

**IN THE MISSOURI DEPARTMENT OF INSURANCE,
FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION**

**In Re: FEDERATED MUTUAL)
INSURANCE COMPANY)
SERFF TRACKING NUMBER) Case No. 151008467C
FEMC-130241645)**

ORDER DISAPPROVING FORM FILING

Upon review and consideration of the filing of Federated Mutual Insurance Company, SERFF Tracking Number FEMC-130241645, specifically Forms GH 24 60.3 (09-15 ed.) and GH 24 61.3 (09-15 ed.), the Director DISAPPROVES said forms for the reasons stated below.

FINDINGS OF FACT

1. John M. Huff is the Director of the Department of Insurance, Financial Institutions and Professional Registration, State of Missouri (“Director” of the “Department”).
2. Federated Mutual Insurance Company (“Federated”), NAIC Number 13935, is a foreign life and health insurance company organized pursuant to the laws of the state of Minnesota and transacting insurance business in the state of Missouri pursuant to a Certificate of Authority issued by the Director.
3. Pursuant to §376.405,¹ insurance companies licensed to transact business in this state may not deliver or issue for delivery in this state a policy of accident or health insurance unless the form has been approved.
4. The Insurance Market Regulation Division (the “Division”) is designated pursuant to §374.075 with the review of forms that are filed by insurance companies.
5. Federated filed policy forms with the Director via the System for Electronic Rate and Form Filing (“SERFF”) on September 14, 2015. The SERFF Tracking Number is FEMC-130241645 (“Filing”).
6. The Filing contains, in pertinent part, forms GH 24 60.3 (09-15 ed.), identified as the Group Health Policy Amendment and GH 24 61.3 (09-15 ed.), identified as the Group Health Certificate Amendment (collectively referred to as the “Forms”).
7. Federated filed the Forms within SERFF as Group Health – Major Medical Insurance.

¹ All statutory references are to RSMo (Supp. 2013) unless otherwise noted.

8. Federated stated that the Forms will be used to amend previously approved forms GH 24 10 (01-12 ed.) and GH 24 11 (01-12 ed.), which were submitted under SERFF Tracking Number FEMC-127391727.
9. Form GH 24 10 provides in relevant part: “CONTRACEPTIVE DEVICES Coverage is provided for contraceptive devices ordered by a **physician**. **Prescription drugs** for contraception are covered under the **prescription drug coverage...**” and “ELECTIVE STERILIZATIONS Vasectomies and tubal ligations, for **covered employees and dependent spouses only.**” GH 24 10, pp. 25-26 of 66, emphasis in original. GH 24 11, pp. 25-26 of 64, contains identical provisions.
10. Brackets ([. . .]) within a policy form reviewed by the Division indicate that the language within the brackets may be included or excluded from the policy form, or the brackets may indicate a numeric range.
11. The Forms state in relevant part:

The [policy/certificate]² is changed as follows for policy [9300] issued to [employer name]:

The following is added to Section VI – Covered Services, item 4. Contraceptive Services; Section VI – Covered Services, item 24. Prescription Drugs; Section VI – Covered Services, item 25. Preventive Care, e. For covered persons who are women; Section VII – Exclusions, item 40.; and Section VII – Exclusions, item 42.:

Coverage is not provided for the following contraceptives:

- a. [Sterilization surgery for women;
- b. Surgical sterilization implant for women;
- c. Implantable rod;
- d. IUD Copper,
- e. IUD with Progestin,
- f. Shots or injections of birth control drugs;
- g. Oral contraceptives (combined pill);
- h. Oral contraceptives (progestin only)
- i. Oral contraceptives extended or continuous use;
- j. Birth control patches;
- k. Vaginal contraceptive ring;
- l. Diaphragm with spermicide;
- m. Sponge with spermicide;
- n. Cervical cap with spermicide;
- o. Female condom;
- p. Spermicide;

² This bracket has been added by the Director to combine the differing language of both Forms.

- q. Plan B (including Plan B One Step and Next Choice);
- r. Ella; and
- s. Any other FDA approved contraceptive method for women.]

(Emphasis in originals, format altered for readability).

CONCLUSIONS OF LAW

Pursuant to §376.405, the Director shall approve only those policy forms that are in compliance with Missouri insurance laws, and “which contain such words, phraseology, conditions, and provisions which are specific, certain and unambiguous and reasonably adequate to meet needed requirements for the protection of those insured.” The Director may disapprove a form filed with the Department, and in doing so must state the reasons for the disapproval in writing.³

On June 30, 2014, the Supreme Court of the United States held in *Burwell v. Hobby Lobby Stores, Inc.*,⁴ that it was a violation of the Religious Freedom Restoration Act to require closely held corporations with contrary religious beliefs to provide contraceptive benefits to its female employees as had been required by the Department of Health and Human Services. As a result of this decision, there was a need, in certain instances, to modify or amend insurance policy forms.

