

1 STATE OF OREGON  
2 DEPARTMENT OF CONSUMER AND BUSINESS SERVICES  
3 INSURANCE DIVISION  
4

5 In the Matter of Bankers Life and Casualty ) AMENDED  
6 Company ) STIPULATION and  
7 ) FINAL ORDER  
8 ) Case No. INS 13-06-003  
9

10 STIPULATION

11 The Director of the Oregon Department of Consumer and Business Services  
12 (director), and through the Insurance Division, commenced this administrative  
13 proceeding, pursuant to Oregon Revised Statutes (ORS) 731.256, to take  
14 enforcement action against Bankers Life and Casualty Company (Bankers Life).

15 Bankers Life desires to conclude this proceeding without a hearing by entering  
16 into this stipulation pursuant to ORS 183.417(3).

17 Bankers Life waives all rights relative to an administrative hearing to  
18 determine the individual facts of each case, which would entail significant time,  
19 effort and expense given the variation in policy forms and the individual facts of  
20 each policyholder and his or her claim(s), and judicial review thereof.

21 Bankers Life therefore stipulates to the following facts, conclusions, action, and  
22 to the issuance of a final order incorporating this stipulation.

23 Bankers Life understands that the stipulation and final order is a public record  
24 and shall be posted permanently on the Insurance Division's website.

25 **Facts and Conclusions**

26 Licensing Information

27 Bankers Life has been licensed in Oregon as a foreign insurer since 12/16/52.  
28 Bankers Life's NAIC number (cocode) is 61263, and federal employer identification  
29 number (FEIN) is 36-0770740. Bankers Life's last recorded principal place of  
30 business address is 111 E Wacker Drive Suite 2100, Chicago, IL 60601-4508; and  
31 telephone number is 317-817-4000.  
32

1 Failed to Acknowledge and Act Promptly Upon Communication About Claim

2 Bankers Life is subject to enforcement action pursuant to ORS 746.230(1)(b)  
3 because of the following circumstances. ORS 746.230(1)(b) states “No insurer or  
4 other person shall commit or perform any of the following unfair claim settlement  
5 practices:...(b) Failing to acknowledge and act promptly upon communications  
6 relating to claims.” In the following five instances, Bankers Life failed to  
7 acknowledge and act promptly upon a communication relating to a claim.

8 1. At all relevant times, a person residing in Oregon was insured by Bankers  
9 Life under a long term care insurance policy. On 11/8/10, the representative of the  
10 person called Bankers Life, informed it that the person would soon begin receiving  
11 health care services from a provider and asked how to file a claim for payment for  
12 such services. On the same date, the representative filed a claim. The  
13 representative called Bankers Life about the status of the claim on 11/15/10,  
14 11/16/10, 12/27/10, 1/7/11, 2/2/11 and 2/16/11. On 11/15/10, the first day that the  
15 representative called Bankers Life, Bankers Life called the provider to obtain  
16 additional information about the potential claim. The provider said that it was  
17 waiting for prior approval before providing any services to the person. Bankers Life  
18 said that it did not give prior approval and closed the claim. On 11/30/10, Bankers  
19 Life began receiving from the provider claims for payment for services provided to  
20 the person and to the person’s spouse. On 2/16/11, after the representative had  
21 called Bankers Life five additional times, the person filed a complaint with the  
22 director. On 3/4/11, Bankers Life reviewed the person’s claim and determined that  
23 the person was not eligible for benefits because the person was not functionally  
24 incapacitated, was not cognitively impaired, or did not need medically necessary  
25 care. On 3/7/11, Bankers Life denied the claim.

26 2. At all relevant times, a person residing in Oregon was insured by Bankers  
27 Life under a long term care insurance policy. On 5/13/11, Bankers Life received  
28 from a health care provider an updated plan of care showing that the person needed  
29 full time care. On 6/16/11, Bankers Life received from the provider a claim for  
30 payment for health care services provided to the person in May 2011. On 6/18/11,

1 Bankers Life paid part of the claim. On 7/14/11, the person filed a complaint with  
2 the director. On 8/5/11, Bankers Life decided to pay the remainder of the claim.

3 3. At all relevant times, a person residing in Oregon was insured by Bankers  
4 Life under a long term care insurance policy. On 12/27/11, Bankers Life was  
5 notified by health care provider that the provider would be providing health care  
6 services to the person and would be filing a claim for payment for such services.  
7 Bankers Life needed certain additional information. On 2/17/12, 52 days later,  
8 Bankers Life requested the additional information.

9 4. At all relevant times, a person residing in Oregon was insured by Bankers  
10 Life under a short term convalescent care insurance policy. On 6/8/12, Bankers Life  
11 received from a health care provider a claim for payment for health care services  
12 provided to the person from 1/1/11 to 7/27/11. On 6/18/12, Bankers Life  
13 acknowledged the claim. Bankers Life did not further process the claim. On 8/3/12,  
14 the representative of the person called Bankers Life about the status of the claim.  
15 Again, Bankers Life did not further process the claim. Also, Bankers Life did not  
16 notify the person by 8/2/12 why Bankers Life had not paid the claim. On 8/14/12,  
17 the person filed a complaint with the director. On 8/15/12, Bankers Life reviewed  
18 the claim. On 9/6/12, Bankers Life decided to pay the claim. However, due to the  
19 size of the payment, Bankers Life audited the payment. On 9/22/12, Bankers Life  
20 paid the claim.

21 5. At all relevant times, a person residing in Oregon was insured by Bankers  
22 Life under a long term care insurance policy. On 7/23/12, Bankers Life received  
23 from a health care provider a claim for payment for health care services provided to  
24 the person from 3/1/12 to 6/28/12. However, the claim included illegible daily care  
25 notes. On 8/17/12, Bankers Life received legible daily care notes. Bankers Life  
26 began processing the claim by entering certain information into its computerized  
27 claim processing system, but did not further process the claim until later. On  
28 9/7/12, the person filed a complaint with the director. On 10/23/12, Bankers Life  
29 decided to pay the claim.

