

**IN RE:
JOHN ALDEN LIFE INSURANCE COMPANY**

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)
) **CONSENT AGREEMENT**
) **Docket No. INS 03-427**
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This document is a Consent Agreement, authorized by 10 M.R.S.A. § 8003(5)(B), entered into by and among John Alden Life Insurance Company (hereafter also “John Alden”), the Superintendent of the Maine Bureau of Insurance (hereafter “the Superintendent”), and the Office of the Attorney General. Its purpose is to resolve, without resort to an adjudicatory proceeding, violations of the Health Plan Improvement Act, 24-A M.R.S. A. Chapter 56-A and Insurance Rule Chapter 850.

**I
FACTS**

1. The Superintendent is the official charged with administering and enforcing Maine’s insurance laws and regulations.
2. John Alden Life Insurance Company is an insurer licensed to sell health insurance in Maine, license # LHF 724. John Alden short-term health insurance policies issued in Maine are administered by Fortis Insurance Company (Fortis), and John Alden is directly responsible for the actions of Fortis in administering its policies.
3. A John Alden policyholder filed a complaint with the Bureau, complaint number 2003-12819, regarding a denial of benefits under a John Alden short-term health insurance policy. The policy was effective from August 22, 2002 to February 28, 2003.
4. On January 3, 2003, Fortis sent Policyholder a benefit denial letter based on the research of a Fortis investigator, stating in part:

"We have obtained medical information from [your physician]. This information indicates that [your] condition was present before your policy’s effective date...your policy has an exclusion which specifically states pre-existing conditions are not covered under your contract. Therefore, since the submitted expenses were for a pre-existing condition, they would not be covered."

5. Policyholder sent Fortis a letter of appeal dated March 19, 2003, enclosing a March 15, 2003 letter from Policyholder's physician challenging the benefit denial.
6. Fortis sent Policyholder a first level appeal decision dated April 3, 2003, advising that the “Health Management Services Department” had reviewed the appeal, and that the appeal was denied. The letter included the following notice of appeal rights:

“Your appeal has been reviewed according to Fortis Health appeal procedures. You have the right to file a first level grievance regarding this determination. You have 60 days from the date of this letter to submit a written grievance for review. Please submit with your grievance any additional information that you would like to have reviewed. All pertinent information will be considered and reviewed.”

7. On May 29, 2003, Policyholder sent Fortis a second letter of appeal by certified mail, which Fortis received on June 2, 2003. The letter of appeal stated in part:

“I have been advised by the Insurance Bureau of the State of Maine to ask for a second level Grievance Review following your denial of the above referenced claim.”

8. Fortis did not respond to Policyholder’s request for a second level grievance review.

II MAINE LAW

9. Rule Chapter 850(8)(D)(2) is applicable to all adverse healthcare treatment decisions, and provides:

(2) Qualified health care professionals shall administer the utilization review program and oversee review decisions. A clinical peer shall evaluate the clinical appropriateness of adverse determinations.

10. Rule Chapter 850(8)(G)(1)(c) requires an adverse health care treatment appeal decision to include each of the following elements:

- i) The names, titles and qualifying credentials of the person or persons evaluating the appeal;
- ii) A statement of the reviewers’ understanding of the reason for the covered person’s request for an appeal;
- iii) The reviewers’ decision in clear terms and the clinical rationale in sufficient detail for the covered person to respond further to the health carrier’s position;
- iv) A reference to the evidence or documentation used as the basis for the decision...
- v) The notice must advise of any subsequent appeal rights, and the procedure and time limitation for exercising those rights. Notice of external review rights must be provided to the enrollee as required by Title 24-A M.R.S.A. § 4312(3). A description of the process for submitting a written request for second level grievance review pursuant to section 9(D) must include the rights specified in section 9(D)(3)(c).

Section 9(D)(3)(c) provides that a covered person has the right to:

- i. Attend the second level review;
- ii. Present his or her case to the review panel;
- iii. Submit supporting material both before and at the review meeting;
- iv. Ask questions of any representative of the health carrier; and
- v. Be assisted or represented by a person of his or her choice.

11. Title 24-A M.R.S.A. § 4312(3) provides, in part:

(3) Notice to enrollees. A carrier shall notify an enrollee of the enrollee's right to request an external review in large type and easy-to-read language in a conspicuous location on the written notice of an adverse health care treatment decision.

III CONCLUSIONS OF LAW

12. John Alden violated Rule Chapter 850(8)(D)(2) by failing to have the initial, January 3, 2003, adverse determination evaluated by a clinical peer. The adverse determination was evaluated by a non-physician investigator.
13. John Alden violated Rule Chapter 850(8)(G)(1)(c)(i) by failing to provide Policyholder with the names, titles, and qualifying credentials of the person or persons who evaluated the first level appeal.
14. John Alden violated Rule Chapter 850(8)(G)(1)(c)(v) by failing to notify Policyholder of the right to a second level review, and the rights under Rule 850(9)(D)(3)(c) to: (i) Attend the second level review; (ii) Present his or her case to the review panel; (iii) Submit supporting material both before and at the review meeting; (iv) Ask questions of any representative of the health carrier; and (v) Be assisted or represented by a person of his or her choice.
15. John Alden violated Title 24-A M.R.S.A. § 4312(3) and Rule Chapter 850(8)(G)(1)(c)(v) by failing to advise Policyholder of the right to an external review.
16. John Alden violated Rule Chapter 850(9) by failing to respond to Policyholder's request for a second level appeal.

IV COVENANTS

17. John Alden shall pay a civil penalty of Five Thousand Dollars and No cents (\$5,000.00) for the violations described in paragraphs 12-16 above.
18. John Alden shall document that revised appeal provisions for John Alden short-term policies meeting the requirements of Maine law have been mailed to all Maine policyholders within sixty (60) days of executing this agreement.
19. John Alden shall ensure that all future adverse healthcare treatment appeal and grievance decisions issued to Maine policyholders include an explicit statement of the reviewer's understanding of the reason(s) for the covered person's request for an appeal.

V MISCELLANEOUS

20. A formal hearing in this matter is waived and no appeal will be made.
21. John Alden acknowledges that this Consent Agreement is a public record within the meaning of 1 M.R.S.A. § 402 and will be available for public inspection and copying as provided for by 1 M.R.S.A. § 408, and will be reported to the NAIC RIRS database.
22. John Alden has been advised of its right to consult with counsel and has, in fact, consulted with counsel before executing this Agreement.

- 23. The parties to this Agreement understand and agree that nothing herein shall affect any rights or interests of any person not a party to this Agreement.
- 24. Nothing herein shall prohibit the Superintendent from seeking an order to enforce this Agreement, or from seeking additional sanctions in the event that John Alden does not comply with the above terms, or from taking further legal action in the event that the Superintendent receives additional evidence not previously a part of this investigation that further legal action is necessary.

SIGNATURE PAGE

Dated: _____, 2004

JOHN ALDEN LIFE INSURANCE COMPANY

By: _____

Its: _____

Printed Name and Title

Subscribed and sworn to before me
this _____ day of _____, 2004.

Notary Public

Printed name

Date of commission expiration

Dated: _____, 2004

**MAINE OFFICE OF THE ATTORNEY
GENERAL**

Thomas C. Sturtevant, Jr.
Assistant Attorney General

MAINE BUREAU OF INSURANCE

Effective

Date: , 2004

Alessandro A. Iuppa, Superintendent