as:

Making or permitting any unfair discrimination between individuals of the same class or between neighborhoods within a municipality and of essentially the same hazard in the amount of premium, policy fees, or rates, charged for any policy or contract of insurance, or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever;

Colorado Insurance Regulation 5-1-10 § III(B) requires:

Every property and casualty insurer, including workers' compensation and title insurers, are required to file insurance rates, minimum premiums, schedule of rates, rating plans, dividend plans, individual risk modification plans, deductible plans, rating classifications, territories, rating rules, rate manuals and every modification of any of the forgoing which it proposes to use. Such filings must state the proposed effective date thereof, and indicate the character and extent of the coverage contemplated.

The following sample demonstrated that, in some instances, the Company failed to follow rates on file with the Colorado Division of Insurance when issuing policies of insurance

PRIVATE PASSENGER AUTO NEW BUSINESS POLICIES ISSUED BY THE COMPANY-1996

Population	Sample Size	Number of Exceptions	Percentage to Sample
18,166	104	3	2.8%

An examination of 104 systematically selected files, representing 0.05% of all private passenger automobile new business policies issued by the Company in Colorado during 1996, showed 3 instances (2.8% of the sample) wherein the Company rated insurance policies using rates and/or rating rules not on file with the Division of Insurance and/or failed to use rates on file with the Colorado Division of Insurance when issuing new business insurance policies.

**RESIDENTIAL FIRE NEW BUSINESS POLICIES ISSUED BY THE COMPANY-
1996**

Population	Sample Size	Number of Exceptions	Percentage to Sample
584	50	2	4%

An examination of 50 systematically selected files, representing 8.5% of all private residential fire new business policies issued by the Company in Colorado during 1996, showed 2 instances (4% of the sample) wherein the Company rated insurance policies using rates and/or rating rules not on file with the Division of Insurance and/or failed to use rates on file with the Colorado Division of Insurance when issuing new business insurance policies.

Using Rates In Effect At The Time Of Agent’s Quote

- (1) In three of the reported instances the Company issued new business private passenger automobile policies using rates which had been superceded by a later rate increase and filing. On January 22, 1996, the Company submitted to the Colorado Division of Insurance finalized filings for a 5% private passenger auto rate increase. The Company’s filing included a *Colorado Rate & Rule Filing Submission Form*. Item number seven of the *Colorado Rate Rule Filing Submission Form* requires Companies seeking to implement rate changes to provide the date such rate change is to take effect in Colorado. The Company specified on that form that the rate change would be effective on February 19, 1996, for new and renewal business. *See, Colorado Rate & Rule Filing Submission Form, Colorado Rate & Rule Form A (3-92): 1271A*(example of rate filing form).

- (2) In two of the reported instances the Company issued new business residential fire policies using rates which had been superceded by a later rate increase and filing. On June 24, 1996, the Company submitted a rate filing and manual pages reflecting a 7% overall increase. The Company stated “We plan to implement these changes on July 15, 1996 [sic] with respect to new business written and renewal business *processed* (italics added) on or after that date.” Specifically, one policy written with an effective date of July 29, 1996, and one policy written with an effective date of July 15, 1996, used rates which were in effect from December 9, 1992, until July 15, 1996.

A problem arises because the Company uses rates which are in effect on the date the policy is quoted /processed, not the date the policy is effective. The Company advises that rates used are those in effect at the time of the agent's quote rather than rates in effect on the policy inception date, which, in the case of an automobile policy, may be as long as 60 days before the effective date of the policy or, in the case of a residential fire policy, up to one year before the effective date of the policy. When identical risks, with identical effective dates, are insured and one is quoted prior to the effective date of the rate change and one is quoted after the date of the rate change, each policy to be effective after the date of the rate change, the premiums will be different. This results in unfair discrimination as described in Section 10-3-1104(1)(f)(II).

Recommendation #3.

Within 30 days the Company should be required to show why it should not be considered in violation of Section 10-3-1104(1)(f)(II). In the event the Company is unable to provide such documentation, it should demonstrate that a procedure has been put in place to assure compliance with Section 10-3-1104(1)(f)(II) by using rates in effect on the effective date of the policy rather than the date the policy is quoted or processed.

PERTINENT FACTUAL FINDINGS

HOMEOWNERS

MARKET CONDUCT EXAMINATION REPORT
ALLSTATE INSURANCE COMPANY

PERTINENT FACTUAL FINDINGS

UNDERWRITING

Issue D: Failure to follow policy provisions for cancellations

Section 10-4-110.7 sets forth certain requirements regarding non renewal of homeowners policies. The statute provides:

No insurer shall cancel or refuse to renew a policy of homeowner's insurance unless such insurer mails by first-class mail to the named insured, at the last address shown in the insurer's records, at least thirty days in advance a notice of its intended action which specifically states the reasons for proposing to take such action; but, where cancellation is for nonpayment of premium, at least ten days' notice of cancellation accompanied by the reasons therefor shall be given.

Section 10-3-1104(1)(f)(II) defines an unfair business practice as:

(II) Making or permitting any unfair discrimination between individuals of the same class or between neighborhoods within a municipality and of essentially the same hazard in the amount of premium, policy fees, or rates charged for any policy or contract of insurance, or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever;

The Company's policy provisions regarding cancellation and non renewal state:

Cancellation. . .

Our Right to Cancel:

Allstate may cancel this policy by mailing notice to **you** at the mailing address shown on the Policy Declarations. When this policy has been in effect for less than 60 days, and is not a renewal with **us**, **we** may cancel this policy for any reason by giving **you** at least 10 (30 by Colorado endorsement) days notice before the cancellation takes effect.

