STATE OF MICHIGAN

DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES

MARKET CONDUCT EXAMINATION

NUMBER 2013C-0059

June 20, 2014

TARGETED MARKET CONDUCT EXAMINATION REPORT

OF

ALLSTATE PROPERTY AND CASUALTY INSURANCE COMPANY

NORTHBROOK, ILLINOIS

NAIC COMPANY CODE 17230

For the Period January 1, 2012 through December 31, 2012

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I. EXECUTIVE SUMMARY

Allstate Property and Casualty Insurance Company (the Company) is an authorized foreign insurance company domiciled in Illinois. This examination was conducted by the Department of Insurance and Financial Services (DIFS) in conformance with the National Association of Insurance Commissioners (NAIC) *Market Regulation Handbook* (2012) (*Handbook*) and the Michigan Insurance Code, MCL 500.100 et seq. (the Code). The purpose of the exam is to evaluate the compliance of the Company with applicable Michigan statutes, NAIC Guidelines and DIFS regulations. The scope of market conduct examination includes the Company's activities related to the handling of: (1) Bodily Injury (BI) Claims, (2) Personal Injury Protection (PIP) Claims and (3) BI and PIP Litigated Claims. The examination covers the period January 1, 2012 through December 31, 2012.

This summary of this targeted market conduct examination of the Company is intended to provide an overview of the examination results. The body of the report provides details of the scope of the examination, findings, DIFS recommendations, and Company responses.

DIFS considers a "finding" a substantive issue in which a violation of Code was found to have occurred, or one in which corrective action on the part of the Company is deemed advisable.

Findings:

- The Company does not provide a copy of the Colossus evaluations to claimants.
- The Company's BI training materials do not accurately convey the BI threshold in accordance with *McCormick* v. *Carrier* 487 Mich 180; 795 NW2d 517 (2010).
- The Company reports that approximately nine percent (9%) of PIP payments are late, necessitating the payment of interest.
- The Company acknowledges that some claims go unpaid due to the "one year back" rule.
- A Company adjustor referred to an IME doctor as a "hired gun".

Recommendations:

- DIFS recommends that a copy of the Colossus evaluations be furnished to claimants.
- DIFS recommends that the Company update training materials to accurately reflect *McCormick* v. *Carrier*.
- DIFS recommends that the Company continue to work to reduce the percentage of late PIP claims.
- DIFS recommends that appropriate language be incorporated in PIP claims letters to prevent claims from going unpaid due to the "one year back" rule.
- DIFS recommends that the Company stress to all adjusters as well as the IME physicians that IME results should in no way be pre-determined.

Company Response:

Please see section IV for our response on each finding.

II. OBJECTIVES, SCOPE AND METHODOLOGY

This report is based on a targeted market conduct examination of Allstate Property and Casualty Insurance Company. The examination was conducted at the DIFS office located at 611 West Ottawa Street, Lansing, MI. The contact for this exam was Celeste Vanduch, Senior State Filings Analyst. DIFS conducted this examination in accordance with statutory authority of MCL 500.222 et seq. All Michigan laws, regulations and bulletins cited in this report may be viewed on the DIFS website at www.michigan.gov/difs.

This examination was conducted under the supervision of Sherry J. Bass-Pohl, Manager of the Market Conduct Company Examination Unit.

The examination was called due to changes in the complaint index.

The examination team sampled Company records in the areas of (1) BI Claims, (2) PIP Claims and (3) BI and PIP Litigated Claims. The analysis and examination of these areas were conducted and measured according to the Standards and practices in the NAIC *Handbook*, the applicable statutes in the Code, and the Company's internal guidelines and procedures.

Three types of review may be utilized for the above standards. Certain standards may be examined with a single review, and others may be examined using one or more types of review. The NAIC *Handbook* calls for a random sample of 100 files when the examination population is greater than 5,000. This statistical sample is applied as follows:

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A. Generic Review: A standard test is applied using analysis of all files written by agents at the specific branch office for the time frame of the examination. The Company provides the general file information as a response to examiner questions.

