



# **MARKET CONDUCT EXAMINATION**

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**MIIX ADVANTAGE INSURANCE COMPANY**

LAWRENCEVILLE, NEW JERSEY

**STATE OF NEW JERSEY**

**DEPARTMENT OF BANKING AND INSURANCE**

Office of Consumer Protection Services

Market Conduct Examination Section

Report Adopted: March 29, 2005

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CONFIDENTIAL

MARKET CONDUCT EXAMINATION

of the

MIXX ADVANTAGE INSURANCE COMPANY OF NEW JERSEY

Located in

LAWRENCEVILLE, NEW JERSEY

as of

August 9, 2004

BY EXAMINERS

Of the

STATE OF NEW JERSEY  
DEPARTMENT OF BANKING AND INSURANCE  
**OFFICE OF CONSUMER PROTECTION SERVICES**

MARKET CONDUCT EXAMINATION UNIT  
DATE REPORT ADOPTED: MARCH 29, 2005

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# I. INTRODUCTION

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This is a report of the Market Conduct activities of the MIIX Advantage Insurance Company of New Jersey (hereinafter referred to as MIIX or the Company). In this report, examiners of the New Jersey Department of Banking and Insurance (hereinafter referred to as the Department or NJDOBI) present their findings, conclusions and recommendations as a result of their market conduct examination. The Market Conduct Examiners were Monica Koch, Examiner-in-Charge, and examiners Virgil Downtin and Marcus Rosser.

## A. Scope of Examination

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The scope of the market conduct examination included an evaluation of the Company's handling of credit balances and unearned premium on terminated and inforce medical malpractice policies. The market conduct examiners checked for compliance with N.J.S.A. 17:29C-4.1 and N.J.S.A. 17:29AA-1 et seq. Specific emphasis was placed on the Company and its agency force concerning resolution of policy accounts with credit balances that exceed 60 days from the date that the balance occurs in the account.

The market conduct examiners reviewed business conducted by the Company during the period January 1, 2003 to August 13, 2004. This examination covered the Company's New Jersey business activities only, and includes analysis of credit balances that occurred on individual physician and surgeon policies between January 1, 2003 and December 31, 2003. The examiners completed their fieldwork at the Company's Lawrenceville, New Jersey office. The examiners completed additional review work and report writing on various dates thereafter.

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 Market Conduct Examiners Handbook. In addition, the examiners used the NAIC Handbook, Chapter VIII- Conducting the Health Examination- as a guide to write this report.

## B. Error Ratios

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Error ratios are the percentage of files that the examiners found to be handled in error. Each file either mishandled or not handled in accordance with applicable state statutes or regulations is an error. Even though a file may contain multiple errors, the examiners counted the file only once in calculating the 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 Company corrected an error as a result of a consumer complaint or due to the examiners' findings, the error is included in the error ratio. If the Company corrects an

error independent of a complaint or NJDOBI intervention, the error is not included in the error ratios.

For the purposes of the electronic database analyses, the examiners define an exception as a record in a database that does not meet specific criteria as set forth in database queries. The file or record has not been reviewed in depth by an examiner.

Whenever the examiners find that a company commits a type of error with sufficient frequency, they will cite the errors as an improper general business practice. If an error constitutes an improper general business practice, the examiners have stated this in the report.

The examiners sometimes find improper general business practices of an insurer that may be technical in nature or which did not have an impact on a consumer. Even though such a practice 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 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 any particular files in the error ratio.

The examiners submitted written inquiries to Company representatives on the errors cited in this report. This provided MIIX the opportunity to respond to the examiners' findings and provide exception to the cited errors or mishandling of files reported herein. In response to these inquiries, MIIX agreed with some of the errors cited in this report. On those errors with which the Company disagreed, the examiners evaluated the merits of each response and gave due consideration to all of its 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.