When the policy has been in effect for 60 days or more, or if it is a renewal with **us**, **we** may cancel this policy for one or more of the following reasons:

- 1) non-payment of premium;
- 2) the policy was obtained by misrepresentation, fraud or concealment of material facts;
- 3) material misrepresentation, fraud or concealment of material facts in presenting a claim, or violation of any of the policy terms; or

- 4) there has been a substantial change or increase in hazard in the risk **we** originally accepted.

If the cancellation is for non-payment of premium, **we** will give **you** at least 10 days notice. If the cancellation is for any other reasons, **we** will give **you** at least 30 days notice. . . .

. . .**Our** Right to Not Renew or Continue:

Allstate has the right not to renew or continue the policy beyond the current premium period. If **we** do not intend to continue or renew the policy, **we** will mail **you** notice at least 30 days before the end of the premium period.

HOMEOWNER POLICIES NON RENEWED BY COMPANY-1996

Population	Sample Size	Number of Exceptions	Percentage to Sample
717	51	2	3.9%

An examination of 51 files, representing 7.1% of all homeowners policies cancelled by the Company in Colorado during 1996, showed two instances (3.9% of the sample) wherein the Company failed to follow policy provisions when canceling policies mid-term.* Both policies were in effect for more than 60 days and were cancelled for reasons other than those reasons described in the policy’s cancellation provisions.

Allstate Insurance Company, Allstate Deluxe Homeowners Policy, General Section P.6.

Recommendation #4:

Within 30 days, the Company should provide documentation demonstrating why it should not be considered in violation of §10-3-1104(1)(f)(II), 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 adopted procedures which will assure compliance with the statutory requirement.

*The cancelled policies were found in the sample pulled from the non renewal run provided by the company. There were no errors in handling the non renewals. However, the cancellations were in violation as noted in the body of the report.

Issue E: Using policy forms that contain conflicting provisions

Section 10-3-1104(1)(f)(II) defines an unfair business practice as:

- (II) Making or permitting any unfair discrimination between individuals of the same class or between neighborhoods within a municipality and of essentially the same hazard in the amount of premium, policy fees, or rates charged for any policy or contract of insurance, or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever;

An examination of the Company's policy forms and endorsements demonstrated that they contained conflicting provisions which, when applied inconsistently, could lead to discrimination between individuals of the same class.

Allstate's homeowners policies contain, in part, the following provisions:

Cancellation . . .

When the policy has been in effect for 60 days or more, or if it is a renewal with us, we may cancel this policy for one or more of the following reasons:

- 1) non-payment of premium;
- 2) the policy was obtained by misrepresentation, fraud or concealment of material facts;
- 3) material misrepresentation, fraud or concealment of material facts in presenting a claim, or violation of any of the policy terms;
or
- 4) there has been a substantial change or increase in hazard in the risk we originally accepted.

Concealment Or Fraud

This policy is void if it was obtained by misrepresentation, fraud or concealment of material facts. If it is determined that this policy is void, all premiums paid will be returned to **you** since there has been no coverage under this policy.

Allstate Standard Homeowners Policy, page 6.

The Cancellation provision includes cancellation for misrepresentation, fraud or concealment. However, under another policy provision entitled Concealment or Fraud, the remedy is avoidance of the policy. The two remedies for misrepresentation, fraud or concealment of material facts appear to be in conflict and therefore permit unfair discrimination between individuals in similar circumstances.

Recommendation #5:

Within 30 days the Company should provide documentation demonstrating why it should not be considered in violation of Section 10-3-1104(1)(f)(II). In the event the Company is unable to provide such documentation, it should be required to provide evidence demonstrating that the Company has amended their policy form to further clarify the distinction between *voiding* the policy for fraud and *cancelling* the policy for fraud by adopting procedures which will assure compliance with the statutory requirement.

Issue F: Failure to provide policyholders with a specific reason for the non renewal and or cancellation of insurance policies

Section 10-4-110.7 sets forth certain requirements regarding non renewal of homeowners policies. The statute provides:

No insurer shall cancel or refuse to renew a policy of homeowner's insurance unless such insurer mails by first-class mail to the named insured, at the last address shown in the insurer's records, at least thirty days in advance a notice of its intended action which specifically states the reasons for proposing to take such action; but, where cancellation is for nonpayment of premium, at least ten days' notice of cancellation accompanied by the reasons therefor shall be given.

Section 10-3-1104(1)(f)(II) defines an unfair business practice as:

(II) Making or permitting any unfair discrimination between individuals of the same class or between neighborhoods within a municipality and of essentially the same hazard in the amount of premium, policy fees, or rates charged for any policy or contract of insurance, or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever;

REJECTED HOMEOWNERS APPLICATIONS -1996

Population	Sample Size	Number of Exceptions	Percentage to Sample
753	50	22	44%

An examination of 50 files, representing 6.6% of homeowners applications rejected by the Company in Colorado during 1996, showed 22 instances (44% of the sample) wherein the Company failed to give the specific reason for the action on the notice of cancellation which was mailed to the insured which was sufficiently clear and specific so that a person of average intelligence could identify the bases for the insurer's decision without making further inquiry. Specifically, the company failed to provide a complete and specific reason for the rejection of the application.

CANCELLED HOMEOWNERS POLICIES -1996

Population	Sample Size	Number of Exceptions	Percentage to Sample
172	57	29	50.9%

An examination of 57 files, representing 33.1% of homeowners policies cancelled by the Company in Colorado during 1996, showed 29 instances (50.9% of the sample) wherein the Company failed to give the specific reason for the action on the notice of rejection/cancellation which was mailed to the insured which was sufficiently clear and specific so that a person of average intelligence could identify the bases for the insurer's decision without making further inquiry.

NON RENEWED FIRE POLICIES -1996

Population	Sample Size	Number of Exceptions	Percentage to Sample
5	5	2	40%

An examination of 5 files, representing 100% of residential fire policies non renewed by the Company in Colorado during 1996, showed 2 instances (40% of the sample) wherein the Company failed to give the specific reason for the action on the notice of non renewal which was mailed to the insured which was sufficiently clear and specific so that a person of average intelligence could identify the bases for the insurer's decision without making further inquiry.

