

ATTORNEY GENERAL OF THE STATE OF NEW YORK

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In the Matter of

Connecticut General Life Insurance Company  
Cigna Health and Life Insurance Company

Assurance No.: 16-179

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**ASSURANCE OF DISCONTINUANCE  
UNDER EXECUTIVE LAW  
SECTION 63. SUBDIVISION 15**

Pursuant to the provisions of Section 63 and Article 7-A of the New York Executive Law, Eric T. Schneiderman, Attorney General of the State of New York, caused an inquiry to be made into certain practices of Connecticut General Life Insurance Company and the Cigna Health and Life Insurance Company (collectively, “Cigna”) relating to compliance with state and federal mental health parity laws. Based upon the inquiry, the New York State Office of the Attorney General (“OAG”) has made factual and legal findings, summarized in this Assurance of Discontinuance (“Assurance”). In response, Cigna has agreed to modify and/or discontinue certain practices that are referenced in this Assurance, and to institute measures ensuring that the relief agreed to by this Assurance will fully be accomplished.

**I. BACKGROUND**

1. The Connecticut General Life Insurance Company and the Cigna Health and Life Insurance Company (collectively, “Cigna”), are for-profit corporations that offer health plans to New York consumers. Cigna’s principal offices are located at 900 Cottage Grove Road, Bloomfield, Connecticut.

2. In the regular course of business, Cigna enrolls consumers in health plans and

contracts with health care providers for the delivery of health care services to those consumers. Offering seven different standard health plans in New York State, Cigna provides health care coverage for approximately 171,000 New York consumers. Cigna offers health plans that provide inpatient and outpatient benefits for medical/surgical and mental health conditions.

## **II. RELEVANT LAWS AND LEGAL DUTIES**

3. Timothy's Law, enacted in 2006, mandates that New York group health plans that provide coverage for inpatient hospital care or physician services must also provide "broad-based coverage for the diagnosis and treatment of mental, nervous or emotional disorders or ailments, . . . at least equal to the coverage provided for other health conditions." N.Y. Ins. Law §§ 3221(1)(5)(A); 4303(g)(1).

4. Timothy's Law also requires that plans provide coverage comparable to that provided for other health conditions for adults and children with biologically based mental illness, such as panic disorder, obsessive compulsive disorder, schizophrenia, and major depression, under the terms and conditions otherwise applicable under the policy. N.Y. Ins. Law §§ 3221(1)(5)(B)(i); 4303(g)(2)(A).

5. The federal Mental Health Parity and Addiction Equity Act ("The Federal Parity Act"), enacted in 2008, prohibits large group, individual, and Medicaid health plans that provide both medical/surgical benefits, and mental health or substance use disorder benefits, from imposing treatment limitations on mental health or substance use disorder treatment that are more restrictive than the predominant treatment limitations applied to substantially all medical/surgical benefits, or applicable only with respect to mental health or substance use disorder benefits. 29 U.S.C. § 1185a; 42 U.S.C. § 300gg-26; 45 C.F.R. § 146.136(c)(4)(i).

6. New York Insurance Law requires that New York health plans provide coverage

for the screening, diagnosis, and treatment of autism spectrum disorder ("ASD"). N.Y. Ins. Law §§ 3216(i)(25), 3221(l)(17), and 4303(ee) (collectively the "autism mandate").

7. New York Insurance and Public Health Laws require health plans to disclose to members their financial responsibility for services that are not covered, and for covered services provided outside of the health plan network. The plan must inform the member how it pays for out-of-network services, how its payment compares to the usual cost of out-of-network services, and give an estimate of payment. N.Y. Ins. Law §§ 3217-a, 4324, and N.Y. Public Health Law §4428.

8. The New York State Executive Law authorizes the Attorney General, where there are “repeated fraudulent or illegal acts” or “persistent fraud or illegality in the carrying on, conducting or transaction of business,” to seek relief, including enjoining the continuance of such business activity or of any fraudulent or illegal acts, as well as restitution and damages. N.Y. Exec. Law § 63(12).

### **III. THE OAG’S FINDINGS**

9. The OAG received a number of consumer complaints concerning Cigna’s medical coverage policy for neuropsychological testing,<sup>1</sup> which states that Cigna will not cover neuropsychological testing for “psychiatric conditions, e.g., psychotic disorders, anxiety disorders, substance abuse, personality disorders, mood disorders.” The policy says Cigna will not cover neuropsychological testing for these conditions because such testing “is considered educational in nature and/or not medically necessary.” This blanket exclusion of coverage for psychiatric conditions violates the state and federal mental health parity laws described above.

10. The Cigna policy for neuropsychological testing likewise bars coverage for “autism

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<sup>1</sup> Policy number 0258, dated 07/15/15.

spectrum disorder (ASD/pervasive developmental disorder (PDD)).” This limit contravenes the autism mandate, also described above.

11. In light of the failures to comply with the mental health parity laws and autism mandate, Cigna’s policies constitute an illegal act under N.Y. Executive Law §63(12).

