

STATE OF NEW JERSEY
DEPARTMENT OF BANKING AND INSURANCE

IN THE MATTER OF THE REQUEST BY)	
EXPRESS SCRIPTS TO SURRENDER THE)	
LICENSE OF CARECORE, N.J., AND)	
CONVERT TO A CERTIFIED ORGANIZED)	CONSENT ORDER
DELIVERY SYSTEM BY MAKING THE RISK)	
DE MINIMUS AND IN LIEU OF THE FILING)	
AND PUBLIC HEARING REQUIREMENTS OF)	
THE INSURANCE HOLDING COMPANY)	
SYSTEMS ACT, <u>N.J.S.A. 17:27A-2</u>)	

This matter having been opened by the Commissioner of the Department of Banking and Insurance (“the Commissioner” and the “Department”) pursuant to N.J.S.A. 17:1-1, 17:1-15, 17:1C-19, 17:27A-1 to -14, 17:48H-1 to -35, Title 17B, N.J.S.A. 26:2J-1 to -47, N.J.S.A. 26:2S-1 to -28, all regulations thereunder, and all powers expressed or implied therein; and

WHEREAS, pursuant to N.J.S.A. 17:1-1, the Department is vested with the authority to administer and enforce the insurance laws of this State; and

WHEREAS, pursuant to N.J.S.A. 17:1C-19, the Legislature has declared that the Department “has a statutory obligation to protect the interests of New Jersey’s insurance consumers and to regulate and oversee the operations of the insurance industry;” and

WHEREAS, pursuant to N.J.S.A. 17:1-15, the Commissioner has been granted with broad powers and duties to effectuate the statutory obligations of the Department to protect the interests of New Jersey’s insurance consumers and to regulate and oversee the operations of the insurance industry, including but not limited to: “Administer the work of the [D]epartment;” “Perform, exercise and discharge the functions, powers, and duties of the [D]epartment . . . as the

[C]ommissioner deems necessary;” “Determine all matters of policy within the [C]ommissioner’s jurisdiction;” and “Perform such other functions as may be prescribed by law in this act or by any other law;” and

WHEREAS, pursuant to 17:48H-1 to -35, Title 17B, N.J.S.A. 26:2J-1 to -47, N.J.S.A. 26:2S-1 to -28, the Commissioner has broad and pervasive powers to regulate the health insurance markets in this State and has been entrusted with the protection of health insurance consumers, including licensure, market conduct regulation, and/or solvency monitoring of all entities licensed or authorized to transact business as licensed organized delivery systems (“LODS”), health insurers, and health maintenance organizations, or as certified organized delivery systems in this State; and

WHEREAS, P.L. 2017, c. 383, enacted January 16, 2018, provided that beginning April 16, 2018, pharmaceutical services are considered “limited health care services” under the Organized Delivery System Act (“Act”), N.J.S.A. 17:48H-1 to -35, and thus pharmacy benefit managers must become either certified or licensed as an organized delivery system and the Department has issued Bulletin 18-11 in anticipation of rulemaking in this regard; and

WHEREAS, pursuant to N.J.S.A. 17:27A-2d, the Commissioner is empowered with prior approval of any merger or other acquisition of control of a domestic insurer, which includes any LODS pursuant to N.J.S.A. 17:48H-16(a) and N.J.A.C. 11:22-4.10, after holding a public hearing; and

WHEREAS, pursuant to N.J.S.A. 17:27A-2 and N.J.A.C. 11:1-35.6(f) and -35.6(g), upon the Department’s determination that a Form A filing is deemed complete, the “acquiring party shall cause notice of the hearing to be published in not less than two newspapers of general circulation in this State . . . [and] not later than seven days, nor earlier than 14 days, prior to the

scheduled date of the hearing,” which “shall be on the documents filed” unless the Department in its discretion determines that a public hearing with live testimony is in the interest of the policyholders of the insurer being acquired or of the public; and

IT APPEARING that, pursuant to N.J.S.A. 17:27A-2, by a filing dated April 20, 2018, Cigna Corporation (“Cigna”) and Halfmoon Parent, Inc. (“Holdco”), filed with the Department an application to acquire control (“the Form A filing”) of CareCore N.J., LLC. (“CareCore” or “the ODS”), a LODS in New Jersey; and

