

STATE OF NEW JERSEY
DEPARTMENT OF BANKING AND INSURANCE

IN THE MATTER OF:

Proceedings by the Commissioner of)	
Banking and Insurance, State of New)	CONSENT
Jersey, with respect to MDAvantage Insurance)	ORDER
Company of New Jersey NAIC No. 11498)	

TO: MDAvantage Insurance Company of NJ
Two Princess Road Suite 2
Lawrenceville, NJ 08648

This matter, having been opened to the Commissioner of Banking and Insurance (“Commissioner”), State of New Jersey, upon the filing of a Market Conduct Examination Report (“the Report”) containing the results of the November 1, 2011 to October 31, 2012 examination of credit balances and unearned premiums for MDAvantage Insurance Company of NJ (“the Company”) performed by the Department of Banking and Insurance (Department) pursuant to the authority provided at N.J.S.A. 17:23-20 et seq.; and

WHEREAS, the market conduct examination revealed certain instances, as fully set forth in the Report, where the Company’s practices did not accord fully with various provisions of New Jersey insurance statutes or regulations; and

WHEREAS, based on the documentation and information submitted by the Company, the Department is satisfied that the Company have taken or will take corrective measures pursuant to the recommendations of the Report.

NOW, THEREFORE, IT IS on this 17th day of SEPTEMBER, 2013

ORDERED AND AGREED that the attached Report will be adopted and filed as an official record of the Department; and

IT IS FURTHER ORDERED AND AGREED that the Company shall comply with New Jersey insurance statutes and regulations and the recommendations contained in the attached Report; and

IT IS FURTHER ORDERED AND AGREED that pursuant to N.J.S.A. 17:23-24d(1), within 30 days of the adoption of the Report, the Company shall file an affidavit with the Department's Market Conduct Unit, stating under oath that its directors have received a copy of the adopted Report.



Peter Hart
Acting Director of Insurance

Consented to as to form, content and entry



Name Michael P. Martin
MDAdvantage Insurance Company of NJ
SVP - General Counsel
Title

Date: 13 September 2013

MARKET CONDUCT EXAMINATION

of the

MDADVANTAGE INSURANCE COMPANY OF NEW JERSEY

located in

LAWRENCEVILLE, NEW JERSEY

as of

March 29, 2013

BY EXAMINERS

of the

STATE OF NEW JERSEY

DEPARTMENT OF BANKING AND INSURANCE

OFFICE OF CONSUMER PROTECTION SERVICES

**MARKET CONDUCT EXAMINATIONS and ANTI-FRAUD
COMPLIANCE SECTIONS**

DATE REPORT ADOPTED:

SEPTEMBER 23, 2013

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I. INTRODUCTION

This is a report of the Market Conduct activities of the MDAdvantage Insurance Company of New Jersey (hereinafter referred to as “MDAdvantage” or “the Company”). In this report, examiners of the New Jersey Department of Banking and Insurance (NJDOBI) present their findings, conclusions and recommendations as a result of their examination.

A. SCOPE OF EXAMINATION

The scope of the examination included an evaluation of the Company’s rating manual filed with the Commissioner and the handling of credit balances and unearned premium on terminated and in-force medical malpractice policies. The examiners checked for compliance with N.J.S.A. 17:29C-4.1, N.J.S.A. 17:29AA-1 et seq. and N.J.S.A. 17:29A-6 and 15. Specific emphasis was placed on the proper use of base rates with respect to medical specialties and the Company’s Risk Management Incentive Plan and discounts.

The market conduct examiners reviewed business conducted by the Company during the period November 1, 2011 through October 31, 2012. This examination covered the Company’s New Jersey business activities only. The examiners conducted their fieldwork at MDAdvantage’s office in Lawrenceville, New Jersey. On various dates following the fieldwork, the examiners completed additional review work and report writing in Trenton, N.J. The Market Conduct Examiners were Examiner-in-Charge Monica Koch, Marleen Sheridan, Erin Porter and Michael Wise.

The examiners randomly selected files and records from computer listings and documents provided by the Company. The random selection process is in accordance with the National Association of Insurance Commissioner’s (NAIC) Market Regulation Handbook. The examiners used the NAIC Market Regulation Handbook, Chapter Sixteen (General Examination Standards) and Chapter Seventeen, (Conducting Property and Casualty Insurance Examinations) as a guide to examine the Company and write this report.

