REPORT ON EXAMINATION

OF THE

MEDCO CONTAINMENT INSURANCE COMPANY OF NEW YORK

AS OF

DECEMBER 31, 2016

DATE OF REPORT	**DECEMBER 8, 2020**
EXAMINER	**JOHN ROMANO, CFE**

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ANDREW M. CUOMO
Governor

LINDA A. LACEWELL
Superintendent

December 8, 2020

Honorable Linda A. Lacewell
Superintendent of Financial Services
Albany, New York 12257

Madam:

Pursuant to the requirements of the New York Insurance Law, and acting in accordance with the instructions contained in Appointment Number 31642, dated June 23, 2017 attached hereto, I have made an examination into the condition and affairs of the Medco Containment Insurance Company of New York, a for-profit stock company licensed pursuant to the provisions of Article 42 of the New York Insurance Law, as of December 31, 2016. The following report is respectfully submitted thereon.

The examination was conducted at the home office of Medco Containment Insurance Company of New York, located at 100 Parsons Pond Drive, Franklin Lakes, New Jersey.

Wherever the designations the "Company" or "MCICNY" appear herein, without qualification, they should be understood to indicate Medco Containment Insurance Company of New York.

Wherever the designation "MHS" appears herein, without qualification, it should be understood to indicate Medco Health Solutions, Inc., MCICNY's parent company.

Wherever the designation "ESHC" appears herein, without qualification, it should be understood to indicate Express Scripts Holding Company, MCICNY's ultimate parent company.

Wherever the designation, the "Department" appears herein, without qualification, it should be understood to indicate the New York State Department of Financial Services.

1. SCOPE OF THE EXAMINATION

The previous examination was conducted as of December 31, 2013. This examination was a financial examination, as defined in the National Association of Insurance Commissioners ("NAIC") *Financial Condition Examiners Handbook, 2017 Edition* (the "Handbook"), and covered the three-year period from January 1, 2014 through December 31, 2016. The examination was conducted observing the guidelines and procedures in the Handbook. Where deemed appropriate by the examiner, transactions occurring subsequent to December 31, 2016 were also reviewed.

The examination was conducted on a risk-focused basis in accordance with the provisions of the Handbook, which provides guidance for the establishment of an examination plan based on the examiner's assessment of risk in the Company's operations and utilized that evaluation in formulating the nature and extent of the examination. The examiner planned and performed the examination to evaluate the Company's current financial condition, as well as to identify prospective risks that may threaten the future solvency of MCICNY.

The examiner identified key functional areas and their corresponding key processes, assessed the risks within those processes and assessed the internal control systems and procedures used to mitigate those risks. The examination also included an assessment of the principles used and significant estimates made by management, an evaluation of the overall financial statement presentation, and determined management's compliance with the Department's statutes and guidelines, Statutory Accounting Principles, as adopted by the Department, and NAIC Annual Statement instructions.

Information concerning the Company's organizational structure, business approach and control environment were utilized to develop the examination approach. The examination evaluated the Company's risks and management activities in accordance with the NAIC's nine branded risk categories. These categories are as follows:

- Pricing/Underwriting
- Reserving
- Operational
- Strategic
- Credit
- Market
- Liquidity
- Legal
- Reputational

The examination also evaluated the Company's critical risk categories in accordance with the NAIC's ten critical risk categories. These categories are as follows:

- Valuation/Impairment of Complex or Subjectively Valued Invested Assets
- Liquidity Considerations
- Appropriateness of Investment Portfolio and Strategy
- Appropriateness/Adequacy of Reinsurance Program
- Reinsurance Reporting and Collectability
- Underwriting and Pricing Strategy/Quality
- Reserve Data
- Reserve Adequacy
- Related Party/Holding Company Considerations
- Capital Management

The Company was audited annually for the years 2014 through 2016, by the accounting firm of PricewaterhouseCoopers, LLP ("PwC"). The Company received an unmodified opinion in each of those years. Certain audit work papers of PwC were reviewed and relied upon in conjunction with this examination. ESHC has an internal audit department which has been given the task of assessing the Company's internal control structure.

A review was made of the Company's compliance with the provisions of Insurance Regulation 118 (11 NYCRR 89), "Audited Financial Statements." This regulation establishes the requirement that insurers develop an Enterprise Risk function to define and mitigate risks within the organization. The regulation is based on the Model Audit Rule ("MAR"), as established by the NAIC.

During this examination, an information systems review was made of the Company's computer systems and operations on a risk-focused basis, in accordance with the provisions of the Handbook. The examiner also reviewed the corrective actions taken by the Company with respect to the recommendations concerning financial issues contained in the prior report on examination. The results of the review are contained in Item 7 of this report.

This examination was conducted as a coordinated examination, as such term is defined in the Handbook, of the insurance subsidiaries of ESHC. The examination was led and facilitated by the state of Pennsylvania ("PA") with participation from the state of New York ("NY"). Since the Lead and Participating states, as such terms are defined in the Handbook, are accredited by the NAIC, the states deemed it appropriate to rely on each other's work. The examination team representing the Lead and Participating states identified and assessed the risks for key functional activities across all ESHC's insurance subsidiaries included within the examination scope. The examination team also assessed the relevant prospective risks as they relate to the various insurance entities.

This report on examination is confined to financial statements and comments on those matters which involve departure from laws, regulations or rules, or which require explanation or description.

