

BEFORE ALLAN L. MCVEY, INSURANCE COMMISSIONER  
OF THE STATE OF WEST VIRGINIA

*In the Matter of:*

**HIGHMARK WEST VIRGINIA, INC.**

Administrative Proceeding No. 23-IC-155545

**CONSENT ORDER**

In lieu of proceeding with an administrative complaint proceeding, the parties hereto have reached a solution of the matters at issue and desire that a Consent Order be entered accordingly. Highmark West Virginia, Inc. ("Highmark"), NAIC # 54828, understands and agrees that by agreeing to the entry of this Consent Order it waives all rights to an administrative hearing and to judicial review of this matter. Highmark understands and agrees that by agreeing to the entry of this Consent Order it also agrees to the administrative action taken against it as is reflected in the Consent Order. The Insurance Commissioner for the State of West Virginia ("Commissioner") believes the entry of this Consent Order is appropriate and in the public interest.

**JURISDICTION AND APPLICABLE LAW**

The Commissioner/West Virginia Offices of the Insurance Commissioner ("WVOIC") has jurisdiction over the subject matter of this action and over Highmark pursuant to W.Va. Code § 33-24-1, *et seq.* The Insurance Commissioner is charged with the responsibility of verifying Highmark's continued compliance with West Virginia Code and the West Virginia Code of State Rules as well as all other provisions of regulation that Highmark is subjected to, by virtue of its Certificate of Authority to operate in the State of West Virginia.

Pursuant to W.Va. Code § 33-24-4, W. Va. Code § 33-2-9 applies to Highmark. Under the statute, the Commissioner or his examiners may conduct an examination of any company as often as the Commissioner in his discretion considers appropriate. *See* W. Va. Code § 33-2-9(c). Further,

in addition to conducting an examination, the Commissioner or his examiners may, as the Commissioner considers necessary, analyze or review any phase of the operations or methods of doing business of an insurer transacting an insurance business in the State of West Virginia. See W. Va. Code § 33-2-9(h). Under W. Va. Code §33-2-9(i)(1) in conducting examinations, examiners shall observe the guidelines and procedures set forth in the examiners' handbook adopted by the National Association of Insurance Commissioners. The Commissioner may also employ any other guidelines or procedures as the Commissioner may consider appropriate.

W. Va. Code R. §114-15-4.1.c states:

4.1. Examination, analysis and review activities shall include the following as they relate to the operation of entities, individuals or persons subject to the provisions of W. Va. Code §33-2-9:

c. Review of any statements, reports, or reviews of an entity, individual or person's financial condition, performance or market conduct practices including the review or development of any forecasts or projections or any type of filing made or intended to be made with the insurance commissioner. This review shall include but not be limited to the review or investigation of any audited financial report, compilation or review performed by a certified public accountant, actuarial statement or certification, documents submitted in application for licensure or registration in the state, or other matters or materials deemed necessary by the commissioner to fulfill his or her statutory obligations.

According to W. Va. Code §33-4-14(d) each domestic, foreign and alien insurer, organization or corporation shall annually, on or before March 1 each year, and forty-five days after the end of the first, second and third calendar quarters, file with the National Association of Insurance Commissioners a copy of its annual statement convention blank and the quarterly statement blanks, along with such additional filings as prescribed by the Commissioner. The market conduct annual statement ("MCAS") is an additional filing as required under this code section.

Under W.Va. Code §33-2-9(i)(2), every company or person from whom information is sought, its officers, directors and agents shall provide to the examiners timely, convenient and free access at all reasonable hours at its offices to all books, records, accounts, papers, documents and any or all computer or other recordings relating to the property, assets, business and affairs of the company being examined. The officers, directors, employees and agents of the company or person shall facilitate the examination and aid in the examination so far as it is in their power to do so.

Pursuant to W.Va. Code §33-2-9(i)(3), the refusal of any company, by its officers, directors, employees or agents, to submit to examination or to comply with any reasonable written request of the examiners shall be grounds for suspension, revocation, refusal or nonrenewal of any license or authority held by the company to engage in an insurance or other business subject to the commissioner's jurisdiction.

Pursuant to W.Va. Code § 33-24-4, the Unfair Trade Practices Act (Chapter 33, Article 11) applies to Highmark. W.Va. Code § 33-11-3 states, "No person shall engage in this State in any trade practice which is defined in this article as, or determined pursuant to section seven [§ 33-11-7] of this article to be, an unfair method of competition or an unfair or deceptive act or practice in the business of insurance."

