

**SPECIAL MARKET CONDUCT REPORT ON EXAMINATION**

**OF**

**CIGNA HEALTHCARE OF NEW YORK, INC.**

**AS OF**

**SEPTEMBER 30, 2004**

**DATE OF REPORT**

**DECEMBER 4, 2008**

**EXAMINER**

**FROILAN L. ESTEBAL**

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STATE OF NEW YORK  
INSURANCE DEPARTMENT  
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David A. Paterson  
Governor

Eric R. Dinallo  
Superintendent

December 4, 2008

Honorable Eric R. Dinallo  
Superintendent of Insurance  
Albany, New York 12257

Sir:

Pursuant to the provisions of the New York Insurance Law and acting in accordance with the instructions contained in Appointment Number 22091, dated September 11, 2003, attached hereto, I have made a special market conduct examination into the affairs of CIGNA HealthCare of New York, Inc., a for-profit health maintenance organization licensed pursuant to the provisions of Article 44 of the New York Public Health Law. The following report thereon is respectfully submitted.

The examination was conducted at the offices of CIGNA HealthCare of New York, Inc. located at 900 Cottage Grove Road, Bloomfield, Connecticut, and 145 East 45<sup>th</sup> Street, New York, New York.

Wherever the terms the "Plan" or "CHCNY" appear herein, without qualification, they should be understood to refer to CIGNA HealthCare of New York, Inc.

## **1. SCOPE OF EXAMINATION**

This special market conduct examination was conducted to review compliance with Section 4308(b) of the New York Insurance Law and Department Regulation No. 62 ((11 NYCRR 52) – “Minimum Standards for the Form, Content and Sale of Health Insurance...”). The examination focused upon CHCNY’s rating practices for its large group experience rated business and entailed a review of the compensation for agents and brokers involved with the selling of this product. The examination covered the period January 1, 2003 to September 30, 2004, however, transactions prior to and subsequent to this period were reviewed where deemed appropriate.

The examination encompassed a review of the point-of service (“POS”) product offered jointly by CHCNY and its affiliate, Connecticut General Life Insurance Company (“CGLIC”), an authorized insurer licensed pursuant to the laws of Connecticut. CHCNY utilizes an experience rating formula for its POS product that blends experience-based rates (out-of-network benefits covered by CGLIC) with adjusted community rates (in-network benefits covered by CHCNY).

This special report on examination is confined to comments on those matters which involve departures from laws, regulations or rules, or which are deemed to require an explanation or description.

## **2. DESCRIPTION OF PLAN**

The Plan is a for-profit health maintenance organization (“HMO”) licensed pursuant to the provisions of Article 44 of the New York Public Health Law. It commenced operations on October 1, 1986. The Plan filed an application for a Certificate of Authority on May 14, 1985, which was granted by the New York State Department of Health, effective July 30, 1986. On July 1, 1987, the Plan attained federal qualification under Title XIII of the Public Health Service Act, however, the Plan voluntarily relinquished its federal qualification, effective July 1, 1995.

Effective June 20, 1991, the Plan’s name was changed to CIGNA Health Plan of New York, Inc. On July 1, 1992, the Plan was granted a Certificate of Authority to operate a health maintenance organization (“HMO”) in the five boroughs of New York City, as well as in the counties of Nassau, Suffolk, Orange, Putnam, Rockland and Westchester in New York State. It operates as an Independent Practice Association (“IPA”) model HMO. On September 10, 1993, the Plan’s name was changed to CIGNA HealthCare of New York, Inc., and on December 18, 2000, the New York State Department of Health approved a merger of Healthsource HMO of New York, Inc., an affiliated company, into the Plan, effective June 30, 2001.

The Plan is a wholly-owned subsidiary of Healthsource, Inc. (the Parent), which is a wholly-owned subsidiary of CIGNA Health Corporation (CHC), a subsidiary of CIGNA Corporation, which is an indirectly wholly-owned subsidiary of CIGNA, Inc.