2. FACILITATION OF THE EXAMINATION

Section 308(a)(1) of the New York Insurance Law states, in part:

> "The superintendent may also address to any… authorized insurer… any inquiry in relation to transactions or condition or any matter connected therewith. Every corporation or person so addressed shall reply in writing to such inquiry promptly and truthfully…"

Section 310 of the New York Insurance Law states, in part:

> "(2) Any examiner authorized by the superintendent shall be given convenient access… to the books, records, files, securities and other documents of such insurer or other person, including those of any affiliated or subsidiary companies thereof, which are relevant to the examination, and shall have power to administer oaths and to examine under oath any officer or agent of such insurer or other person, and any other person having custody or control of such documents, regarding any matter relevant to the examination.
>
> (3) The officers and agents of such insurer or other person shall facilitate such examination and aid such examiners in conducting the same so far as it is in their power to do so.
>
> (4) The refusal of any insurer to submit to examination shall be ground for revocation or refusal of a license or renewal license.

On October 5, 2017, MCICNY denied an examination request for access to two internal audit reports that had been performed of the Company's Medicare Supplemental line of business. On January 4, 2018, a letter was sent to the Company by the Department citing the Department's authority to receive the internal audit reports pursuant to sections 308 and 310 of the New York Insurance Law ("NYIL"). These sections of the NYIL provide the Superintendent with broad authority to obtain information from, and conduct examinations of, insurers and their holding companies. Additionally, these sections of the NYIL require the Company to provide the DFS with access to documents and require officers and agents of the insurer to facilitate and aid in the examination.

The Company violated sections 308(a)(1) and 310 of the New York Insurance Law when it failed to respond to the Department's January 4, 2018 letter.

It is recommended that the Company comply with sections 308(a)(1) and 310 of the New York Insurance Law and facilitate the examination process by promptly fulfilling all examination requests.

3. DESCRIPTION OF THE COMPANY

The Company was incorporated in the State of New York on February 15, 1989, under the name American Nisshin Insurance Company, a property and casualty insurance corporation. The Company received its licensing authority from New York State on July 15, 1989 and commenced writing business on July 31, 1989. On November 1, 1994, the Company effected a name change to Medco Containment Insurance Company of New York, following its August 31, 1994 acquisition by its current parent company, Medco Health Solutions, Inc. (formerly known as Merck-Medco Managed Care, LLC). Medco Health Solutions, Inc. ("MHS") is a third-party administrator of the prescription drug programs and services for such clients as large private and public-sector employers and their employees, physicians, pharmacies, drug manufacturers, etc. Commencing January 1, 2006, the Company began serving as a plan sponsor offering Medicare Part D prescription drug coverage, under the Centers for Medicare & Medicaid Services ("CMS") sponsored Medicare Part D benefit. The Company provides Medicare drug benefit plan options for beneficiaries, including (i) a "standard Part D" benefit plan as mandated by statute, and (ii) for an additional premium, benefit plans with coverage that exceeds the standard Part D coverage.

On July 21, 2011, MHS announced an agreement with Express Scripts, Inc. ("ESI" or "Express Scripts") whereby ESI agreed to buy MHS for $29.1 billion in cash and stock. On April

2, 2012, ESI and MHS merged, and MHS and ESI each became wholly owned subsidiaries of Express Scripts Holding Company.

MCICNY is required to maintain $100,000 of minimum paid-in capital based upon the line of business it is authorized to transact as set forth in Section 1113(a)(3)(i) of the New York Insurance Law. The Company reported, as of December 31, 2016, total paid-in capital of $1,000,000. Additionally, as of December 31, 2016, the Company reported total capital and surplus in the amount of $55,775,605. The Company's Risk Based Capital ("RBC") for the examination period decreased to 1,205.50% in 2016, from 2,387.57% in 2014. The RBC was in excess of any action level for those years.

Section 325(b) of the New York Insurance Law states, in part:

> "(b) A domestic insurer and a licensed United States branch of an alien insurer entered through this state may keep and maintain its books of account without this state if, in accordance with a plan adopted by its board of directors and approved by the superintendent…"

MCICNY maintains its books of accounts and corporate records in New Jersey, at its home office. Pursuant to the requirements of Section 325(b) of the New York Insurance Law, the Company has obtained regulatory approval for this arrangement.

A. <u>Management and Controls</u>

Pursuant to the Company's charter and by-laws, the corporate powers are to be exercised through a Board of Directors (the "Board") consisting of not less than seven (7) nor more than fourteen (14) members.

As of December 31, 2016, the seven (7) members of the Board of Directors and their principal business affiliations were as follows:

Name and Residence	Principal Business Affiliation
Martin Akins St. Louis, MO	Executive Vice President, Secretary and General Counsel, Express Scripts Holding Company
Jennifer Knisley Ballwin, MO	Vice President of Product Management, Express Scripts Holding Company
Michael Looney Chesterfield, MO	Senior Director Medicare/Medicaid, Express Scripts Holding Company
Christina Macinski St. Charles, MO	Vice President of Supply Chain Economics, Express Scripts Holding Company
Christopher McGinnis St. Charles, MO	Vice President, Controller, and Chief Accounting Officer, Express Scripts Holding Company
William McLaughlin Florida, NY	Vice President of Information Technology, Express Scripts Holding Company
David Queller St. Louis, MO	Senior Vice President of Sales and Account Management, Express Scripts Holding Company

The Company's Board of Directors held quarterly meetings for calendar years 2015 and 2016. According to the by-laws, the Board is only required to hold one meeting annually, without notice, immediately after the annual meeting of shareholders or within ten (10) days upon one (1) days' notice. The Chairman of the Board can call a special meeting as deemed appropriate.