CANCELLED FIRE POLICIES -1996

Population	Sample Size	Number of Exceptions	Percentage to Sample
12	12	5	41.6%

An examination of 12 files, representing 100% of residential fire policies cancelled by the Company in Colorado during 1996, showed 5 instances (41.6% of the sample) wherein the Company failed to give the specific reason for the action on the notice of cancellation which was mailed to the insured which was sufficiently clear and specific so that a person of average intelligence could identify the bases for the insurer's decision without making further inquiry.

NON RENEWED HOMEOWNERS POLICIES -1996

Population	Sample Size	Number of Exceptions	Percentage to Sample
717	51	22	43.1%

An examination of 51 files, representing 7.1% of homeowners policies non renewed by the Company in Colorado during 1996, showed 22 instances (43.1% of the sample) wherein the Company failed to give the specific reason for the action on the notice of non renewal which was mailed to the insured which was sufficiently clear and specific so that a person of average intelligence could identify the bases for the insurer's decision without making further inquiry.

Specifically, the reason given is not "specific" as defined by the statute in that, based on the reasons stated in the notice alone, one cannot ascertain whether the Company's decision to terminate policies was in accordance with Company underwriting guidelines.

Recommendation #6:

Within 30 days, the Company should provide documentation demonstrating why it should not be considered in violation of § 10-4-720, C.R.S., and the cited portions of Colorado Insurance Regulation 5-2-3. In the event the Company is unable to provide such documentation, it should be required to provide evidence demonstrating that the Company has amended its procedures regarding non renewal notices to assure future compliance with applicable Colorado Statutes.

PERTINENT FACTUAL FINDINGS

AUTOMOBILE

MARKET CONDUCT EXAMINATION REPORT
ALLSTATE INSURANCE COMPANY

PERTINENT FACTUAL FINDINGS

UNDERWRITING

Issue G: Using rates and/or rating rules not on file with the Colorado Division of Insurance and/or using excessive, inadequate, or unfairly discriminatory rates.

Section 10-4-401(3)(b) C.R.S. states:

Type II kinds of insurance, regulated by open competition between insurers, including fire, casualty, inland marine, title insurance, and all other kinds of insurance subject to this part 4, and not specified in paragraph (a) of this subsection (3), including the expense and profit components of workers' compensation insurance, which shall be subject to all the provisions of this part 4 except for sections 10-4-405 and 10-4-406. Concurrent with the effective date of new rates, type II insurers shall file rating data, as provided in section 10-4-403, with the commissioner.

Section 10-3-1104(1) (m), C.R.S. Unfair methods of competition and unfair or deceptive acts or practices, defines and describes an unfair method of competition and unfair or deceptive act or practice as " Failure to make promptly a full refund or credit of all unearned premiums to the person entitled thereto upon termination of insurance coverage: . . ."

The Company's Private Passenger Auto Insurance Manual, Colorado Rules, Rule #16, page 19, ed. 7-5-93, states "On all cancellations, the earned premium retained by Allstate shall be calculated on a pro rata basis for the length of time the policy or coverage was in force."

AUTOMOBILE POLICIES CANCELLED BY COMPANY - FIRST 59 DAYS

Total Population	Sample Size	Number of exceptions	Percent to Sample
103	51	40	78.4%

An examination of 51 systematically selected files representing 49.5% of all policies cancelled by the company in the first 59 days in Colorado during 1996, showed 40 instances (78.4% of the sample) in which the company failed to use pro rata factors in canceling policies.

All policies reviewed were "6 month policies." That is, they were written for a term of 181, 182, 183 or 184 days. In calculating the factor used to determine the earned/unearned premium the company used a period of 182.5 days in all cases, whether the term or the policy was 181 days or 184 days. For example: a policy written for a term of 184 days is cancelled after being in force for 29 days; the pro rata factors are .1576/earned and .8423/unearned (29/184=. 1576; 155/184=. 8423).

Using the company's method of a 182.5 day term for all policies the factors are .158/earned and .849/unearned ($29/182.5=.158$ and $155/182.5=.849$). Therefore, where the term of the policy is less than 182.5 days the company is returning too little and where the term exceeds 182.5 days the company is returning too much.

NEW BUSINESS ISSUED-AUTOMOBILE POLICIES

Total Population	Sample Size	Number of exceptions	Percent to Sample
18,166	104	2	1.9%

An examination of 104 systematically selected files representing 0.5% of all new business policies issued by the company in Colorado during 1996, showed 2 instances (1.9% of the sample) in which the company failed to use correct pro rata factors.

In calculating policy term adjustments the company also used a factor based on a 182.5-day term rather than pro rata factors based on the actual number of days in the policy period. In one instance a policy was term was shortened to change the effective date at the request of a lien holder, and in another the policy term was shortened the change the billing date.

Recommendation #7:

Within 30 days the Company should demonstrate why it should not be considered in violation of Sections 10-3-1104 and 10-4-401 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 corrected its procedures and implemented plans to bring it into conformity with its Private Passenger Automobile Insurance Manual and applicable Colorado Statutes. The examiners recommend that the company recalculate all policies terminated since January 1, 1996, and all policies with policy terms adjusted since January 1, 1996, and return all monies due policyholders because of incorrect calculations.

Issue H: Certifying non complying forms to the Division of Insurance and/or failure to properly certify forms

1) Certification of non complying forms

Section 10-4-725(1), C.R.S., provides:

All insurers providing automobile insurance and who are authorized by the commissioner to conduct business in Colorado shall submit an annual report to the commissioner listing any policy forms, endorsements, cancellation notices, renewal notices, disclosure forms, notices of proposed premium increases, notices of proposed reductions in coverage, and such other forms as may be requested by the commissioner issued or delivered to any policyholder in Colorado. Such listing shall be submitted by July 15, 1993, and not later than July 1 of each subsequent year and shall contain a certification by an officer of the organization that to the best of the officer's knowledge each policy form, endorsement, or notice form in use complies with Colorado law. The necessary elements of certification shall be determined by the commissioner.