B. ERROR RATIOS

Error ratios are the percentage of files reviewed which an insurer handles in error. A file is counted as an error when it is mishandled or the insured is treated unfairly, even if no statute or regulation is applicable. If a file contains multiple errors, the examiners will count the file only once in calculating error ratios. However, any file that contains more than one error will be cited more than once in the report. In the event that the insurer corrects an error as a result of a consumer complaint or due to the examiners’ findings, the error will be included in the error ratio. If the insurer corrects an error independent of a complaint or NJDOBI intervention, the error is not included in the error ratios.

There may be errors cited in this report that define practices as specific acts that an insurer commits so frequently that it constitutes an improper general business practice. Whenever the examiners find that the errors cited constitute an improper general business practice, they have stated this in the report.

The examiners sometimes find improper general business practices or insurer errors that may be technical in nature or which did not have an impact on a consumer. Even though such errors or practices would not be in compliance with applicable law, the examiners do not count each of these files as an error in determining error ratios. Whenever such business practices or errors do have an impact on the consumer, each of the files in error will be counted in the error ratio. The examiners indicate in the report whenever they did not count particular files in the error ratio.

The examiners submitted written inquiries to Company representatives on the errors cited in this report. These inquiries provided MDAdvantage the opportunity to respond to the examiners' findings and to provide exceptions to the statutory and/or regulatory errors or mishandling of files reported. In response to these inquiries, MDAdvantage agreed with some of the errors cited in this report. On those errors with which the Company disagreed, the examiners evaluated the individual merits of each response and gave due consideration to all comments. In some instances, the examiners did not cite the files due to the Company's explanatory responses. In others, the errors remained as cited in the examiners' inquiries. For the most part, this is a report by exception.

C. COMPANY PROFILE

MDAdvantage Insurance Company of New Jersey (MDAdvantage) is a provider of medical professional liability insurance and associated premises liability insurance. The Company is located in Lawrenceville, New Jersey. MDAdvantage is a New Jersey-domiciled private stock insurance company. The Company received its Certificate of Authority to write insurance on August 23, 2002 and began issuing policies on September 1, 2002.

MDAdvantage is a full service insurance carrier which provides underwriting, claims administration and risk management services to its clients. Additional coverage is also available, which consists of employment practice liability, privacy and data security and medical practice administration insurance. This coverage is available to medical professionals that have at least 51% of their practice in the State of New Jersey. MDAdvantage insures licensed physicians, surgeons, podiatrists and dentists.

II. POLICYHOLDER SERVICE: RESOLVING CREDIT BALANCES

A. INTRODUCTION

The Department completed a market conduct examination on MDAdvantage in 2005. That examination revealed a 10% error ratio on credit balances that remained unresolved in excess of 60 days. In response to the recommendations that appeared in the 2005 market conduct adopted report, the Company agreed to review credit balances and resolve them within 60 days. The current exam was designed to determine the extent to which the Company has implemented the 60-day resolution period.

On the present examination, the Company provided the examiners with a computer formatted spreadsheet that listed monthly premium credits where earned premium was less than billed premium. This report listed a total of 504 credit balances (119 on cancelled policies and 385 on active policies that were in force) that occurred during the review period of November 1, 2011 through October 31, 2012. All 504 credit balances were generated from a total of 1,859 physician malpractice insurance policies that were in force or terminated during the review period.

The examiners randomly selected 155 credit balance transactions from the population of 504 credit balances. It should be noted that the examiners defined the random review population as credit balances rather than policies, because a single policy could have accounted for multiple credit balances in which only some may have not been resolved in a timely manner.

Overall, the examiners found one credit balance in error from the random sample of 155 credit balances, for a total error ratio of less than 1%.

B. ERROR RATIOS

The examiners calculated the following error ratios by applying the procedure outlined in the introduction of this report. Error ratios are itemized separately based on the review samples as indicated in the following chart.