B. Sample Review: A "sample" review indicates that a standard is tested through direct review of a random sample of files using sampling methodology described in the NAIC *Handbook*, Chapter 14. The samples include all files within a specific subgroup. The sampling techniques used are based on a 95 percent (95%) confidence level, meaning there is 95 percent (95%) confidence that the error percentages shown in the various standards so tested are representative of the entire set of records from which it was drawn. An error rate in excess of the tolerance level in these sections of the report is indicative of a general business practice of engaging in that type of conduct. Note that the statistical error tolerance is not indicative of the actual tolerance of DIFS for deliberate or systematic error.

C. Census Review: Marketing and Sales, as well as Complaint files, are not subject to the sampling procedure, as the number of relevant files does not warrant taking a sample. Therefore, every relevant marketing piece and complaint file for the examination period is reviewed by the examination team for compliance with applicable statutes, regulations and internal company guidelines.

This examination report is a report by test. The report contains a summary of pertinent information about the lines of business examined. This includes each NAIC *Handbook* source and Standard, Code citation, any examination findings detailing the non-compliant or problematic activities that were discovered during the course of the exam, the Company response proposing methods for correcting the deficiencies, and recommendation for any further action by DIFS.

III. COMPANY OPERATIONS AND PROFILE

Allstate Property and Casualty Insurance Company began operations in 1931, as an Illinois domiciled company. It is a stock company. Allstate was founded in 1931 as part of Sears, Roebuck & Co., and became a publicly traded company in 1993. At the time, the initial public offering of Allstate was the largest in U.S. history. On June 30, 1995, it became a totally independent company after Sears divested its remaining shares to Sears stockholders. It is currently licensed to market its products in 50 states. The Company markets and sells its products through captive agents. Approximately 600 producers are appointed in Michigan. The Company's top lines of business are auto and home insurance. Its size category is XV ($2 billion or greater), and the Company is rated A+ (Superior) by the A.M. Best Company. Its outlook is stable. The Company plans to expand its Drivewise program and continue its Esurance and Encompass distribution channels.

IV. EXAMINATION FINDINGS AND RECOMMENDATIONS

CLAIM HANDLING

Standard 1: The initial contact by the regulated entity with the claimant is within the required time frame. NAIC *Handbook*, Chapter 16.

Standard 3: Claims are resolved in a timely manner. NAIC *Handbook,* Chapter 16.

MCL 500.3142:

(1) Personal protection insurance benefits are payable as loss accrues.

(2) Personal protection insurance benefits are overdue if not paid within 30 days after an insurer receives reasonable proof of the fact and of the amount of loss sustained. If reasonable proof is not supplied as to the entire claim, the amount supported by reasonable proof is overdue if not paid within 30 days after the proof is received by the insurer. Any part of the remainder of the claim that is later supported by reasonable proof is overdue if not paid within 30 days after the proof

is received by the insurer. For the purpose of calculating the extent to which benefits are overdue, payment shall be treated as made on the date a draft or other valid instrument was placed in the United States mail in a properly addressed, postpaid envelope, or, if not so posted, on the date of delivery.

(3) An overdue payment bears simple interest at the rate of 12% per annum.

MCL 500.3145:

(1) An action for recovery of personal protection insurance benefits payable under this chapter for accidental bodily injury may not be commenced later than 1 year after the date of the accident causing the injury unless written notice of injury as provided herein has been given to the insurer within 1 year after the accident or unless the insurer has previously made a payment of personal protection insurance benefits for the injury. If the notice has been given or a payment has been made, the action may be commenced at any time within 1 year after the most recent allowable expense, work loss or survivor's loss has been incurred. However, the claimant may not recover benefits for any portion of the loss incurred more than 1 year before the date on which the action was commenced. The notice of injury required by this subsection may be given to the insurer or any of its authorized agents by a person claiming to be entitled to benefits therefor, or by someone in his behalf. The notice shall give the name and address of the claimant and indicate in ordinary language the name of the person injured and the time, place and nature of his injury.

(2) An action for recovery of property protection insurance benefits shall not be commenced later than 1 year after the accident.

***Standard 4*:** The regulated entity responds to claims correspondence in a timely manner. NAIC *Handbook*, Chapter 16.

Standard 5: Claim files are adequately documented. NAIC *Handbook,* Chapter 16.

Standard 6: Claims are properly handled in accordance with policy provisions and applicable statutes (including HIPAA), rules and regulations. NAIC *Handbook,* Chapter 16.