### 3. **EXECUTIVE SUMMARY**

The results of this examination revealed certain operational deficiencies that indicate areas of weaknesses that directly impacted CHCNY's compliance with the New York Insurance Law, the New York Public Health Law, and related Regulations. Examples of these include the following:

- CHCNY violated Section 4308(b) of the New York Insurance Law and Part 52.40(g)(1) of Department Regulation No. 62 (11 NYCRR 52) when it failed to act in accordance with its experience rating formula filed with the Department.
- CHCNY violated Section 4308(b) of the New York Insurance Law and Part 52.40(g)(1) of Department Regulation No. 62 (11 NYCRR 52) when it applied factors that were not in its filed formula and when it failed to apply the factors as stated in the filed formula.
- CHCNY violated Section 4308(b) of the New York Insurance Law and Part 52.40(g)(1) of Department Regulation No. 62 (11 NYCRR 52) when it allowed a rate cap/guarantee, or charged a rate other than the filed rate.
- CHCNY violated Part 52.42(e) of Department Regulation No. 62 (11 NYCRR 52.42(e)) when it paid commissions in excess of the prescribed four percent (4%) limitation.
- CHCNY failed to comply with the requirements of Circular Letter No. 9 (1999) - "Adoption of Procedure Manuals", when its board of directors failed to obtain the requisite certification that there was proper oversight of certain of the Plan's operations, including its underwriting and rating functions.
- CHCNY's failed to comply with the requirements of Circular Letter No. 26 (2000) - "Point-of-Service Products", when its board of directors failed to formally adopt an experience rated formula for use in rating the in-network component of its large group point-of-service product.

#### **4. UNDERWRITING AND RATING ISSUES**

A review of CHCNY's large group experience rating practices and policies was performed to determine compliance with Section 4308(b) of the New York Insurance Law and Department Regulation No. 62 (11 NYCRR 52). The examination encompassed a review of a randomly selected sample of 20 contracts for the point-of-service (POS) product offered jointly by CHCNY and CGLIC. The sample included new and renewal business.

It should be noted that the purpose of this examination was to review CHCNY's compliance with Department statutes and verify CHCNY's conformity with its filed rating formula and underwriting guidelines. Thus, the examiner reviewed the underwriting files and supporting documentation for the sampled contracts in order to determine compliance with applicable statutes and the Plan's own underwriting guidelines, as well as the experience rating formula it submitted to the Insurance Department ("Department").

The Department's Health Bureau actuarial unit was also provided with copies of the underwriting files for the sampled contracts selected by the examiner. During its review, the actuarial unit determined that in some instances CHCNY used factors that did not conform with the factors built into its experience rating POS formula ("formula") filed with and approved by the Department. Additionally, the review revealed that during the rating process, CHCNY applied features that were not included as part of the formula filed with the Department.

The issues discussed above can be apportioned into two main categories of examination findings, "Misapplication of Filed Formula" and "Deviation from Filed Formula"; these are detailed below as follows:

A. Misapplication of Filed Formula

The formula contains factors for specific components therein, but the actual factors being used by CHCNY in its application of the formula to new and renewal accounts did not match the factors in the formula on file with the Department. The examiner and the Department's actuarial unit determined that there were four (4) aspects of CHCNY's experience rating formula on file with the Department, for which the actual factors used in renewal calculations by the Plan were different from the ones in the filed formula.

These are described as follows:

(i) "Annual Trend Rates" were used by CHCNY to project the incurred claims for the mid-point of the most recent claims experience period to the mid-point of the period of applicability for the prospective premium rates. These annual trends are specific, resembling the annual trend rate of +13.9% submitted by CHCNY in the first quarter of 2004, and the annual trend rate of +14.5% submitted by CHCNY in the second quarter of 2004.

A review of the sampled group accounts indicated that CHCNY was using annual trend rates that differed from the ones in its formula filed with the Department.

(ii) "Stop-Loss Pooling Charges" were used by CHCNY to eliminate or reduce the impact of large dollar claims on actual accounts. The excess of actual claim amounts over a pre-established amount (e.g. \$50,000 or \$250,000) were eliminated from the claims experience data on accounts with such claims, and a pooling charge was added to all accounts for the selected pre-established pooling level.



A review of the sampled accounts indicated that CHCNY used stop-loss pooling charges that varied from the stop-loss pooling charges contained in its formula filed with the Department.