1 Refused to Pay Claim Without Conducting a Reasonable Investigation

2 Bankers Life is subject to enforcement action pursuant to ORS 746.230(1)(d)  
3 because of the following circumstances. ORS 746.230(1)(d) states “No insurer or  
4 other person shall commit or perform any of the following unfair claim settlement  
5 practices:...(d) Refusing to pay claims without conducting a reasonable  
6 investigation based on all available information.” In the following 23 instances,  
7 Bankers Life refused to pay a claim before conducting a reasonable investigation  
8 thereof.

9 1. At all relevant times, a person residing in Oregon was insured by Bankers  
10 Life under a long term care insurance policy. On 8/25/05, Bankers Life received  
11 from a health care provider a claim for payment for health care services provided to  
12 the person in July 2005. The claim indicated that the person was cognitively  
13 impaired. However, the claim did not provide certain necessary information about  
14 the results of tests used to determine the person’s condition. Bankers Life did not  
15 request the information. On 9/27/05, Bankers Life denied the claim. On 10/17/05,  
16 Bankers Life received the information. On 10/12/05, the person filed a complaint  
17 with the director. On 11/2/05, Bankers Life decided to pay the claim.

18 2. At all relevant times, a person residing in Oregon was insured by Bankers  
19 Life under a long term care insurance policy. On 8/10/05, Bankers Life received  
20 from a health care provider a claim for payment for health care services provided to  
21 the person in August 2005. The claim indicated that the person was functionally  
22 incapacitated because the person needed “hands on assistance” by another person  
23 with three activities of daily living. However, the claim did not provide certain  
24 necessary information about the dates on which the person received the care.  
25 Bankers Life did not request the information. Instead, on 8/30/05, and again on  
26 9/26/05, Bankers Life denied the claim because “[t]he facts we have show that you  
27 did not require assistance with two or more of the activities of daily living.” On  
28 9/13/05, the person filed a complaint with the director. On 10/5/05, Bankers Life  
29 paid the claim.

1           3. At all relevant times, a person residing in Oregon was insured by Bankers  
2 Life under a long term care insurance policy. On 10/17/05, Bankers Life received  
3 from a health care provider a claim for payment for health care services provided to  
4 the person in August 2005. The claim indicated that the person was functionally  
5 incapacitated. However, the claim did not provide certain necessary information  
6 about the dates on which the person received the care. Bankers Life did not request  
7 the information. On 9/27/05, Bankers Life denied the claim. On 10/12/05, the  
8 person filed a complaint with the director. On 11/2/05, Bankers Life called the  
9 provider and received the information. Sometime after 11/11/05, Bankers Life paid  
10 the claim.

11           4. At all relevant times, a person residing in Oregon was insured by Bankers  
12 Life under a long term care insurance policy. On 10/17/05, Bankers Life received  
13 from a health care provider a claim for payment for health care services provided to  
14 the person on nine specified dates in August 2005, four of which were for respite  
15 care. The policy provided a benefit for respite care. Respite care was described as  
16 professional care given to a family member who is chronically ill in order to  
17 temporarily relieve unpaid caregivers. The benefit period was 14 days. The policy  
18 paid the benefit rather than crediting the period of care to the "elimination period"  
19 or the period of time for which the policy will not pay benefits for covered services.  
20 On 10/17/05 Bankers Life refused to pay the benefit for respite care and credited the  
21 nine days to the person's "elimination period." On 10/12/05, the person filed a  
22 complaint with the director. On 11/11/05, Bankers Life decided to pay the benefit  
23 for respite care.

24           5. At all relevant times, a person residing in Oregon was insured by Bankers  
25 Life under a long term care insurance policy. On 12/8/05, Bankers Life received  
26 from a health care provider a claim for payment for health care services provided to  
27 the person in September, October, and or to be provided to the person in December  
28 2005. On 1/4/06, Bankers Life paid the claim for the services provided in September  
29 and October 2005, but refused to pay the claim for the services provided in  
30 December 2005. Bankers Life refused to pay the claim for the services provided in

1 December 2005 because they were "advanced" or not yet incurred when Bankers  
2 Life received the claim. Bankers Life failed to determine that as of 1/4/06 the claim  
3 for the services provided in December 2005 were no longer "advanced" and thus  
4 were payable. On 4/26/06, the person filed a complaint with the director. On  
5 6/29/06, Bankers Life paid the claim for the services provided in December 2005.

6 6. At all relevant times, a person residing in Oregon was insured by Bankers  
7 Life under a long term care insurance policy. On 10/2/06, Bankers Life received  
8 from a health care provider a revised claim for payment for health care services  
9 provided to the person in April and May 2006. The claim indicated that the person  
10 needed medically necessary care. However, the claim did not provide certain  
11 necessary information about the cost and duration of the services provided to the  
12 person. Bankers Life did not request the information. On 6/16/06, Bankers Life  
13 denied the claim. On 6/29/07, the person filed a complaint with the director. On  
14 8/17/07, Bankers Life decided to pay the claim.

15 7. At all relevant times, each of twelve persons residing in Oregon were insured  
16 by Bankers Life under a long term care insurance policy that provided certain  
17 benefits for covered services provided to the person in an Assisted Living Facility  
18 and in an Alternate Care Facility. In eleven of the policies, the maximum daily  
19 benefit for services provided in an Alternate Care Facility was more than the  
20 maximum daily benefit for services provided in an Assisted Living Facility. In one  
21 of the policies, the maximum daily benefit was the same but the maximum benefit  
22 period for services provided in an Alternate Care Facility was longer than in the  
23 maximum benefit period for services provided in an Assisted Living Facility. Each  
24 person initially resided in an Assisted Living Facility but later became cognitively  
25 impaired and moved to an Alternate Care Facility. From 1/1/05 to 3/26/07, each  
26 person filed a claim for payment for services provided in an Alternate Care Facility.  
27 However, Bankers Life paid benefits as if the services were provided in an Assisted  
28 Living Facility rather than in an Alternate Care Facility. On 8/18/06, one of the  
29 persons filed a complaint with the director. Bankers Life paid additional benefits of

1 \$7,070.00 to the complaining person in November 2006, and \$117,782.45 to the  
2 other 13 persons sometime between 6/19/07 to 11/7/07, for a total of \$124,852.45.

