

Centers for Medicare & Medicaid Services  
Kansas City Regional Office

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Market Conduct Examination Report

**Fortis Insurance Company**  
Wisconsin: Newborns' and Mothers'  
Health Protection Act

## **Background**

Generally, the requirements of the Newborns' and Mothers' Health Protection Act of 1996 (NMHPA) became effective on January 1, 1998.

As of the commencement of the market conduct examination of Fortis Insurance Company (FIC) the State of Wisconsin had not incorporated into Wisconsin State law provisions and/or requirements that would bring Wisconsin into compliance with the requirements of NMHPA. As a result, pursuant to the requirements found at sections 2722 and 2761 of the Public Health Service Act (42 USC sections 300gg-22, 300gg-61), the enforcement of all or part of the NMHPA in Wisconsin is currently the responsibility of the Centers for Medicare and Medicaid Services (CMS). CMS began its enforcement of the NMHPA in Wisconsin on July 9, 2000.

Utilizing enforcement tools similar to those used by State insurance departments, the CMS KCRO undertook the responsibility of the enforcement of NMHPA through form review, complaint investigation, and market conduct examinations.

On June 5, 2001 a letter was sent to Fortis President Benjamin Cutler II announcing the examination of Fortis.

HuffThomas, a regulatory consulting firm, was contracted by CMS to perform the on-site portion of the market conduct examinations of issuers identified by CMS.

On July 10, 2001 an entrance conference was held at FIC headquarters in Milwaukee, Wisconsin and the examination begun.

## Company History and Background

Fortis Insurance Company (FIC) which was known as Time Insurance Company until April 1998, was founded in 1892 as the LaCrosse Mutual Aid Association. The company became part of N. V. AMEV, a holding company based in the Netherlands, in 1978 (N. V. is now called Fortis AMEV). In 1990, N.V. AMEV joined forces with a Belgian company, A. G. Groupe (now called Fortis AG). The combined operations have now adopted the name Fortis. Fortis' listed companies are Fortis (B) of Belgium and Fortis (NL) of the Netherlands.

FIC is a subsidiary of Fortis Health, which is part of Fortis, Inc., a financial services company that, through its operating companies and affiliates, provides specialty insurance and investment products to businesses, organizations and individuals in the United States. Fortis Inc., is part of the international Fortis group, Fortis AG.

Fortis health products are issued and underwritten by Fortis Insurance Company and John Alden Life Insurance Company of Milwaukee, WI and Fortis Benefits Insurance Company of Kansas City, MO. These three companies make up the organization known as Fortis Health.

FIC offers health care products to individuals and small groups. This includes specialty products, such as, student insurance and a short-term medical plan. It offers its products in each of the states in the United States and also in America Samoa, Puerto Rico and the Virgin Islands. Not all products are offered in all states. The Company sells a variety of life, annuity and health products approved in each territorial market.

Fortis Health officers are as listed below:

Ben Cutler II	President and CEO
David McDonough	Chief Operating Officer
Margaret Crawford	Sr. V.P. Human Resources
Ann Mayberry-French	Sr. V.P. General Counsel
Roger Jones	Sr. V.P. Chief Information Officer

Fortis Insurance Company officers are as listed below:

Benjamin Cutler II	President
Donald Hamm Jr.	Treasurer – V.P.
Ann Mayberry-French	Secretary – V.P.
Steven DeRaleau	V.P.
Michael Kellen	V.P.
David McDonough	V.P.
James Oatman	V.P.
James Srite	V.P.

Peggy Ettestad	V.P.
Kimberly Harm	V.P.
Dean Kopperud	V.P.
Clark Merkley	V.P.
Robert Ogden	V.P.
Leopoldo Toralballa	V.P.
Jack Gochenaur	V.P.
Laura Hohing	V.P.
Jon Nicholson	V.P.
Ross Rosenberg	V.P.

The Company has two types of sales recruitment. It uses regional independent agents and contracts with Managing General Agents (MGA's). The MGA's are large independent agencies, which sometimes have sub-agents, that submit applications to company underwriters. The MGA's do not have binding authority, all issued policies are reviewed and either denied or accepted by Company personnel. There is only one MGA contract in Massachusetts. The Company does not use Third Party Administrators.

The individual market in Massachusetts is currently closed. The Company still writes small group business, however it is not actively pursuing the market.

## **Preliminary Examination Findings In Brief**

With respect to Fortis Insurance Company's (FIC) compliance with the provisions of the Newborns' and Mothers' Health Protection Act of 1996 (NMHPA), the examination noted general compliance with the Act.