IT FURTHER APPEARING that CareCore provides utilization management and a network for outpatient diagnostic imaging and other services that provides services for the State’s largest commercial health carrier, in addition to other insurers operating in New Jersey, and had over \$158 million in direct written premium in this State in 2017; and

IT FURTHER APPEARING that CareCore is an indirectly and wholly owned subsidiary of Express Scripts Holding Company, a Delaware Corporation (“Express Scripts”), and the Form A filing is a part of Cigna’s proposed acquisition of Express Scripts, a nationwide pharmacy benefits management services company with complementary health services operation, (hereinafter “transaction”); and

IT FURTHER APPEARING that Cigna has a New Jersey health maintenance organization and a New Jersey dental plan organization, and other foreign insurers in the group that are authorized to transact business in New Jersey; and

IT FURTHER APPEARING that the Department has not deemed the Form A filing complete and has not directed Cigna to publish notice of the hearing as required by N.J.A.C. 11:1-35.6(f); and

IT FURTHER APPEARING that, despite New Jersey's regulatory requirements, Cigna and Express Scripts first advised the Department on or about December 13, 2018, that the parties intend to close the transaction on December 19, 2018; and

IT FURTHER APPEARING that Cigna and Express Scripts seek the ability to proceed with the transaction and remain in compliance with all New Jersey regulatory requirements through a reduction of the risk in the LODS, CareCore, such that an exemption from licensure can be granted by the Commissioner and CareCore's license can be surrendered and converted into a certified ODS pursuant to N.J.A.C. 11:22-4.3(b)(1), to enable withdrawal of the Form A filing; and

IT FURTHER APPEARING that, in support of this, CareCore filed with the Department an application for exemption from licensure as an organized delivery system supported by necessary documents including a fully-executed Capital and Surplus Guaranty dated December 18, 2018, by Cigna and CareCore whereby Cigna absolutely and unconditionally guarantees to contribute funds to CareCore, as necessary or on demand of the Commissioner, to maintain the ODS' Risk-Based Capital ("RBC") ratio above Company-action level, and whereby the parties agreed that CareCore shall continue to comply with appropriate State laws, including but not limited to, submission of Quarterly and Annual Financial Statements and an annual RBC report; and

IT FURTHER APPEARING that Cigna, Express Scripts and CareCore hereby consent to the terms and conditions of this Consent Order in furtherance of the transaction and to appropriately and necessarily provide the Commissioner and the Department the opportunity to address any concerns or issues regarding possible impacts of the transaction on the New Jersey health insurance market and its consumers, providers and carriers; and

NOW, THEREFORE, IT IS on this 18th day of December, 2018:

ORDERED and AGREED that CareCore's request for an exemption from licensure pursuant to N.J.A.C. 11:22-4.3(b)(1) is hereby granted because the ODS demonstrated that its exposure to financial loss is now limited in amount or likelihood to the degree that it reasonably will not prevent the system from satisfying the liabilities imposed under the terms of its contracts; and

IT IS FURTHER ORDERED and AGREED that, pursuant to N.J.S.A. 17:48H-1 to -35, N.J.A.C. 11:22-4.1 to -4.14 and N.J.A.C. 11:24B-1.1 to -5.10, CareCore's license as an organized delivery system is hereby surrendered and its license is converted to a certified organized delivery system; and

IT IS FURTHER ORDERED and AGREED that, pursuant to N.J.A.C. 11:22-4.10, upon full execution of this Consent Order by the parties and issuance by the Commissioner, the Form A filing shall be deemed withdrawn because it is no longer required due to the conversion of the LODS to a CODS; and

IT IS FURTHER ORDERED and AGREED that, in consideration of the foregoing, the parties to this Consent Order hereby consent in full to the following conditions:

1. CareCore shall continue to comply with the requirements of N.J.S.A. 17:48H-1 to -35, N.J.A.C. 11:22-4.6 to -4.9, -4.10 (Holding Company Act Compliance, N.J.S.A. 17:27A-1 to -14, except for N.J.S.A. 17:27A-2 to the extent provided herein), and -4.11 to -4.14, N.J.A.C. 11:24B-1.1 to -5.10, N.J.A.C. 11:2-39A.1 to -39A.15, including submission of Quarterly and Annual Financial Statements and an annual Risk-Based Capital Report, and consents to application of proceedings pursuant to Life and Health Insurers Rehabilitation

and Liquidation Act, N.J.S.A. 17B:32-31 to -91 if the financial condition warrants institution of delinquency proceedings in this State; and