MCL 500.3107:

(1) Except as provided in subsection (2), personal protection insurance benefits are payable for the following:

(a) Allowable expenses consisting of all reasonable charges incurred for reasonably necessary products, services and accommodations for an injured person's care, recovery, or rehabilitation. Allowable expenses within personal protection insurance coverage shall not include either of the following:

(i) Charges for a hospital room in excess of a reasonable and customary charge for semiprivate accommodations except if the injured person requires special or intensive care.

(ii) Funeral and burial expenses in excess of the amount set forth in the policy which shall not be less than $1,750.00 or more than $5,000.00.

(b) Work loss consisting of loss of income from work an injured person would have performed during the first 3 years after the date of the accident if he or she had not been injured. Work loss does not include any loss after the date on which the injured person dies. Because the benefits received from personal protection insurance for loss of income are not taxable income, the benefits payable for such loss of income shall be reduced 15% unless the claimant presents to the insurer in support of his or her claim reasonable proof of a lower value of the income tax advantage in his or her case, in which case the lower value shall apply. For the period beginning October 1, 2012 through September 30, 2013, the benefits payable for work loss sustained in a single 30-day period and the income earned by an injured person for work during the same period together shall not exceed $5,189.00, which maximum shall apply pro rata to any lesser period of work loss. Beginning October 1, 2013, the maximum shall be adjusted annually to reflect changes in the cost of living under rules prescribed by the commissioner but any change in the maximum shall apply only to benefits arising out of accidents occurring subsequent to the date of change in the maximum.

(c) Expenses not exceeding $20.00 per day, reasonably incurred in obtaining ordinary and necessary services in lieu of those that, if he or she had not been injured, an injured person would have performed during the first 3 years after the date of the accident, not for income but for the benefit of himself or herself or of his or her dependent.

(2) Both of the following apply to personal protection insurance benefits payable under subsection (1):

(a) A person who is 60 years of age or older and in the event of an accidental bodily injury would not be eligible to receive work loss benefits under subsection (1)(b) may waive coverage for work loss benefits by signing a waiver on a form provided by the insurer. An insurer shall offer a reduced premium rate to a person who waives coverage under this subsection for work loss benefits. Waiver of coverage for work loss benefits applies only to work loss benefits payable to the person or persons who have signed the waiver form.

> (b) An insurer shall not be required to provide coverage for the medical use of marihuana or for expenses related to the medical use of marihuana.

Standard 9: Denied and closed without payment claims are handled in accordance with policy provisions and state law. NAIC *Handbook,* Chapter 16.

MCL 500.2026:

> (1) Unfair methods of competition and unfair or deceptive acts or practices in the business of insurance, other than isolated incidents, are a course of conduct indicating a persistent tendency to engage in that type of conduct and include:
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> ***
>
> (b) Failing to acknowledge promptly or to act reasonably and promptly upon communications with respect to claims arising under insurance policies.
> (c) Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies.
> (d) Refusing to pay claims without conducting a reasonable investigation based upon the available information.
> (e) Failing to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed.
>
> ***
>
> (n) Failing to promptly provide a reasonable explanation of the basis in the policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement.

Standard 11: Claim handling practices do not compel claimants to instigate litigation, in cases of clear liability and coverage, to recover amounts due under policies by offering substantially less than is due under the policy.

MCL 500.2026:

> (1) Unfair methods of competition and unfair or deceptive acts or practices in the business of insurance, other than isolated incidents, are a course of conduct indicating a persistent tendency to engage in that type of conduct and include:
>
> ***
>
> (g) Compelling insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts due the insureds.

> (h) Attempting to settle a claim for less than the amount to which a reasonable person would believe the claimant was entitled, by reference to written or printed advertising material accompanying or made part of an application.

MCL 500.3135:

> (1) A person remains subject to tort liability for noneconomic loss caused by his or her ownership, maintenance, or use of a motor vehicle only if the injured person has suffered death, serious impairment of body function, or permanent serious disfigurement.
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> ***
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> (5) As used in this section, "serious impairment of body function" means an objectively manifested impairment of an important body function that affects the person's general ability to lead his or her normal life.