Type of Credit Balance	Files Reviewed	Files in Error	Error Ratio
Cancelled	30	0	0
In-Force	125	1	< 1%
Overall Totals	155	1	< 1%

C. EXAMINER'S FINDINGS

1. Failure to Refund Credit Balance within 60 Days Due to Policy Endorsement – 1 File in Error/\$206 Delayed Refund

N.J.S.A. 17:29C-4.1 requires an insurer to remit any refunds to an insured within 60 days of receiving notice of cancellation. On January 12, 2012 the broker of record requested that MDAdvantage remove one doctor from policy number 5-GRP0300600. The Company did not issue a refund until April 24, 2012, which is 43 days beyond the required 60 days. The Company agreed with this error.

This File is also Listed in Appendix A1 of the Report

III. RATING

A. INTRODUCTION

The examiners reviewed 140 randomly selected physician policy files from the in-force population of 1,859 policies. The examiners checked for compliance with N.J.S.A. 17:29A-6 and 15 (filed and approved rating methodologies) and N.J.S.A. 17:29AA-1 et seq. The examiners placed special emphasis on the application of discounts. These requirements are related to NAIC Standards outlined in Chapter Seventeen, (Conducting Property and Casualty Insurance Examinations) of the NAIC Market Regulation Handbook.

B. ERROR RATIOS

The examiners calculated error ratios for each random sample by applying the procedure outlined in the introduction of this report. Error ratios are itemized separately for the review samples as indicated in the chart that follows.

Random Rating Sample	Files Reviewed	Files in Error	Error Ratio
In-Force Policies	<u>140</u>	<u>5</u>	<u>4%</u>
Random Review Total	140	5	4%

C. EXAMINERS' FINDINGS

1. Failure to Underwrite and Determine Eligibility for Electronic Prescription Writer System (EPW) and Electronic Medical Records System (EMR) Discounts - 3 Files in Error

N.J.S.A. 17:29A-6 and 15 and N.J.S.A. 17:29AA-1 et seq. require insurers to charge rates in strict conformity with its rating system as filed with and approved by the Commissioner. According to the MDAdvantage Risk Management Incentive Plan, an approved electronic medical record system (EMR) qualifies for an annual three percent premium discount and an approved electronic prescription writer system (EPW) qualifies for an annual two percent premium discount. Eligibility for these discounts is determined sixty days prior to the effective date of policy renewal and is subject to Risk Management Department review and monitoring.

The examiners found three policies in which the insureds' renewal application indicated eligibility for EMR and EPW discounts. Contrary to the above mentioned statutes, the Company failed on one policy to assess eligibility of an EMR discount for three policy periods which represent \$1,920 in potential premium discounts. On another policy, the Company failed to assess eligibility of EMR and EPW discounts for two policy periods, for a potential net premium overcharge of \$620. On the remaining policy, MDAdvantage failed to assess

eligibility for EMR and EPW discounts for one policy period, for a potential net premium overcharge of \$482.

In response to the examiners' inquiries, the Company stated that its underwriting section had not contacted the Risk Management Unit to obtain a determination of the functionality and use of the EMR and EPW for each policyholder. In response to the examiners' inquiries and the draft examination report, the Company contacted the insureds in order to confirm eligibility for these discounts for all applicable policy periods. Insured responses were not complete as of the date of this final report; however, the Company agreed to apply all discounts that are ultimately deemed eligible. See recommendations section.

The Files are also Listed in Appendix B1

2. Failure to Underwrite Computer-Aided Detection Discount - 1 File in Error/Premium Impact Pending

Pursuant to N.J.S.A. 17:29AA-1 et seq. and N.J.S.A. 17:29A-6 & 15, insurers are required to charge those rates that are filed with the Commissioner. The examiners found a premium overcharge error on policy 5-IND011365, in which MDAdvantage failed to evaluate and apply the computer-aided detection (CAD) discount. According to the MDAdvantage Risk Management Incentive Plan, an approved CAD system qualifies for an annual 5% premium discount (when fully operational and used as a tool to assist in the interpretation of all patient mammograms for at least nine months). The insured's July 1, 2010 application indicated the use of CAD technology.

Contrary to the above-referenced statutes, this discount was not underwritten for the July 1, 2010 – July 1, 2011, July 1, 2011 – July 1, 2012, or July 1, 2012 – July 1, 2013 policy periods. Upon receipt of renewal applications, the company failed to follow up with the insured or mail a questionnaire to begin the evaluation process that would qualify the insured for this discount. As a result of the examiners' inquiries, the Company advised that it contacted the provider to begin the eligibility evaluation process to determine any credit/refund that may be applicable for the eligible policy periods. The provider's response and actual refund/credit is pending.