3 8. At all relevant times, a person residing in Oregon was insured by Bankers  
4 Life under a short term convalescent care insurance policy. On 2/12/08, Bankers  
5 Life received from a health care provider a claim for payment for health care  
6 services provided to the person from December 2007 to May 2008. On 3/7/08,  
7 Bankers Life denied the claim because (1) a physician's report dated 9/20/07  
8 indicated that the person was not functionally incapacitated, (2) an independent on-  
9 site assessment on 1/14/08 indicated that the person was not functionally  
10 incapacitated or cognitively impaired, and (3) the claim did not indicate that the  
11 person was functionally incapacitated or cognitively impaired or the person needed  
12 medically necessary care. However, the physician's report indicated that the person  
13 was chronically ill from 2/20/07 to 8/29/07 and the care provided was medically  
14 necessary. Bankers Life overlooked the later information when it denied the claim.  
15 On 7/25/08, the person filed a complaint with the director. On 8/7/08, Bankers Life  
16 reviewed the claim file again and decided to pay the claim.

17 9. At all relevant times, a person residing in Oregon was insured by Bankers  
18 Life under a long term care insurance policy. On 9/2/09, Bankers Life received from  
19 a health care provider a claim. The claim indicated that the person needed care for  
20 dementia & osteoarthritis, and was functionally incapacitated to the extent the  
21 person needed hands-on assistance completing two activities of daily living, and  
22 received "homemaker" care from 9/1/08 to 9/7/08. However, the claim did not  
23 provide certain necessary information about the care that was provided and  
24 whether the person paid for the care. Bankers Life also received with the claim an  
25 authorization to obtain the person's medical records. However, Bankers Life did not  
26 request the medical records until later. On an unknown date, Bankers Life denied  
27 the claim, or otherwise did not pay the claim. On 9/24/09, the person filed a  
28 complaint with the director. On an unknown date between 10/4/10 and 10/26/10,  
29 Bankers Life requested the records. On 10/26/10, Bankers Life received the medical  
30 records. Bankers Life found that the records did not show that the person was

1 sufficiently cognitively impaired, but did show that the person had a myocardial  
2 infarction on 7/30/08 and was functionally incapacitated after she was discharged  
3 from a hospital for treatment of the infarction. Bankers Life paid \$1,284.51 on  
4 11/8/10 for services provided from 8/2/08 to 8/10/08, and paid \$2,518.42 on 4/21/11  
5 for services provided from 9/4/08 to 9/14/08 and from 10/16/08 to 10/24/08.

6 10. At all relevant times, a person residing in Oregon was insured by Bankers  
7 Life under a long term care insurance policy. On 5/18/10, Bankers Life received  
8 from a health care provider a claim for payment for respite care services provided  
9 by "hospice" to the person on four days in May 2010. The policy provided a benefit  
10 for respite care. Respite care was described as professional care given to a family  
11 member who is chronically ill in order to temporarily relieve unpaid caregivers. The  
12 benefit period was 14 days. The policy paid the benefit rather than crediting the  
13 period of care to the "elimination period" or the period of time for which the policy  
14 will not pay benefits for covered services. On 7/9/10, Bankers Life refused to pay  
15 the benefit for respite care and credited the four days to the person's "elimination  
16 period." On 8/6/10, the person filed a complaint with the director. On 9/16/10,  
17 Bankers Life decided to pay the claim.

18 11. At all relevant times, a person residing in Oregon was insured by Bankers  
19 Life under a long term care insurance policy. On 10/22/10, Bankers Life received  
20 from a health care provider a claim for payment for health care services provided to  
21 the person on various dates from 5/18/10 to 10/9/10. Bankers Life was required by  
22 OAR 836-080-0225(1) to acknowledge or pay the claim by 11/21/10. On 11/29/10,  
23 eight days late, Bankers Life approved the claim but, instead of paying any benefits,  
24 credited the entire period of care to the "elimination period" or the period of time for  
25 which the policy will not pay benefits for covered services. On 12/14/10, Bankers  
26 Life received an appeal claiming that the care provided was hospice care. On  
27 1/13/11, Bankers Life denied the appeal because although the care provided was  
28 hospice care, it was provided by Medicare and thus excluded under the policy. On  
29 1/22/11, Bankers Life received another appeal claiming that the care provided was  
30 respite care. The policy provided a benefit for respite care. Respite care was



1 described as professional care given to a family member who is chronically ill in  
2 order to temporarily relieve unpaid caregivers. The benefit period was 14 days. The  
3 policy paid the benefit rather than crediting the period of care to the "elimination  
4 period" or the period of time for which the policy will not pay benefits for covered  
5 services. On 2/21/11, Bankers Life denied the appeal because it thought that the  
6 only paid caregivers were being relieved and the care provided was not temporary.  
7 The caregiver being relieved was a member of the chronically ill person's family and  
8 who was not being paid for their services. The unpaid caregiver initially used the  
9 provider intermittently but later on, as providing the care became more  
10 burdensome, used the provider more frequently. On 3/4/11, the person filed a  
11 complaint with the director. On 11/7/11, Bankers Life decided to pay the benefit for  
12 respite care because the care provided may have been initiated as respite care.

13 12. At all relevant times, a person residing in Oregon was insured by Bankers  
14 Life under a long term care insurance policy. On 12/20/10, Bankers Life received  
15 from a health care provider a claim for payment for health care services provided to  
16 the person in December 2010. On 12/30/10, Bankers Life denied the claim because  
17 it mistakenly thought the claim was a continuation of a claim received on 8/20/10  
18 for care provided by the provider to the person in August 2010 and denied on  
19 10/14/10. On 1/21/11 the person filed a complaint with the director. Bankers Life  
20 conducted an investigation of the claim. On 2/7/11, Bankers Life called the person's  
21 representative claiming that the care provided in December 2010 was respite care.  
22 The policy provided a benefit for respite care. Respite care was described as  
23 professional care given to a family member who is chronically ill in order to  
24 temporarily relieve unpaid caregivers. The benefit period was 14 days. The policy  
25 paid the benefit rather than crediting the period of care to the "elimination period"  
26 or the period of time for which the policy will not pay benefits for covered services.  
27 However, the representative permitted Bankers Life to credit the period of care to  
28 the "elimination period" rather than paying for the care.