2. **No New Jersey Funds for Acquisition.** Upon consummation of the transaction, Cigna/Express Scripts shall: (a) *Assets*: not dispose of or otherwise use assets of CareCore or Cigna HealthCare of New Jersey, Inc. and Cigna Dental Health of New Jersey, Inc. (collectively with CareCore, the “NJ Domestic Insurers”) or any other subsidiaries of Cigna/Express Scripts that are licensed, authorized, or certified by the New Jersey Department of Banking and Insurance to transact business in New Jersey (collectively, the “Cigna Insurers In NJ”) for the purpose of repaying any debt incurred to finance the transaction, use no part of the assets of the NJ Domestic Insurers or the Cigna Insurers In NJ to pay, reimburse, or otherwise fund both the cash financing portion of the transaction and the substantial debt related to the financing of the transaction except, with respect to this clause (a), as approved or otherwise permitted by the relevant agency with regulatory authority; (b) *Costs*: not pass onto the NJ Domestic Insurers, the Cigna Insurers In NJ or New Jersey insureds any acquisition costs or other consideration, including without limitation executive compensation paid to or accrued for the benefit of any executive officers of Cigna/Express Scripts in connection with, or triggered by, the transaction; (c) *Rates*: not seek premium rate increases applicable to New Jersey insureds that are intended to be used, or are used, to pay for the cost of the transaction. Cigna/Express Scripts represent and warrant that premiums and cost-sharing obligations payable (including copayments and deductibles) by New Jersey insureds for products offered by the NJ Domestic Insurers and the Cigna Insurers In NJ shall not increase as a result of costs incurred in financing, analyzing and/or consummating the transaction (“Acquisition

Costs”). (Such Acquisition Costs include, but are not limited to, attorneys’ and investment bankers’ fees, travel expenses, due diligence expenses, and expenses related to current or future acquisitions by Cigna/Express Scripts.) (d) *No Dividends*: The NJ Domestic Insurers shall refrain from declaring and/or paying any dividends (ordinary or extraordinary), without the express prior approval of the Commissioner for a period of three (3) years from the consummation of the transaction.

3. **Prompt De-Lever**. The Applicants have represented in the Application that the combined entity will de-lever to a debt-to-capital ratio below 40% within 18 to 24 months following the transaction. Upon the consummation of the transaction, Cigna/Express Scripts will provide to the Department semi-annual reports on the status of the plans to de-lever with regards to the debt financing obligations. Such semi-annual reports shall be submitted to the Department as a separate document and shall include the current leverage ratio.
4. **Maintain RBC**. For a period of five (5) years from the consummation of the transaction, Cigna/Express Scripts shall cause the NJ Domestic Insurers to maintain a minimum Authorized Control Level Risk Based Capital (RBC) level of 300% at all times.

Plan of Operation

5. **Document Synergies**. The parties have represented in the Form A Application that certain synergies will be achieved as a result of the transaction. As such, Cigna/Express Scripts shall provide to the Department annual reports for three years documenting details of the progress toward achieving such estimated synergies (total cost savings reflected in terms of premium reductions, out of pocket cost savings and/or other savings accruing to customers and consumers) both (a) on a nationwide basis and (b) specific to the New Jersey business of the NJ Domestic Insurers and the Cigna Insurers In NJ.