One (1) exception was noted with respect to FIC's compliance in the individual market. Specifically, FIC has failed to amend its policies with the required NMHPA notice language outlined at 45 CFR § 148.170(d)(2).

**Exception #1 - - Violation of 45 CFR § 148.170(d)**

**General Subject Area(s) - - Individual Contract Notice Requirements**

## **Background**

Federal Regulations found at 45 CFR 148.170(d) require that an issuer offering health insurance coverage in the individual market which provides benefits for a hospital length of stay in connection with childbirth must disclose in the contract information that notifies covered individuals of their rights under the Newborns' and Mothers' Health Protection Act of 1996 (NMHPA). The regulations also specify the specific disclosure language which must be used to fulfill this requirement.

## **Specific Violation**

- **Fortis Insurance Company (FIC) has failed to modify its individual contracts to include the required NMHPA notice. The currently issued contracts do not contain the required notice nor were the in-force policies endorsed with the necessary language to bring them into compliance.**

Federal Regulations found at 45 CFR 148.170(a)(1) state as follows:

### **148.170 Standards relating to benefits for mothers and newborns.**

(a) *Hospital length of stay – (1) General Rule.* Except as provided in paragraph (a)(5) of this section, an issuer offering health insurance coverage in the individual market that provides benefits for a hospital length of stay in connection with childbirth for a mother or her newborn may not restrict benefits for the stay to less than –

- (i) 48 hours following a vaginal delivery; or
- (ii) 96 hours following a delivery by cesarean section.

FIC issues and/or renews individual policies in Wisconsin. These policies are listed by form number below:

**216, 225, 100, 182, 192, 353, 502, 594,  
524, 525, 534, 544, 556, 557, 584, 596**

Each of the aforementioned policies either provide for traditional maternity benefits and/or hospitalization benefits for non-elective cesarean sections.

Federal Regulations found at 45 CFR 148.170(d) state the following:

- (d) *Notice requirement.* Except as provided in paragraph (d)(4) of this section, an issuer offering health insurance in the individual market must meet the following requirements with respect to benefits for hospital lengths of stay in connection with childbirth:
- (1) *Required statement.* The insurance contract must disclose information that notifies covered individuals of their rights under this section.
  - (2) *Disclosure notice.* To meet the disclosure requirement set forth in paragraph (d)(1) of this section the following disclosure notice must be used:

**Statement of Rights Under the Newborns' and Mothers' Health Protection Act**

Under federal law, health insurance issuers generally may not restrict benefits for any hospital length of stay in connection with childbirth for the mother or newborn child to less than 48 hours following a vaginal delivery, or less than 96 hours following a delivery by cesarean section. However, the issuer may pay for a shorter stay if the attending provider (e.g., your physician, nurse midwife, or physician assistant), after consultation with the mother, discharges the mother or newborn earlier.

Also, under federal law, issuers may not set the level of benefits or out-of-pocket costs so that any later portion of the 48-hour (or 96-hour) stay is treated in a manner less favorable to the mother or newborn than any earlier portion of the stay.

In addition, an issuer may not, under federal law, require that a physician or other health care provider obtain authorization for prescribing a length of stay of up to 48 hours (or 96 hours). However, to use certain providers or facilities, or to reduce your out-of-pocket costs, you may be required to obtain precertification. For information on precertification, contact your issuer.

- (3) *Timing of disclosure.* The disclosure notice in paragraph (d)(2) of this section shall be furnished to the covered individuals in the form of a copy of the contract, or rider (or equivalent amendment to the contract) not later than March 1, 1999.

Federal Regulations found at 45 CFR Part 150, Appendix A to Subpart C of Part 150 – Examples of Violations, II. *Basis for Imposition of Civil Money Penalties – Actions in the Individual Market* (e) lists the following as a basis of imposition of a Civil Money Penalty:

Failure to comply with the standards relating to benefits for mothers and newborns (§ 148.170).

In States where the § 148.170 standards are applicable (see § 148.170 (e)), failure to comply with the §148.170 standards relating to benefits for mothers and newborns includes those circumstances in which a health insurance issuer does the following:

- (10) Fails to provide participants and beneficiaries with a statement describing the requirements of the Newborns' and Mothers' Health Protection Act of 1996, using the language provided at §148.170 (d)(2), not later than March 1, 1999.

FIC became subject to the aforementioned Federal Regulations effective July 9, 2000. However, FIC has failed to amend its policies with the required notice language outlined at 45 CFR § 148.170(d)(2).

