

FEB 26 2002

DEPT. OF INSURANCE  
BY CB

STATE OF ARIZONA

DEPARTMENT OF INSURANCE

In the Matter of:

**TRUSTMARK INSURANCE COMPANY,**

NAIC #61425,

Respondent

) Docket No. 02A-042-INS

) **CONSENT ORDER**

Examiners for the Department of Insurance (the "Department") conducted a market conduct examination of Trustmark Insurance Company ("Trustmark"). The Report of Examination of the Market Conduct Affairs of Trustmark Insurance Company alleges that Trustmark has violated A.R.S. §§20-448.01, 20-461, 20-466.03, 20-1402, 20-1408, 20-2106, 20-2301, 20-2309, 20-2310, 20-2321, 20-2322, 20-2532, 20-2536 and A.A.C. R20-6-201, R20-6-801, R20-6-1203, and R20-6-1205.

Trustmark wishes to resolve this matter without formal proceedings, admits that the following Findings of Fact are true, and consents to the entry of the following Conclusions of Law and Order.

**FINDINGS OF FACT**

1. Trustmark is authorized to transact life and disability insurance pursuant to a Certificate of Authority issued by the Director.

2. The Examiners were authorized by the Director to conduct a market conduct examination of Trustmark. The on-site examination covered the time period from April 1, 1996 through March 31, 1999, and was concluded on November 23, 1999. Based on the findings the Examiners prepared the "Report of Examination of

1 the Market Conduct Affairs of Trustmark Insurance Company”, dated November 23,  
2 1999.

3 3. The Examiners reviewed an unknown number of policy forms, application  
4 forms, form letters, HIV-related test consent forms, disclosure forms and claim forms  
5 utilized by the Company during the time frame of the examination and found as  
6 follows:

7 a. Trustmark used a claim form (F364-62/R2-94) that failed to  
8 contain a compliant version of the fraud warning statement.

9 b. Trustmark used one HIV-related test consent form (191-164 AZ)  
10 that was not filed nor approved by the Director.

11 c. Trustmark used three enrollment forms (UW3 R1 (1-96), UW3 TX  
12 (5-98), UW3 (1-96)) that failed to disclose that the individual or his representative is  
13 entitled to receive a copy of the authorization for the release of information.

14 d. Trustmark used one policy form (C989C), a certificate of coverage,  
15 that did not comply with applicable law by:

16 i. Excluding benefits for any condition specifically excluded  
17 from coverage by an elimination rider.

18 ii. Allowing credit against Pre-existing Condition Exclusions for  
19 each month of qualifying previous coverage was continuous to a date not more than 30  
20 days before the effective date of the coverage.

21 iii. Failing to allow the enrollment of dependents without  
22 evidence of insurability.

23 iv. Providing that conversion applies only after 90 days of  
24 continuous coverage.

25

1 v. Failing to provide coverage that is most similar to the  
2 coverage provided under its group policies, to persons exercising their conversion  
3 right.

4 e. Trustmark used one policy form (S989C), a certificate of coverage,  
5 that did not comply with applicable law by:

6 i. Stating that benefits for pre-existing conditions will be  
7 limited to \$2,000 for persons continuously covered under a prior group coverage being  
8 replaced by this benefit.

9 ii. Limiting benefits to the end of an 18-month period during  
10 which the person is continuously covered under this benefit.

11 iii. Stating that benefits for pre-existing conditions will be paid  
12 as if the condition was not pre-existing for persons continuously covered under prior  
13 group coverage being replaced by this benefit.

14 iv. Requiring that a provider obtain pre-certification for  
15 prescribing the minimum length of stay for childbirth admission.

16 v. Stating that conversion applies only after three months of  
17 continuous employment.

18 vi. Providing that the conversion policy will generally provide  
19 basic hospital and surgical benefits that are less than those provided by the group  
20 coverage.

