

ATTORNEY GENERAL OF THE STATE OF NEW YORK

In the Matter of

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

Assurance No.: 13-474

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

Pursuant to the provisions of Section 63(12) of the Executive Law and Article 22-A of the General Business Law, Eric T. Schneiderman, Attorney General of the State of New York, caused an inquiry to be made into certain business practices of the Connecticut General Life Insurance Company and the Cigna Health and Life Insurance Company (collectively, “Cigna”), relating to their administration of mental health benefits. Based upon that inquiry, the Office of the Attorney General (“the OAG”) has made the following findings, and Cigna has agreed to modify its practices and assure compliance with the following provisions of this Assurance of Discontinuance (“Assurance”).

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 7 different standard insured 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. THE OAG’S INVESTIGATION AND FINDINGS

3. The Health Care Bureau of the OAG conducted an investigation into Cigna’s administration of mental health benefits following the receipt of a complaint from a consumer (the “complainant”) alleging that Cigna had improperly denied coverage for her mental health treatment. The complainant sought coverage for nutritional counseling, a medically necessary component of her treatment for the eating disorder anorexia nervosa, but Cigna denied all but three of her claims, citing a three-visit per calendar year limit that Cigna applies to nutritional counseling. Cigna does not apply such a limit to the treatment of members with diabetes, who also seek, and receive as a covered benefit, unlimited nutritional counseling.

4. Eating disorders are biologically based mental illnesses. According to the National Institute of Mental Health (“NIMH”), three to four percent of women will have an eating disorder, such as anorexia nervosa or bulimia nervosa, at some point in their lives, and males also experience eating disorders, to a lesser degree. NIMH states that anorexia is associated with depression, anxiety, heart complications, including cardiac arrest, electrolyte disturbances, thinning of the bones, muscle loss, lack of menstruation, low blood pressure and death. In fact, NIMH data show that individuals with anorexia have a level of mortality up to 18 times greater than the average population without anorexia – the highest mortality ratio of any mental illness. Bulimia can cause

gastrointestinal problems, severe dehydration from purging of fluid, and electrolyte imbalance, which can lead to heart attack, according to NIMH.

5. Evidence-based medical guidelines confirm the important role of nutritional counseling in the treatment of eating disorders. According to the American Psychiatric Association's Practice Guideline for the Treatment of Patients with Eating Disorders, nutritional counseling is "a useful part of treatment and helps reduce food restriction, increase the variety of foods eaten, and promote healthy but not compulsive exercise patterns," and is an empirically supported strategy for the treatment of binge eating.

6. Additionally, the National Eating Disorders Association recommends nutritional counseling because it can "help patients choose their own meals and can provide a structured meal plan that ensures nutritional adequacy and that none of the major food groups are avoided."

7. The complainant's health care provider determined that nutritional counseling was a key part of her treatment. Prior to treatment, due to her inability to meet minimal nutritional requirements, the complainant's body weight dropped to a dangerously low level and she developed osteopenia, a precursor to osteoporosis. After she began treatment, her program included weekly visits to a nutritional therapist, which helped her develop balanced meal plans and an understanding the implications of her poor eating behaviors. Nutritional counseling treatment ultimately helped her reach an appropriate, healthy body weight.

8. Cigna denied all but three of the complainant's claims for nutritional counseling in 2011 and 2012, on the grounds that such counseling is subject to a three-

visit limit per calendar year. The member's family appealed Cigna's denials, but the denials were upheld upon internal appeal. The complainant's family, nevertheless, continued the treatment, paying \$2,400 out-of-pocket for an additional 22 sessions, rather than jeopardize her health by stopping treatment.

9. Over the last four years, Cigna has denied nutritional counseling for almost 50 members with eating disorders on the grounds that they exceeded the three-visit limit. In total, Cigna denied coverage for more than 300 sessions of nutritional counseling for members with mental health conditions, forcing them to be charged more than \$33,000 for this necessary treatment. In contrast, Cigna does not apply the three-visit limit to the treatment of diabetes.