MCL 500.3148:

> (1) An attorney is entitled to a reasonable fee for advising and representing a claimant in an action for personal or property protection insurance benefits which are overdue. The attorney's fee shall be a charge against the insurer in addition to the benefits recovered, if the court finds that the insurer unreasonably refused to pay the claim or unreasonably delayed in making proper payment.
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> (2) An insurer may be allowed by a court an award of a reasonable sum against a claimant as an attorney's fee for the insurer's attorney in defense against a claim that was in some respect fraudulent or so excessive as to have no reasonable foundation. To the extent that personal or property protection insurance benefits are then due or thereafter come due to the claimant because of loss resulting from the injury on which the claim is based, such a fee may be treated as an offset against such benefits; also, judgment may be entered against the claimant for any amount of a fee awarded against him and not offset in this way or otherwise paid.

MCL 500.3151

> When the mental or physical condition of a person is material to a claim that has been or may be made for past or future personal protection insurance benefits, the person shall submit to mental or physical examination by physicians. A personal protection insurer may include reasonable provisions in a personal protection insurance policy for mental and physical examination of persons claiming personal protection insurance benefits.

1. Claims Closed with Payment – Personal Auto Bodily Injury

The examiners requested the population of Michigan Claims Closed With Payment – Personal Auto Bodily Injury.

File Data	Population Size	Maximum Number of Failures Permitted in Sample	Stage 1 Sample Size	Date Sample Pulled	Errors Found
Claims Closed With Payment - Personal Auto Bodily Injury	322	2	74	12/20/13	0

Findings:
The Company continues to use Colossus to evaluate BI claims. Colossus is a software program used to assist adjusters in the evaluation of bodily injury claims. The Company does provide written notification to claimants that Colossus is used, in accordance with the 2010 NAIC Market Conduct exam agreement. The Company maintains that Colossus is specifically programmed for Michigan. The Company does not provide a copy of the Colossus report to claimants. The Company does offer advice to claimants regarding attorney fees. The Company states that the conversation should inform the claimant that it is entirely the claimant's choice to retain an attorney and that the Company claim handling will not change if there is an attorney involved. The Company also advises the claimant that the claimant would also be responsible for the payment of any attorney he/she chooses. The Company stated that these discussion points will be re-communicated to frontline employees as a reminder of the proper way to respond to a claimant's questions about attorney retention.

Recommendations:
Computer Sciences Corporation (CSC) designed Colossus. The CSC website states that Colossus evaluations are provided by most insurance companies upon request of the claimant. DIFS recommends that the Company follow this practice.

Company Response:
"Although the CSC website states that Colossus recommendations are provided by most insurance companies, Allstate is not one of them. We follow the terms of the 2010 NAIC Market Conduct Exam Agreement. We are not required to provide Colossus evaluations. We respect the Department's recommendation to make the evaluation available upon request of the claimant; however, we will not be making any changes to our current position on this matter as we view the report to be work product."

2. Claims Closed Without Payment – Personal Auto Bodily Injury

The examiners requested the population of Michigan Claims Closed Without Payment – Personal Auto Bodily Injury.

File Data	Population Size	Maximum Number of Failures Permitted in Sample	Stage 1 Sample Size	Date Sample Pulled	Errors Found
Claims Closed Without Payment –Personal Auto Bodily Injury	425	2	94	12/20/13	0

Findings:
In the course of examining these files, the training materials for BI claims were reviewed. Those training materials did not accurately reflect the most current Michigan Supreme Court interpretation of the BI threshold (*McCormick* v *Carrier*). It is hoped that no claimants were discouraged from making a BI claim due to a misunderstanding of the BI threshold.

Recommendations:
A recommendation was made to update Company training materials to accurately reflect *McCormick* v. *Carrier*. The Company has already agreed to this.

Company Response:
"We appreciate your recommendation to update our training materials to accurately reflect McCormick v. Carrier. Our training materials have already been updated and provided to you for review. Based on your agreement with the updates, our communication with employees has begun and we will continue to reinforce the Michigan Supreme Court's interpretation of the BI threshold."

3. Claims Closed With Payment – Personal Auto PIP Claims

The examiners requested the population of Michigan Claims Closed With Payment – Personal Auto PIP Claims.