(2) All insurers providing automobile insurance and who are authorized by the commissioner to conduct business in Colorado shall also submit to the commissioner a list of any new policy form, endorsement, cancellation notice, renewal notice, disclosure form, notice of proposed premium increase, notice of proposed reductions in coverage, and any other form as may be requested by the commissioner at least thirty-one days before using such policy form, endorsement, cancellation notice, renewal notice, disclosure form, notice of proposed premium increase, notice of proposed reductions in coverage, and any other form as may be requested by the commissioner. Such listing shall also contain a certification by an officer of the organization that to the best of the officer's knowledge each new policy form, endorsement, or notice form proposed to be used complies with Colorado law. The necessary elements of the certification shall be determined by the commissioner.

(3) The commissioner shall have the power to examine and investigate insurers authorized to conduct business in Colorado to determine whether automobile policy forms, endorsements, cancellation notices, renewal notices, disclosure forms, notices of proposed premium increases, notices of proposed reductions in coverage, and such other forms as may be requested by the commissioner comply with the certification of the organization and statutory mandates.

Colorado Insurance Regulation 1-1-6, promulgated pursuant to §§ 10-1-109, 10-4-419, 10- 4-725, and 10-16-107.2, C.R.S., provides in part:

B. Filing requirements

At least 31 days prior to using any new form, subject to the provisions of this regulation, each entity must file in a format prescribed by the Commissioner, a Listing of New Policy Forms including a fully executed certificate of compliance. Any such listing and the applicable certificate of compliance must be prepared individually for each program. Not later than July 1 of each year, each private passenger automobile insurer and claims-made liability insurer must file an Annual Report of policy forms including a fully executed certificate of compliance.

Section 10-3-1104(1)(u) describes an unfair business practice as:

Certifying pursuant to section 10-4-725 or issuing, soliciting, or using an automobile policy form, endorsement, or notice form that does not comply with statutory mandates. Such solicitation or certification shall be subject to the sanctions described in sections 10-3-1107, 10-3-1108, and 10-3-1109.

Section 10-4-719.7, C.R.S., provides in pertinent parts:

(1) No insurer shall cancel, fail to renew, refuse to write, reclassify an insured under, reduce coverage under, unless the reduction is part of a general reduction in coverage filed with the commissioner, or increase the premium for, unless the increase is part of a general increase in premiums filed with the commissioner, any complying policy because the applicant, insured, or any resident of the household of the applicant or insured has had an accident or accidents which are not the fault of such named applicant, insured, household member, or permissive user. . . .

. . .1.5)(b)(I) No insurer shall refuse to write a complying policy solely because of the claim or driving record of one or more but fewer than all of the persons residing in the household of the named insured.

(II) An insurer shall offer to exclude any person by name pursuant to section 10-4-721 in the household if such person's driving record and claim experience would justify the refusal by such insurer to write a policy for such person if such person were applying in such person's own name and not as part of a household. . . .

(2) An insured who believes the provisions of subsection (1) or (1.5) of this section have been violated shall have the right to file a protest with the commissioner pursuant to the provisions of section 10-4-720.

Under §10-4-719.7(2), C.R.S., an insured who is denied coverage has the right to protest such denial. The procedural requirements of such protest are set forth in section 10-4-720, C.R.S.

An applicant's right to protest as set forth under § 10-4-719.7 is, however, limited to situations in which an insurer's denial is based, in whole or in part, on the applicant's prior claims and/ or driving history wherever an accident is involved.

Equally, under §10-4-719.7(1.5)(b)(II) insurers must offer a named driver exclusion, where applicable, when canceling policies during the 59 day underwriting period or otherwise rejecting an application for insurance.

Colorado Insurance Regulation 5-2-3(III)(D)(4) provides in part:

4. Unacceptable reasons for refusal to renew a policy of automobile insurance include, but are not limited to the following: . . .

. . .c. The previous agent no longer represents the company.

Certification of non complying forms

❖ The following listed 7 forms were certified to the Division of Insurance and do not comply with Section 10-4-719.7, C.R.S. because (A) The forms do not provide space for a named driver exclusion as required and (B) the forms do not provide notice of the applicant/insured's right to protest as required by the cited statute.

- 1) 367-21db-Rejection Letter (Accidents)
- 2) 367-21cb-Rejection Letter (Violations)
- 3) 367-21br-Rejection Letter (Accidents/Violations)
- 4) 367-21er-Rejection Letter (Suspended License)
- 5) 303-2f-Cancellation letter (within the underwriting period-Violations)
- 6) 303-2c-Cancellation Letter(Within underwriting period-Accidents/Violations)
- 7) 303-2-Cancellation Letter (Within underwriting period-Violations)

❖ Form letter 303-30, (Non renewal Letter-Terminated Agency) certified by the Company for use in Colorado in 1996, does not appear to comply with the requirements of the cited law. Specifically, it is not permissible to refuse to renew a policy of insurance because the insured's previous agent no longer represents the company. In order to comply with the law, such a notice should include language manifesting the Company's willingness to renew the policy.

2) **Using non certified forms**

A review of all Company policy forms, endorsements, certifications and filings effective during 1996 demonstrated that, in 1996, the Company failed to make an annual

certification of form X487 (Explanation of Options Upon Non renewal) in compliance with §10-4-725, C.R.S.