1 Failed to Timely Acknowledge or Pay Claim

2 Bankers Life is subject to enforcement action pursuant to OAR 836-080-0225(1)  
3 because of the following circumstances. OAR 836-080-0225(1) states "An insurer  
4 shall: (1) Not later than the 30th day after receipt of notification of claim,  
5 acknowledge the notification or pay the claim. An appropriate and dated notation  
6 of the acknowledgment shall be included in the insurer's claim file." In the  
7 following 18 instances, Bankers Life failed to timely acknowledge or pay a claim.

8 1. At all relevant times, a person residing in Oregon was insured by Bankers  
9 Life under a long term care insurance policy. On 2/15/05, Bankers Life received  
10 from a health care provider a claim for payment for health care services provided to  
11 the person in January 2005. Bankers Life was required by OAR 836-080-0225(1) to  
12 acknowledge or pay the claim by 3/17/05. Bankers Life did not acknowledge or pay  
13 the claim by the due date. On 4/12/05, 26 days late, Bankers Life paid the claim.

14 2. At all relevant times, a person residing in Oregon was insured by Bankers  
15 Life under a long term care insurance policy. On 2/15/05, Bankers Life received  
16 from a health care provider a claim for payment for health care services both  
17 provided and to be provided to the person in February 2005. Bankers Life was  
18 required to at least acknowledge the claim by 3/17/05. Bankers Life did not  
19 acknowledge or pay the claim by the due date. On 4/12/05, 26 days late, Bankers  
20 Life paid the claim.

21 3. At all relevant times, a person residing in Oregon was insured by Bankers  
22 Life under a long term care insurance policy. On 2/23/05, Bankers Life received  
23 from a health care provider a claim for payment for health care services to be  
24 provided to the person in March 2005. Bankers Life was required to at least  
25 acknowledge the claim by 3/25/05. Bankers Life did not acknowledge or pay the  
26 claim by the due date. On 4/12/05, 18 days late, Bankers Life paid the claim.

27 4. At all relevant times, a person residing in Oregon was insured by Bankers  
28 Life under a long term care insurance policy. On 10/12/05, Bankers Life received  
29 from a health care provider a claim for payment for health care services provided to  
30 the person September 2005. Bankers Life was required by OAR 836-080-0225(1) to

1 acknowledge or pay the claim by 11/11/05. Bankers Life did not acknowledge or pay  
2 the claim by the due date. On 11/30/05, 19 days late, Bankers Life paid the claim.

3 5. At all relevant times, a person residing in Oregon was insured by Bankers  
4 Life under a long term care insurance policy. On 10/27/05, Bankers Life received  
5 from a health care provider a claim for payment for health care services provided to  
6 the person in September 2005. Bankers Life was required by OAR 836-080-0225(1)  
7 to acknowledge or pay the claim by 11/26/05. Bankers Life did not acknowledge or  
8 pay the claim by the due date. On 12/29/05, 33 days late, Bankers Life paid the  
9 claim.

10 6. At all relevant times, a person residing in Oregon was insured by Bankers  
11 Life under a long term care insurance policy. On 10/27/05, Bankers Life received  
12 from a health care provider a claim for payment for health care services provided to  
13 the person in October 2005. Bankers Life was required by OAR 836-080-0225(1) to  
14 acknowledge or pay the claim by 11/26/05. Bankers Life did not acknowledge or pay  
15 the claim by the due date. On 12/29/05, 33 days late, Bankers Life paid the claim.

16 7. At all relevant times, a person residing in Oregon was insured by Bankers  
17 Life under a long term care insurance policy. On 10/27/05, Bankers Life received  
18 from a health care provider a claim for payment for health care services to be  
19 provided to the person in November 2005. Bankers Life was required to at least  
20 acknowledge by 11/26/05. Bankers Life did not acknowledge or pay the claim by the  
21 due date. On 12/29/05, 33 days late, Bankers Life paid the claim.

22 8. At all relevant times, a person residing in Oregon was insured by Bankers  
23 Life under a long term care insurance policy. On 11/8/05, Bankers Life received  
24 from a health care provider a claim for payment for health care services provided to  
25 the person in October 2005. Bankers Life was required by OAR 836-080-0225(1) to  
26 acknowledge or pay the claim by 12/8/05. Bankers Life did not send to the insured  
27 or provider an acknowledgment of the claim or payment of the claim. Instead, on  
28 2/6/06, Bankers Life informed the director that if the person provided the  
29 information then Bankers Life would pay the claim.

1 9. At all relevant times, a person residing in Oregon was insured by Bankers  
2 Life under a long term care insurance policy. On 12/12/05, Bankers Life received  
3 from a health care provider a claim for payment for health care services provided to  
4 the person in July 2005. Bankers Life was required by OAR 836-080-0225(1) to  
5 acknowledge or pay the claim by 1/11/06. Also, Bankers Life received a copy of the  
6 claim On 1/4/06, 2/13/06 and 4/21/06. Bankers Life did not acknowledge the original  
7 or copies of the claim. On 6/29/06, 108 days late, after the person filed a complaint  
8 with the director, Bankers Life paid the claim.

9 10 At all relevant times, a person residing in Oregon was insured by Bankers  
10 Life under a long term care insurance policy. On 2/13/06, Bankers Life received  
11 from a health care provider a claim for payment for health care services provided to  
12 the person from August 2005 to February 2006. Bankers Life was required by  
13 OAR 836-080-0225(1) to acknowledge or pay the claim by 3/15/06. Bankers Life did  
14 not acknowledge the claim by the due date. On 6/29/06, 106 days late, after the  
15 person filed a complaint with the director, Bankers Life paid the claim.

16 11. At all relevant times, a person residing in Oregon was insured by Bankers  
17 Life under a long term care insurance policy. On 4/21/06, Bankers Life received  
18 from a health care provider a claim for payment for health care services provided to  
19 the person from August 2005 to April 2006. Bankers Life was required by  
20 OAR 836-080-0225(1) to acknowledge or pay the claim by 5/21/06. Bankers Life did  
21 not acknowledge the claim by the due date. On 6/29/06, 39 days late, after the  
22 person filed a complaint with the director, Bankers Life paid the claim.