21 f. Trustmark used one policy form (C/S989C-04 03), amendment to  
22 certificates of coverage C989C and S989C, that did not comply with applicable law by:

23 i. Stating that the limit for pre-existing conditions shall not  
24 apply to a newborn or adopted child if coverage is requested within 30 days of birth.

25

1                   ii.     Stating that the limit for pre-existing conditions shall not  
2 apply to the time a person was covered under creditable coverage if such creditable  
3 coverage provided the same or greater benefits as those provided herein.

4                   iii.     Stating that late enrollees must enroll within 30 days.

5                   g.     Trustmark used one policy form (GAZ (After 7/1/97)) that did not  
6 comply with applicable law by:

7                   i.     Limiting mental health benefits to an amount less than the  
8 lifetime maximum for all health services or health benefits.

9                   ii.     Stating that the limit for pre-existing conditions shall not  
10 apply to the time a person was covered under creditable coverage if such creditable  
11 coverage provided the same or greater benefits as those provided herein.

12                  iii.     Requiring that a provider obtain pre-certification for  
13 prescribing the minimum length of stay for childbirth admission.

14                  iv.     Providing that conversion applies only after 90 days of  
15 continuous coverage.

16                  v.     Providing that conversion cannot be made by the insured if  
17 coverage terminates for employee misconduct.

18                  vi.     Providing that the conversion policy will generally provide  
19 basic hospital and surgical benefits that are less than those provided by the group  
20 coverage.

21                  vii.    Failing to include all exceptions where a person shall not be  
22 considered a late enrollee.

23                  h.     Trustmark used a claims investigation form that failed to comply  
24 with applicable law by:

1 i. Failing to specify the length of time that the authorization  
2 remains valid.

3 ii. Failing to include language that the individual or the  
4 individual's authorized representative was entitled to receive a copy of the form.

5 i. Trustmark used an employee enrollment form (NYU/1998/FI-NON-  
6 MED (3/98)) that failed to comply with applicable law by:

7 i. Stating that if the employee has declined enrollment  
8 because other health insurance coverage that the employee may be able to enroll in  
9 the plan in the future if enrollment is requested within 30 days after coverage ends.

10 ii. Stating that if the employee has a new dependent as a  
11 result of marriage, birth, adoption or placement for adoption, that the employee may be  
12 able to enroll the dependents provided that he requests enrollment within 30 days.

13 j. Trustmark used a Pre-existing Condition Exclusion letter that failed  
14 to comply with applicable law by stating that pre-existing conditions are conditions for  
15 which medical advice, diagnosis, care, or treatment was recommended or received  
16 within the six-month period preceding the first day of the waiting period for enrollment.

17 k. Trustmark used a group policy form (GXX) that failed to comply  
18 with applicable law by:

19 i. Failing to include language that provided for the right of all  
20 persons covered under the group contract to convert to an individual disability policy  
21 for any reason other than non-payment of premium.

22 ii. Failing to include all of the exceptions that would qualify an  
23 enrollee to not be considered a late enrollee.

24 iii. Stating that the Company may choose to non-renew the  
25 coverage if the Company is no longer marketing this plan on the contract anniversary

1 date, and that the Company would, in that instance, offer to the Employer/Assured the  
2 currently marketed version of similar group health coverage.

3 iv. Stating that the limit for pre-existing conditions shall not  
4 apply to the time a person was covered under creditable coverage if such creditable  
5 coverage provided the same or greater benefits as those provided herein.

6 v. Requiring that a provider obtain pre-certification for  
7 prescribing the minimum length of stay for childbirth admission.

8 l. Trustmark used a group certificate form (GAZ), as the coverage  
9 certificate for all group health insurance issued, that failed to comply with applicable  
10 law by:

11 i. Failing to include all of the exceptions that would qualify an  
12 enrollee to not be considered a late enrollee.

13 ii. Stating that the limit for pre-existing conditions shall not  
14 apply to a newborn or adopted child if coverage is requested within 30 days of birth.