Recommendation #8:

Within 30 days, the Company should provide documentation demonstrating why it should not be considered in violation of §10-4-719.7, C.R.S. ,10-3-1104(1)(u), 10-4-725 Colorado Insurance Regulation 1-1-6 and Colorado Insurance Regulation 5-3-2(III)(D(4)). In the event the Company is unable to provide such documentation, it should be required to provided evidence demonstrating that the Company has withdrawn the forms from use in Colorado or revised them to be in compliance with the above cited statutes and regulations. Finally, the Company should be required to demonstrate that it has implemented procedures to assure future compliance with applicable Colorado laws regarding the filing and certification of policy forms, endorsements, cancellation notices, renewal notices, disclosure forms, notices of proposed premium increases, notices of proposed reductions in coverage, and such other forms as may be requested by the Division of Insurance.

Issue I: Failure of Company to offer a named driver exclusion when refusing to write policies of insurance

Section 10-4-719.7(1.5)(b)(I) through (III) provides:

(b)(I) No insurer shall refuse to write a complying policy solely because of the claim or driving record of one or more but fewer than all of the persons residing in the household of the named insured.

(II) An insurer shall offer to exclude any person by name pursuant to section 10-4-721 in the household if such person's driving record and claim experience would justify the refusal by such insurer to write a policy for such person if such person were applying in such person's own name and not as part of a household.

(III) An insurer renewing a policy pursuant to subparagraph (II) of this paragraph (b) shall include as part of such renewal a written notice naming the party specifically excluded from coverage.

Furthermore, section 10-4-721(1), C.R.S., provides in pertinent part:

(1) In any case where an insurer is authorized under this part 7 to cancel or refuse to renew or increase the premiums on an automobile liability insurance policy under which more than one person is insured because of the claim experience or driving record of one or more but less than all of the persons insured under the policy, the insurer shall in lieu of cancellation, non renewal, or premium increase offer to continue or renew the insurance but to exclude from coverage, by name, the person whose claim experience or driving record would have justified the cancellation or non renewal. The premiums charged on any such policy excluding a named driver shall not reflect the claims, experience, or driving record of the excluded named driver.

APPLICATIONS REJECTED; REFUSALS TO WRITE-1996

Population	Sample Size	Number of Exceptions	Percentage to Sample
898	50	5	10%

An examination of 50 systematically selected files representing 5.5% of all policies canceled by the Company within the first 59 days in Colorado during 1996 showed 5 instances (10% of the sample) wherein the Company issued underwriting cancellation notices during the first 59 days of coverage (refused to write) without offering a driver exclusion when such offer was applicable.

Recommendation #9:

Within 30 days, the Company should demonstrate why it should not be considered in violation of §§ 10-4-719.7 and 10-4-721(1), C.R.S. In the event that the Company is unable to provide such documentation, the Company should be required to provide documentation demonstrating that it has amended and corrected its rules and procedures regarding the offering of named driver exclusions and has implemented a plan which will offer driver exclusions as required under applicable Colorado law.

Issue J: Misrepresentation of material policy provisions

Section 10-3-1104(1) sets forth certain defined methods of unfair competition. The statute provides:

(1) The following are defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:

(a) Misrepresentations and false advertising of insurance policies:
Making, issuing, circulating, or causing to be made, issued, or circulated, any estimate, circular, statement, sales presentation, omission, or comparison which:

(I) Misrepresents the benefits, advantages, conditions, or terms of any insurance policy;

10-3-1104(1)(b) further states: False information and advertising generally: Making publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or any radio or television station, or in any other way, an advertisement, announcement, or statement containing any assertion, representation, or statement with respect to the business of insurance, or with respect to any person in the conduct of his insurance business, which is untrue, deceptive, or misleading;

Specifically, the Additional Personal Injury Protection coverage (identified as coverage VB01 in the company manuals) filed with the Colorado Division of Insurance indicates that the work loss benefit will be paid as follows:

100% of the first \$125/week loss in gross income
85% of the remaining loss in gross income
Subject to the aggregate limit

However, the Supplement to Policy Declaration page which is attached to the policy form is incorrect in that this page indicates that the work loss benefit will be paid as follows:

85% of loss of gross income per week
Subject to the aggregate Limit.

PRIVATE PASSENGER AUTOMOBILE NEW POLICIES ISSUED -1996

Population	Sample Size	Number of Exceptions	Percentage to Sample
18,166	104	1	0.9%

An examination of 104 files, representing 5% of Private Passenger Automobile policies written by the Company in Colorado during 1996, showed one instance (0.9% of the sample) wherein the Company issued a policy which incorrectly stated the work loss benefits applicable under the policy.

Recommendation #10:

Within 30 days, the Company should provide documentation demonstrating why it should not be considered in violation of § 10-3-1104(1) 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 adopted and implemented procedures which will correct this system error and assure compliance with statutory requirements and the company's filed program.

Issue K: Failure to file and/or use a PIP disclosure/selection form

The Colorado no-fault statute authorizes insurers to offer alternative Personal Injury Protection coverages to meet the varying needs of Colorado policyholders. The statute sets forth three main programs: 1) a standard minimum personal injury protection program (PIP defined under §10-4-706(1)(b), C.R.S.); 2) a limited or basic personal injury protection program (Limited PIP)(defined under §10-4-706(3)(a) through (e)), and; 3) an extended or added personal injury protection program (APIP)(defined under§10-4-710, C.R.S.).

Given the various PIP options described above, §10-4-706(4), C.R.S., requires all insurers offering no-fault coverage in Colorado to provide each insured or applicant with a PIP summary disclosure form prior to issuing any complying policy. The statute requires:

(4)(a) An insurer issuing policies providing coverages as set forth in this section shall provide written explanations of all available coverages prior to issuing any policy to an insured. After a named insured selects a policy with desired personal injury protection coverage, an insurer shall not be under any further obligation to notify such policyholder in any renewal or replacement policy of the availability of a basic personal injury protection policy or of any alternative personal injury protection coverage.