(iii) “Retention Percentages” were used by CHCNY to convert projected incurred claims to required premiums for the incoming renewal period. These percentages were referred in CHCNY's filed formula as medical cost ratios (“MCRs”). The projected incurred claims were then divided by such retention percentages by CHCNY; this had the impact of adding a provision to reflect the retention for expenses and profit to the incurred claims.

In CHCNY's filed formula, the retention factors are indicated as a fixed factor for all accounts. A review of actual accounts indicated that CHCNY varied the retention factors by account, based on certain criteria (e.g. the size of the account as determined by the number of covered subscribers). In addition, it appeared that CHCNY was varying the factors for a given account, using terms like “soft target” and “hard target”.

(iv) “Credibility Factors” were used by CHCNY to blend the two main components of the experience rated formula, which are the projected incurred claims based on the actual experience period and the projected incurred claims incorporated in its manual premium rates. Such credibility factors are set for the projected incurred claims based on the actual experience period. These factors are typically small, such as 20% for small accounts, and increase with the size of the account, typically reaching a level of 100% for accounts with 1,000 or more subscribers. The factors applied to the “non-credible item”, the projected incurred claims from its manual rates, are 100%, less the credibility factor applied to the “credible item” noted above.

A review of the sampled accounts by the examiner and the Department's actuarial unit indicated that CHCNY used credibility factors which did not correspond to the factors described in its formula on file with the Department.

Section 4308(b) of the New York Insurance Law states in pertinent part:

“No corporation subject to the provisions of this article shall enter into any contract unless and until it shall have filed with the superintendent a schedule of the premiums or, if appropriate, rating formula from which premiums are determined, to be paid under the contracts and shall have obtained the superintendent's approval thereof...”

Part 52.40(g)(1) of Department Regulation No. 62 (11 NYCRR 52) states:

“(g) The following rules shall apply to the adjustment of the rate of premium based on the experience of any contract of master group insurance as provided for under section 4305(a), (b) or (c) of the Insurance Law:

(1) Contracts of master group insurance may be experience-rated only in accordance with a formula or plan previously furnished to the department. Such formula or plan shall include a retention designed to provide for a contribution to surplus.”

It is recommended that CHCNY comply with the requirements of Section 4308(b) of the New York Insurance Law and Part 52.40(g)(1) of Department Regulation No. 62 by utilizing the annual trend rates, stop-loss pooling charges, retention percentages and credibility factors as contained in its formula submitted to and approved by the Superintendent.

It is recommended that CHCNY comply with the requirements of Section 4308(b) of the New York Insurance Law and Part 52.40(g)(1) of Department Regulation No. 62 by charging rates that are based on strict adherence to the provisions of its experience rating formula filed with and approved by the Superintendent.

B. Deviation from Filed Formula

The formula on file with the Department does not allow for the application of certain “adjustments” that were used in the rating process of several accounts by CHCNY. The examiner and the Department’s actuarial unit specifically identified seven adjustments utilized by CHCNY during the application of its experience rating formula, which were not incorporated in the formula filed with the Department. These are described as follows:

(i) “Demographic Adjustments” were used by CHCNY to “correct” for the differences in the demographic data (e.g. distribution by age, sex and dependent status) between the experience period and the period for which premium rates were determined. CHCNY never included in its filed formula, the use of such demographic adjustment factors, nevertheless, a review of CHCNY’s underwriting folders revealed that it used such factors.

(ii) “Adjustments for Shift in Membership” were used by CHCNY to “normalize” the difference in the membership information between the experience period and the period for which premium rates were determined. This adjustment complements item (i) above, Demographic Adjustments. CHCNY never included in its filed formula, the use of such factors for shifts in membership, nevertheless, a review of CHCNY’s underwriting folders revealed that it used such factors.

(iii) “Underwriting Discretion Scorecard” (“Scorecard”) was used by CHCNY to establish adjustments to the premium rates determined by the formulated process to reflect favorable and unfavorable situations prevailing on specific accounts. Typically, it established a

series of 10 to 12 criteria on which an account would be evaluated and assigned points for each criterion, with positive points for a favorable situation and negative points for an unfavorable situation. The point values were added for all criteria evaluated and specific adjustments were introduced in the premium rates (e.g. a reduction in premium rates for a positive sum total of all points and vice versa). Although this Scorecard was designed to result in either an increase or decrease to rates, none of the Scorecard adjustments reflected in the files selected for review by the Department resulted in an increased rate.