This File is also Listed in Appendix B2

3. Improper Out-of-State Surcharge to Provider – 1 File in Error/\$40,448 in Premium Overcharges)

N.J.S.A. 17:29A-6 & 15 and N.J.S.A. 17:29AA-1 et seq. require insurers to charge rates in strict conformity with its rating system as filed with and approved by the Commissioner. According to the Company's filed and approved New

Jersey Professional Liability Program, physicians who also practice outside the State of New Jersey will be subject to a surcharge if the out-of-state exposure is greater than 10% of the entire practice.

The examiners found one policy in which MDAdvantage improperly applied the out-of-state exposure surcharge. Based on the initial application with an effective date of June 1, 2006, the insured worked greater than 10% of his time in New York. The insured was therefore subject to this surcharge. During the June 1, 2009 policy period, however, the insured advised that he conducted business in New Jersey 100% of the time. Contrary to the above mentioned statutes, the company continued to apply the Out-of-State surcharge. In response to the examiner's inquiry, the Company endorsed this policy to remove the surcharge for four policy periods, resulting in a premium return of \$40,448.00 to the insured.

This File is also Listed in Appendix B3

IV. TERMINATIONS

A. INTRODUCTION

During the review period November 1, 2011 to October 21, 2012, MDAdvantage terminated seven policies for cause. The examiners checked for compliance with N.J.A.C. 11:27-6.1, N.J.S.A. 17:30D-24, N.J.A.C. 11:1-20.2 (Cancellation and Nonrenewal Notices) and MDAdvantage criteria for termination and NAIC standards as outlined in Chapter Sixteen (General Examination standards) and Chapter Seventeen, (Conducting Property and Casualty Insurance Examinations) of the Market Regulation Handbook.

B. ERROR RATIOS

The examiners calculated error ratios for each random sample by applying the procedure outlined in the introduction of this report. Error ratios are itemized separately for the review samples as indicated in the chart below.

Type of Review	Files Reviewed	Files in Error	Error Ratio
Cancelled	2	0	0
Nonrenewed	5	0	0
Total	7	0	0

C. EXAMINERS FINDINGS

The examiners reviewed all seven policies that were terminated during the review period. Specifically, the examiners checked that all nonrenewed and cancelled policies were terminated in accordance with N.J.A.C. 11:27-6.1, N.J.S.A. 17:30D-24, N.J.A.C. 11:1-20.2 and MDAdvantage's own Underwriting Cancellations and Nonrenewal guidelines. Documentation in the Company's system indicated that all seven policies were properly terminated based on the insureds' Underwriting/Experience review.

V. RECOMMENDATIONS

MDAdvantage should inform all responsible personnel and third party entities who handle the files and records cited as errors in this report of the examiners' recommendations and remedial measures that follow in the report sections indicated. The examiners also recommend that MDAdvantage establish procedures to monitor compliance with these measures.

Throughout this report, the examiners cite and/or discuss all errors found. If the report cites a single error, the examiners often include a "reminder" recommendation because if a single error is found, additional errors may have occurred.

Non-compliant activity was identified in this report which may extend to other jurisdictions. The Company is directed to take immediate corrective action to demonstrate its ability and intention to conduct business according to New Jersey law and regulations. When applicable, corrective action for other jurisdictions should be addressed.

The examiners acknowledge that during the examination MDAdvantage agreed and already complied with, either in whole or in part, some of the recommendations. For the purpose of obtaining proof of compliance and for the Company to provide its personnel with a document they can use for future reference, the examiners have listed all recommendations below.

A. GENERAL INSTRUCTIONS

All items requested for the Commissioner and copies of all written instructions, procedures, recommended forms, etc., should be sent to the Commissioner, c/o Clifton J. Day, Manager of the Market Conduct Examinations and Anti-Fraud Compliance Unit, Mary Roebling Building, 20 West State Street, PO Box 329, Trenton, N.J. 08625, within thirty (30) days of the date of the adopted report.