Along with the written disclosure required above, Colorado Insurance Regulation 5-2-6 § III(B)(8) also requires that insurers obtain Division approval of any PIP Summary Disclosure Form which contains information regarding PIP cost containment options prior to using the form in Colorado. The regulation provides:

8. Any disclosure form containing a cost containment option must be approved by the Commissioner prior to use.

By statute, all summary forms containing a cost containment option must be filed for approval by the Division prior to use. Equally, Colorado statutes require that any company offering no-fault coverage in Colorado must provide its policyholders with a written explanation of all PIP coverages offered by the Company, including a description of any cost containment options. Whenever a company's PIP summary disclosure/selection form contains information pertaining to PIP cost containment options, the summary disclosure/selection form must be filed with the Division for approval prior to use.

Specifically, the Company does not have a PIP summary disclosure form in use in Colorado as required by the above cited statute.

Recommendation #11:

Within 30 days, the Company should provide documentation demonstrating why it should not be considered in violation of §10-4-706(4), 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 filed a PIP summary disclosure/selection form for use in Colorado and, to the extent that form describes any PIP cost containment options, has filed that form for approval prior to using the form in Colorado. Finally, the Company should be required to demonstrate that it has implemented procedures that will assure future compliance with the statutory and regulatory requirements of Colorado insurance law.

Issue L: Failure to Include and/or Disclose all Company PIP Cost Containment Options in a PIP Cost Containment Selection & Disclosure Form

Colorado Insurance Regulation 5-2-6, promulgated under the authority of §§ 10-1-109 and 10-4-706, (2), C.R.S., provides:

3. Any policy form containing a cost containment option must be approved by the Commissioner of Insurance (Commissioner) prior to use.
4. Insurers intending to offer one or more cost containment options must use a form which discloses information about the options and which, when completed, contains the insured's signature.
5. The disclosure form must contain:
 - a. The different cost containment options available, together with a means for the applicant to indicate the option selected;
 - b. A reasonable explanation of the different cost containment options offered and the applicable limitations, presented in easy understandable terms;
 - c. The approximate savings in premium for the different options offered (this can be expressed as a percentage);
 - d. The date of selection; and
 - e. An area for the applicant's signature.

A review of the Company's PIP cost containment selection & disclosure form demonstrated that the form did not comply with the requirements set forth above. Specifically, the Company's form did not contain information regarding a \$100 deductible offered by the Company for PIP medical coverage. The cited law specifically requires that any insurer using cost containment mechanisms in concert with PIP coverage must provide Colorado insureds with a PIP cost containment selection & disclosure form which sets forth all cost containment options offered by the Company.

Recommendation # 12:

Within 30 days, the Company should demonstrate why it should not be considered in violation of § 10-3-1104(1)(b), C.R.S., and Colorado Insurance Regulation 5-2-6. In the event that the Company is unable to provide such documentation, the Company should be required to provide documentation demonstrating that it has amended, and filed for approval, a corrected PIP Cost Containment Selection & Disclosure Form which contains information about all cost containment options offered by the Company as required under applicable Colorado law.

PERTINENT FACTUAL FINDINGS

RATING

Issue M: Failure to adopt and/or implement rating rules and procedures which prevent unfair discrimination.

Section 10-4-401(3)(b), C.R.S. provides:

Type II kinds of insurance, regulated by open competition between insurers, including fire, casualty, inland marine, title insurance, and all other kinds of insurance subject to this part 4 and not specified in paragraph (a) of this subsection (3), including the expense and profit components of workers' compensation insurance, which shall be subject to all the provisions of this part 4 except for sections 10-4-405 and 10-4-406. Concurrent with the effective date of new rates, type II insurers shall file rating data, as provided in section 10-4-403, with the commissioner.

Section 10-4-403(1), C.R.S. provides:

Rates shall not be excessive, inadequate, or unfairly discriminatory.

Additionally, Section 10-3-1104(1)(f)(II), C.R.S., defines unfair discrimination as:

Making or permitting any unfair discrimination between individuals of the same class or between neighborhoods within a municipality and of essentially the same hazard in the amount of premium, policy fees, or rates, charged for any policy or contract of insurance, or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever;

Furthermore, Colorado Insurance Regulation 5-1-10 § III(B) requires:

Every property and casualty insurer, including workers' compensation and title insurers, are required to file insurance rates, minimum premiums, schedule of rates, rating plans, dividend plans, individual risk modification plans, deductible plans, rating classifications, territories, rating rules, rate manuals and every modification of any of the forgoing which it proposes to use. Such filings must state the proposed effective date thereof, and indicate the character and extent of the coverage contemplated.

The examiners reviewed the company's Private Passenger Auto Insurance Manual, Colorado Rules which contained the following rule.

Rule 34 – Single Car Driving Record Surcharge

Eligibility For Surcharge

Vehicles which meet the following criteria shall receive a surcharge of 20% for coverages AA,BB,VA,VB,DD and HH.

For single car policies, as new business, at least one operator in the household had an accident chargeable under Rule 13 or a moving traffic violation during the 36 months ending on the effective date of the policy

Removal Of Surcharge

The Surcharge will be removed when:

1. the insureds [sic] adds a car to the policy, or
2. all operators in the household have been accident and violation free for the 36 months ending 45 days prior to the effective date of the policy.

Allstate Insurance Company Private passenger Auto Insurance Manual, Colorado Rules page 33, ed.12-1-95.

According to the Company, a single car applicant is surcharged because he/she has only one vehicle. If the surcharged policyholder then adds a second vehicle the Company removes the surcharge. However, if the insured subsequently *deletes* the second car and again becomes a one-car owner, the company does not replace the surcharge on the policy. Thus, a situation arises wherein two policyholders, with single car policies, are paying different premiums because one policyholder is surcharged while the other policyholder (who has removed the additional vehicle) is not.

This surcharge only applies to single car owners and is completely separate from all other discounts and surcharges, such as the multi-car discount.

