

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. 21-IC-02191

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(b) states:

No such corporation shall deliver or issue for delivery any subscriber's contract, changes in the terms of such contract, application, rider or endorsement, until a copy thereof and the rates pertaining thereto have been filed with and approved by the commissioner. All such forms filed with the commissioner shall be deemed approved after the expiration of sixty days from the date of such filing unless the commissioner shall have disapproved the same, stating his reasons for such disapproval in writing. Such forms

may be used prior to the expiration of such periods if written approval thereof has been received from the commissioner.

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 issued forms in their small group transitional block of business that had not been approved by the Commissioner. Highmark discovered that the small group grandmothers/transitional certificates to be effective July 1, 2021 were filed with the Commissioner on July 30, 2021, but Highmark began renewing the grandmothers/transitional groups on July 1, 2021. Highmark self-reported the issue to the Commissioner and stated that approximately 222 grandmothers/transitional groups renewed from July 1 to September 1, 2021 before the forms were approved. The forms at issue were approved by the Commissioner on August 30, 2021 with an effective date of September 30, 2021.

### 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 two-hundred twenty-two (222) grandmothers/transitional groups were renewed prior to the forms being approved by the Commissioner.

Highmark consents and agrees to the imposition of and payment to the Commissioner of an administrative fine in the amount of Seventy-Five Thousand Dollars (\$75,000.00) 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. 21-IC-02191.

MISCELLANEOUS PROVISIONS

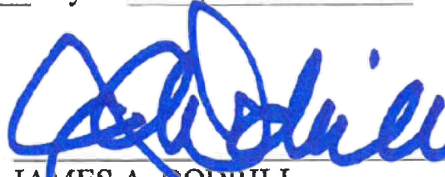
Jurisdiction of this matter is retained by the Commissioner for enforcement of this Consent Order. Any party hereto may apply to the Commissioner for such further orders and directions as may be necessary or appropriate with respect to the construction and enforcement of this Consent Order. The remedies 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 Seventy-Five Thousand Dollars (\$75,000.00) 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 16th day of September 2021.



JAMES A. DODRILL  
Insurance Commissioner  
State of West Virginia

Prepared by:

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Jeffrey C. Black (WVSB #8188)

Attorney Supervisor, Regulatory Compliance  
Legal Division

West Virginia Offices of the Insurance Commissioner  
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Charleston, West Virginia 25305-0540

Reviewed and agreed to by:

HIGHMARK WEST VIRGINIA, INC.

By: James L. Fawcett

Print Name

Its: President

Signature: *James L. Fawcett*

Date: 9/7/2021