

ATTORNEY GENERAL OF THE STATE OF NEW YORK

In the Matter of

**CONNECTICUT GENERAL LIFE INSURANCE
COMPANY AND CIGNA HEALTHCARE OF NEW
YORK, INC.**

**AGREEMENT CONCERNING PHYSICIAN PERFORMANCE
MEASUREMENT, REPORTING AND TIERING PROGRAMS**

**PURSUANT TO EXECUTIVE LAW
SECTION 63, SUBDIVISION 15**

1. Pursuant to the provisions of Article 22-A of the General Business Law and Executive Law §63(12), Andrew M. Cuomo, Attorney General of the State of New York (the “Attorney General”) caused an industry-wide inquiry to be made into certain business practices regarding physician performance measurement, reporting and tiering programs. The inquiry included CONNECTICUT GENERAL LIFE INSURANCE COMPANY and CIGNA HEALTHCARE OF NEW YORK, INC. (“CIGNA”).

2. The wide variation in the quality and cost-efficiency of care delivered by health care providers and professionals is well-documented. As a result, meaningful efforts to measure and publicly report the comparative quality of physician practice are needed to help consumers make informed choices of where and from whom to seek care. In addition, experience has shown that measuring and publicly reporting physicians’ performance based on quality and cost-efficiency supports provider efforts to improve their performance. The Attorney General believes that more and complete information provided to the consumer better educates all parties. However, because measuring physician performance is relatively new, complex and

rapidly evolving, the need for transparency, accuracy and oversight in the process is great. In addition, when the sponsor is an insurer, the profit motive may affect its program of physician measurement and/or reporting. This is a potential conflict of interest and therefore requires scrutiny, disclosure and oversight by appropriate authorities. When making important healthcare decisions, such as choosing a primary care physician or specialist, consumers are entitled to receive reliable and accurate information unclouded by potential conflicts of interest. The independence, integrity, and verifiable nature of the rating process are paramount. CIGNA considers itself and seeks to be an industry leader in the area of health care transparency and consumer information.

THE ATTORNEY GENERAL’S INQUIRY

3. The Office of the Attorney General (the “OAG”) received information that CIGNA was engaged in a physician performance measurement, reporting or tiering program. Specifically, CIGNA has created a program to measure, report and/or tier physicians known as the “CIGNA Care Network.”¹ This network consists of physicians who meet standards of performance and cost-efficiency, as determined by CIGNA. The CIGNA Care Network designates physicians based on their performance on “select quality and cost-efficiency measures.” Employers who have selected the CIGNA Care Network may create financial incentives, such as reduced co-payments or deductibles, to encourage their employees to use the

¹ This network consists of physicians practicing in any of twenty-one medical specialty areas, as follows: allergy/immunology, colon and rectal surgery, endocrinology, hematology/oncology, neurology, ophthalmology, rheumatology, cardiology, gastroenterology, infectious diseases, neurosurgery, obstetrics/gynecology, orthopedics, urology, cardiovascular surgery, ear/nose/throat (otolaryngology), general surgery, pulmonary medicine, nephrology, vascular surgery, and dermatology.

network.² Because of this, consumers who select physicians outside the CIGNA Care Network may pay more than consumers who select physicians within that network.³ As part of an industry-wide inquiry, the Attorney General examined whether programs such as CIGNA Care Network could potentially confuse or deceive consumers in violation of consumer protection laws.

4. CIGNA has fully cooperated with this inquiry by providing documents and information to the OAG and by conferring with the OAG.

5. The Attorney General's investigation included a review of documents, meetings with representatives from CIGNA, other insurers, consumer, labor and employer groups, medical societies and organizations, and experts in the field of measuring physician performance.

FINDINGS OF THE ATTORNEY GENERAL'S INQUIRY

6. The Attorney General finds that any initiatives to measure quality and cost-efficiency of physicians, such as the CIGNA Care Network, have the potential to cause confusion if not conducted and communicated appropriately, and could result in a violation of law.

THEREFORE,

IT NOW APPEARS that CIGNA and the OAG are willing to enter into this Agreement concerning CIGNA's physician performance measurement, reporting or tiering program, without CIGNA admitting the Attorney General's Findings, and that the Attorney General is willing to

² According to CIGNA's website: "However, a lower member copayment or coinsurance level applies if the member chooses a CIGNA Care Network designated physician."