III. RELEVANT LAWS

10. 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(l)(5)(A); 4303(g)(1). 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 – including bulimia and anorexia – under the terms and conditions otherwise applicable under the policy. N.Y. Ins. Law §§ 3221(l)(5)(B)(i); 4303(g)(2)(A).

11. 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).

12. 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).

13. Based on the findings of the Attorney General’s investigation, the Attorney General has determined that Cigna’s conduct has resulted in violations of N.Y. Executive Law Section 63(12), Timothy’s Law and the Federal Parity Act. Cigna’s practices have had the effect of unlawfully limiting Cigna members’ access to mental health services.

NOW, WHEREAS, Cigna neither admits nor denies the Attorney General's findings in Paragraphs 1 through 9;

WHEREAS, access to adequate mental health treatment is essential for individual and public health; and

WHEREAS, Cigna has cooperated with the OAG's investigation; and

WHEREAS, the Attorney General is willing to accept the terms of this Assurance under Executive Law Section 63(15) and to discontinue his investigation; and

WHEREAS, the parties each believe that the obligations imposed by this Assurance are prudent and appropriate; and

WHEREAS, the Attorney General 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. Within sixty (60) days of the Effective Date, Cigna will implement the following reforms:

15. Cigna will modify its claim coverage policies and procedures so as not to apply a visit limit for medically necessary nutritional counseling prescribed for mental health disorders. Nothing herein shall preclude Cigna from conducting utilization review for nutritional counseling, subject to applicable law.

16. Cigna will submit to the OAG revised benefit certificate language for all Cigna products, stating that there shall be no visit limit for nutritional counseling prescribed for mental health disorders. Cigna will incorporate the revised language into

all new insurance policies and all renewing insurance policies at the next policy revision or renewal date, in accordance with applicable law.

17. Cigna will conduct in-service training for its claim and clinical review staff regarding the removal of visit limits for nutritional counseling prescribed for mental health disorders. Cigna will provide OAG with a copy of the materials used in such training, a list of attendees of such training, and the dates of training and distribution of training materials.

V. RETROSPECTIVE RELIEF

18. Within sixty (60) days of the Effective Date, Cigna will re-process and pay claims for nutritional counseling for mental health conditions that it denied solely due to the three-visit limit from 2010 through present. Cigna will send a refund letter (in the form attached as Exhibit A) together with refund check(s), to each affected member. The amount to be paid shall consist of the reimbursement rate otherwise applicable under the contract. Based on information provided by Cigna, it is anticipated that Cigna will refund to approximately 50 consumers (the “affected members”) a total of approximately \$33,000 in out-of-pocket expenses for nutritional counseling.

19. Cigna will bear all costs of the restitution process as described above.

20. If any other unidentified Cigna members received medically necessary nutritional counseling for mental health conditions but did not file claims for such counseling due solely to the three-visit limit, Cigna will allow such members to file claims for such counseling after the Effective Date, and Cigna will accept and pay such claims, regardless of when the claims are filed with Cigna, in accordance with the other terms of the member’s contract in effect at the time the services were rendered.

VI. MONETARY PENALTIES, FEES and/or COSTS

21. In consideration of the making and execution of this Assurance, and within sixty (60) business days of the Effective Date of this Assurance, Cigna shall pay \$23,000 to the OAG for penalties, fees and/or costs of the Attorney General's investigation.

VII. MISCELLANEOUS

Compliance

22. Cigna shall submit to the OAG, within thirty (30) days of completion of the activities and restitution set forth above in paragraphs 15 through 20, a letter certifying and setting forth its compliance with this Assurance.

Cigna's Representations

23. 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 as set forth in the above Findings. 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.

Communications

24. All communications, reports, correspondence, and payments that Cigna submits to the OAG concerning this Assurance or any related issues is to be sent to the attention of the person identified below:

Michael D. Reisman, Esq.
Assistant Attorney General
Health Care Bureau
Office of the New York Attorney General
120 Broadway
New York, NY 10271

Michael.reisman@ag.ny.gov

25. Receipt by the OAG of materials referenced in this Assurance, with or without comment, shall not be deemed or construed as approval by the OAG of any of the materials, and Cigna shall not make any representations to the contrary.