Recommendation #13:

Within 30 days the Company should provide documentation why it should not be considered in violation of Section 10-3-1104(1)(f)(II). In the event the Company is not able to provide such documentation, it should be required to demonstrate that it has reviewed its procedures in relation to surcharges and has implemented procedures for the equitable application of surcharges based on actuarially supported data.

PERTINENT FACTUAL FINDINGS

CLAIMS

Issue N: Failure to produce and/ or maintain records for market conduct review.

Section 10-1-109, C.R.S., provides:

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.

Pursuant to the authority granted by § 10-1-109, C.R.S., Colorado Insurance Regulation 1-1-7 was adopted to assist the commissioner in carrying out market conduct examinations in accordance with Colorado law. Colorado Insurance Regulation 1-1-7 provides in pertinent parts:

B. RECORDS REQUIRED FOR MARKET CONDUCT PURPOSES

1. Every insurer/carrier or related entity licensed to do business in this state shall maintain its books, records, documents and other business records so that the insurer's/carrier's or related entity's claims, rating, underwriting, marketing, complaint, and producer licensing records are readily available to the commissioner. Unless otherwise stated within this regulation, records shall be maintained for the current calendar year plus two calendar years.
2. A policy record shall be maintained for each policy issued in this state. Policy records shall be maintained for the current policy term, plus two calendar years, unless otherwise contractually required to be retained for a longer period. Provided, however, documents from policy records no longer required to be maintained under this regulation, which are used to rate or underwrite a current policy, must be maintained in the current policy records. Policy records shall be maintained as to show clearly the policy term, basis for rating and, if terminated, return premium amounts, if any. Policy records need not be segregated from the policy records of other states so long as they are readily available to the commissioner as required under this rule. A separate copy need not be maintained in the individual policy records, provided that any data relating to that policy can be retrieved. Policy records shall include:

- a. The application for each policy, if any;
 - b. Declaration pages, endorsements, riders, termination notices, guidelines or manuals associated with or used for the rating or underwriting of the policy. Binder(s) shall be retained if a policy was not issued; and
 - c. Other information necessary for reconstruction of the rating and underwriting of the policy.
3. Claim files shall be maintained so as to show clearly the inception, handling and disposition of each claim. A claim file shall be retained for the calendar year in which it is closed plus the next two calendar years.
 4. Records relating to the insurer's/carrier's or related entity's compliance with this state's producer licensing requirements shall be maintained, which shall include the licensing records of each agency and producer associated with the insurer or related entity. Licensing records shall be maintained so as to show clearly the dates of the appointment and termination of each producer.
 5. The complaint records required to be maintained under Section 10-3-1104, C.R.S. and Regulation 6-2-1.

Records required to be retained by this regulation may be maintained in paper, photograph, microprocess, magnetic, mechanical or electronic media, or by any process which accurately reproduces or forms a durable medium for the reproduction of a record. A company shall be in compliance with this section if it can produce the data which was contained on the original document, if there was a paper document, in a form which accurately represents a record of communications between the insured and the company or accurately reflects a transaction or event. Records required to be retained by this regulation shall be readily available upon request by the commissioner or a designee. Failure to produce and provide a record within a reasonable time frame shall be deemed a violation of this regulation, unless the insurer or related entity can demonstrate that there is a reasonable justification for that delay.

In order to review the Company's claims practices regarding denial of claims, the Company was requested to produce a list of all claims denied by the Company during 1996, the period under examination. A denied claims file sample was requested in accordance with procedures developed by the National Association of Insurance Commissioners. Due to the records maintenance system used, the Company was unable to produce a list of claims denied and, therefore, a sample was not available for the examiners' review.

Recommendation #14:

Within 30 days, the Company should provide written documentation demonstrating why it should not be considered in violation of Colorado Insurance Regulation 1-1-7, as authorized by §10-1-109, C.R.S. 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 record maintenance and identification and categorization of claims payments and denials and has implemented procedures which will assure future compliance with the law.

Issue O: Failure to obtain specific written assignment from policyholders when making 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.

Furthermore, Colorado Insurance Regulation 5-1-5 § III, authorized by §10-1-109(1), C.R.S., states:

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

In addition to above cited statutes, Section 10-4-708.4(2) provides in part:

When a licensed hospital or other licensed health care provider receives an assignment form 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.

When read as a whole, § 10-4-708.4, C.R.S., requires insurers to make direct payment of benefits once assigned. The insurer, however, is also required, under Colorado Insurance Regulation 5-1-5 § III, to acquire a written assignment before making direct payments to anyone other than the individual insured.

Section 10-4-708.4(2), C.R.S., places the burden of obtaining the written assignment for PIP benefits on the health care provider. Once the health care provider obtains the written assignment, it is the duty of the health care provider to directly bill the insurance company. The first bill submitted in coordination with PIP benefits should be accompanied by the insured's written assignment.

**PRIVATE PASSENGER AUTO
PERSONAL INJURY PROTECTION BENEFITS DRAFTS -1996**

Population	Sample Size	Number of Exceptions	Percentage to Sample
147,819	200	126	63%

An examination of 200 systematically selected PIP claim drafts, representing 0.1% of all personal injury protection benefit drafts/checks maintained by the Company in 1996 showed 126 instances (63% of the sample) wherein the Company failed to procure an assignment from policyholders before making direct payments to health care providers.

Recommendation # 15:

Within 30 days the Company should provide written documentation demonstrating why the Company should not be considered in violation of Section 10-4-708.4(2), C.R.S. and Colorado Insurance Regulation 5-1-5 section 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 making direct payment of personal injury protection benefits.

Issue P: Failure to pay transfer fees in association with title transfers

Section 10-3-1104(1)(h)(VI) defines an unfair claims settlement practice as:

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

The Company's private passenger automobile policy used in Colorado during 1996 states

COVERAGE BB – AUTOMOBILE LIABILITY INSURANCE

Allstate will pay damages an insured person is legally obligated to pay because of:

. . . 2. Damage to or destruction of property.