23 12. At all relevant times, a person residing in Oregon was insured by Bankers  
24 Life under a long term care insurance policy. On 8/9/07, Bankers Life received from  
25 a health care provider a claim for payment for health care services provided to the  
26 person in July 2007. Bankers Life was required by OAR 836-080-0225(1) to  
27 acknowledge or pay the claim by 9/8/07. Bankers Life did not acknowledge or pay  
28 the claim by the due date. On 9/19/07, 11 days late, Bankers Life paid the claim.

29 13. At all relevant times, a person residing in Oregon was insured by Bankers  
30 Life under a long term care insurance policy. On 2/11/08, Bankers Life received

1 from a health care provider a claim for payment for health care services provided to  
2 the person in January 2008. Bankers Life was required by OAR 836-080-0225(1) to  
3 acknowledge or pay the claim by 3/12/08. Bankers Life did not acknowledge or pay  
4 the claim by the due date. On 4/28/08, 47 days late, Bankers Life paid the claim.

5 14. At all relevant times, a person residing in Oregon was insured by Bankers  
6 Life under a long term care insurance policy. On 3/10/08, Bankers Life received  
7 from a health care provider a claim for payment for health care services provided to  
8 the person in February 2008. Bankers Life was required by OAR 836-080-0225(1)  
9 to acknowledge or pay the claim by 4/9/08. Bankers Life did not acknowledge or pay  
10 the claim by the due date. On 4/28/08, 19 days late, Bankers Life paid the claim.

11 15. At all relevant times, a person residing in Oregon was insured by Bankers  
12 Life under a long term care insurance policy. On 7/29/10, Bankers Life received  
13 from a health care provider a claim for payment for health care services provided to  
14 the person. Bankers Life was required by OAR 836-080-0225(1) to acknowledge or  
15 pay the claim by 8/28/10. Bankers Life did not acknowledge or pay the claim by the  
16 due date. On 9/3/10, five days late, Bankers Life paid the claim.

17 16. At all relevant times, a person residing in Oregon was insured by Bankers  
18 Life under a long term care insurance policy. On 8/19/10, Bankers Life received  
19 from a health care provider a claim for payment for health care services provided to  
20 the person in October 2010. Bankers Life was required by OAR 836-080-0225(1) to  
21 acknowledge or pay the claim by 9/18/10. Bankers Life did not acknowledge or pay  
22 the claim by the due date. On 12/6/10, 79 days late, Bankers Life paid the claim.

23 17. At all relevant times, a person residing in Oregon was insured by Bankers  
24 Life under a long term care insurance policy. On 8/9/11, Bankers Life received from  
25 a health care provider a claim for payment for health care services provided to the  
26 person in July 2011. Bankers Life was required by OAR 836-080-0225(1) to  
27 acknowledge or pay the claim by 9/8/11. Bankers Life did not acknowledge or pay  
28 the claim by the due date. On 9/14/11, six days late, Bankers Life paid the claim.

29 18. At all relevant times, a person residing in Oregon was insured by Bankers  
30 Life under a long term care insurance policy. On 10/12/12, Bankers Life received  
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1 from a health care provider a claim for payment for health care services provided to  
2 the person from 7/6/12 to 7/16/12. Bankers Life was required by OAR 836-080-  
3 0225(1) to acknowledge or pay the claim by 11/11/12. Bankers Life did not  
4 acknowledge or pay the claim by the due date. On 12/11/12, the person filed a  
5 complaint with the director. On 12/31/12, 50 days late, Bankers Life decided to pay  
6 the claim.

7 Failed to Timely Respond to Communication About Claim

8 Bankers Life is subject to enforcement action pursuant to OAR 836-080-0225(3)  
9 because of the following circumstances. OAR 836-080-0225(3) states "An insurer  
10 shall...(3) Make an appropriate reply, not later than the 30th day after receipt, to  
11 all other pertinent communications about a claim from a claimant that reasonably  
12 indicate a response is expected." In the following two instances, Bankers Life failed  
13 to reply to a communication about a claim.

14 1. At all relevant times, a person residing in Oregon was insured by Bankers  
15 Life under a long term care insurance policy. On 9/20/10, Bankers Life received by  
16 fax a letter dated 9/20/10 from an attorney representing the person requesting  
17 certain information about a closed claim. Bankers Life was required by OAR 836-  
18 080-0225(3) to reply to the communication by 10/20/10. Bankers Life did not reply  
19 to the communication by the due date. On 12/8/10, 49 days late, Bankers Life  
20 replied to the communication.

21 2 At all relevant times, a person residing in Oregon was insured by Bankers  
22 Life under a long term care insurance policy. On 12/20/10, Bankers Life received  
23 from a health care provider a claim for payment for health care services provided to  
24 the person in December 2010. On 12/30/10, Bankers Life denied the claim because  
25 it mistakenly thought the claim was a continuation of a claim received on 8/20/10  
26 for care provided by the provider to the person in August 2010 and denied on  
27 10/14/10. On 1/7/11, Bankers Life received from the person additional information  
28 about the denied claim and an appeal of the denial. On 1/18/11, Bankers Life  
29 overlooked the appeal and again denied the claim for the same reason it initially  
30 denied the claim. , After the person filed a complaint with the director, Bankers

1 Life requested an independent on-site assessment to determine what healthcare the  
2 person actually needed. The assessment was performed on 1/28/11 and Bankers  
3 Life received the assessment on 2/3/11. On 2/7/11, Bankers Life Bankers Life called  
4 the person's personal representative who said the care provided in December 2010  
5 was respite care. The policy provided a benefit for respite care. Respite care was  
6 described as professional care given to a family member who is chronically ill in  
7 order to temporarily relieve unpaid caregivers. The benefit period was 14 days. The  
8 policy paid the benefit rather than crediting the period of care to the "elimination  
9 period" or the period of time for which the policy will not pay benefits for covered  
10 services. However, the representative permitted Bankers Life to credit the period of  
11 care to the elimination period rather than paying for the care.