Commitment to New Jersey Insureds

6. **Maintain Products, Services Area, Networks.** Cigna/Express Scripts agree that, for a period of three years from consummation of the transaction, (a) the NJ Domestic Insurers shall, continue to offer their current Medicare Part D prescription drug plans and comprehensive health products, if any, and the Cigna Insurers In NJ shall maintain substantially the same offering of comprehensive health products, if any, in each case, throughout their current service area in New Jersey, except to the extent that changes to such products or service areas are otherwise approved by the Department or required by the Centers for Medicare and Medicaid Services, and (b) the NJ Domestic Insurers and the Cigna Insurers In NJ shall use reasonable efforts to maintain their current networks of providers, including pharmacies, without material changes, except to the extent such changes are otherwise approved by the Department or required by the Centers for Medicare and Medicaid Services. Nothing herein shall preclude the NJ Domestic Insurers or the Cigna Insurers In NJ from offering new products with different networks or from entering new markets in New Jersey, such as the individual and small employer markets.
7. **New Jersey Business.** Cigna/Express Scripts are committed to seeking opportunities to write new business in New Jersey. During the three year-period from the consummation of the transaction, Cigna/Express Scripts will evaluate in good faith opportunities to offer one or more new products in New Jersey and will report to the Department annually regarding such efforts.
8. **No Material Change to Business.** (a) Upon the consummation of the transaction, Cigna/Express Scripts shall refrain from the following actions: (i) liquidating the NJ Domestic Insurers; (ii) selling any material portion of the assets of the NJ Domestic Insurers;

(iii) merging the NJ Domestic Insurers with any other person or persons; or (iv) making any other material change with regard to business, corporate structure, management or general plan of operations of the NJ Domestic Insurers, all without the express prior approval of the Commissioner.

(b) Except to the extent authorized or required by a regulatory authority with applicable jurisdiction, upon the consummation of the transaction, Cigna/Express Scripts shall refrain from the following actions: (i) liquidating the Cigna Insurers In NJ; (ii) selling any material portion of the assets of the Cigna Insurers In NJ; (iii) merging the Cigna Insurers In NJ with any other person or persons; and (iv) making any other material change specific to the New Jersey business of Cigna Insurers In NJ.

9. **No Gag Clauses.** On a going forward basis, Cigna/Express Scripts shall not enter into any new provider contracts between New Jersey providers and affiliated companies containing gag clauses and/or that would restrict the ability of the provider to freely and openly discuss lower priced drugs and other services. Cigna/Express Scripts shall provide the Department with quarterly reports on its progress to eliminate these clauses in New Jersey until further order of the Commissioner or her successors.

Commitment to New Jersey's Improved Health Outcomes

10. **Care Improvements.** Cigna/Express Scripts shall roll out throughout New Jersey, and in scale that is reflective of New Jersey's market share of Cigna/Express Scripts' business, the enhanced care model as presented as part of the Form A Application – such as improvements in total cost of care, Net Promoter Score, cost trend and closures in gaps of care such as diabetes care, cardiology care and opioid abuse. Cigna/Express Scripts shall also provide to the Department an annual report for a period of three years from

consummation of the transaction, detailing quality metrics applied and measured by Cigna/Express Scripts along with additional details indicating improved health outcomes.

11. Public Service. Within 180 days of closure of the transaction, The Cigna Foundation will create a New Jersey Donor Advisory Board to make recommendations concerning the use of Public Services Funds (as hereinafter defined) for purposes as follows: including but not limited to, supporting health insurance education and enrollment activities, health initiatives, health care transformation activities, all of which Public Service Funds shall be granted to organizations operating within, and for purposes occurring in, the State of New Jersey.

(a) The Cigna Foundation shall initially contribute and deposit \$1.5 million to the New Jersey advised fund upon formation (the “Public Service Funds”) within 180 days of closure of the transaction, and \$1.5 million annually for the four years following the initial contribution and deposit. The New Jersey Donor Advisory Board, with the consent of the Commissioner upon initial formation only, shall be broadly based and made up of five (5), seven (7) or nine (9) New Jersey residents, all of whom shall be independent of any influence or control of Cigna or The Cigna Foundation.

(b) Sixty (60) days prior to the adoption of the proposed organizational and/or governance documents, The Cigna Foundation shall submit said documents to the Department of Banking and Insurance for prior review and approval. Beginning in 2020, by each June 1st, The Cigna Foundation shall submit an annual report to the Commissioner with respect to the New Jersey Advised Fund, which shall describe the New Jersey Donor Advisory Board’s members, information about all grants and expenditures made in furtherance of the purposes of the New Jersey Advised Fund, including the recipients of financial support

recommended by the New Jersey Donor Advisory Board, and financial statements of the New Jersey Advised Fund's activities for the prior year ended December 31st.

