

BEFORE JAMES A. DODRILL, INSURANCE COMMISSIONER
OF THE STATE OF WEST VIRGINIA

In the Matter of:

**HIGHMARK WEST VIRGINIA INC.
DBA HIGHMARK BLUE CROSS BLUE SHIELD
WEST VIRGINIA**

Administrative Proceeding No. 20-CORF-02000

CONSENT ORDER

In lieu of proceeding with an administrative complaint proceeding, the parties hereto have reached a resolution of the matters at issue and desire that a Consent Order be entered accordingly. Highmark West Virginia Inc. (“Highmark”), 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. Further, 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. Finally, 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

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.* W.Va. Code § 33-24-6(c) states,

No rates to be charged subscribers shall be used or established by any such corporation unless and until the same have been filed with the commissioner and approved by him. The procedure for such filing and approval shall be the same as that prescribed in subsection (b) of this section for the approval of forms. The commissioner shall approve all such rates which are not excessive, inadequate or unfairly discriminatory.

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 filed for a large group rate increase on June 28, 2019, and on August 6, 2019. The June 28th filing, MSBC-131998085, requested a 3% increase. Although the filing was not made until June 28, 2019, Highmark had already implemented the increase on March 1, 2019. The

August 6th filing, MSBC-132036152, requested a 14% increase. The Commissioner approved a 7% increase. Highmark implemented the August 6th filing prior to the Commissioner's approval of the 7% increase.

Upon review of information and data, it has been determined that approximately twenty (20) policyholders were impacted by Highmark's use of unapproved rates. The unapproved rates used by Highmark caused improper increases in policyholders' premiums.

Highmark, on its own initiative, began taking corrective action to address the policyholders impacted by the unapproved rates by issuing restitution for the amounts that the policyholders were overcharged. Highmark has also issued invoices with the new proper rates.

AGREED ACTION

By agreeing to and executing this Consent Order, Highmark agrees to and requests the entry of this Consent Order. Highmark acknowledges that the Commissioner would likely prevail at a hearing against Highmark resulting in a civil penalty not to exceed Five Thousand Dollars (\$5,000.00) **per violation** pursuant to W.Va. Code §§ 33-11-3, 33-11-6, and 33-11-7. The facts, as stated above, reveal that twenty (20) policyholders were impacted resulting in twenty (20) violations which could effectuate a maximum penalty of One Hundred Thousand Dollars (\$100,000.00).

Highmark consents and agrees to the imposition of and payment to the Commissioner of an administrative fine in the amount of Two Thousand Five Hundred Dollars (\$2,500.00) **per violation** (twenty violations) resulting in a penalty totaling Fifty Thousand Dollars (\$50,000.00) to be paid within 30 days of the entry of this Order.

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. 20-CORF-02000.

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 Consent 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


Inasmuch as the Commissioner finds and concludes, based upon the foregoing, that Highmark violated W.Va. Code §§ 33-11-3, 33-11-6, 33-11-7 and 33-24-6, it is **ORDERED** that a civil penalty in the amount of Fifty Thousand Dollars (\$50,000.00) be, and the same 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 18th day of June 2020.



JAMES A. DODRILL
Insurance Commissioner
State of West Virginia

Prepared by:



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Post Office Box 50540
Charleston, West Virginia 25305-0540

Reviewed and agreed to by:

HIGHMARK WEST VIRGINIA INC.

By: James L. Fawcett
Print Name

Its: President

Signature: 

Date: June 16, 2020