³ CIGNA offers a Physician Quality and Cost Efficiency Tool to members. According to the CIGNA website, this program uses claims data to profile physicians in twenty-one specialties using one to three stars with separate stars for quality and cost efficiency.

accept this Agreement pursuant to Executive Law §63(15) in lieu of commencing a statutory or other proceeding against CIGNA pursuant to Executive Law §63(12).

CORE PRINCIPLES: ACCURACY AND TRANSPARENCY OF INFORMATION, OVERSIGHT OF THE PROCESS, AND FAIRNESS IN COMPARISON OF PHYSICIANS

7. The core principles of this settlement are *accuracy* and *transparency* of information, and *oversight* of the process. Terms and conditions of accuracy and transparency are contained herein as well as an oversight mechanism of an independent monitor which will examine, and report on, compliance with the terms herein.

Accuracy/Transparency

Performance Measurement

8. Two categories of measurement may be included in the rating: “quality of performance” and “cost-efficiency.” In information for consumers and public reporting, measures of cost-efficiency and measures of quality of performance shall be calculated separately and disclosed as such. To the extent the individual scores for quality of performance and cost efficiency are combined for a total ranking, the proportion of each measure shall be clearly disclosed. For example, a company could maintain separate cost efficiency scores and quality of performance ratings to disclose to the consumer. In the event the company decides to combine the cost efficiency and quality of performance scores for a total combined score, the individual component scores, and their proportion of the total combined score, shall be clearly disclosed.

9. In evaluating physician quality and cost-efficiency, CIGNA should seek to achieve the goals of safe, timely, effective, efficient, equitable and patient-centered care, to the

extent possible. CIGNA should seek to include patient experience as a measure of patient-centeredness. CIGNA shall use measures to determine quality of performance that are based on nationally-recognized evidence-based and/or consensus-based clinical recommendations or guidelines. Where available, CIGNA shall use measures endorsed by the National Quality Forum (“NQF”) or other entities whose work in the area of physician quality performance is generally accepted in the healthcare industry. Where NQF-endorsed measures are unavailable, CIGNA shall use measures endorsed by the AQA and accreditors. Where NQF, AQA, or accreditors’ measures are unavailable, or data to calculate the measures are unavailable to CIGNA, CIGNA shall use measures based on other bona fide nationally-recognized guidelines. The basis and data used, and its relative weight or relevance to the overall rating, shall be fully disclosed.

10. In light of the need for greater consistency in physician quality performance and cost-efficiency evaluations, CIGNA agrees to support the development and use of standardized quality and cost-efficiency measures.

11. At least 45 days prior to implementation of a material change to CIGNA’s program, CIGNA shall inform physicians of its intent to use and process for using measures or other criteria to determine quality performance, cost-efficiency, or placement in a performance network.

12. In evaluating physician cost-efficiency performance, CIGNA shall use appropriate and comprehensive episode of care software and shall ensure that any appropriate risk adjustment occurs as described below. In measuring physician cost-efficiency, CIGNA shall compare physicians within the same specialty within the appropriate geographical market. The

basis and data used, and its relative weight or relevance to the overall rating, shall be fully disclosed.

13. The oversight mechanism provided for in this Agreement shall examine compliance with the provisions and measurements described herein.

Accuracy in Sample Size

14. CIGNA shall describe the statistical basis for the number of patients for each disease state or specialty and use accurate, reliable and valid measurements of a physician's quality performance.

15. CIGNA shall describe the statistical basis for the number of patient episodes of care and use accurate, reliable and valid measurements of a physician's cost-efficiency performance.

16. The oversight mechanism provided for in this Agreement shall examine compliance with this section.

Measurements Adjustments

17. In determining a physician's performance for quality and cost-efficiency, CIGNA shall use appropriate risk adjustment to account for the characteristics of the physician's patient population, such as case mix, severity of the patient's condition, co-morbidities, outlier episodes and other factors.

18. The oversight mechanism provided for in this Agreement shall examine compliance with this section.

Attribution

19. In deciding physician attribution for quality measurement, CIGNA shall determine which physician or physicians should be held reasonably accountable for a patient's care and shall fully disclose the methodology used for such attribution.

20. The oversight mechanism provided for in this Agreement shall examine compliance with this section.

Transparency in Rankings

21. In describing its physician performance program and how physicians are selected for the CIGNA Care Network, CIGNA shall clearly indicate the measurements for each criteria and its relative weight in overall evaluation. In ratings for consumers' use, measures of cost-efficiency should be used in conjunction with measures of quality of performance. CIGNA shall not conduct rankings based solely on cost-efficiency, but shall consider quality dimensions. Specifically, CIGNA shall disclose to what extent the rankings and selection process are based on cost-efficiency and on quality. To the extent that CIGNA presents a combined score or rating using cost-efficiency and quality, CIGNA shall disclose the specific measures for each category and their relative weight in determining a combined score.