26. All notices, correspondence, and requests to Cigna shall be directed as follows:

Patrick M. Gillespie
Director, State Government Affairs
Cigna
499 Washington Boulevard
Jersey City, NJ 07310
patrick.gillespie@cigna.com

Valid Grounds and Waiver

27. Cigna hereby accepts the terms and conditions of this Assurance and waives any rights to challenge it in a proceeding under Article 78 of the Civil Practice Law and Rules or in any other action or proceeding.

No Deprivation of the Public's Rights

28. Nothing herein shall be construed to deprive any member or other person or entity of any private right under law or equity, nor shall anything herein impose upon Cigna any additional liability which did not exist prior to entering into the Assurance.

No Blanket Approval by the Attorney General of Cigna's Practices

29. 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, or those of its agents or assigns, and none of them shall make any representation to the contrary.

Monitoring by the OAG

30. 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. 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.

No Limitation on the Attorney General's Authority

31. 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 to this Assurance, or Cigna's noncompliance with any applicable law with respect to any matters.

No Undercutting of Assurance

32. 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.

Governing Law; Effect of Violation of Assurance of Discontinuance

33. Under Executive Law Section 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.

34. This Assurance shall be governed by the laws of the State of New York without regard to any conflict of laws principles.

35. 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.

No Presumption Against Drafter; Effect of any Invalid Provision

36. None of the parties shall be considered to be the drafter of this Assurance or any provision for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter hereof. This Assurance was drafted with substantial input by all parties and their counsel, and no reliance was placed on any representation other than those contained in this Assurance.

37. 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.

Entire Agreement; Amendment

38. 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.

39. 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 and among the OAG and Cigna regarding the subject matter of this Assurance.

40. This Assurance may not be amended or modified except in an instrument

in writing signed on behalf of all the parties to this Assurance.

41. 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.

Binding Effect

42. 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.

Effective Date

43. 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.

AGREED TO BY THE PARTIES:

BLUMFIELD, CT
Dated: , New York
JANUARY 6, 2014

Connecticut General Life Insurance Company
Cigna Health and Life Insurance Company

By: *Edward P. Potones*

Name: *EDWARD P. POTONES*

Title: *ASSISTANT SECRETARY*

Dated: New York, New York
January 7, 2014

ERIC T. SCHNEIDERMAN
Attorney General of the State of New York

LISA LANDAU
Health Care Bureau Chief

By: *Michael D. Reisman*

MICHAEL D. REISMAN
Assistant Attorney General
Health Care Bureau

EXHIBIT A

[Cigna Letterhead]

[date]

Dear Member:

As the result of an investigation by the Health Care Bureau of the New York State Office of the Attorney General (OAG), it has come to our attention that Cigna has denied claims for nutritional counseling for behavioral health conditions on the grounds that the claims exceeded a three-visit per calendar year limit imposed by Cigna. Cigna has agreed to remove the three-visit limit for medically necessary nutritional counseling for mental health disorders, and has agreed to re-process and pay claims for mental health conditions that it denied solely due to the three-visit limit from 2010 through present.

We are, therefore re-processing claims you made for nutritional counseling that were previously denied due to the three-visit limit. Re-processing these claims may result in your being issued a refund check. For your convenience, the explanation of benefits statement attached to your re-processed claim(s) contains the date(s) of medical services for which payments are included in any refund.

We apologize for any confusion this may have caused you. If you have any questions, you may contact Cigna at (800) 244-6224. Also, if for any reason you think the refund amount is inaccurate or that the refund should include services on other dates, you may submit a written objection within thirty (30) days. Your submission should include documentation that supports your objection and be sent to:

Janine Biondo
Claims Resolution Unit, Cigna Legal
P.O. Box 188016
Chattanooga, TN 37422

If you have any concerns regarding obtaining an appropriate refund, or if you disagree with Cigna's determination regarding a written objection, you may contact the OAG's Health Care Bureau for assistance by phone at (800) 428-9071 or by writing to:

NYS Office of the Attorney General
Health Care Bureau
The Capital, Albany, N.Y. 12224-0341

Very Truly,
