

**STATE OF VERMONT  
DEPARTMENT OF FINANCIAL REGULATION**

In Re: Cigna Behavioral Health, Inc.        )  
  )  
  )       DOCKET NO. 13-011-I  
  )  
  )

**CONSENT ORDER**

The Vermont Department of Financial Regulation (the “Department”) has reviewed the practices of Cigna Behavioral Health, Inc. (“CBH”) and applicable Cigna-affiliated entities<sup>1</sup> (collectively, “Respondent”) regarding the use of unlicensed mental health review agents in making payment determinations for mental health and substance abuse related claims. The Department identified violations pursuant to Sections 4089a, 4089b, 4723, and 4724(9)(A) and (C) of Title 8, and Section 4 of Department Regulation H-2011-01: in making payment determinations in certain mental health service review cases, Respondent failed to obtain a review made by a licensed review agent and, following from those failures, Respondent failed to accurately present pertinent facts in settling claims, as a result of failing to reasonably implement standards that would have recognized and noted that its determinations were not based on a review performed by a licensed review agent.

**I. JURISDICTION**

1. Pursuant to the authority contained in Title 8, the Commissioner of the Department administers and enforces the insurance laws of the State of Vermont. 8 V.S.A. §§ 11—13, 15, 4089b, 4089a, 4723, and 4724.

**II. STIPULATION**

2. Respondent has executed a “Stipulation and Consent to the Issuance of a Consent Order,” dated November 21, 2014 (“Stipulation”), which is incorporated by reference and accepted by the Commissioner. By this Stipulation, Respondent has consented to the

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<sup>1</sup> At all times, “Respondent” stands in the place of any entity directly and cognizably affiliated with CBH and the Cigna companies, including but not limited to CBH, Cigna Health and Life Insurance Company, and Connecticut General Life Insurance Company .

issuance of this Order by the Commissioner under 8 V.S.A. §§ 11, 12, 13, 15, 4089b, 4089a, 4723, and 4724, without admitting or denying any findings of fact or conclusions of law, except that Respondent admits the facts necessary to establish the Commissioner's and the Department's jurisdiction over Respondent and the subject matter of this action.

3. Respondent acknowledges that the Department will not be precluded in any manner from seeking to subject Respondent to further sanctions or administrative enforcement proceedings for any alleged future violation of Vermont laws and regulations occurring after the effective date of this Order.
4. Respondent will not make any public statement or comment that diminishes, undermines, contradicts, or denies any findings or conclusions of this Order.

### **III. DEPARTMENT FINDINGS AND CONCLUSIONS**

5. In order to determine whether to approve or deny payment for a given or proposed mental health care service, an insurer must obtain a "service review" of the given or proposed service.
6. Under 8 V.S.A. § 4089a(b)(5), a "service review refers to the system of reviewing the appropriate and efficient allocation of mental health care services given or proposed to be given to a patient . . . for the purpose of determining whether such services should be reimbursed, covered or provided by an insurer[.]"
7. Without a service review, an insurer cannot approve or deny a given or proposed mental health service. 8 V.S.A. § 4089a.
8. Only a licensed mental health review agent ("review agent") may conduct a service review. 8 V.S.A. §§ 4089a(b)(4) and 4089a(c).
9. As required by statute, the Department licenses mental health review agents and requires review agents to meet appropriate and established standards, including compliance with an application process; the appropriate type, medical qualifications, and personnel required to perform reviews; and submission to monitoring by the Department. 8 V.S.A. § 4089a and Dept. Reg. H-2011-01.
10. Respondent is a managed care organization in Vermont that provides insurance coverage and benefits to Vermonters relating to substance abuse and mental health conditions.