The minutes of all meetings of the Board of Directors' and committees thereof held during the examination period were reviewed. A review of the minutes of the attendance records at the Company's Board meetings showed that the meetings were generally well attended, with all Board members attending at least one half of the Board meetings they were eligible to attend.

Section 2 – *Risk-Focused Examination Process* – of the *2017 NAIC Financial Condition Examiners Handbook* states in part:

> "…it is important that the board contain at least a critical mass of outside directors. The number should suit the entity's circumstances, but more than one outside director would normally be needed for a board to have the requisite balance… A board composed entirely (or principally) of officers of the company… cannot be viewed as capable of sufficient, independent oversight of the insurer operations."

The Board does not include any independent members, as each director is an officer of ESHC and holds a management position with MCICNY.

It is recommended, as a best practice and as suggested by the NAIC's Financial Condition Examiners Handbook, that the Company include a representation of independent members on its Board of Directors.

In reviewing the Board of Directors' and Committees' meeting minutes for the exam period, the examiner noted that the meeting minutes lacked a level of detail that demonstrated active participation of the Board in the business affairs of MCICNY. Active participation and decision making can be demonstrated through detailed notes of the discussion of the Board Members and/or inclusion of presentations and other meeting materials discussed during the Board meetings as part of the minutes.

Additionally, it should be noted that during the examination period, several actions of the Board were made in lieu of meetings.

It is recommended that MCICNY's Board of Directors actively participate in the decision-making of the Board and monitor and oversee all of MCICNY's business affairs.

A similar recommendation was made in the prior report on examination.

As of December 31, 2016, the principal officers of the Company were as follows:

Name	Title
Michael Looney	President and Chief Executive Officer
Christopher McGinnis	Vice-President and Chief Financial Officer
Timothy Smith	Vice-President and Treasurer
Martin Akins	Secretary

Subsequent to the examination date and during the course of fieldwork, the following changes in the principal officers of the Company occurred:

- Effective March 10, 2017, Peter Wickersham replaced Michael Looney as Chairman of the Board, President and Chief Executive Officer; as well as on the Audit and Compliance Committee of MCICNY.
- Effective September 1, 2017, Brad Phillips replaced Christopher McGinnis as Vice-President and Chief Financial Officer, Board and Audit Committee member for MCICNY.

B. Corporate Governance

Corporate Governance, Enterprise Risk Management ("ERM"), Internal Audit, and Compliance functions for the Company are provided by the ultimate parent company, Express Scripts Holding Company, a publicly traded company.

Overall, it was determined that the Company's Corporate Governance structure is adequate, sets an appropriate "tone at the top," supports a proactive approach to operational risk management, and contributes to an effective system of internal controls. It was concluded that the Board of Directors and key executives encourage integrity and ethical behavior throughout the organization and that senior management promotes a corporate culture that acknowledges, understands, and maintains an effective control environment.

<u>Enterprise Risk Management</u>

Insurance Circular Letter No. 14 (2011) encourages insurers to adopt a formal Enterprise Risk Management ("ERM") function to identify, measure, aggregate, and manage risk exposures within predetermined tolerance levels across all activities of the enterprise. The State of New York codified Insurance Regulation 203 (11 NYCRR 82), which formally establishes ERM function for insurers meeting certain requirements.

Insurance Regulation 203 (11 NYCRR 82) states, in part:

> "(a)…an entity shall adopt a formal enterprise risk management function that identifies, assesses, monitors, and manages enterprise risk…The enterprise risk management function shall be appropriate for the nature, scale, and complexity of the risk and shall…
>
> (1) have an objective enterprise risk management function headed by an appropriately experienced individual… who has access to the board of directors…
>
> (2) have a written risk policy adopted by the respective board or a committee thereof … that delineates the insurer's… risk/reward framework, risk tolerance levels, and risk limits;
>
> (3) provide a process for the identification and measurement of risk under a sufficiently wide range of outcomes using techniques that are appropriate to the nature, scale, and complexity of the risks the insurer… and are adequate for capital management and solvency purposes;
>
> (4) have a process of risk identification and measurement… that provides appropriately detailed descriptions and explanations of risks identified, the measurement approaches used, key assumptions made, and outcomes of any plausible adverse scenarios that were run;
>
> (5) use prospective solvency assessments, including scenario analysis and stress testing;
>
> (6) incorporate risk tolerance levels and limits in the policies and procedures, business strategy, and day-to-day strategic decision-making processes;
>
> (7) consider a risk and capital management process to monitor the level of financial resources relative to economic capital and regulatory capital requirements;
>
> (8) incorporate investment policy, asset-liability management policy, effective controls on internal models, longer-term continuity analysis, and feedback loops to update and improve the enterprise risk management function continuously;
>
> (9) address all reasonably foreseeable and relevant material risks including, as applicable, insurance, underwriting, asset-liability matching, credit, market, operational, reputational, liquidity, and any other significant risks;
>
> (10) include an assessment that identifies the relationship between risk management and the level and quality of financial resources necessary as determined with quantitative and qualitative metrics; and
>
> (11) identify, quantify, and manage any risks to which the insurer may be exposed by transactions or affiliations with any other member of the holding company system… of which the insurer is a member."