12. Claims data provided by Cigna shows that from 2013-2016 Cigna denied at least thirty-two (32) claims for neuropsychological testing for ASD.

13. Not only was Cigna applying improper coverage exclusions, but it failed to assist providers in understanding the neuropsychological testing benefit. For example, out-of- network providers have reported that Cigna denied provider requests – made on behalf of Cigna members -- for expected out-of-network payments by Cigna and member cost-sharing amounts, to which they had a right under New York Insurance and Public Health Law.

**NOW, WHEREAS,** Cigna admits the OAG’s findings above, and the OAG is willing to accept the terms of this Assurance under Executive Law § 63(15) and to discontinue this inquiry; the Parties each believe that the obligations imposed by this Assurance are prudent and appropriate; and the OAG has determined that this Assurance is in the public interest.

**IT IS HEREBY UNDERSTOOD AND AGREED** by and between the Parties that:

#### **IV. PROSPECTIVE RELIEF**

14. Cigna shall revise its policies relating to coverage for neuropsychological testing to eliminate any complete bans on coverage for neuropsychological testing for any general diagnosis, including but not limited to psychiatric conditions, autism spectrum disorder (ASD) and pervasive development disorder (PDD).

15. Cigna shall revise its policies relating to coverage for neuropsychological testing to clearly indicate that New York law requires that health plans cover provide coverage for the

screening, diagnosis, and treatment of ASD/PDD. Cigna shall qualify its statement regarding the medical necessity for the use of neuropsychological testing in the assessment and/or management of ASD, by adding the fact that that some states have mandates that require coverage for such services, and identifying that New York is one of those states.

16. Cigna shall revise its policies relating to coverage for ASD/PDD assessment and treatment to clearly indicate that New York requires that health plans cover the screening, diagnosis, and treatment of ASD/PDD. In its national policy for coverage of autism services, Cigna must modify its statement that it will not cover neuropsychological testing, by adding language to specify that some states have mandates to cover the screening, diagnosis, and treatment of ASD/PDD, and by identifying that New York is one of those states.

17. Cigna shall also modify its statement regarding the medical necessity for the use of neuropsychological testing in the assessment and/or management of ASD, by adding language to specify that some states have mandates that require coverage for such services when prescribed or ordered by a licensed physician or psychologist and by identifying that New York is one of those states.

18. Cigna shall clarify its medical coverage policy for concussion (mild traumatic brain injury) and mild cognitive impairment (neurocognitive disorder) to explicitly state that neuropsychological testing will be covered for such conditions when those diagnoses are associated with a change in behavior, memory, or mental states, when the standard treatment has failed, and when there is a suspicion of an underlying central nervous condition.

19. Cigna shall provide coverage information, including but not limited to the expected out-of-network payment by Cigna and the member's likely out-of-pocket costs, to its members, prospective members, and providers who request same.

20. Cigna shall train its management, employees, agents and contractors, and modify

its practices, procedures, and policies, in accordance with the provisions of this Assurance.

## **V. RESTITUTION**

21. Cigna will provide restitution to providers and members who were denied coverage for neuropsychological testing for autism spectrum disorder (ASD) from the period November 1, 2012 through the present, the date the autism mandate went into effect in New York State. This restitution will include, but not necessarily be limited to, payment for the 32 denials for coverage of autism services referenced in paragraph 12.

22. Restitution shall be in the amount of what would have been sent to the provider and/or member if the claim had been covered, and shall also include twelve (12) percent interest per annum from the date the claim was processed.

23. Cigna shall send restitution payments within sixty (60) days from the Effective Date of this Assurance. Cigna shall send by regular mail the restitution check to the last known address of the recipient. Cigna shall make reasonable efforts to ensure the restitution checks are received, which shall include but not be limited to contacting the United States Post Office for a possible forwarding address.

24. Cigna shall submit to the OAG a restitution report within ninety (90) days of the Effective Date of this Assurance, which includes, for each claim: the identity of the member, the identity of the provider involved in the claim, the date of service, the restitution amount(s) with an explanation as to how it was calculated, the date restitution was issued, and the address(es) to which the restitution was sent.

25. Cigna shall continue to cooperate with the OAG and promptly resolve all consumer complaints that the OAG submits to Cigna, or otherwise come to the attention of Cigna, which shall include issuing appropriate restitution to members.

## **VI. PENALTIES**

26. Within thirty days of the Effective Date of this Assurance, Cigna shall pay \$50,000.00 (fifty thousand dollars) to the OAG as a civil penalty, in lieu of any other action which could be taken by the OAG in consequence of the foregoing. Checks issued pursuant to this Assurance shall be made payable to “State of New York Department of Law” and must reference “Assurance 16-179.”