### **Adverse Impact to Consumers**

- Without the appropriate notice language as required by regulation, consumers may be unaware of the specific protections to which they are entitled under the requirements of the NMHPA.

### **Recommendation(s)**

- FIC should revise the language of all the policies it currently markets to include the required NMHPA notification.
- FIC should amend all of it's existing polices to include the required NMHPA notification.

**Examination Note:** Information collected by the on-site examiners did reveal FIC made certain efforts to notify group and individual policyholders of the requirements of the NMHPA and to amend these policies to reflect compliance. However, these efforts did not meet the requirements of 45 CFR § 148.170(d).



October 24, 2002

Benjamin Cutler, President  
Fortis Insurance Company  
P.O. Box 3050  
Milwaukee, WI 53201

RE: Women's Health and Cancer Rights Act of 1998 (WHCRA) Market Conduct Examination – **Massachusetts**

Dear Mr. Cutler:

Pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) market conduct examination requirements found at 45 CFR 150.313(e)(3), this letter will convey the results of the Centers for Medicare & Medicaid Services' (CMS') review of Fortis Insurance Company's (FIC) May 28, 2002 response to the WHCRA market conduct examination report of FIC dated March 27, 2002.

Specifically, the requirements of 45 CFR 150.313(e)(3) provide CMS with the following four (4) response options to each issue identified in a market conduct examination report:

- 1) Concurrence with the issuer's position.
- 2) Approval of the issuer's proposed plan of correction.
- 3) Conditional approval of the issuer's proposed plan of correction, which will include any modifications CMS requires.
- 4) Notice to the issuer that there exists a potential violation of HIPAA requirements.

With respect to any issues CMS chooses to "Approve" or "Conditionally Approve" in this letter, should FIC not fulfill the requirements and/or take the appropriate corrective actions within the appropriate time frames, CMS may pursue a Civil Monetary Penalty (CMP) with respect to those issues. In addition, CMS will consider such a failure by FIC to be an aggravating factor as provided for at 45 CFR 150.312 and calculate any CMPs to the maximum amount allowed under the law.

**Exception #1 – Sections 2706 and 2752 of the PHS Act (reference Section 713 of ERISA) – Limited Interpretation of a Mastectomy Impacting Coverage for Breast Reconstruction following a Mastectomy**

**Background** – Information collected by the on-site examiner indicated that FIC’s interpretation of which procedures constitute a mastectomy was more limited than those procedures indicated by FIC’s chosen source of reference for determining the nature of such medical procedures. This narrow interpretation would lead to incorrect and non-compliant denials of the benefit protections provided by WHCRA.

In total, four (4) codes that would otherwise trigger the protections of WHCRA were excluded by FIC.

In FIC’s response, the company indicated they provided the on-site examiner those procedure codes reflecting their understanding of procedures that would constitute a mastectomy. They further indicated the procedure codes cited in the Market Conduct Examination Report would in fact be covered under FIC’s contracts subject to the terms and limitations of those contracts. The company went on to state that claims for services for these procedures would be referred to FIC’s Health Management department for review.

FIC indicated that the company’s Health Management Services and Claims staff would be notified that the procedures in question constitute a “mastectomy” for the purposes of compliance with WHCRA in the State of Massachusetts and that subsequent services for reconstruction, including reconstruction of the other breast to achieve a symmetrical appearance, would be a covered benefit pursuant to WHCRA.

**CMS Response** – Approval of FIC’s proposed plan of correction.

**Exception #2 – Sections 2706 and 2752 of the PHS Act (reference Section 713 of ERISA) – Limited Interpretation of Breast Reconstruction**

**Background** – Information collected by the on-site examiner indicated that FIC’s coverage of breast reconstruction procedures is more limited than those procedures indicated by FIC’s chosen source of reference for determining the nature of such medical procedures. These limitations would lead to incorrect and non-compliant denials of the breast reconstruction benefit protections provided by WHCRA.

In total, five (5) codes that would otherwise be covered procedures pursuant to the requirements of WHCRA were excluded by FIC.

In FIC’s response, the company indicated they provided the on-site examiner those procedure codes reflecting their best estimation of procedures that would constitute breast reconstruction under the terms of WHCRA. They further indicated the procedure codes

cited in the Market Conduct Examination Report would have been reviewed for medical necessity and appropriateness before a determination of coverage would be made.

FIC indicated that the company's Health Management Services and Claims staff would be notified that the procedures in question, when performed subsequent to a mastectomy on covered persons in Massachusetts, would constitute breast reconstruction as contemplated by the requirements of WHCRA. The procedures in question would be a covered benefit in compliance with WHCRA, subject to the terms and limitations of the contract.