12 Failed to Timely Notify Claimant of Additional Time Needed to Accept or Deny Claim

13 Bankers Life is subject to enforcement action pursuant to OAR 836-080-0235(4)  
14 because of the following circumstances. OAR 836-080-0235(4) states "If an insurer  
15 needs more time to determine whether the claim of a first party claimant should be  
16 accepted or denied, it shall so notify the claimant not later than the 30th day after  
17 receipt of the proofs of loss, giving the reason more time is needed. Forty-five days  
18 from the date of such initial notification and every 45 days thereafter while the  
19 investigation remains incomplete, the insurer shall notify the claimant in writing of  
20 the reason additional time is needed for investigation. In the following one  
21 instance, Bankers Life failed to notify the person that Bankers Life needed more  
22 time to investigate a claim before deciding whether to accept the claim. At all  
23 relevant times, a person residing in Oregon was insured by Bankers Life under a  
24 long term care insurance policy. On 10/16/07, Bankers Life received from a health  
25 care provider a claim for payment for health care services provided to the person in  
26 September 2007. Bankers Life needed more time to determine whether to pay the  
27 claim. Bankers Life was required by OAR 836-080-0235(4) to notify the person by  
28 11/15/07. Bankers Life did not notify the person by the due date. On 11/27/07, 12  
29 days late, Bankers Life notified the person.

1 Failed to Notify Insured About How to Contact Insurance Division

2 Bankers Life is subject to enforcement action pursuant to OAR 836-052-0756(7)  
3 because of the following circumstances. OAR 836-052-0756(7) states “If an insurer  
4 denies payment of benefits under a long term care policy, the insurer shall include  
5 in its denial letter information about how the insured may contact the Insurance  
6 Division of the Department of Consumer and Business Services for assistance either  
7 by contacting the Insurance Division Consumer Advocacy Unit at its toll free  
8 telephone number or visiting the Division’s website at the website address currently  
9 provided by the Division as may be updated from time to time on the Division  
10 website.” This rule applies to policies issued on and after 3/1/05. In 48 instances,  
11 from 2/10/11 to 9/16/11, Bankers Life denied a claim but failed to inform in writing  
12 the claimant about how to contact the Insurance Division.

13 Failed to Notify Insured About Independent Review of Benefit Determination

14 Bankers Life is subject to enforcement action pursuant to OAR 836-052-  
15 0768(3)(b) because of the following circumstances. OAR 836-052-0768(2)(c) states  
16 that “[i]f an insurer determines that the benefit trigger [as defined in  
17 ORS 743.652(2) and described in OAR 836-052-0756] of a long term care insurance  
18 policy [as defined in ORS 743.652(5)] has not been met, the insurer shall provide a  
19 clear, written notice to the insured and the insured’s authorized representative [as  
20 defined in OAR 836-052-0768(1)], if applicable, of all of the following: (a) The reason  
21 that the insurer determined that the insured’s benefit trigger has not been met; (b)  
22 The insured’s right to [an] internal appeal in accordance with section (3) of this rule,  
23 and the right to submit new or additional information relating to the [adverse]  
24 benefit trigger denial with the appeal request; and (c) The insured’s right, after  
25 exhaustion of the insurer’s internal appeal process, to have the [adverse] benefit  
26 trigger determination reviewed under the independent review process in accordance  
27 with section (4) of this rule.” OAR 836-052-0768(3)(b) states that “[i]f the insurer’s  
28 original [adverse benefit] determination is upheld after the internal appeal process  
29 has been exhausted, and new or additional information has not been provided to the  
30 insurer, the insurer shall provide a written description of the insured’s right to



1 request an independent review of the benefit determination as described in section  
2 (4) of this rule to the insured and the insured's authorized representative, if  
3 applicable." OAR 836-052-0768(3)(c) states "[a]s part of the written description of  
4 the insured's right to request an independent review, an insurer shall include the  
5 following, or substantially equivalent, language: 'We have determined that the  
6 benefit eligibility criteria ("benefit trigger") of your [policy] [certificate] has not been  
7 met. You may have the right to an independent review of our decision conducted by  
8 long term care professionals who are not associated with us. Please send a written  
9 request for independent review to us at [address]. You must inform us, in writing, of  
10 your election to have this decision reviewed within 120 days after you receive this  
11 letter. Listed below are the names and contact information of the independent  
12 review organizations [as defined in OAR 836-052-0508(2)(a)] approved or certified  
13 by the Department of Consumer and Business Services to conduct long term care  
14 insurance benefit eligibility reviews. If you wish to request an independent review,  
15 please choose one of the listed organizations and include its name with your request  
16 for independent review. If you elect independent review, but do not choose an  
17 independent review organization with your request, we will choose one of the  
18 independent review organizations for you and refer the request for independent  
19 review to it.'" Thus, OAR 836-052-0768 gives the insured the right to both internal  
20 review by the insurer and external review by an independent review organization of  
21 the insurer's adverse benefit trigger determination. OAR 836-052-0768 applies to  
22 requests for internal and external review made on or after 7/1/12 under a long term  
23 care insurance policy issued or renewed after 7/1/12. Bankers Life implemented a  
24 manual process from 7/1/12 to 11/1/12 and an automated process since 11/2/12 to  
25 notify an insured of the insured's right to internal and external review of an adverse  
26 benefit trigger determination. However, in 11 instances from 7/1/12 to 4/9/13,  
27 Bankers Life failed notify an insured of the insured's right to external review an  
28 adverse benefit trigger determination.

29

30

1 Engaged in an Unfair and Injurious Act While Transacting Insurance

2 Bankers Life is subject to enforcement action pursuant to ORS 746.240 because  
3 of the following circumstances. ORS 746.240 states “No person shall engage in this  
4 state in any trade practice that, although not expressly defined and prohibited in  
5 the Insurance Code, is found by the Director of the Department of Consumer and  
6 Business Services to be an unfair or deceptive act or practice in the transaction of  
7 insurance that is injurious to the insurance-buying public.” In the following ten  
8 instances, Bankers Life engaged in the following acts that were unfair and injurious  
9 to an insured.

10 1. At all relevant times, a person residing in Oregon was insured by Bankers  
11 Life under a long term care insurance policy. The policy contained a provision  
12 called a waiver of premium benefit which provides that Bankers Life will not charge  
13 the insured premium for the policy while the insured is receiving covered services  
14 for more than 90 days. On 2/19/09, Bankers Life incorrectly determined that the  
15 benefit started on 2/15/09. The benefit should have started on 1/15/09. Bankers  
16 Life charged the person additional premium. On 2/25/09, during a routine claim  
17 audit, Bankers Life discovered and corrected the error, and refunded the additional  
18 premium of \$162.48.