22. CIGNA shall disclose how the perspectives of consumers, consumer advocates, employers, labor, and/or physicians were incorporated in the development of the physician reporting program.

Transparency - Disclosure to Consumers

23. For existing programs, not later than 30 days from the effective date of this Agreement, CIGNA shall disclose to consumers: (1) where its physician performance ratings are

found; (2) that physician performance ratings are only a guide to choosing a physician, that consumers should confer with their existing physicians before making a decision, and that such ratings have a risk of error and should not be the sole basis for selecting a doctor; (3) information explaining the physician rating system, including the basis upon which physician performance is measured, and the basis for determining that a physician is not currently rated due to insufficient data or a pending appeal; (4) any limitations of the data CIGNA uses to measure physician performance; (5) how physicians are selected for inclusion or exclusion in the CIGNA Care Network; (6) details on the factors and criteria used in CIGNA's rating systems, specifically its quality performance measures, cost-efficiency measures and other methodologies as prescribed herein; and (7) how the consumer may register a complaint about the CIGNA Care Network with CIGNA and the oversight monitor. CIGNA agrees to directly and prominently display this information on its website(s) and other appropriate locations in accordance with the standards and template when provided by the oversight monitor described below. To assure compliance with items one through seven of this paragraph, CIGNA shall apply for and obtain review by the oversight monitor described below.

24. For programs CIGNA will be implementing in the future, at the time the program is made public, CIGNA shall document that it has already completed or has applied to complete a review by the oversight monitor described below. CIGNA will conspicuously disclose to consumers on its website(s) and other appropriate locations and formats information that describes its processes with regard to the above seven items and such other processes and procedures as are set forth in this Agreement, in accordance with the standards and requirements set forth by the oversight monitor described below.

Transparency - Disclosure to Physicians

25. For existing programs, no later than 30 days from the effective date of this Agreement CIGNA shall apply for and obtain review by the oversight monitor described below, to enable reporting of the detailed data and methodologies to physicians in an independent and easily-accessible manner, including measures and other criteria, that CIGNA used to determine physician quality and cost-efficiency ratings and inclusion or exclusion in the CIGNA Care Network. In addition, CIGNA shall explain to physicians that they have the right to correct errors and seek review of data, quality and cost-efficiency performance ratings and inclusion or exclusion from the CIGNA Care Network. CIGNA shall also inform physicians they may submit any additional information, including that contained in medical charts, for consideration. CIGNA shall also provide a reasonable, prompt, and transparent appeals process.

26. For programs CIGNA will be implementing in the future, at the time the program is made public, CIGNA shall document that it has already completed or has applied to complete review by the oversight monitor described below.

27. At least 45 days before making available to consumers any new or revised quality or cost-efficiency evaluations or any new or revised inclusions or exclusions from the CIGNA Care Network, CIGNA shall provide physicians with notice of the proposed change; an explanation of and access to the data used for a particular physician; methodology and measures used to assess physicians, including attribution; and an explanation of the physician's right to make corrections and appeal. If a physician makes a timely appeal, CIGNA shall make no change in the physician's quality and cost-efficiency rankings or designation until the appeal is completed. The oversight monitor shall have oversight and review of the physician appeals

process.

Use of Data

28. Data collection is a critical part of physician performance measurement. In order to produce the most reliable and meaningful information, CIGNA shall use the most current claims or other data to measure physician performance, consistent with the time period needed to attain adequate sample sizes and to comply with the requirements of this Agreement. CIGNA shall use its best efforts to ensure that the data it relies upon is accurate, including a consideration of whether some medical record verification is appropriate and necessary.

29. As part of its reporting to the oversight monitor described below, within 3 months of this Agreement, CIGNA shall provide the oversight monitor a plan to use aggregated (pooled) data, validated as appropriate, as a supplement to test its own claims data, within 6 months of this Agreement. The OAG may in its sole discretion grant an extension of time in this regard.