Express Scripts Holding Company adopted an ERM framework for proactively addressing and mitigating risks, including prospective business risks. ESHC relies on its Enterprise Risk Council (the "Council") to monitor the business and financial risk exposures of the Express Scripts Holding Company group, which includes MCICNY. The Council is led by the Vice President of Corporate Audit who meets regularly with other cross-functional Vice Presidents, known as risk champions, to discuss and review risk issues.

The prior report on examination as of December 31, 2013, included seven (7) recommendations related to ERM. As part of the NAIC's risk-focused examination process, the examiner conducted a review of the Company's ERM practices along with the lead state's (Pennsylvania Insurance Department) analyst's review of the Company's 2016 filed Own Risk and Solvency Assessment ("ORSA") report by Medco Containment Life Insurance Company ("MCLIC"), an affiliate domiciled in Pennsylvania.

During the period under review, the Company conducted little to no quantitative analysis of its key risks in a stressed environment. In addition, the Company did not use a risk and capital model. Furthermore, the Company's capital adequacy analysis and prospective solvency assessment was either missing or weak in the following areas:

- Actual group capital amount versus group risk capital amount;
- Sufficiency of group capital based upon use of economic capital scenarios or stress testing;
- Method of capital measurement;
- Quantification of reasonably foreseeable and relevant material risks;
- Controls over capital;
- Controls over model validation and/or independent reviews; and
- Quality of capital.

The Company addressed four (4) of the seven (7) prior report recommendations and continued to work on improving its ERM framework and practices. The following are repeat ERM recommendations from the prior report:

It is recommended that the Company identify and quantify its risks in a manner that is appropriate to the nature, scale, and complexity of the risks the insurer bears and that such identification and quantification be adequate for capital management and solvency purposes.

It is also recommended that prospective solvency assessments, including scenario and stress testing, be made a key component of the Company's ERM function, highlighting the impact of such scenario and stresses on the Company's future solvency.

It is further recommended that the Company consider a risk and capital management process to monitor the level of its financial resources relative to its economic capital and regulatory capital requirements.

C. Territory and Plan of Operation

As of December 31, 2016, MCICNY was licensed, only in the state of New York, to transact accident and health insurance as set forth in Section 1113(a)(3)(i) of the NYIL.

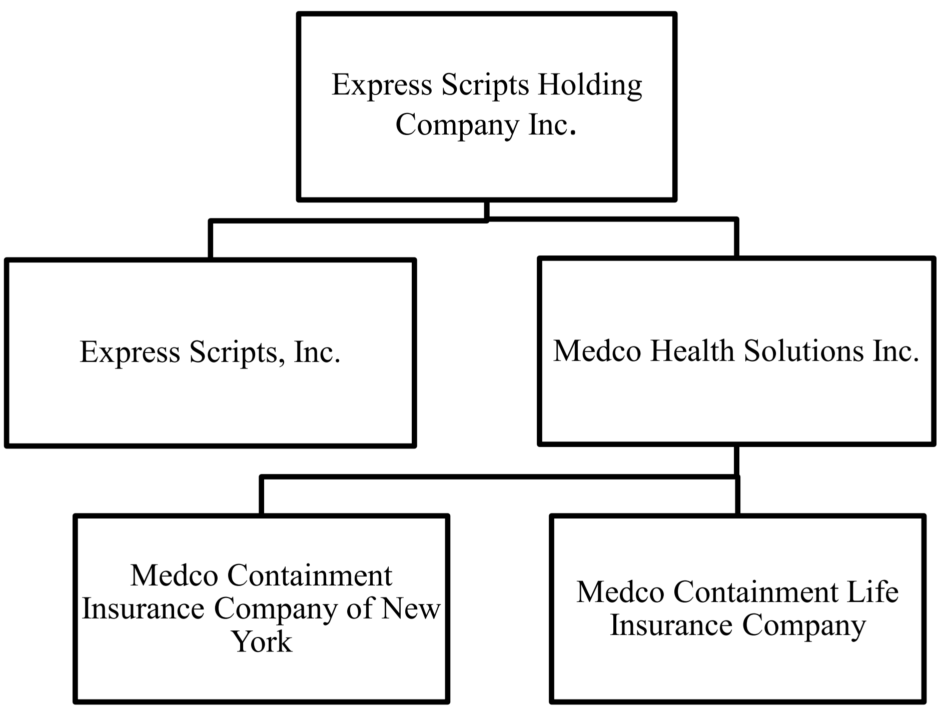
MCICNY's total direct written premiums for the examination period were as follows:

Year	Premiums Written
2014	$ 97,430,775
2015	98,261,960
2016	114,896,089
Total	$ 310,588,824

D. Holding Company System

MCICNY is a 100% controlled subsidiary of MHS, a Delaware-incorporated and publicly traded corporation. On July 20, 2011, Express Scripts, Inc. ("ESI") entered into an Agreement and Plan of Merger ("Merger Agreement") with MHS, Aristotle Merger Sub, Inc. and Plato Merger Sub, Inc. These later two entities were both wholly-owned subsidiaries of MHS. The Merger Agreement provided that Aristotle Merger Sub, Inc. merged with and into ESI, with ESI being the surviving corporation. Immediately thereafter, Plato Merger Sub, Inc. merged into MHS, with MHS being the surviving corporation. As a result of the merger, effective April 2, 2012, both MHS and ESI became wholly-owned subsidiaries of Aristotle Holding Inc., and MCICNY became an indirect subsidiary of the Aristotle Holding Inc. As part of the completion of the merger, Aristotle Holding, Inc. changed its name to Express Scripts Holding Company.