## **VII. CORRESPONDENCE AND PAYMENT**

27. All notices, reports, requests, and other communications to any Party pursuant to this Assurance shall be in writing and shall be directed as follows:

If to the OAG to:

Carol Hunt  
Assistant Attorney General, Health Care Bureau  
120 Broadway, 26th Floor  
New York, New York 10271

If to Cigna to:

Mark Lavoie  
Senior Counsel  
Cigna  
900 Cottage Grove Road  
Hartford, Connecticut 06152

## **VIII. MISCELLANEOUS**

28. Cigna’s Representations. The OAG has agreed to the terms of this Assurance based on, among other things, the representations made to the OAG by Cigna and its counsel and the OAG’s own factual investigation. To the extent that any material representations are later found to be inaccurate or misleading, this Assurance is voidable by the OAG in its sole discretion.

29. Tolling provision. If the Assurance is voided or breached, Cigna agrees that any statute of limitations or other time-related defenses applicable to the subject of the Assurance and any claims arising from or relating thereto are tolled from and after the date of this Assurance. In the event the Assurance is voided or breached, Cigna expressly agrees and acknowledges that this Assurance shall in no way bar or otherwise preclude the OAG from commencing, conducting or prosecuting any investigation, action or proceeding, however denominated, related to the Assurance, against Cigna, or from using in any way any statements, documents or other materials produced or provided by Cigna prior to or after the date of this Assurance.

30. No Deprivation of the Public's Rights. Nothing herein shall be construed to deprive any person of any private right under law or equity.

31. No Blanket Approval by the OAG of Cigna's Practices. Acceptance of this Assurance by the OAG shall not be deemed or construed as approval by the OAG of any of Cigna's acts or practices, and Cigna shall make no representation to the OAG to the contrary.

32. Monitoring by the OAG. To the extent not already provided under this Assurance, Cigna shall, upon request by the OAG, provide all documentation and information necessary for the OAG to verify compliance with this Assurance, at Cigna's expense. This Assurance does not in any way limit the OAG's right to obtain, by subpoena or by any other means permitted by law, documents, testimony, or other information.

33. No Limitation on the OAG's Authority. Nothing in this Assurance in any way limits the OAG's ability to investigate or take other action with respect to any non-compliance at any time by Cigna with respect this Assurance, or Cigna's noncompliance with any applicable law with respect to any matters.

34. Nondisparagement of the Assurance. Cigna shall not take any action or make any statement denying, directly or indirectly, the propriety of this Assurance or expressing the view that this Assurance is without factual basis. Nothing in this paragraph affects Cigna's (a) testimonial obligations or (b) right to take legal or factual positions in defense of litigation or other legal proceedings to which the OAG is not a Party.

35. Governing Law; Effect of Violation of the Assurance. This Assurance shall be governed by the laws of the State of New York without regard to any conflict of laws principles.

36. Under Executive Law § 63(15), evidence of a violation of this Assurance shall constitute prima facie proof of a violation of the applicable law in any action or proceeding thereafter commenced by the OAG.

37. If a court of competent jurisdiction determines that Cigna has breached this Assurance, Cigna shall pay to the OAG the cost, if any, of such determination and of enforcing this Assurance, including without limitation legal fees, expenses, and court costs. Such payment shall be directed to the attention of the OAG pursuant to paragraph 32 hereof.

38. Any failure by the OAG to enforce this entire Assurance or any provision thereof with respect to any deadline or any other provision herein shall not be construed as a waiver of the OAG's right to enforce other deadlines and provisions of this Assurance.

39. In the event that any one or more of the provisions contained in this Assurance shall for any reason be held to be invalid, illegal, or unenforceable in any respect, in the sole discretion of the OAG such invalidity, illegality, or unenforceability shall not affect any other provision of this Assurance.

40. Entire Agreement; Amendment. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Assurance has been made to or relied

upon by Cigna in agreeing to this Assurance.

41. This Assurance contains an entire, complete, and integrated statement of each and every term and provision agreed to by and among the Parties, and the Assurance is not subject to any condition not provided for herein. This Assurance supersedes any prior agreements or understandings, whether written or oral, between the OAG and Cigna regarding the subject matter of this Assurance.

42. This Assurance may not be amended or modified except in an instrument in writing signed on behalf of all the Parties to this Assurance.

43. The division of this Assurance into sections and subsections and the use of captions and headings in connection herewith are solely for convenience and shall have no legal effect in construing the provisions of this Assurance.

44. Binding Effect. This Assurance is binding on and inures to the benefit of the Parties to this Assurance and their respective successors and assigns, provided that no Party, other than the OAG, may assign, delegate, or otherwise transfer any of its rights or obligations under this Assurance without prior written consent of the OAG.

45. Effective Date. This Assurance is effective on the date that it is signed by the Attorney General or his authorized representative (the “Effective Date”), and the document may be executed in counterparts, which shall all be deemed an original for all purposes.

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**AGREED TO BY:**

Dated: January 11, 2017

"CIGNA"

*Cigna Health and Life Insurance Company  
Connecticut General Life Insurance Company*

By: *Charles W. O'Dell*

**CONSENTED TO:**

Dated: January 19, 2017

**ERIC SCHNEIDERMAN**

Attorney General of the State of New York

120 Broadway

New York, NY 10271

By: *Lisa Landau*

Lisa Landau  
Bureau Chief, Health Care Bureau