Further, W.Va. Code § 33-11-6(a) states:

If, after notice and hearing, the commissioner determines that any person has engaged in or is engaging in any method of competition, act or practice in violation of the provisions of this article or any rules or regulations promulgated by the commissioner thereunder, the commissioner shall issue an order directing the person to cease and desist from engaging in the method of competition, act or practice and, in addition thereto, the commissioner may at his or her discretion order any one or more of the following:

(a) Require the payment to the State of West Virginia of a penalty in a sum not exceeding one thousand dollars for each and every act or violation, but not to exceed an aggregate penalty of ten thousand dollars, unless the person knew or reasonably should have known he or she was in violation of this article, in which case the penalty shall not exceed five thousand dollars for each and every act or violation, but not to exceed an aggregate penalty of one hundred thousand dollars in any six-month period.

#### **EFFECT ON THIRD PARTIES**

This Consent Order does not vest standing in any third party with respect to the terms hereof, nor create for any person, other than the Commissioner, a right to enforce its terms.

#### **ALLEGED FACTS**

Highmark's 2022 MCAS for the company's health line of business was due on May 31, 2023. On or about May 29, 2023, Highmark requested additional time to submit the 2022 Health MCAS, stating that data preparation was delayed. On May 30, 2023, the Commissioner approved a Health MCAS filing extension until June 14, 2023, and advised Highmark that, at this time, West Virginia was not granting extensions beyond June 14, 2023. On June 15, 2023, Highmark was notified by email that the MCAS Filing Status Report from the NAIC database was showing that the MCAS data was not submitted for the health line of business in the State of West Virginia. On July 10, 2023, Highmark requested an additional fifteen-to-thirty-day extension due to a "data glitch" that needed to be resolved prior to filing. The Commissioner denied Highmark's request for an extension on July 11, 2023. Finally, on July 14, 2023, Highmark filed its Health MCAS. In total, the company was thirty days late filing the MCAS.

Additionally, Highmark was late filing its 2020 MCAS. Highmark has been late filing its MCAS two of the last three data years.

#### **AGREED ACTION**

By agreeing to and executing this Consent Order, Highmark agrees to and requests the entry of this Consent Order against it. In addition, Highmark acknowledges that the Commissioner has amassed sufficient evidence such that he would likely prevail at a hearing against Highmark resulting in a civil penalty not to exceed Five Thousand Dollars (\$5,000.00) pursuant to W.Va. Code §§ 33-11-3, 33-11-6, and 33-11-7.

Highmark consents and agrees to imposition against it and payment to the Commissioner of an administrative fine in the amount of Five Thousand (\$5,000.00) dollars.

### **FINAL DISPOSITION**

This Consent Order constitutes the final disposition, except for any enforcement actions with respect to this order as may be necessary, of Administrative Proceeding No. 23-IC-155545.

### **MISCELLANEOUS PROVISIONS**


Jurisdiction of this matter is retained by the Commissioner for enforcement of this Consent Order. Any party hereto may apply to the Commissioner for such further orders and directions as may be necessary or appropriate with respect to the construction and enforcement of this Consent Order. The remedies in this Consent Order are cumulative and in addition to any other remedies the Commissioner may have at law or equity. Nothing herein shall be construed to prevent the Commissioner from commencing any action for conduct not addressed hereunder, even though such conduct may also violate this Consent Order.

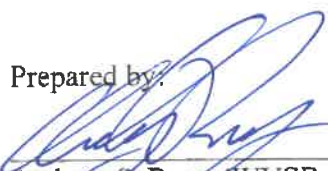
Highmark understands that this is an action taken against it and that this order will be reported to the database maintained by the National Association of Insurance Commissioners (NAIC) and otherwise be made public in accordance with law.


**ORDER**

**WHEREFORE**, the Commissioner finds and concludes, based upon the foregoing, that Highmark violated W.Va. Code §§ 33-11-3, 33-11-6, and 33-11-7. It is, therefore, **ORDERED** that a civil penalty in the amount of Five Thousand Dollars (\$5,000.00) is, hereby, assessed against Highmark, and that such civil penalty shall be paid within 30 days of the entry of this Consent Order.

**ENTERED** on this 21<sup>ST</sup> day of August 2023.

  
Allan L. McVey  
CPCU, ARM, AAI, AAM, AIS  
Insurance Commissioner  
State of West Virginia

Prepared by:   
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Andrew S. Ryan (WVSB #12813)  
Associate Attorney, Regulatory Compliance  
Legal Division  
West Virginia Offices of the Insurance Commissioner  
Post Office Box 50540  
Charleston, West Virginia 25305-0540

Reviewed and agreed to by:  
  
HIGHMARK WEST VIRGINIA, INC.  
By: JAMES LOVE FAWCETT JR.  
(Print Name)  
Title: PRESIDENT  
Signature:   
Date: 8-17-2023