The following abbreviated chart illustrates the holding company system of MCICNY and its other affiliates as of December 31, 2016:



The Company is party to six (6) agreements with members of its holding company system, detailed as follows:

(1) Medicare Part D Pharmacy Benefit Management Agreement;
(2) Medicare Part D Pharmacy Benefit Management EGWP ("Employer Group Waiver Plan") Agreement;
(3) Integrated Medicare Part D Prescription Drug Program Master Agreement;
(4) Services Agreement;
(5) Joint Enterprise Agreement for Medicare Prescription Plan ("PDP") Sponsor; and
(6) Tax Allocation Agreement.

Medicare Part D Pharmacy Benefit Management Agreement

Effective January 1, 2015, the Company entered into the Medicare Part D Pharmacy Benefit Management Agreement with Medco Health Solutions and Express Scripts, Inc., a direct wholly owned subsidiary of Express Scripts Holding Company Inc., establishing Express Scripts, Inc. as the exclusive provider of PBM Services for all of the Company's Plans. Under the terms of the agreement, PBM services include, but are not limited to: eligibility determination, pharmacy network; including mail service pharmacy and specialty products, claims processing, formulary, rebates, program operations, and providing employees and vendor enrollment services for the Company. It was noted that this agreement, as well as the Medicare Part D Pharmacy Benefit Management Employer Group Waiver Plan ("EGWP") Agreement discussed below, superseded the Integrated Medicare Part D Prescription Drug Program Master Agreement. The agreement, effective January 1, 2016, was amended to revise the pricing, other services provided, and parties to the agreement. Additional changes to the agreement included the removal of Medco Health Solutions as a party, changing the settlement timing of the fees, and updated definitions.

Medicare Part D Pharmacy Benefit Management EGWP Agreement

Effective January 1, 2016, the Company entered into the Medicare Part D Pharmacy Benefit Management EGWP Agreement with Express Scripts, Inc., establishing Express Scripts as the exclusive provider of PBM Services for the employer groups the Company contracts with, along with CMS, to provide Employer Group Waiver Plans benefits to the Medicare-eligible retirees of the employer groups. Under the terms of the agreement, PBM Services include, but are not limited to eligibility determination, pharmacy network; including mail service pharmacy and specialty products, claims processing, formulary, rebates, program operations, and providing employees and vendor enrollment services for the Company.

Integrated Medicare Part D Prescription Drug Program Master Agreement

Effective June 6, 2005, the Company entered into the captioned agreement with MHS. The agreement provided for MCICNY to retain MHS and its subsidiaries, which hold TPA licenses in certain states, to provide a Medicare Prescription Drug Program including, but not limited to, retail pharmacy, mail order pharmacy, specialty drug pharmacy services, and prescription drug formulary for eligible persons, point-of-care, physician office communications, cost containment initiatives, and ensuring CMS Compliance developed and implemented by MHS. The agreement was amended annually to reflect updated rate changes for prescription drug reimbursement. The most recent amendments were effective on January 1, 2013 and January 1, 2014.

The Company further amended this Agreement, in September 2013 and January 2014, respectively, in both instances to update the Agreement to add pricing and other terms specific to the acquisition of an additional Medicare Prescription Drug Plan which was purchased from Smart Insurance Company (“the Smart D Plan”). These two amendments provided pricing terms for the newly acquired Smart D Plan block of business for September 1, 2013 through December 31, 2013 and January 1, 2014 through December 31, 2014, respectively. The agreement was superseded by the Pharmacy Benefit Management Agreements, effective January 1, 2016, as noted above.

Services Agreement

Effective August 31, 1994, the Company entered into a service agreement with MHS whereby MHS agreed to perform accounting, underwriting, claims processing and investment services for a fee, which permits the allocation of expenses between the two entities. On June 26, 2007, the Department approved an amendment to this agreement. The amendment included the following additional provisions: (1) MHS was to provide the Company with management and administrative services, including all personnel necessary for the management of the operations and services of MCICNY and the implementation of the Company's policies; and (2) the Company was to maintain its accounts and records in Franklin Lakes, New Jersey.

After the merger, the Company underwent integration and streamlining processes in which certain functions previously performed by MHS were delegated to the ultimate parent, Express Scripts Holding Company and/or other affiliates within the holding company. For example, part of the claims processing services was delegated to Express Scripts, Inc. Monitoring and oversight responsibilities with respect to regulatory compliance, internal audit function and the system of internal controls were delegated to the ultimate parent. However, the service agreement was not revised to reflect these changes. Additionally, the service agreement contained an outdated cost allocation schedule for payments of expenses among the affiliates. The prior report on examination included recommendations to address the need to update the service agreement and cost allocations schedule. The Medicare Part D Pharmacy Management Agreement executed in 2015 and amended in 2016 addressed the prior report's comments.

Part 109.2(b) of Insurance Regulation 30 (11 NYCRR 109.2(b)) states, in part:

> "… (1) When a direct allocation is not made, salaries, within certain exceptions hereinafter noted, shall be allocated on whichever of the following basis, or combinations…
>
> Number of items of units
> Time studies
> Overhead on other allocations
> Premiums
> Dollar volume of losses
> Other special studies
>
> (2) The effects of the application of each operating expense classification of all bases of allocation shall be shown on records kept in clear and legible form. Such records shall be readily available for examination."