## **C. Company Profile**

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MIIX Advantage Insurance Company of New Jersey (MANJ), received its certificate of authority on August 23, 2002, permitting it to conduct business as a new physician-supported company providing medical professional liability insurance coverage to physicians in New Jersey. MIIX Advantage Insurance Company of New Jersey began issuing policies on September 1, 2002. The Company offers claims-made and modified claims-made policies.

As of December 31, 2003, MIIX Advantage Insurance Company of New Jersey had 2,689 policyholders in New Jersey. MIIX Advantage Insurance Company of New Jersey employs 80 staff members at its Lawrenceville, New Jersey location. Effective August 10, 2004, the Company changed its name to MDAdvantage Insurance Company of New Jersey. This report continues to refer to the Company as MIIX Advantage Insurance Company since this reflects the official company name at the time of this examination.

## II. Policyholder Service: Resolving Credit Balances

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### A. Introduction

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This exam was designed to determine whether MIIX provides appropriate refunds or if it credits accounts in a timely manner, whenever unearned premium is owed to the insureds. The examiners specifically checked for resolution of credit balances that remained unresolved for more than 60 days during the review period of January 1, 2003 through December 31, 2003.

In response to the examiners' request, the Company provided a list of all 2,689 policies that were in force during the review period. From this population, the examiners requested the Company to identify all policies that included negative endorsements that occurred during the calendar year 2003 review period. Negative endorsements result in credit balances and occur as a result of changes in risk or timing in posting premium to the account. Examples of the former include reduction in the number of physicians employed in a practice, changes in physician skill status (time in residency, board certifications and other factors). Examples of the latter include payment of estimated premium where actual exposure is less than anticipated and incorrect premium payment by the insured. MIIX provided the examiners with two separate, computer-generated reports that listed all account transactions that occurred during the review period. These reports are identified as the JPS report and the Evolution Refund Report.

The JPS report included all negative endorsements that were processed during the review period. The JPS report was created from the JPS Transaction Recording System, which captures and tracks on a daily basis all transactions that have a financial impact on a policy, including credit balances that occur as a result of endorsements, adjustments, flat cancellations and any other similar transactions that cause premium debits and credits. The second report, which utilized the Evolution System, identifies, monitors and resolves all premium credits that occur due to negative endorsements and any other factors that could result in overpayment of premium. The examiners used these reports to define populations and review samples, which are discussed in Section II.B which follows.

### B. Credit Balance Populations, Samples and Errors

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The examiners queried the JPS report and discovered a total of 355 policies that generated a total of 753 accounting, endorsement or premium transactions. The examiners randomly selected 50 of the 355 policies and found a total of 13 transactions that were identified as credit balances. The examiners also queried the Evolution report

and found that it contained a total of 240 policies that generated 268 credit balances. The examiners randomly selected 60 of the 240 policies and found a total of 60 credit balances on as many policies. It should be noted that the examiners defined the random review populations as credit balances rather than policies, because a single policy could have accounted for multiple credit balances in which only some were not resolved in a timely manner.

The examiners randomly selected and reviewed a total of 73 credit balances from the two reports described above. For informational purposes, these 73 credit balances were derived from a total of 110 policies. Review of the 13 credit balances from the 50 policies referenced above (JPS System) revealed one credit balance in error. Review of the 60 credit balances from the 60 policies also referenced above (Evolution System) revealed six credit balances in error.

Overall, the examiners found a total of seven credit balances in error from the two random selections that comprised the overall review sample of 73 credit balances, for an overall error ratio of 10%. The following chart itemizes these errors by type of reporting system.

**Chart 1 – Random Review**

<u>Type of Policy</u>	<u>Credit Balances Reviewed</u>	<u>Credit Balances in Error</u>	<u>Error Ratio</u>	<u>Amount Credit Balance Errors</u>
JPS	13	1	8%	\$ 22.00
Evolution	<u>60</u>	<u>6</u>	10%	\$18,240.51
Totals	73	7	10%	\$18,262.51

### **C. Examiners’ Findings**

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#### **1. Failure to Resolve Credit Balances within 60 Days 3 Errors (3 Credit Balances from Evolution Refund Report)**

From the credit balance Evolution Refund Report provided by the Company, the examiners found 3 policies in which MIIX failed to resolve credit balances within 60 days. This is contrary to **N.J.S.A. 17:29C-4.1**, which specifies a guideline of 60 days as a reasonable timeframe during which any unearned premium shall be remitted or credited to an insured.