15 iii. Stating that the limit for pre-existing conditions shall not  
16 apply to the time a person was covered under creditable coverage if such creditable  
17 coverage provided the same or greater benefits as those provided herein.

18 iv. Providing that conversion cannot be made by the insured if  
19 coverage terminates for employee misconduct.

20 v. Providing that conversion privilege was available after a  
21 person had been continuously covered for at least 90 days.

22 m. Trustmark used a form (G456-2(7/3)), Evidence Of Insurability,  
23 that failed to comply with applicable law by:

24 i. Failing to state the length of time that the authorization  
25 remains valid.

1                   ii.       Failing to disclose that the individual or their representative  
2 is entitled to receive a copy of the authorization for the release of information.

3                   n.       Trustmark used two form letters ("Notice of Changes to ACEC  
4 Life/Health Plan Effective January 1, 1998" and an Enrollment Denial Letter) that  
5 defined a late enrollee as an employee or dependent who requests coverage more  
6 than 30 days after the initial eligibility date.

7                   o.       Trustmark used a policy amendment to all Certificates of  
8 Coverage that failed to comply with applicable law by:

9                   i.       Failing to list all of the events that qualify as special or late  
10 enrollments.

11                   ii.       Failing to include loss of coverage under other health  
12 benefits plans in its definition of a special enrollee.

13                   iii.       Stating that special enrollees must enroll within 30 days  
14 after termination or expiration of coverage.

15                   p.       Trust mark used four individual health policy forms (TEMP TELE-  
16 MED, TELE-MED II, TELE-MED III, TELE-MED IV) that contained language which  
17 stated that the benefits for the treatment of AIDS and AIDS-Related Complex are  
18 limited to a \$25,000 lifetime benefit. These are lesser amounts than would be allowed  
19 for all other diseases. The lifetime benefit for all other diseases is \$2,000,000.

20                   4.       The Examiners reviewed an unknown number of advertising materials  
21 used by the Company during the time frame of the examination and found as follows:

22                   a.       Trustmark used two individual health advertising forms (F679-112  
23 and F679-101 for TELE-MED individual major medical coverage in Arizona) that  
24 stated: The benefits for the treatment of AIDS and AIDS-Related Complex are limited  
25 to a \$25,000 maximum for the first five years of coverage. These are lesser amounts

1 than would be allowed for all other diseases. The lifetime benefit for all other diseases  
2 is \$2,000,000.

3 b. Trustmark used one group health advertising form (UW50(1-94))  
4 that stated there was a 30-day gap in coverage required to receive credit for prior  
5 credible coverage.

6 c. Trustmark used an advertising form (83-203 M/B) that failed to  
7 disclose the extent to which any loss is not covered if it is traceable to a condition  
8 existing prior to the effective date of the policy.

9 d. Trustmark used an advertising form titled "Trustmark Select Plan"  
10 that did not comply with applicable law by stating that normal pregnancy benefits will  
11 be paid for hospital charges if the mother goes home the same day that the baby is  
12 born or the next day.

13 5. The Examiners reviewed the Company's compliance with Arizona's  
14 health care appeal and grievance statutes and found that Trustmark failed to have a  
15 utilization review plan filed with the Director from July 1, 1998 until March 31, 1999.

16 6. Benefit Claims Payors, Inc. (BCP) is a third party administrator appointed  
17 by New York Underwriters, Inc. (NYU) in accordance with a Managing General  
18 Underwriting Agreement between Trustmark and NYU.

19 7. The Examiners reviewed 33 of 33 appeals processed by BCP on behalf  
20 of Trustmark during the time frame of the examination and found as follows:

21 a. BCP failed to mail a written acknowledgement to 33 members and  
22 the member's treating provider within five business days after the request for appeal.

23 b. BCP failed to have a licensed physician or other licensed health  
24 care professional review 31 appeals and render a decision.

25



1 c. BCP failed to notify seven members in writing of its decision within  
2 60 days of receipt of the written appeal.