In reviewing the allocation of costs between the affiliated entities, it was noted that the Labor Allocation Policy and procedures were not compliant with Part 109.2(b) of Insurance Regulation 30 (11 NYCRR 109.2(b)) in that the determination for allocating indirect labor expenses is performed only once annually, and is based on estimates made by those performing the various tasks without sufficient management oversight and review. Further, the examiner noted that the policy was not applied consistently throughout the examination period. As such, the Company was not compliant with Insurance Regulation 30's requirement to allocate indirect labor expenses on an adequate basis and provide clear and legible support of the allocation method.

It is recommended that the Company comply with Insurance Regulation 30 by developing labor allocation procedures that establish indirect labor allocation methods.

It is also recommended that the Company ensure that the newly developed procedures are consistently applied.

Joint Enterprise Agreement for Medicare Prescription Plan ("PDP") Sponsor

Effective January 1, 2016, this agreement provides for MCICNY to act as Prescription Drug Plan Sponsor and offer uniform prescription drug benefits as required under the CMS contract, S5660. Under the terms of the agreement, MCICNY is responsible for coverage in the State of New York.

Tax Allocation Agreement

Effective March 10, 2004, the Company entered into a Tax Allocation Agreement (the "Agreement") with MHS. A revised agreement was submitted to the Department for approval on September 27, 2013. The intent of the revised Agreement was to reflect the merger between Express Scripts, Inc. and MHS, however, the revised Agreement failed to comply with the provisions of Insurance Circular Letter No. 33 (1979) because it did not include the required arbitration, assignment and inspection of records clauses. Subsequent changes were made to the Agreement and on April 29, 2015, it was resubmitted to DFS for approval.

On August 7, 2015, the Agreement was approved by DFS, however, the Company failed to execute the Agreement by not setting an effective date for the Agreement and by not including signatures of representatives from all parties involved.

It is recommended that, subsequent to approval, MCICNY execute all inter-company agreements with date and signatures by the interested parties and provide copies to the Department.

It is also recommended that MCICNY execute the approved Tax Allocation Agreement and submit a copy with current date and signature(s) to the Department.

E. Significant Operating Ratios

As of December 31, 2016, the Company's significant operating ratios were as follows:

Net Premiums Written to Surplus	205.99%
Uncollected Premiums to Surplus	0.63%
Liabilities to Liquid Assets	61.97%

The above ratios fall within the benchmark ranges set forth in the Insurance Regulatory Information System of the NAIC.

F. Accounts and Records

Insurance Circular Letter No. 4 (2015), which replaced Insurance Circular Letter No. 3 (2013), states in part:

> "By June 1, 2015, each company must submit a Disaster Response Plan to the Department. Entities must provide their completed Disaster Response Plan to the Department via the Department's Portal Application or in hard copy…
>
> By June 1, 2015, the Disaster Response Plan Questionnaire must be submitted to the Department via the Department's Portal Application or in hard copy…
>
> By June 1, 2015, the Business Continuity Plan Questionnaire must be submitted to the Department via the Department's Portal Application or in hard copy…"

It should be noted that Insurance Circular Letter No. 3 (2013) contained similar requirements to the foregoing, for that year.

In response to the prior examination report's recommendation for the Company to comply with Insurance Circular Letter No. 3 (2013), the Company indicated that "*MCICNY files the Disaster Response Plan annually*" and "*The Disaster Plan was uploaded on the DFS web portal* *on April 14, 2017.*" Upon review, it was noted that the Company provided the Disaster Response Plan Questionnaire and the Business Continuity Plan Questionnaire, however, there was no record of the Company filing its Disaster Response Plan with the Department.

It is recommended that the Company comply with the requirements of Insurance Circular Letter No. 4 (2015), and any updates thereof, by filing in a timely and complete manner, all of its required Plans and Questionnaires.

4. FINANCIAL STATEMENTS

The following statements show the assets, liabilities, and surplus as of December 31, 2016, as contained in the Company's 2016 filed annual statement, a condensed summary of operations and a reconciliation of the surplus account for each of the years under review. The examiner's review of a sample of transactions did not reveal any differences which materially affected the Company's financial condition as presented in its December 31, 2016 filed annual statement.

The firm of PricewaterhouseCoopers, LLP was retained by the Company to audit the Company's combined statutory basis financial statements of financial position, as of December 31st for each year in the examination period, and the related statutory-basis statements of operations, surplus, and cash flows for the year then ended.

PricewaterhouseCoopers, LLP concluded that the statutory financial statements presented fairly, in all material respects, the financial position of the Company at the respective audit dates. Balances reported in these audited financial statements were reconciled to the corresponding years' annual statements with no discrepancies noted.

A. Balance Sheet

Assets

Cash, cash equivalents, and short-term investments	$ 18,767,181
Uncollected premiums and agents' balances in the course of collection	348,775
Accrued retrospective premiums and contracts subject to redetermination	362,000
Funds held by or deposited with reinsured companies	162,281
Amounts receivable relating to uninsured plans	252
Net deferred tax asset	263,752
Receivables from parent, subsidiaries and affiliates	2,251,647
Health care and other amounts receivable	45,250,842
Total assets	$ 67,406,730

Liabilities

Claims unpaid	$ 6,174,408
Unpaid claims adjustment expenses	67,000
Premiums received in advance	118,319
General expenses due and accrued	818,057
Current federal and foreign income payable	4,453,207
Remittances and items not allocated	134
Total liabilities	$ 11,631,125

Capital and surplus

Common capital stock	$ 1,000,000
Gross paid-in and contributed surplus	34,568,941
Unassigned funds	20,206,664
Total capital and surplus	55,775,605
Total liabilities, capital and surplus	$ 67,406,730

NOTE: The Internal Revenue Service has NOT conducted audits of the income tax returns filed on behalf of the Company through tax year 2016. The examiners are unaware of any potential exposure of the Company to any tax assessments, and no liability has been established herein relative to such contingency.