On September 14, 2015, Federated filed the Forms to amend its previously approved policy and certificate (GH 24 10 and GH 24 11). The purpose of the amendments is to exclude from its policy and certificate contraception and sterilization coverages for women. Nowhere within the Forms does Federated address the exclusion of such coverages for men. Under Missouri’s insurance laws, treating men differently from women violates the Unfair Trade Practices Act and the prohibition against sex discrimination.

Federated’s Forms Violate the Unfair Trade Practices Act

Under the Unfair Trade Practices Act, unfair discrimination includes: “limiting the amount of coverage available to an individual because of the gender ... of the individual[.]”⁵ While a variety of drugs and devices related to contraception have historically been utilized by the female gender, sterilization is not so limited. Some examples where Federated’s Forms limit the amount of coverage available to an individual because of gender include: “[s]terilization surgery for women;” “[s]urgical sterilization implant for women;” and, “[a]ny other FDA approved contraceptive method for women.” By singling out one gender for which to limit coverage, the Forms are in violation of §375.936(11)(e). As such, the Forms do not comply with the laws of this state as required by §376.405.

³ Section 376.405.

⁴ 134 S.Ct. 2751 (2014).

⁵ Section 375.936(11)(e), RSMo 2000.

Federated's Forms Violate the Prohibition Against Sex Discrimination

The purpose of Missouri's law prohibiting sex discrimination is, in part, "to eliminate the act of denying insurance ... coverage on the sole basis of sex ... in any terms or conditions of insurance contracts[.]"⁶ Such law states:

Neither the amount of benefits payable under a contract, nor any term, condition, or type of coverage within a contract, shall be restricted, modified, excluded, or reduced solely on the basis of the sex ... of the insured or prospective insured[.]⁷

The law also provides specific examples of prohibited practices including, but not limited to:

(7) Restricting, reducing, modifying, or excluding benefits relating to coverage involving the genital organs of only one sex[.]⁸

By excluding contraception and sterilization benefits only for women, the Forms exclude coverage benefits solely based upon the gender of the insured in violation of this statute. By excluding contraception and sterilization benefits only for women, these Forms exclude benefits relating to the coverage of the genital organs of only women.

These Forms are not mandated by the result in *Burwell v. Hobby Lobby, Inc.*⁹ The Court therein did not mandate health insurance forms that discriminated on the basis of gender.

By singling out one gender for which to exclude coverage and by restricting, reducing, modifying, or excluding benefits solely on the basis of the sex of the insured or related to coverage involving the genital organs of only one sex, the Forms are in violation of §375.995.4. As such, the Forms do not comply with the laws of this state as required by §376.405.

After review and consideration of the Forms included in the Federated Filing, the company has failed to demonstrate the Forms' compliance with Missouri law as enumerated herein. While there may be additional reasons as to why these Forms do not comply with Missouri's insurance laws, the reasons stated herein are sufficient to disapprove such forms. Each reason stated herein for disapproval of the Forms is a separate and sufficient cause to disapprove such forms.

Federated's Forms do not comply with Missouri law. As such, said forms are not in the public interest.

This Order is in the public interest.

⁶ Section 375.995.2, RSMo 2000.

⁷ Section 375.995.4.

⁸ *Id.*

⁹ 134 S.Ct. 2751 (2014).

IT IS THEREFORE ORDERED that Forms GH 24 60.3 (09-15 ed.) and GH 24 61.3 (09-15 ed.) are hereby **DISAPPROVED**. Federated Mutual Insurance Company is hereby prohibited from delivering or issuing for delivery any policies of group health insurance utilizing said forms.

SO ORDERED, SIGNED AND OFFICIAL SEAL AFFIXED THIS 30th **day**
of October, 2015.



A handwritten signature in blue ink, appearing to read "John M. Huff", is written over a horizontal line.

JOHN M. HUFF
DIRECTOR

NOTICE

TO: Federated Mutual Insurance Company and any unnamed persons aggrieved by this Order:

You may request a hearing on the disapproval of these forms. You may do so by filing a pleading with the Director of the Department of Insurance, Financial Institutions and Professional Registration, P.O. Box 690, Jefferson City, MO 65102, within 30 days after the mailing of this notice pursuant to 20 CSR 800-1.030.

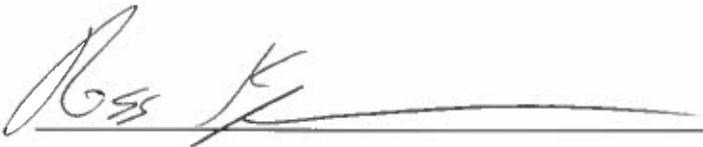
CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of October, 2015, a copy of the foregoing Order and Notice was

Served via certified mail addressed to:

Jeffrey Fetters
President
Federated Mutual Insurance Company
121 East Park Square
Owatonna, MN 55060

Kayla Paape
Compliance Analyst
Federated Mutual Insurance Company
121 East Park Square
Owatonna, MN 55060

A handwritten signature in black ink, appearing to read "Ross K.", is written over a horizontal line.