3 d. BCP denied 17 appeals and did not initiate the external  
4 independent review process and failed to provide the members with notice of the  
5 option to proceed to an external independent review.

6 8. The Examiners reviewed 1,093 of 23,294 group and individual life and  
7 health insurance policies issued, declined, terminated, renewed, or otherwise  
8 processed by the Company or its Administrators, on behalf of Trustmark, during the  
9 time frame of the examination and found as follows:

10 a. Trustmark failed to offer a group conversion policy that provided  
11 the most similar benefits to the terminated policy, and failed to offer a monthly  
12 premium payment plan to 61 insureds.

13 b. Trustmark failed to include in 142 renewal notices, an explanation  
14 of the extent to which any increase in premium was due to the actual or expected  
15 claims experience of the individuals covered under the employers health plan.

16 c. Trustmark failed to send 185 renewal notices at least 60 days prior  
17 to the expiration of the health benefits plan.

18 9. The Examiners reviewed 1,174 of 259,268 life insurance, Medicare  
19 supplement insurance, and health insurance claims processed by the Company or its  
20 Administrators during the time frame of the examination and found as follows:

21 a. Trustmark failed to acknowledge the receipt of 171 claims within  
22 ten working days.

23 b. Trustmark failed to complete the investigation of 101 claims within  
24 30 days.

1 c. Trustmark failed to accept or deny 320 claims within 15 working  
2 days of receipt of an acceptable proof of loss.

3 **CONCLUSIONS OF LAW**

4 1. Trustmark violated A.R.S. §20-466.03 by utilizing a claim form that failed  
5 to contain a compliant fraud warning statement.

6 2. Trustmark violated A.R.S. §20-448.01(B) and A.A.C. R20-6-1203(C) by  
7 using an HIV-related test consent form that was not filed nor approved by the Director.

8 3. Trustmark violated A.R.S. § 20-2106(9) by failing to disclose that the  
9 individual or their representative is entitled to receive a copy of the authorization for the  
10 release of information.

11 4. Trustmark violated A.R.S. § 20-2310(B)(1) by excluding benefits for any  
12 pre-existing condition for more than 12 months for a regular enrollee and 18 months  
13 for a late enrollee.

14 5. Trustmark violated A.R.S. § 20-2310(E)(6) by imposing a preexisting  
15 exclusion in the case of an individual who is covered under creditable coverage 31  
16 days after the individual's date of birth.

17 6. Trustmark violated A.R.S. § 20-2301(A)(15) by:

18 a. Failing to allow the enrollment of dependents without evidence of  
19 insurability.

20 b. Stating that special enrollees must enroll within 30 days.

21 c. Failing to include all exceptions where a person shall not be  
22 considered a late enrollee.

23 d. Failing to include loss of coverage under other health benefits  
24 plans in its definition of a special enrollee.

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1           7.     Trustmark violated A.R.S. § 20-1408(A) by allowing conversion only after  
2 90 days of continuous coverage.

3           8.     Trustmark violated A.R.S. § 20-1408(B) by failing to provide coverage  
4 that is most similar to the coverage provided under its group policies, to persons  
5 exercising their conversion right.

6           9.     Trustmark violated A.R.S. § 20-2310(B)(2) by failing to reduce the period  
7 of any applicable preexisting condition exclusion by the aggregate of the periods of  
8 creditable coverage that apply to the individual, and limiting benefits for pre-existing  
9 conditions which were covered under prior group coverage.

10          10.    Trustmark violated A.R.S. § 20-2310(E)(6) by imposing a preexisting  
11 exclusion in the case of an individual who is covered under creditable coverage 31  
12 days after the individual's date of birth.

13          11.    Trustmark violated A.R.S. § 20-2321(F) by requiring that a provider  
14 obtain pre-certification for prescribing the minimum length of stay for childbirth.