B. Statement of Revenue and Expenses and Capital and Surplus

Capital and surplus increased $2,015,367 during the three-year period, January 1, 2014 through December 31, 2016, detailed as follows:

Revenue		
Net premium income	$ 326,147,430	
Total revenue		$ 326,147,430
Hospital and Medical Expenses		
Prescription drugs	$ 270,077,563	
Net reinsurance recoveries	(17,232,551)	
Total hospital and medical expenses	$ 287,310,114	
Administrative Expenses		
Claim adjustment expenses	$ 4,151,403	
General administration expenses	29,573,197	
Total administrative expenses	$ 33,724,600	
Total underwriting deductions		$ 321,034,714
Net underwriting gain		$ 5,112,716
Net investment gain		73,165
Net loss from agents or premium balances charged off		(637,863)
Aggregate write-in for other expenses		(273,352)
Net income before federal income taxes incurred		$ 4,274,666
Federal income taxes incurred		2,786,428
Net income		$ 1,488,238

Changes in Capital and Surplus

	Gains in Surplus	Losses in Surplus	
Capital and surplus, per report on examination, as of December 31, 2013			$ 53,760,238
Net income	$ 1,488,238		
Change in net deferred income taxes		$ 393,218	
Change in non-admitted assets	420,347		
Paid-in surplus	500,000		
Net increase in capital and surplus			2,015,367
Capital and surplus, per report on examination, as of December 31, 2016			$ 55,775,605

5. CLAIMS UNPAID AND UNPAID CLAIMS ADJUSTMENT EXPENSES

The examination liability of $6,241,408 for the above captioned account is the same as the amount reported by the Company in its filed annual statement as of December 31, 2016.

The examination analysis of the claims unpaid reserve was conducted in accordance with generally accepted actuarial principles and practices and was based on statistical information contained in the Company's internal records and annual statements as verified during the examination. The examination reserve was based upon actual payments made through a point in time, plus an estimate for claims remaining unpaid at that date. Such estimate was calculated based on actuarial principles, which utilized the Company's experience in projecting the ultimate cost of claims incurred on or prior to December 31, 2016.

6. MARKET CONDUCT ACTIVITES

In the course of this examination, a review was made of the manner in which the Company conducts its business and fulfills its contractual obligations to policyholders and claimants. The review was general in nature and is not to be construed to encompass the more precise scope of a market conduct examination.

In determining the scope of this review, the examiner took into consideration the Company's Medicare Part D Drug Coverage line of business, which falls under the purview of CMS, accordingly, the review was limited to agents and brokers.

No issues or areas of noncompliance were noted.

7. COMPLIANCE WITH PRIOR REPORT ON EXAMINATION

The prior report on examination as of December 31, 2013, contained the following nineteen (19) comments and recommendations (page numbers refer to the prior report):

ITEM NO.		PAGE NO.
	Management and Controls	
1.	It is recommended that the minutes of the MCICNY Board of Directors' meetings document the active participation and decision-making of the Board in monitoring and overseeing MCICNY's business affairs. It is noted that a similar recommendation was made in the prior report on examination. This leads to a concern that the Board may not be taking a sufficient role in corporate oversight. *The Company has not complied with this recommendation over the course of three examinations.*	8
2.	It is recommended that each member of the board of directors complies with Section 312(b) of New York Insurance Law and reviews the report on examination and sign the attestation in a timely manner. *The Company has complied with this recommendation*.	9
	Enterprise Risk Management	
3.	It is recommended that the Company maintains supporting documentation with appropriate detailed descriptions and explanations of the risks identified, the measurement approaches used, key assumptions made, and outcomes of any plausible adverse scenarios that were run. *The Company has complied with this recommendation.*	12

ITEM NO.		PAGE NO.
	Enterprise Risk Management	
4.	It is recommended that the Company identifies and quantifies its risks in a manner that is appropriate to the nature, scale, and complexity of the risks the insurer bears and that such identification and quantification should be adequate for capital management and solvency purposes. *The Company has not complied with this recommendation over the course of two examinations.*	12
5.	It is also recommended that the ERM function incorporates risk tolerance levels and limits in the risk policy and procedures, business strategy, and day-to-day strategic decision making processes. *The Company has complied with this recommendation*.	13
6.	It is recommended that the Company implements a formal written risk policy to delineate the risk/reward framework, risk tolerance levels and risk limits. *The Company has complied with this recommendation.*	13
7.	It is recommended that prospective solvency assessments, including scenario and stress testing, be made a key component of the Company's ERM function, highlighting the impact of such scenario and stresses on the Company's future solvency. *The Company has not complied with this recommendation over the course of two examinations.*	13
8.	It is recommended that the Company considers a risk and capital management process to monitor the level of its financial resources relative to its economic capital and regulatory capital requirements. *The Company has not complied with this recommendation over the course of two examinations.*	13
9.	It is recommended that the ERM function incorporates investment policy, asset-liability management policy, effective controls on internal models, longer-term continuity analysis, and feedback loops to update and improve ERM continuously. *The Company has complied with this recommendation.*	13