On all policies to be reopened with premium credits or refunds, or discounts, MD Advantage should provide the insured with a cover letter that contains the following first paragraph (variable language is included in parentheses):

1. Premium Refund/Credits

"During a review of our policy files by Market Conduct examiners of the New Jersey Department of Banking and Insurance, they found that we failed to correctly rate your policy. Enclosed is our (refund/credit) in the amount of (insert amount) to correct our error."

2. Discounts

"During a review of your claim by Market Conduct Examiners of the New Jersey Department of Banking and Insurance, they found that we (failed to

provide you with a (xx%) discount on your medical liability policy. Enclosed is our (payment/policy credit) in the amount of (insert amount) to correct our error."

B. POLICYHOLDER SERVICE: RESOLVING CREDIT BALANCES

1. MDAdvantage should issue a written reminder to all appropriate personnel that the Company must refund credit balances within a reasonable amount of time not to exceed sixty days from the date the balance occurs in the account as required by N.J.S.A. 17:29C-4.1.

C. RATING

2. MDAdvantage should issue written instructions to appropriate personnel stating that, when an insured's application or renewal questionnaire indicates that the medical practice has implemented an electronic office system, the Company must determine the functionality of each system and, where viable, provide the applicable discount. Emphasis should be placed on the use of an electronic prescription writer system, an electronic medical records system and/or computer-aided detection for mammography.
3. The Company should open the policies cited in Section III, 1 and 2 of this report and issue the correct discounts for each policy period. Documentation reflecting discounts to the applicable policy periods should be forwarded to the Commissioner.
4. MDAdvantage should issue a written reminder to appropriate personnel stating that, pursuant to N.J.S.A. 17:29AA-1 et seq. and N.J.S.A. 17:29-6 and 15, the Company is required to charge rates in strict conformity with its rating system as filed with and approved by the Commissioner. The Company should review policy 5-IND0115614 and issue a refund for any improper out-of-state surcharges.

APPENDIX A

Policyholder Service: Resolution of Credit Balances

1. Failure to Refund Credit Balance within 60 Days Due to Policy Endorsement - 1 File in Error

Credit Refund	Date Endorsement Received	Date Endorsement Processed	Amount of Credit Refund	Days over 60
5- GRP0300600	1/12/2012	4/24/2012	\$206	43

APPENDIX B

Underwriting and Rating

1. Failure to Underwrite and Determine Eligibility for Electronic Prescription Writer Systems (EPW) and Electronic Medical Records Systems (EMR) Discounts - 3 Files in Error

Policy Number	Policy Periods Owed	Type of Discount
5-IND0111190	9/1/2010 - 9/1/2011	EMR Discount
	9/1/2011 - 9/1/2012	
	9/1/2012 - 9/1/2013	
5-IND2029013	9/22/2011 - 9/22/2012	EMR & EPW Discounts
	9/22/2012 - 9/22/2013	
5-IND0109189	6/1/2012 - 6/1/2013	EMR & EPW Discounts
Totals		

2. Failure to Provide Computer-Aided Detection Discount - 1 File in Error

5- IND0113653	Amount Pending Additional Insured Documentation
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3. Improper Out of State Surcharge to Provider - 1 File in Error

POLICY	POLICY PERIOD	SURCHARGE OWED
5-IND0115614	06/01/2009 - 06/01/2010	\$14,246.00
	06/01/2010 - 06/01/2011	\$ 8,666.00
	06/01/2011 - 06/01/2012	\$ 8,588.00
	06/01/2012 - 06/01/2013	\$ 8,588.00
Totals		\$40,088.00

VI. VERIFICATION PAGE

I, Monica Koch, am the Examiner-in-Charge of the Market Conduct Examination of MDAdvantage Insurance Company conducted by examiners of the New Jersey Department of Banking and Insurance. This verification is based on my personal knowledge as acquired in my official capacity.

The findings, conclusions and recommendations contained in the foregoing report represent, to the best of my knowledge, a full and true statement of the Market Conduct Examination of MDAdvantage Insurance Company as of March 29, 2013.

I certify that the foregoing statements are true. I am aware that if any of the foregoing statements made by me is willfully false, I am subject to punishment.

June 5, 2013

Date



Monica Koch
Examiner-In-Charge
New Jersey Department
of Banking and Insurance