Total unresolved premium as a result of this error was \$9,517.51. The average credit balance in error under this error category was \$3,172.50.

PLEASE SEE APPENDIX A-I FOR CREDIT BALANCES IN ERROR

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**2. Failure to Provide Refund on Policies with Credit Balances under \$25.00  
2 Files in Error (1 Credit Balance from the JPS System and 1 Credit Balance from the Evolution Refund Report)**

From the credit balance database provided by the Company, the examiners found two policies in which MIIX failed to provide a credit refund. In response to an inquiry, the Company stated that MIIX Advantage does not provide return checks under \$25.00. The Company further advised that amounts under \$25.00 would be used as an offset if future activity on a policy generates additional premium. This procedure is problematic in that additional premium may not occur for an indefinite period beyond the 60-day resolution period. Failure to resolve credit balances under \$25.00 is contrary to the guidelines established under N.J.S.A. 17:29C-4.1. The examiners note that while this error actually occurred on only two credit balances, it nevertheless resulted from a business decision.

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PLEASE SEE APPENDIX A-II FOR CREDIT BALANCES IN ERROR

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**3. Failure to Provide Credit Balance Refund on Inactive Policy  
1 File in Error (1 Credit Balance from the Evolution Refund Report)**

The examiners found one policy from the Evolution Report in which MIIX did not resolve a credit balance in a timely manner because the policy was inactive as a result of the insured's disability. In such situations, coverage is suspended during the period of disability and the policy is deemed inactive, but still in force. In response to the examiners' inquiries, MIIX advised that the insured on policy number **5-IND0105023** was disabled effective January 22, 2004, with an expected return date in June 2004. Although the \$6,647 credit balance existed as of March 23, 2004 and was payable within 60 days pursuant to N.J.S.A. 17:29C-4.1, MIIX advised that it does not refund or process credit balances on inactive policies until they are reactivated upon the insured's return to work. System records indicated that MIIX had not issued this refund as of June 2, 2004, resulting in a resolution period in excess of at least 11 days beyond the 60-day period. The examiners note that the practice of automatically pending credit balance refunds during periods of inactivity is inconsistent with the 60-day resolution period specified in N.J.S.A. 17:29C-4.1. This is especially problematic where the period of inactivity is in excess of 60 days. This practice also increases the likelihood that credit balances on such policies will remain not only unresolved for more than 60 days, but undetected for an indefinite period of time.

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PLEASE SEE APPENDIX A-III FOR CREDIT BALANCE IN ERROR

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**4. Failure to Refund Credit Balances within 60 days due to Policy Endorsements  
1 File in Error (1 Credit Balance from the Evolution Refund Report)**



From the Evolution Refund Report, the examiners found 1 policy in which MIIX failed to resolve a credit balance within 60 days due to a policy endorsement. On policy 5-GRP2025991, the insured underpaid the renewal premium, was notified of the underpayment, and then provided an additional premium payment that resulted in an overpayment. This overpayment was identified by the Company as a credit balance. However, the broker was unaware that the additional payment caused a credit balance and was under the impression that a premium deficit still existed. For this reason, the broker did not initiate a refund. Ultimately, the system was updated and the broker issued a payment on May 17, 2004, or 110 days beyond the January 28, 2004 date in which the credit balance first occurred. This represents a delay of 50 days beyond the 60-day period allowed under N.J.S.A. 17:29C-4.1. Total unresolved premium as a result of this error was \$2,074.00.