(c) The Cigna Foundation shall also provide the Department by June 1st each year, the IRS Form 990 filed with respect to The Cigna Foundation for the prior year-ended December 31st, any filings made in accordance with the laws of the State of Connecticut, and shall also create a webpage providing information concerning the activities of the New Jersey Advised Fund on The Cigna Foundation website.

Data Privacy

12. **Firewalls and Data Use.** For a period of at least five (5) years from the consummation of the transaction, Cigna/Express Scripts shall adopt a firewall policy that creates appropriate functional separation between Cigna employees involved in the sales and account management, pricing and underwriting, and proposals and marketing for Cigna's Healthcare of NJ, Cigna Dental Health of NJ and Carecore NJ, LLC and competitively sensitive information belonging to Express Scripts' health plan clients ("Confidential Information"). Cigna/Express Scripts shall maintain these firewalls to ensure that health plan clients' competitively sensitive information is not inappropriately used in a manner that harms competition (the "Firewalls"). The Firewalls shall include: (a) appropriate IT access controls, organizational structures, and corporate policies and procedures that are designed to ensure health plan clients' information is not used to the competitive advantage of Cigna's health plan; (b) training and monitoring to ensure compliance; (c) investigation of any suspected material violation of the established policies and procedures; and (d) appropriate disciplinary action for any substantiated violation. Cigna/Express Scripts shall provide the Commissioner with a copy of their firewall policy within 10 days of the

consummation of the transaction. No later than forty-five (45) days following the consummation of the transaction, Cigna/Express Scripts shall retain an independent consultant acceptable to the Department to perform an assessment of such firewall policy. Cigna/Express Scripts shall provide the Department with periodic reports regarding such assessments as well as a copy of such consultant's final report together with Cigna/Express Scripts' plans to address any recommendation and within ninety (90) days of receipt a progress report as to implementation.

13. **Cybersecurity.** Cigna/Express Scripts agrees to provide the Department with confidential access to their cybersecurity plan for review as a part of the coordinated multi-state examination in which New Jersey is participating pursuant to N.J.S.A. 17:27A-5 and N.J.S.A. 17:27A-6 commencing in 2019. Cigna/Express Scripts agrees to provide notice to the Department when/if a cybersecurity breach takes place and agrees to work with the Department to protect New Jersey policyholders if they are affected. Cigna/Express Scripts shall take no action to oppose regulation and/or legislation regarding cybersecurity, the same as or substantially similar to the NAIC's Insurance Data Security Model Law. Cigna/Express Scripts commits to serving as a resource to the Department and providing constructive input and expertise to the Department with respect thereto.

Competition

14. **No Preferential Pricing.** Express Scripts and its subsidiaries are prohibited from including a "most favored nation" provision, whether written or oral, or any other similar provision that provides preferential pricing terms, in any agreement with any Cigna-affiliated health insurer licensed or authorized to transact business in New Jersey.
15. **Independent Pharmacies.** Cigna/Express Scripts strongly support the role of independent

pharmacies in the healthcare system. The NJ Domestic Insurers and the Cigna Insurers In NJ will strive to maintain a participating provider network that includes both chain and non-chain pharmacies for insured products in New Jersey. Cigna/Express Scripts acknowledges and commits that the NJ Domestic Insurers and the Cigna Insurers In NJ will fully comply with New Jersey's any willing pharmacy mandate with respect to all pharmacies, including specialty pharmacies, for the business conducted in this State. For a period of three years from consummation of the transaction, the NJ Domestic Insurers and the Cigna Insurers In NJ shall annually report to the Department the percentages of non-chain New Jersey pharmacies and specialty pharmacies in their New Jersey pharmacy networks.