15          12.    Trustmark violated A.R.S. § 20-2322(B)(2) by limiting mental health  
16 benefits to an amount less than the lifetime maximum for all health services or health  
17 benefits.

18          13.    Trustmark violated A.R.S. § 20-2310(E)(5) by failing to determine the  
19 extent to which an individual has satisfied any portion of any applicable preexisting  
20 condition period by counting a period of creditable coverage without regard to the  
21 specific benefits covered during that period.

22          14.    Trustmark violated A.R.S. § 20-2309(A) by:

23            a.     Not providing at least 60 days prior written notice to the employer,  
24 regarding the terms for renewal of the plan.

1           b.     Failing to explain in its renewal notice the extent to which any  
2 increase in premium was due to the actual or expected claims experience of the  
3 individuals covered under the employer's health plan.

4           15.    Trustmark violated A.R.S. § 20-2106(8) by failing to specify the length of  
5 time that the authorization remains valid in the case of authorizations signed for the  
6 purpose of gathering information regarding a claim for benefits.

7           16.    Trustmark violated A.R.S. § 20-2301(A)(20) by defining a pre-existing  
8 condition as a condition for which medical advice, diagnosis, care, or treatment was  
9 recommended or received within the six-month period preceding the first day of the  
10 waiting period for enrollment.

11          17.    Trustmark violated A.R.S. § 20-2309(E)(3) by including language in a  
12 group policy form that fails to offer the employer the option to purchase all other health  
13 benefits plans currently offered by the Company, when the current plan was non-  
14 renewed by the Company.

15          18.    Trustmark violated A.R.S. § 20-2310(E)(7) by using language in a group  
16 certificate that states that the limit for pre-existing conditions shall not apply to a  
17 newborn or adopted child if coverage is requested within 30 days of birth.

18          19.    Trustmark violated A.R.S. § 20-2106(7) by failing to specify the length of  
19 time that the authorization remains valid in the case of authorizations signed for the  
20 purpose of gathering information in connection with an application for an insurance  
21 policy.

22          20.    Trustmark violated A.A.C. R20-6-1205(B) by not providing benefits for  
23 HIV, AIDS, and AIDS-related conditions in the same manner and to the same extent  
24 as those benefits provided for all other diseases.

1           21. Trustmark violated A.A.C. R20-6-201(C)(3)(a) by using an advertising  
2 form (83-203 M/B) that failed to disclose the extent to which any loss is not covered if it  
3 is traceable to a condition existing prior to the effective date of the policy.

4           22. Trustmark violated A.R.S. § 20-2532(E) by failing to file a utilization  
5 review plan with the Department prior to March 31, 1999.

6           23. Trustmark violated A.R.S. § 20-2536(B) by failing to mail a written  
7 acknowledgement to the member and the member's treating provider within five  
8 business days after the request for an appeal.

9           24. Trustmark violated A.R.S. § 20-2536(D) by failing to have a licensed  
10 physician or other licensed health care professional review an appeal and render a  
11 decision.

12           25. Trustmark violated A.R.S. § 20-2536(E)(2) by failing to notify members in  
13 writing of their decision within 60 days of receipt of the written appeal.

14           26. Trustmark violated A.R.S. § 20-2536(G) by failing to initiate the external  
15 independent review process and provide the members with notice of the option to  
16 proceed to an external independent review.

17           27. Trustmark violated A.R.S. §§ 20-1408(B) and 20-1408(C) by failing to  
18 offer a group conversion plan that provided benefits most similar to the terminated  
19 policy and a monthly premium payment plan.

20           28. Trustmark violated A.R.S. §20-461(A)(2) and A.A.C. R20-6-801(E)(1) by  
21 failing to acknowledge the receipt of a claim within ten working days.

22           29. Trustmark violated A.R.S. §20-461(A)(3) and A.A.C. R20-6-801(F) by  
23 failing to complete claims investigations within 30 days.



1 h. Failing to send a renewal notice at least 60 days prior to the  
2 expiration of the health benefits plan.