File Data	Population Size	Maximum Number of Failures Permitted in Sample	Stage 1 Sample Size	Date Sample Pulled	Errors Found
Claims Closed With Payment - Personal Auto PIP Claims	2754	2	94	12/20/13	9

Findings:
The reason for calling the exam was complaints about untimely PIP payments. (See MCL 500.3142 cited above). In 2009, approximately ten percent (10%) of PIP payments included penalty interest payments. At that time, the problem was attributed to "a known system issue which occurred between October 16 and December 18, 2009". In 2012, the percentage has been reduced to just under nine percent (9%). The Company stated that, among other reasons, staffing and technology challenges have also contributed to delays in PIP payment processing. The Company stated that it was not satisfied with untimely PIP payments. The Company also stated that it does not set Company goals for timeliness of PIP payments, but that local claim offices may set individual goals.

Recommendations:
DIFS strongly recommends that the Company endeavor to reduce the percentage of late PIP payments. The Company should establish goals which eliminate or reduce violations of MCL 500.3142. Staffing and technology issues should be addressed. Continued violation of MCL 500.3142 cannot be condoned. We will follow up semi-annually to monitor progress in this area.

Company Response:
"Allstate strives to reduce late payments that are within its control. At the local level, a high to low range goal of 20% - 18% has been established to reduce the age of pending bills. The high to low range of 20%-18% bills pending greater than 20 days has been established. This goal has been assigned to all adjusters and leaders within the Michigan PIP office.

For instances where the bill is not paid within 30 days, we continue to comply with MCL 500.3142(3) by paying simple interest at the rate of 12% per annum."

4. Claims Closed Without Payment – Personal Auto PIP Claims

The examiners requested the population of Michigan Claims Closed Without Payment – Personal Auto PIP Claims

File Data	Population Size	Maximum Number of Failures Permitted in Sample	Stage 1 Sample Size	Date Sample Pulled	Errors Found
Claims Closed Without Payment – Personal Auto PIP Claims	3904	2	94	12/20/2013	0

Findings:
The Company was asked how many claims went unpaid due to the "one year back" rule (MCL 500.3145(1)). While it is difficult to provide a definitive answer, the Company did state the following: "To prevent a PIP claim from going unpaid due to the 'one year back' rule, we can incorporate language in our acknowledgement letter as well as a letter to providers to make them aware of the limitation".

Recommendations:
DIFS recommends that the language be so incorporated.

Company Response:
"Allstate is moving forward with incorporating language into our Acknowledgement letter to alert customers and claimants regarding MCL 500.3145(1). We will also continue to consider the "one year back rule" in our litigation strategy and document our claim file accordingly should we apply this defense."

5. Litigated Claims – Personal Auto Bodily Injury

The examiners requested the population of Michigan Litigated Claims - Personal Auto Bodily Injury.

File Data	Population Size	Maximum Number of Failures Permitted in Sample	Stage 1 Sample Size	Date Sample Pulled	Errors Found
Litigated Personal Auto Bodily Injury Claims	224	2	67	12/20/2013	0

Findings:
The two sides in BI suits are understandably far apart as negotiations begin. The gap narrows over time until a settlement is reached.

Recommendations:
There are no recommendations.

Company Response:
“Allstate does not have any additional response to this section.”

6. Litigated Claims – Personal Auto PIP

The examiners requested the population of Michigan Litigated Claims – Personal Auto PIP.

File Data	Population Size	Maximum Number of Failures Permitted in Sample	Stage 1 Sample Size	Date Sample Pulled	Errors Found
Litigated Personal Auto PIP Claims	265	2	67	12/20/2013	0

Findings:
One litigated PIP file contained a reference by an Allstate adjuster to IME doctors as “hired guns”. The Company stated that it does “not condone this type of characterization as it is inaccurate”.

Recommendations:
The Company should endeavor to convey to both adjusters and the IME physicians with whom the Company contracts that the IMEs are in fact independent and the results are in no way pre-determined.

Company Response:
“Allstate does not condone this type of characterization, as it is inaccurate. Our IME physicians are independent and objective. As you know from the previously submitted IME vendor contract, we contractually require our vendors to assign credentialed providers to us for all exams. These physicians are independent contractors over which Allstate has no control.”

V. ACKNOWLEDGEMENT

This examination report of Allstate Property and Casualty Insurance Company is respectfully submitted to the Director of the Department of Insurance and Financial Services, State of Michigan.

The courteous cooperation and assistance of the officers and employees of the Company extended to the examiners during the course of the examination is hereby acknowledged.

In addition to the undersigned, Zachary Dillinger MCM, Market Conduct Examiner, participated in the examination.

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Examiner-in-Charge
Department of Insurance and Financial Services
Market Conduct Section