11. In certain cases, Respondent arranges for service reviews for its insured subscribers, reviews that are to determine whether a treatment or type of care is appropriate and/or efficient.
12. Respondent entered into contracts and agreements with certain independent physicians as well as with a business entity known as an independent review organization which employs physicians to perform reviews for insurers and like organizations. These independent physicians and the independent review organization (collectively, “unlicensed review agents”) are unlicensed agents—neither those independent physicians nor the independent review organization has a licenses from the Department to perform service reviews.
13. In more than 50 cases between February 28, 2000, and the effective date of this Order (“Given Period”), Respondent received reviews from the unlicensed review agents consisting of advice, recommendations, suggestions, and determinations of whether given or proposed medical services are the appropriate allocation of mental health services given or proposed to be given to its subscribers/patients.
14. In the given period and for more than 50 cases, Respondent adopted and incorporated reviews from the unlicensed review agents into its records and treated those reviews as service reviews, expressly basing the reimbursement or coverage determination on the reviews from unlicensed agents. Based on our review, the Respondent’s standards and internal controls failed to catch this error. In those cases, Respondent did not otherwise conduct its own reviews. In those cases, Respondent typically mailed notifications to insured patients and their treating physicians which identified unlicensed agents as the physicians who made the determinations—such letters indicated that the appropriate service review had been conducted, when in fact the service reviews had not been conducted since the “reviewer” was not licensed by the Department, thereby mistakenly misinforming insured patients and their treating physicians as to whether the requested treatment or procedure had been reviewed.
15. In the given period and for more than 50 cases, Respondent regarded the reviews from the unlicensed review agents as “service reviews” and made determinations about the reimbursement or coverage of given or proposed treatments as a result of those reviews.

16. In the given period and for more than 50 cases, since unlicensed agents cannot legally conduct service reviews Respondent failed to conduct service reviews in more than 50 cases. 8 V.S.A. § 4089a and Dept. Reg. H-2011-01.
17. In those cases wherein the Respondent mistakenly sent incorrect information about service reviews to its insured patients and to treating physicians, a statutorily-mandated and important part of insurance coverage, the Respondent thereby violated 8 V.S.A. § 4724(9)(A).
18. In those cases wherein the Respondent did not obtain a service review from a licensed review agent, but acted on the claim anyway, the Respondent thereby “fail[ed] to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies.” 8 V.S.A. § 4724(9)(C).
19. During the course of the investigation into the matter, Respondent cooperated with the Department and that cooperation has been taken into account in this Order.

#### **ORDER TO PAY PENALTY**

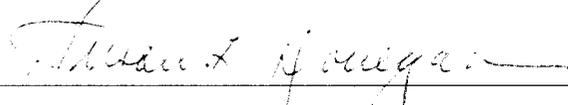
20. As used in this Order and in the Stipulation, the “Effective Date” means the date on which the Order is issued.
21. Respondent will continue to submit to monitoring of its mental health review agent compliance, and continue to impose the remedial measures instituted prior to this Order.
22. Respondent shall pay an administrative penalty of Three-Hundred-Forty-Two-Thousand and Five-Hundred Dollars (\$342,500.00) plus Fifty-Thousand Dollars (\$50,000.00) in costs, such amounts to be paid within thirty (30) days of the effective date of this Order.
23. Respondent must treat the civil money penalty paid under this Consent Order as a penalty paid to the government for all purposes. Regardless of how the Department or the State ultimately uses those funds, Respondent may not: claim, assert, or apply for a tax deduction, tax credit, or any other tax benefit for any civil money penalty paid under this Order; or seek or accept, directly or indirectly, reimbursement or indemnification from any source, including but not limited to payment made under any insurance policy, with regard to any civil money penalty paid under this Order.
24. Except for Prest & Associates, Inc. (“Prest”), which is the subject of an action of the Department already, the Department will seek no further fine or other sanction authorized by statute or regulation with respect to failure of Respondent and/or any of its known

agents, affiliates, subsidiaries, divisions, departments, business lines, products or other representatives, to comply with 8 V.S.A. §§ 4089a, 4089b, 4723, or 4724(9)(A) and (C), or Section 4 of Department Regulation H-2011-01, Dept. Reg. H-2011-01 § 4, for the Given Period as it relates to Respondent's failure to conduct service reviews and related violations.

25. The exceptions identified in the preceding paragraph refer to Prest & Associates, Inc. and any of Prest's agents, affiliates, subsidiaries, divisions, departments, departments, business lines, products or other representatives (collectively, "agents"). Nothing in this Order in any way limits, bars, impedes, prohibits, or otherwise affects the Department from seeking fine or other sanction authorized by statute or regulation against Prest or its agents, including failures to comply with 8 V.S.A. §§ 4089a, 4089b, 4723, or 4724(9)(A) and (C), or Section 4 of Department Regulation H-2011-01, Dept. Reg. H-2011-01 § 4, including the Department's separate action against Prest for any work Prest undertook for the Respondent.
26. This Order is intended to be, and will be construed as, a final order of the Commissioner.
27. This Order shall be governed by and construed by the laws of the State of Vermont.

SO ORDERED:

Dated at Montpelier, Vermont this 35<sup>th</sup> day of November, 2014.

  
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Susan L. Donegan, Commissioner  
Vermont Department of Financial Regulation