19 2. At all relevant times, a person residing in Oregon was insured by Bankers  
20 Life under a long term care insurance policy. The policy contained a provision  
21 called a waiver of premium benefit which provides that Bankers Life will not charge  
22 the insured premium for the policy while the insured is receiving covered services  
23 for more than 90 days. On 8/20/09, Bankers Life correctly determined that the  
24 benefit started on 7/22/09. However, on 9/1/09, Bankers Life incorrectly recorded  
25 that the benefit started on 7/22/10, a year later. Bankers Life charged the person  
26 additional premium. On 4/25/11, the person filed a complaint with the director. On  
27 5/17/11, Bankers Life corrected the error and refunded the additional premium of  
28 \$893.45.

29 3. At all relevant times, a person residing in Oregon was insured by Bankers  
30 Life under a long term care insurance policy. The policy contained a provision  
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1 called a waiver of premium benefit which provides that Bankers Life will not charge  
2 the insured premium for the policy while the insured is receiving covered services  
3 for more than 90 days. On 9/1/09, Bankers Life incorrectly determined that the  
4 benefit would end on 8/25/09. The benefit should end on 9/24/09. On 9/8/09, during  
5 a routine claim audit, Bankers Life discovered and corrected the error.

6 4. At all relevant times, a person residing in Oregon was insured by Bankers  
7 Life under a long term care insurance policy. The policy contained a provision  
8 called a waiver of premium benefit which provides that Bankers Life will not charge  
9 the insured premium for the policy while the insured is receiving covered services  
10 for more than 90 days. On 5/4/10, Bankers Life incorrectly determined that the  
11 benefit started on 2/12/10. The benefit should have started on 2/8/10. Bankers Life  
12 charged the person additional premium. On 5/10/10, during a routine claim audit,  
13 Bankers Life discovered the error and requested that it be corrected. On 1/10/12,  
14 Bankers Life discovered that the error had not been corrected and again requested  
15 it be corrected. On 1/11/12, Bankers Life corrected the error, and refunded the  
16 additional premium of to the person \$33.16.

17 5. At all relevant times, a person residing in Oregon was insured by Bankers  
18 Life under a long term care insurance policy. The policy contained a provision  
19 called a waiver of premium benefit which provides that Bankers Life will not charge  
20 the insured premium for the policy while the insured is receiving covered services  
21 for more than 90 days. Bankers Life failed to start the benefit on 1/19/10. Bankers  
22 Life charged the person additional premium. On 7/23/10, during a routine claim  
23 audit, Bankers Life discovered the error. On 9/1/10, Bankers Life corrected the  
24 error, and refunded the additional premium of \$2,216.42.

25 6. At all relevant times, a person residing in Oregon was insured by Bankers  
26 Life under a long term care insurance policy. The policy contained a provision  
27 called a waiver of premium benefit which provides that Bankers Life will not charge  
28 the insured premium for the policy while the insured is receiving covered services  
29 for more than 90 days. Bankers Life failed to start the benefit on 1/3/11. Bankers  
30 Life charged the person additional premium. On 5/16/11, the person called Bankers

1 Life about the additional premium, and Bankers Life purportedly told the person  
2 that the “there was a note in the file” and “this was being worked on.” The person  
3 asked to speak to a supervisor, and was purportedly told that a supervisor was  
4 present but not available to speak to the person. On 5/17/11, when the person was  
5 not satisfied with Bankers Life’s response, the person filed a complaint with the  
6 director. On 5/26/11, Bankers Life corrected the error and refunded the additional  
7 premium of \$2,764.20.

8 7. At all relevant times, a person residing in Oregon was insured by Bankers  
9 Life under a long term care insurance policy. The policy contained a provision  
10 called a waiver of premium benefit which provides that Bankers Life will not charge  
11 the insured premium for the policy while the insured is receiving covered services  
12 for more than 90 days. Bankers Life failed to start the benefit on 6/7/11. Bankers  
13 Life charged the person additional premium. On 6/22/11, the person called Bankers  
14 Life about the error. On 7/29/11, Bankers Life corrected the error, and refunded the  
15 additional premium of \$347.56.

16 8. At all relevant times, a person residing in Oregon was insured by Bankers  
17 Life under a long term care insurance policy. The policy contained a provision  
18 called a waiver of premium benefit which provides that Bankers Life will not charge  
19 the insured premium for the policy while the insured is receiving covered services  
20 for more than 90 days. On 7/13/11, Bankers Life failed to credit 28 days from 6/3/11  
21 to 6/30/11, during which the person received covered services, in determining the  
22 waiver of premium benefit start date. As a result, Bankers Life failed to start the  
23 benefit on 8/16/11. Bankers Life charged the person additional premium. On or  
24 about 8/1/11, the director had asked Bankers Life when the waiver of premium  
25 benefit started. On 8/26/11, Bankers Life discovered and corrected the error, and  
26 refunded the additional premium of \$188.62.

27 9. At all relevant times, a person residing in Oregon was insured by Bankers  
28 Life under a long term care insurance policy. The policy contained a provision called  
29 an elimination period which provides that Bankers Life will not pay benefits for  
30 covered services until after the elimination period. The elimination period was 100

1 days. Bankers Life incorrectly determined that the elimination period ended on  
2 3/17/12, when it actually ended on 3/5/12, thereby causing Bankers Life to not pay  
3 benefits for covered services provided to the person from 3/5/12 to 3/16/12. On  
4 3/21/13, the person filed a complaint with the director about a different concern. On  
5 4/12/13, Bankers Life discovered the error, and paid additional benefits of \$633.12.

6 10. At all relevant times, a person residing in Oregon was insured by Bankers  
7 Life under a long term care insurance policy. The policy contained a provision  
8 called an elimination period which provides that Bankers Life will not pay benefits  
9 for covered services until after the elimination period. The elimination period was  
10 90 days. On 6/11/12, Bankers Life failed to credit 10 days from 4/10/12 to 4/19/12,  
11 during which the person received covered services, in determining the elimination  
12 period ending date. As a result, Bankers Life incorrectly determined that the  
13 elimination period would end on 7/18/12, when it actually would end on 7/8/12. On  
14 6/15/12, the person filed a complaint with the director. On 7/12/12, Bankers Life  
15 corrected the error.