Oversight

30. To assure compliance with the terms of this Agreement, and to facilitate the collection and presentation to consumers and physicians of information about CIGNA's processes and methodologies used in its physician performance reporting program, CIGNA agrees to the appointment of an oversight monitor to be known as the Ratings Examiner ("Rx"). The Rx shall be a nationally-recognized standard-setting organization, nominated and paid for by CIGNA, and approved by the OAG. CIGNA shall promptly complete and maintain in good standing a review of its physician performance measurement and reporting process by the Rx. The review conducted by the Rx shall encompass all of the elements described in this Agreement. CIGNA also agrees to obtain review by the Rx of such additional national

standardized review processes as may be necessary to assure compliance with this Agreement, including fully disclosing CIGNA's procedures for consumer and physician grievance or appellate rights. CIGNA agrees to make the results of these review processes prominently accessible in all locations that describe the physician performance reporting program. The Rx shall report and make recommendations to the OAG every six months regarding the details of the methodologies used and the extent to which they reflect national standards and compliance with this Agreement.

31. For the purposes of this Agreement, a "national standard setting organization" shall be national in scope, independent, and an Internal Revenue Code § 501(c)(3) organization, and shall have existing standards and collection processes that would enable the transparency and accuracy terms of this Agreement to be satisfied.

SUMMIT MEETINGS

32. CIGNA agrees to participate in any summit meetings the Attorney General convenes for the purpose of working on issues related to evaluating physician performance.

CONSISTENCY WITH STATE LAW

33. As applicable, this Agreement shall be interpreted consistently with §4406-(d)(4) of the Public Health Law, § 4803 of the Insurance Law and any other New York State law or regulation.

SUPPORT FOR CONSUMER INFORMATION PROGRAMS

34. CIGNA shall pay a sum up to \$100,000 to an organization or entity, nominated by CIGNA and approved by the OAG, engaged in the development of (1) a web-based and print description of the kind of programs described in this Agreement, and (2) a multi-stakeholder

process for developing a template for how best to communicate this information to consumers and physicians. The multi-stakeholder process shall include individuals representing the perspectives of consumers, insurers, labor, physicians and employers. If such an organization or entity cannot reasonably be found, CIGNA shall make the payment to the OAG. CIGNA agrees to make this payment within 30 days from the effective date of this Agreement. The OAG shall have sole discretion to extend this deadline.

ATTORNEY GENERAL'S AUTHORITY

35. Nothing in this Agreement shall in any way limit the Attorney General's ability to investigate or take other action with respect to any non-compliance at any time by CIGNA with respect to this Agreement. The parties hereby agree that this is an evolving field and as new technology and information becomes available, the parties may wish to refine this Agreement by mutual agreement in a signed writing.

VALID GROUNDS AND WAIVER

36. CIGNA hereby voluntarily accepts the terms and conditions of this Agreement and waives any right to challenge it in a proceeding pursuant to Article 78 of the Civil Practice Law and Rules or in any other action or proceeding.

CORRESPONDENCE AND PAYMENT

37. All correspondence and payments CIGNA submits to the Attorney General pursuant to this Agreement shall be sent to the attention of:

Henry S. Weintraub, Esq.
Assistant Attorney General
Health Care Bureau
120 Broadway, 25th Floor
New York, N.Y. 10271

Any checks issued to the OAG pursuant to this Agreement shall be made out to “State of New York Department of Law.”

SUCCESSORS

38. This Agreement, including, but not limited to, all obligations imposed on or undertaken by CIGNA herein, will be binding upon and enforceable against any subsequent owner or operator (whether by merger, transfer of control, contractual arrangements, or other means) of all or any substantial portion of CIGNA.

PRIVATE RIGHT UNAFFECTED

39. Nothing herein shall be construed to deprive any consumer or other person or entity of any private right under the law.

MISCELLANEOUS PROVISION

40. It is further understood and agreed that the acceptance of this Agreement by the Attorney General shall not be deemed or construed as an approval by the Attorney General of any of the activities of CIGNA, its successors, agents or assigns, and none of them shall make any representations to the contrary.

EFFECT OF BREACH OF AGREEMENT

41. Pursuant to the terms of Executive Law § 63(15), in the event that this Agreement is violated in a relevant and material respect, evidence of such violation shall be prima facie proof of a violation of General Business Law § 349 in any civil action or proceeding thereafter commenced by the Attorney General.

EFFECTIVE DATE

42. This Agreement shall be effective upon the date of the last signature to the Agreement, which may be executed in common parts.

IN WITNESS THEREOF, the undersigned subscribe their names:

Dated: October 29, 2007

**CONNECTICUT GENERAL LIFE
INSURANCE COMPANY and CIGNA
HEALTHCARE OF NEW YORK, INC.**

By: _____

**ATTORNEY GENERAL OF
THE STATE OF NEW YORK**

ANDREW M. CUOMO

WITNESS:

**AMERICAN MEDICAL
ASSOCIATION**

CONSUMERS UNION