Pharmaceutical Costs

16. **Pharmacy Rebates to Policyholders.** Cigna/Express Scripts shall provide to the Department an annual report describing all pharmacy rebates received by or credited to the NJ Domestic Insurers, as well as those pharmacy rebates received or credited to the Cigna Insurers In NJ in connection with New Jersey business insured or administered by such affiliates. The report shall include at a minimum, by line of business, the volume of rebates returned to employers or insureds, the volume of rebates credited at the point of sale, and the volume of rebates retained by the insurer.
17. **PBM Regulation** – Cigna/Express Scripts will not oppose any regulations proposed by the Department regarding implementation, and compliance by Pharmacy Benefits Managers with the provisions, of N.J.S.A. 17B:27F-4 (multiple source generic drug pricing) and P.L. 2017, c. 383 (requiring licensure or certification of PBMs). Cigna/Express Scripts affiliated Pharmacy Benefits Managers transacting business in this State will fully comply

with those laws and their implementing regulations, and with Departmental Bulletin No. 18-11, and any subsequent amendments to those laws and the Department's Bulletin. Cigna/Express Scripts and its affiliates doing business in New Jersey will certify within ten (10) days following the consummation of the transaction that it currently complies with N.J.S.A. 17B:27F-4 by identifying to appealing pharmacies the wholesaler from whom a multiple source generic drug can be obtained at a price equal or less than the maximum allowable cost of the appealed drug.

18. **Definition of Specialty Drugs** – Cigna/Express Scripts will certify within ten (10) days following the consummation of the transaction that only drugs that meet the requirement of 45 C.F.R. 156.122(e) are considered specialty drugs which may have limited sources for the New Jersey business in the NJ Domestic Insurers and the Cigna Insurers In NJ.

19. **ODS Licensure/Certification** - Cigna/Express Scripts shall have all affiliates operating as Pharmacy Benefit Managers in New Jersey apply for licensure or certification as an organized delivery system as required by N.J.S.A. 17:48H-1 to -35 within ninety (90) days of any Departmental Bulletins providing direction as to the application process, or adoption of rules requiring such licensure or certification, whichever comes first.

Compliance with Other New Jersey Regulations

20. Cigna/Express Scripts will ensure that the NJ Domestic Insurers and the Cigna Insurers In NJ fully comply with New Jersey formulary regulations at N.J.A.C. 11:22-5.9, which include a prohibition on closed formularies, and the IHC and SEH regulations, which include a provision requiring that pharmacies dispense a minimum supply of drugs when prior authorization is required but was not obtained, and any subsequent amendments thereto.

21. Cigna will provide the Department within ten (10) days of executing the within Consent Order the 2017 Supplemental Compensation Exhibit (SCE) for the group and shall provide annual updated group and allocated SCE's for a period of three (3) years following the consummation of the transaction in order to comply with the provisions of Bulletin No. 18-03, and any subsequent amendments thereto; and

IT IS FURTHER ORDERED and AGREED that the Department's mission is to protect and educate insurance consumers and to regulate and grow the insurance industry in this State. The conditions imposed in this Consent Order are in fulfillment of this mission. To the extent that Cigna/Express Scripts believes that any condition(s) may be placing them at a competitive disadvantage vis-à-vis their peers, the Department will consider those concerns as raised; and


IT IS FURTHER ORDERED and AGREED that nothing herein shall preclude Cigna/Express Scripts from asserting that reports provided pursuant to the commitments contained herein are exempt from disclosure pursuant to the provisions of the Open Public Records Act, N.J.S.A. 47:1A-1 to -18; and

IT IS FURTHER ORDERED and AGREED that the terms of this Consent Order shall only be amended or terminated through full execution by the parties and issuance of an Amended Consent Order by the Commissioner, or her successor and assigns; and

IT IS FURTHER ORDERED and AGREED that the Superior Court of New Jersey, Mercer County shall have exclusive jurisdiction over enforcement of this Consent Order and all other purposes related to this Consent Order; and

IT IS FURTHER ORDERED and AGREED that should any provision of this Consent Order be found to be invalid or unenforceable, such invalidity or unenforceability shall not

invalidate or make unenforceable any other provision of this Consent Order, and those provisions and the commitments provided therein by the parties shall continue in full force and effect.



Marlene Caride
Commissioner

Consented as Form, Content & Entry as provided on the attached signature pages:

(SPACE INTENTIONALLY BLANK)

Nicole S. Jones

Cigna Corporation

By:

12/18/18

Date

Erin Sale

Halfmoon Parent, Inc.

By:

12/18/18

Date

Express Scripts Holding Company

By:

Date

Cigna Corporation
By:

Date

Halfmoon Parent, Inc.
By:

Date



12/18/18

Express Scripts Holding Company
By:

Date