#### 16 **Action**

17 Pursuant to ORS 731.988(1), Bankers Life is assessed a civil penalty of  
18 \$115,000. The payment shall be made in the form of a check payable to the  
19 "Department of Consumer and Business Services" for the full amount due. The  
20 payment shall be delivered or mailed to the Insurance Division at the Labor and  
21 Industries Building, 350 Winter Street NE Room 300, Salem, OR 97301-3880; or  
22 mailed to the Insurance Division at PO Box 14480, Salem, OR 97309-0405. The  
23 payment shall be received by the Insurance Division before the date of the final  
24 order.

25 Bankers Life shall develop and implement a corrective action plan to prevent the  
26 reoccurrence of the violations described herein.

27 Bankers Life shall also develop and implement a remedial action plan, subject to  
28 the terms below, to ensure that certain claims were properly decided pursuant to  
29 the terms of the respective policy, the circumstances of the respective claimant, and  
30 the relevant information provided by or on behalf of the respective claimant.

1 Bankers Life shall identify each claim that was received by or on behalf of  
2 Bankers Life from 1/1/10 to 10/31/14 for benefits provided by a long term care  
3 insurance policy issued by Bankers Life to a person who resided in Oregon when the  
4 policy was issued.

5 Bankers Life shall cause to be automatically reviewed each identified claim that  
6 was either (1) denied, or (2) involved the determination of the applicability or  
7 duration of a (a) waiver of premium provision or (b) elimination period. Bankers  
8 Life shall also cause to be reviewed each other identified claim if Bankers Life  
9 receives from the claimant thereof a written request to review the claim.

10 Each identified claim that is reviewed shall be reviewed by a remediator, and if  
11 permitted and requested then also by an arbitrator. If the remediator decides that  
12 the claim was properly decided and as a result no additional claim relief is  
13 warranted, then the claimant may request the claim be reviewed by an arbitrator.  
14 However, if the remediator decides that the claim was not properly decided and as a  
15 result additional claim relief is warranted, then the claimant may not request the  
16 claim be reviewed by an arbitrator. The remediator and arbitrator shall not be the  
17 same person and shall not be employed by Bankers Life. The remediator and  
18 arbitrator shall be recommended by Bankers life and approved by the director.

19 Bankers Life shall send to each claimant of an automatically reviewed claim a  
20 written notice informing the claimant of the remediator's decision. If the  
21 remediator decides that the claim was properly decided and as a result no  
22 additional claim relief is warranted, then the notice shall also inform the claimant  
23 that they may request the claim be reviewed by an arbitrator by sending to Bankers  
24 Life by a specified date a written request for an arbitrator to review the claim.

25 Bankers Life shall send to each claimant of a claim other than an automatically  
26 reviewed claim a written notice informing the claimant that the claimant may a  
27 send to Bankers Life by a specified date a written request for a remediator to review  
28 the claim.

29 If Bankers Life timely receives a request to review a claim other than an  
30 automatically reviewed claim, then Bankers Life shall cause the claim to be

1 reviewed by a mediator. After the mediator reviews the claim, Bankers Life  
2 shall send to the claimant a written notice informing the claimant of the  
3 mediator's decision. If the mediator decides that the claim was properly decided  
4 and as a result no additional claim relief is warranted, then the notice shall also  
5 inform the claimant that they may request the claim be reviewed by an arbitrator  
6 by sending to Bankers Life by a specified date a written request for an arbitrator to  
7 review the claim.

8 If Bankers Life timely receives a request for an arbitrator to review an identified  
9 claim, then Bankers Life shall cause the claim to be reviewed by an arbitrator.  
10 After an arbitrator reviews the claim, Bankers Life shall send to the claimant a  
11 written notice informing the claimant of the arbitrator's decision.

12 If the mediator or arbitrator decides, which ever occurs last, that the claim  
13 was not properly decided, and Bankers Life owes additional monetary benefits, then  
14 Bankers Life shall pay within 30 days of the decision the additional monetary  
15 benefits, plus interest at the rate specified in the policy or if no rate is specified,  
16 then at least at the rate of nine percent per annum from the date the benefits  
17 should have been paid to the date of the check paying the additional benefits. If the  
18 mediator or arbitrator decides, which ever occurs last, that the claim was not  
19 properly decided but Bankers Life does not owe any additional monetary benefits,  
20 then Bankers Life shall take the necessary corrective action to implement the  
21 proper decision within 30 days of the decision.

22 Bankers Life shall pay for all costs to develop and implement the corrective and  
23 remedial action plans.

24 Bankers Life shall submit the corrective and remedial action plans to the  
25 director for approval by the 60<sup>th</sup> day after the date of the final order.

26 Bankers Life shall report to the director the results of the implementation of the  
27 corrective and remedial action plans as requested by the director, which reports  
28 shall be confidential pursuant to ORS 731.264.

29 The director shall not take additional enforcement action against Bankers Life  
30 for failing to properly decide a claim that was initially not properly decided but is

1 subsequently properly decided as a result of the implementation of the remediation  
2 plan.

3 After two years after the date of the final order on December 13, 2013, the  
4 director may also examine, investigate, or both, Bankers Life to determine whether  
5 Bankers Life is complying with all laws applicable to processing claims for benefits  
6 provided by long term care insurance policies issued to persons residing in Oregon.  
7 The director may take enforcement action against Bankers Life for any violations  
8 found as result of such examination or investigation.

9

10

11 Dated 12/3/14

William D. Fritts, Jr.

[Signature of Representative]

William D. Fritts, Jr.

[Printed Name of Representative]

Senior Vice President Regulatory and Government Affairs

[Printed Title of Representative]

Bankers Life and Casualty Company

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### FINAL ORDER

21 The director incorporates herein the above stipulation, adopts it as the director's  
22 final decision in this proceeding, and orders that the action stated therein be taken.

23

24 Dated 12/11/14

Laura N. Cali

Laura N. Cali, FCAS, MAAA

Insurance Commissioner and Chief Actuary

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