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PLEASE SEE APPENDIX A-IV FOR CREDIT BALANCES ERROR

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##### **5. Refund Procedure on Broker-Managed Accounts (49 Direct Managed Accounts and 61 Broker Managed Accounts)**

In reviewing the 110 randomly selected policies from the JPS System and the Evolution Refund Report, the examiners noted that 49 policies were managed directly by MIIX, and 61 were managed by brokers. Based on the number of broker-managed accounts, the examiners inquired as to whether the Company had a procedure that would allow MIIX to monitor when the brokers actually issued refunds to insureds. In response to the examiner's inquiry, the Company stated that MIIX Advantage sends out the return premium checks due the insured via the broker if there is a broker on the account. The Company further advised that MIIX does not monitor the brokers' timeliness in delivering checks to policyholders. MIIX further stated that, as the insured's designated representative, issuance of return premium or refunds is governed by broker/client agreements. It should be noted that this does not absolve the Company from fulfilling its oversight responsibilities.

As a result, the examiners were unable to determine from the Company's records the amount of time that lapses between the time that MIIX issues a return premium check to the broker and the date that the broker actually issues the return premium check to the insured.

# III. RATING

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## A. Introduction and Scope

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The examiners reviewed 50 randomly selected physician policy files from the in-force population of 2,689 policies. The examiners checked for compliance with **N.J.S.A. 17:29AA-1 et seq.** and the rating manual filed with the Commissioner. The examiners focused on proper use of base rates with respect to medical specialty, limits of liability and proper assignment to the Company's Medallion, Preferred and Standard risk classifications.

## B. Examiner's Findings

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The examiners found no errors in this review. MIIX properly rated and underwrote all 50 files that the examiners reviewed.

# IV. AGENT LICENSING

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## A. INTRODUCTION

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MIIX Advantage Insurance Company of New Jersey writes medical malpractice and professional liability insurance for New Jersey Hospitals, physicians, and health care professionals. The Company utilizes independent and direct agents, and maintains agency agreements with all of its appointed agents. During the review period, MIIX Advantage Insurance Company of New Jersey had 31 active agencies that serviced and produced new business on behalf of the Company. There were no agents terminated during the review period. The examiners reviewed Company records of agency appointments and terminations, including the proper notification and timeliness requirements pursuant N.J.S.A. 17:22a-15 and N.J.A.C. 11:17-2.9. The examiners found no errors in this review.

# V. RECOMMENDATIONS

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MIIX Advantage Insurance Company should inform all responsible personnel and third party entities, where applicable, who handle the files and records cited as errors in this report of the remedial measures which follow in the report sections indicated. The examiners also recommend that the Company 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, more errors may have occurred.

The examiners acknowledge that during the examination, the Company agreed and had 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

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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 Day, Manager of the Market Conduct Examination and Anti-Fraud Compliance Unit, 20 West State Street, PO Box 329, Trenton, NJ 08625, within thirty (30) days of the date of the adopted report.

On files to be reopened as recommended, the payment should be sent to the insured with an accompanying cover letter containing the following first paragraph (variable language is included in parentheses):

“During a recent review of our files by market conduct examiners of the New Jersey Department of Banking and Insurance, they found that we failed to timely refund your account in the amount of (insert amount). Enclosed is our (check) (confirmation of a premium credit) for that amount to correct the error.”

## B. Policyholder Service

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1. MIIX Advantage should issue written instructions to all Company personnel, field agents and their managers, that they must refund or offset accounts with pending credit balances within 60 days.