CMS Response – Approval of FIC's proposed plan of correction.

**Exception #3 – Sections 2706 of the PHS Act (reference Section 713 of ERISA) – Contract Language – Form Violations – Group Market**

Background – Policy forms collected by the on-site examiner indicated that FIC issued and renewed group health insurance forms that did not accurately reflect the requirements of WHCRA. (NOTE: See report pages 11 – 19 for a complete description of the specific areas of non-compliance).

In FIC's response, they indicated that their forms did not comply with the requirements of WHCRA primarily due to the age of the contracts examined. They further indicated that they provided the on-site examiner with evidence that the company was in full administrative compliance with the requirements of WHCRA and that the identified areas of non-compliance were related to the forms only and were not reflected in benefit claims determinations under WHCRA.

FIC submitted a WHCRA complaint policy form rider (form #27428) and indicated that the new form would be issued to all coverage in force in the group market in Massachusetts upon issuance or renewal of coverage. (A separate letter indicating this agency's acceptance of this form is enclosed).

CMS Response – Conditional approval provided FIC has begun the process of using the aforementioned form with respect to newly issued group business, and has begun amending existing contracts upon renewal. If this activity is not yet underway, FIC should immediately contact this office with an explanation.

**Exception #4 – Sections 2752 of the PHS Act (reference Section 713 of ERISA) – Contract Language – Form Violations – Individual Market**

Background – Policy forms collected by the on-site examiner indicated that FIC renewed individual health insurance forms that did not accurately reflect the requirements of WHCRA. (NOTE: See report pages 20 – 30 for a complete description of the specific areas of non-compliance).

In FIC's response, they indicated that their forms did not comply with the requirements of WHCRA primarily due to the age of the contracts examined. They further indicated that they provided the on-site examiner with evidence that the company was in full administrative compliance with the requirements of WHCRA and that the identified areas of non-compliance were related to the forms only and were not reflected in benefit claims determinations under WHCRA.

FIC submitted a WHCRA complaint policy form rider (form #B105) and indicated that the new form would be issued to all coverage in force in the individual market in Massachusetts upon renewal. (A separate letter indicating this agency's acceptance of this form is enclosed). FIC further indicated that the company does not currently issue new business in the individual market in Massachusetts.

CMS Response – Conditional approval provided FIC has begun the process of amending existing contracts upon renewal. If this activity is not yet underway, FIC should immediately contact this office with an explanation

If you have questions or want to discuss these matters, please contact Jorge Lozano of my Insurance Reform staff at (816) 426-5472, ext. 3120. Thank you for your cooperation.

Sincerely,

/s/

Richard P. Brummel  
Acting Regional Administrator

Enclosure

CC: Gale Arden, CMS, Central Office  
Ruth Bradford, CMS, Central Office  
Evan Doran, CMS, Kansas City Regional Office  
Steven Johnson, FIC  
Christine F. Meyer, FIC



October 24, 2002

Refer to:  
ORA: NMHPA

Mr. Steven E. Johnson  
Market Conduct Analyst  
Fortis Insurance Company  
P.O. Box 3050  
Milwaukee, WI 53201-3050

RE: C99.100.SIG.WI, et al.

Dear Mr. Johnson:

This letter conveys the results of our review of the above captioned forms.

At this time, the State of Wisconsin has not incorporated into law provisions and/or requirements that would bring Wisconsin State law into compliance with the requirements of the Newborns' and Mothers' Health Protection Act of 1996 (NMHPA). As a result, the enforcement of NMHPA in Wisconsin is presently the responsibility of this office.

The captioned forms have been accepted by this office as of the date of this letter with respect to those issues which evidence compliance with the NMHPA. We have not enclosed stamped copies of the accepted forms, as this letter will serve as your record of our acceptance. Please be advised that this review does not replace any form review and/or approval procedures required by Wisconsin State insurance law.

Please note that in accordance with Federal Regulations found at 45 CFR 150.319, this agency is allowed to take into account the insurer's previous record of compliance with respect to situations which arise where the imposition of a Civil Monetary Penalty is warranted. This notification of acceptance of the captioned form filing and your company's cooperation in this process will become a part of the record that will be maintained as evidence of your effort to comply with the NMHPA.

If there are any questions or if discussion is desired, please contact Evan Doran of this office at (816) 426-5472, ext. 3119. Once again, thank you for your cooperation.

Sincerely yours,

/s/

Richard P. Brummel  
Acting Regional Administrator

CC: Benjamin Cutler  
Christine F. Meyer