3 i. Applying an inappropriate pre-existing condition exclusion.

4 j. Failing to include the 30-day waiting period in the calculation of  
5 creditable coverage.

6 k. Failing to acknowledge the receipt of a claim within ten working  
7 days.

8 l. Failing to complete the investigation of a claim within 30 days.

9 m. Failing to accept or deny a claim within 15 working days of receipt  
10 of an acceptable proof of loss.

11 2. Within 90 days of filed date of this Order, Trustmark shall submit to the  
12 Arizona Department of Insurance, for approval, evidence that corrections have been  
13 implemented and communicated to the appropriate personnel, regarding all of the  
14 items listed above in Paragraph 1 of the Order section of this Consent Order.  
15 Evidence of corrective action includes but is not limited to memos, bulletins, E-mails,  
16 correspondence, procedures manuals, print screens and training materials.

17 3. The Department shall be permitted, through authorized representatives,  
18 to verify that Trustmark has complied with all provisions of this Order.

19 4. Trustmark shall pay a civil penalty of \$49,900 to the Director for deposit  
20 in the State General Fund in accordance with A.R.S. §20-220(B). This civil penalty  
21 shall be provided to the Market Conduct Examinations Section of the Department prior  
22 to the filing of this Order.

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1           5.     The Report of Examination of the Market Conduct Affairs of Trustmark  
2 Insurance Company dated November 23, 1999, including the letter submitted in  
3 response to the Report of Examination, shall be filed with the Department after the  
4 Director has filed this Order.

5 DATED at Phoenix, Arizona this 26<sup>th</sup> day of February, 2002.

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8 Charles R. Cohen  
9 Director of Insurance  
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1 **CONSENT TO ORDER**

2 1. Trustmark Insurance Company has reviewed the foregoing Order.

3 2. Trustmark Insurance Company admits the jurisdiction of the Director of  
4 Insurance, State of Arizona, admits the foregoing Findings of Fact, and consents to the  
5 entry of the Conclusions of Law and Order.

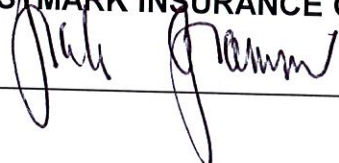
6 3. Trustmark Insurance Company is aware of its right to a hearing, at which  
7 it may be represented by counsel, present evidence, and cross-examine witnesses.  
8 Trustmark Insurance Company irrevocably waives its right to such notice and hearing  
9 and to any court appeals related to this Order.

10 4. Trustmark Insurance Company states that no promise of any kind or  
11 nature whatsoever was made to it to induce it to enter into this Order and that it has  
12 entered into this Consent Order voluntarily.

13 5. Trustmark Insurance Company acknowledges that the acceptance of this  
14 Order by the Director of Insurance, State of Arizona, is solely to settle this matter  
15 against it and does not preclude any other agency or officer of this state or its  
16 subdivisions or any other person from any other civil or criminal proceedings, whether  
17 civil, criminal, or administrative, as may be appropriate now or in the future.

18 6. Frank Gramm who holds the office of General Counsel of Trustmark  
19 Insurance Company, is authorized to enter into this Order for it and on its behalf.

20  
21 2/15/02  
22 Date

23 **TRUSTMARK INSURANCE COMPANY**  
24 By:   
25

1 COPY of the foregoing mailed/delivered  
This 26th day of February 2002, to:

2  
3 Sara Begley  
Deputy Director  
4 Mary Butterfield  
Assistant Director  
5 Consumer Affairs Division  
6 Paul Hogan  
Chief Market Conduct Examiner  
Market Conduct Examinations Section  
7 Alexandra Shafer  
Assistant Director  
8 Life & Health Division  
9 Deloris E. Williamson  
Assistant Director  
10 Rates & Regulations Division  
11 Steve Ferguson  
Assistant Director  
Financial Affairs Division  
12 Terry Cooper  
Manager  
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