2. MIIX Advantage Insurance Company should cease its policy of not offsetting a credit balance on policies where the credit balance is less than \$25.00. The Company should research its existing book of business to identify such unresolved credit balances and propose a plan to remediate such policies.
3. The Company should not automatically pend credit balances indefinitely on inactive policies. Pursuant to N.J.S.A. 17:29C-4.1, MIIX should provide the proper refunds, no later than 60 days after Company personnel are notified that coverage is not required as of a specific date. A copy of these procedures should be provided to the Commissioner. The Company should research and identify all inactive policies to identify and resolve any credit balances that have pended for more than 60 days. Upon completion of this project, the Company should provide the Commissioner with a computer run that itemizes the current credit balance status of each policy that was reviewed. The computer run should include the following fields: Policy Number, Month and Year where the same credit balance appears beyond 60 days, Amount of the Credit Balance, Date Credit Balance was Resolved, Agent Code, Effective Date of Policy.
4. The Company should remind its staff that resolution of credit balances that result from endorsements on physician accounts should meet the timeframes established under N.J.S.A. 17:29C-4.1. The reminder should include means to address delays caused by the insured, the agent, Company personnel and any other personnel that may be involved in this process. MIIX should provide the Commissioner with a copy of this reminder.
5. The Company should research its entire in-force book of business to ensure that any existing credit balance that has pended for more than 60 days is offset against any premium due or refunded where no debits exists. Upon completion of this project, the Company should provide the Commissioner with a computer run that itemizes the current credit balance status of each policy that was reviewed. The computer run should include the following fields: Policy Number, Month and Year where the same credit balance appears beyond 60 days, Amount of the Credit Balance, Date Credit Balance was Resolved, Agent Code, Effective Date of Policy. A separate report with the same fields should be provided to demonstrate the status of all policies that appear in Appendix A-I through A-IV.
6. In those instances where the Company has entered into special agreements in which agents are provided complete authority to handle the refunds of physician accounts, the Company should develop and implement oversight methodologies that ensure proper and timely resolution of credit balances. The Company should provide the Commissioner with a copy of any policies and procedures designed to implement these changes.

## APPENDIX A-I

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### **Failure to Resolve Credit Balances within 60 Days** **(3 Errors - 3 Credit Balances from the Evolution Refund Report)**

POLICY NUMBER	CREDIT BALANCE AMOUNT	DATE CREDIT BALANCE OCCURRED	DATE CREDIT BALANCE WAS RESOLVED	DAYS TO RESOLVE BEYOND 60
5-CRP0302379	\$ 408.51	4/22/03	6/24/03	3
5-IND0112667	\$9,084.00	6/15/03	8/27/03	13
5-GRP03000101	\$ 25.00	11/11/03	1/25/04	15

## APPENDIX-A-II

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### **Failure to Provide Refund on Inactive Policy Credit Balances under \$25.00** **2 Files in Error (1 Credit Balance from the JPS System and 1 Credit Balance from the Evolution Refund Report)**

POLICY NUMBER	CREDIT BALANCE AMOUNT	DATE CREDIT BALANCE OCCURRED
5-IND2015675	\$ 2.00	3/24/04
5-IND0105321	\$ 22.00	5/20/93

## APPENDIX A-III

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### **Failure to Provide Credit Balance Refund on Inactive Policy** **1 File in Error (1 Credit Balance from the Evolution Refund Report)**

POLICY NUMBER	CREDIT BALANCE AMOUNT	DATE CREDIT BALANCE OCCURRED	DATE CREDIT BALANCE RESOLVED	DAYS TO RESOLVE BEYOND 60*
5-IND0105023	\$ 6,647.00	3/23/04	6/2/04	71

\*Delay as of 6/2/04 only. May be greater, depending on when/if credit balance was ultimately returned.

## APPENDIX A-IV

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### **Failure to Refund Credit Balances within 60 days due to Policy Endorsements** **1 File in Error (1 Credit Balance from the Evolution Refund Report)**

POLICY NUMBER	CREDIT BALANCE AMOUNT	DATE CREDIT BALANCE OCCURRED	DATE CREDIT BALANCE RESOLVED	DAYS TO RESOLVE BEYOND 60
5-GRP2025991	\$ 2,074.00	1/28/04	5/17/04	50

## VERIFICATION PAGE

1. I, Monica P. Koch, am the Examiner-in-Charge of the Market Conduct Examination of MIIX Advantage 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.
2. 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 MIIX Advantage Insurance Company as of August 9, 2004.
3. 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.

\_\_\_\_\_  
Date:

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