ITEM NO.		PAGE NO.
	Holding Company System	
10.	It is recommended that the Company revises the service agreement to reflect the changes implemented as a result of the merger and provide the agreement to the Department for review and non-disapproval. *The Company has complied with this recommendation.*	16
11.	It is also recommended that the Company updates the cost allocation schedule in the service agreement to accurately reflect the cost allocation methodology currently being used. *The Company has complied with this recommendation.*	16
12.	It is recommended that the Company settles the inter-company payments with MHS within the timeframe set forth by the term of the Service Agreement. *The Company has complied with this recommendation.*	17
13.	It is recommended that the Company revises its Tax Allocation Agreement in compliance with the requirements of Circular Letter No. 33 (1979) and files the revised Agreement with the Department for approval. *The Company has complied with this recommendation.*	18
14.	It is recommended that the Company complies with the requirements of Circular Letter No. 3 (2013), and any updates to that Circular Letter, by filing timely and completely, its annual Disaster Response Plan, Disaster Response Plan Questionnaire and Business Continuity Plan Questionnaire. *The Company has not complied with this recommendation over the course of two examination.*	20
	Accounts and Records	
15.	It is recommended that the Company exercises greater care and completes Schedule Y in accordance with the NAIC's Annual Statement Instructions. *The Company has complied with this recommendation.*	21

ITEM NO.		PAGE NO.
	Accounts and Records (Cont.'d)	
16.	It is recommended that the Company reports accurate information with respect to the parties of the Tax Allocation Agreement in its filed annual statement. *The Company has complied with this recommendation.*	21
17.	It is recommended that the Company complies with the instructions of the New York Annual Statement Supplement and reports directors' and officers' salaries from all entities within the holding company system. *The Company has complied with this recommendation*	22
18.	It is recommended that the Company complies with the requirements of SSAP No. 84 and confirms the amount of pharmaceutical rebates it is entitled to receive prior to reporting them as a receivable. *The Company has complied with this recommendation.*	23
19.	It is recommended that the Company take steps to reduce the potential risk of loss of its cash. *The Company has complied with this recommendation.*	24

8. SUMMARY OF COMMENTS AND RECOMMENDATION

ITEM			PAGE NO.
A.		Facilitation of the Examination	
		It is recommended that the Company comply with sections 308(a)(1) and 310 of the New York Insurance Law and facilitate the examination process by promptly fulfilling all examination requests.	7
B.		Management and Controls	
	i.	It is recommended, as a best practice and as suggested by the NAIC's Financial Condition Examiners Handbook, that the Company include a representation of independent members on its Board of Directors.	9
	ii.	It is recommended that MCICNY's Board of Directors actively participate in the decision-making of the Board and monitor and oversee all of MCICNY's business affairs. A similar recommendation was made in the prior report on examination.	10
C.		Enterprise Risk Management	
	i.	It is recommended that the Company identify and quantify its risks in a manner that is appropriate to the nature, scale, and complexity of the risks the insurer bears and that such identification and quantification should be adequate for capital management and solvency purposes.	14
	ii.	It is also recommended that prospective solvency assessments, including scenario and stress testing, be made a key component of the Company's ERM function, highlighting the impact of such scenario and stresses on the Company's future solvency.	14
	iii.	It is further recommended that the Company consider a risk and capital management process to monitor the level of its financial resources relative to its economic capital and regulatory capital requirements.	14

ITEM			PAGE NO.
D.		Holding Company System	
	i.	It is recommended that the Company comply with Insurance Regulation 30 by developing labor allocation procedures that establish indirect labor allocation methods.	19
	ii.	It is also recommended that the Company ensure that the newly developed procedures are consistently applied.	19
	iii.	It is recommended that, subsequent to approval, MCICNY execute all inter-company agreements with date and signatures by the interested parties and provide copies to the Department.	20
	iv.	It is also recommended that MCICNY execute the approved Tax Allocation Agreement and submit a copy with current date and signature(s) to the Department.	20
E.		Accounts and Records	
		It is recommended that the Company comply with the requirements of Insurance Circular Letter No. 4 (2015), and any updates thereof, by filing in a timely and complete manner, all of its required Plans and Questionnaires.	22

Respectfully submitted,

____
John Romano, CFE
Examiner-in-Charge

STATE OF NEW YORK)
) SS
)
COUNTY OF NEW YORK)

John Romano, being duly sworn, deposes and says that the foregoing report submitted by him is true to the best of his knowledge and belief.

____
John Romano, CFE

Subscribed and sworn to before me
this ________ day of___________2020

APPOINTMENT NO. **31642**

NEW YORK STATE

DEPARTMENT OF FINANCIAL SERVICES

*I, **MARIA T. VULLO**, Superintendent of Financial Services of the State of New York, pursuant to the provisions of the Financial Services Law and the Insurance Law, do hereby appoint:*

Baker Tilly Virchow Krause, LLP

as a proper person to examine the affairs of

Medco Containment Insurance Company of New York

and to make a report to me in writing of the condition of said

Company

with such other information as they shall deem requisite.

In Witness Whereof, I have hereunto subscribed my name
and affixed the official Seal of the Department
at the City of New York

this 23rd day of June, 2017

MARIA T. VULLO
Superintendent of Financial Services

By:

Lisette Johnson
Bureau Chief
Health Bureau