COVERAGE DD – AUTO COLLISION INSURANCE

Allstate will pay for direct and accidental loss to **your** insured **auto** or a non-owned **auto** (including insured loss to an attached trailer) from a collision with another object or by upset of that auto or trailer. . .

COVERAGE HH – AUTO COMPREHENSIVE INSURANCE

Allstate will pay for direct and accidental loss to the **your**, insured **auto** or a non-owned **auto** not caused by collision. . . .

LIMITS OF LIABILITY

Allstate's limit of liability is the actual cash value of the property or damaged part of the property at the time of loss.

Allstate Insurance Company, Allstate Automobile Policy—Colorado, AU105-2 (5-92)

Whenever a vehicle is declared a total loss there are ancillary costs which must be considered when adjusting and valuing the claim. Private passenger automobile insurance contracts, like the Company's cited above, generally require insurers to included these costs in their loss evaluations and to pay the costs under the policy's liability, comprehensive or collision coverage, whichever coverage is applicable under the circumstances. Insurers must included include taxes and title transfer fees in total loss payments because such costs are an integral part of the insured's loss, or in a third party liability situation, the insured's liability. In Colorado, such costs include, but are not limited to, the following:

1. Vehicle sales tax;
2. License plate transfer fees;*
3. Title Transfer fees**

PRIVATE PASSENGER AUTO TOTAL LOSS AUTOS PAID -1996

Population	Sample Size	Number of Exceptions	Percentage to Sample
1,586	50	17	34%

An examination of 50 systematically selected total loss claim files, representing 3.2% of all total loss claims files maintained by the Company in 1996 showed 17 instances (34% of the sample) wherein the Company failed to pay the \$1 title transfer fee required by Sections 42-6-137, and 4-9.3-105(3), CRS.

Recommendation # 16:

Within 30 days the Company should provide written documentation demonstrating why the Company should not be considered in violation of Sections , 10-3-1104(1)(h)(VI) CRS. In the event the Company is unable to provide such documentation, it should be required to provide written procedures showing that the \$1 transfer fee is paid on all total losses.

* See, Section 42-3-134, C.R.S.(schedule for license plate fees).

** See, Section 42-6-137, C.R.S.(description of \$5.50 title fee); See also, Section 4-9.3-105, C.R.S.(description of special \$1.00 transfer fee).

Issue Q: Delay of PIP benefit payments.

Section 10-3-1104(1)(h), C.R.S., defines in part as unfair business practices:

(II) Failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies; or

(III) Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies; or

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.

PRIVATE PASSENGER AUTO CANCELED PIP DRAFTS FOR 1996

Population	Sample Size	Number of Exceptions	Percentage to Sample
147,819	200	9	4.5%

An examination of 200 systematically selected canceled drafts, representing 0.1% of all personal injury protection drafts/checks issued by the Company in 1996, showed 9 instances (4.5% of the sample) wherein the Company failed to pay PIP claims within the statutory standard of 30 days.

PIP BENEFITS PAID FOR 1996

Population	Sample Size	Number of Exceptions	Percentage to Sample
6,195	102	9	8.8%

An examination of 102 systematically selected files, representing 1.6% of all personal injury protection benefit claims paid by the Company in 1996, showed 9 instances (8.8% of the sample) wherein the Company failed to pay PIP claims within the statutory standard of 30 days.

Recommendation #17:

Within 30 days, the Company should provide documentation demonstrating why it should not be considered to be in violation of §§ 10-3-1104(1)(h)(II), (III), and 10-4-708(1), 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 all procedures related to timeliness of handling claims, investigation of claims, acknowledgment of claims, accumulation of bills, and documentation of claim files and has implemented all necessary changes to assure compliance in each area.

SUMMARY OF RECOMMENDATIONS

for

EXAMINATION REPORT ON ALLSTATE INSURANCE COMPANY

ISSUE	RECOMMENDATION NUMBER	PAGE NUMBER
Issue A: Failure to maintain a complete record of written complaints	1	13
Issue B: Making false or misleading claims in product advertising	2	17
Issue C: Using rates not on file with the Colorado Division of Insurance	3	21
Issue D: Failure to follow policy provisions for cancellations	4	25
Issue E: Using policy forms that contain conflicting and/or discriminatory provisions	5	27
Issue F: Failure to provide policyholders with a specific reason for the non renewal and or cancellation of insurance policies.	6	30
Issue G: Using rates and/or rating rules not on file with the Colorado Division of Insurance and/or using excessive, inadequate, or unfairly discriminatory rates	7	34
Issue H: Certifying non complying forms to the Division of Insurance and/or failure to properly certify forms	8	38
Issue I: Failure of Company to offer a named driver exclusion when refusing to write policies of insurance.	9	40

SUMMARY OF RECOMMENDATIONS

for

EXAMINATION REPORT ON ALLSTATE INSURANCE COMPANY

ISSUE	RECOMMENDATION NUMBER	PAGE NUMBER
Issue J: Misrepresentation of material policy provisions.	10	42
Issue K: Failure to file and/or use a PIP disclosure/selection form	11	44
Issue L: Failure to Include and/or Disclose all Company PIP Cost Containment Options in a PIP Cost Containment Selection & Disclosure Form	12	75
Issue M: Failure to adopt and/or implement rating rules and procedures which prevent unfair discrimination.	13	49
Issue N: Failure to produce and/ or maintain adequate records for market conduct review.	14	53
Issue O: Failure to obtain specific written assignment from policyholders before making direct payment of PIP benefits to health care providers.	15	55
Issue P: Failure to pay transfer fees in association with title transfers.	16	57
Issue Q: Delay of PIP benefit payments	17	59

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