In addition, the review revealed that the Plan did not always apply the result developed from the Scorecard system. It was noted that the review of one underwriting file revealed that the Scorecard resulted in a discount, however, for reasons not documented or explained by the Plan, it was decided that the group would not get the benefit of the Scorecard discount. The Plan stated that in 2003 and 2004, the Scorecard was not always applied to renewals. The Scorecard was used only at the “discretion” of the underwriter(s).

The Plan did not include the Underwriting Discretion Scorecard adjustment in its rate filing to the Department.

(iv) “Bank Account” was a term used when the Plan utilized what it referred to as the underwriters’ “bank account”, which is a method used for instances when the sale of a large group renewal policy results in a shortage of premiums. The bank account is not a bank account in the traditional sense, but rather an internal accounting mechanism developed for the underwriters for the purpose of gauging a group’s performance, versus overall profit targets.

CHCNY's underwriters stated that the bank account is the "last resort" utilized, in the event that a group does not accept the final quoted rate and requests further rate reduction.

In many of the cases reviewed, the underwriters requested that the positive margins in the bank account be used for the purpose of keeping the sale and not losing the policy to a competitor. Using the funding of the bank account results in a policy renewal sold below CHCNY's acceptable target profit range and may or may not be approved by management. However, upon approval by senior officers, the final rate can be reduced even further.

This process is a form of discretionary discounting of the rate and was not part of the experience rate formula filed with the Department.

(v) "Renewal Strategy Rate Adjustments" were described in a one-page memorandum dated March 18, 2005 from CHCNY, as a strategy used by CHCNY in the implementation of its renewal calculations. Its quoted purpose is to optimize earnings and persistency results. Such strategy relies heavily on the ratio of Billed premium rates to Experience Adjusted Manual premium rates, referred to as "BEAM".

The size of the pre-renewal BEAM was used by CHCNY to determine the targeted rate action and the target ending BEAM. This strategy also includes minimum rate actions. Based on this strategy, accounts receive targeted rate actions based on experience, size and status. CHCNY never filed in its formula with the Department for the use of such adjustments; nevertheless, CHCNY used such process in its renewal calculations.

(vi) “Rate Guarantees” were evidenced during the review of the underwriting folders. It was determined that there were some indications of a rate guarantee structure, under which a renewal rate action on a given account would be capped at a certain percentage increase, based on the account’s loss ratio. For example, for an account with a loss ratio between 85% and 90%, the premium rate increase was guaranteed not to exceed 29.9%. In addition, there were some other rules as to how an account qualified for a guaranteed rate increase (e.g. at least 150 subscribers, member cost sharing, underwriters' score of at least 10 points).

It was also noted during the review of the sampled underwriting files that the Plan offered a conditional rate guarantee. This rate guarantee was offered when certain conditions were met by the groups. The rate guarantee model was based primarily on the medical cost ratio (“MCR”), whereby guidelines were set showing the maximum rate increase that could result, dependent upon the actual MCR. Based on the model, the lower the actual MCR, the lower the limits would be for the rate increase. Further, it was revealed that rate caps were not offered to all groups. The guarantee model was only offered upon request, or when further “persuasion” was necessary to secure a sale.

Although there was minimal information available to the examiner regarding the rate guarantee structure, there was enough information to indicate that there was a formal process in place for this arrangement. CHCNY’s filed formula did not contain a rate guarantee structure; nevertheless, CHCNY used such process in its renewal calculations.

(vii) “Manual Premium Rates” did not apply to the experience rating formula by itself, although they apply to the manual premium rate scale used in the blending of the experience incurred claims and the incurred claims incorporated in the manual premium rates.

CHCNY's manual premium rates are revised monthly. However, in its correspondence to the Department, CHCNY detailed that it revised its premium rates on a quarterly basis, with no indication that the premium rates actually used were changed on a monthly basis.

The abovementioned seven adjustment factors should not have been included in CHCNY's large group experience rating process since they were not included in the formula filed with and approved by the Department.

It is recommended that CHCNY discontinue the use of any component of its large group experience rating process that was not filed with the Department and approved by the Superintendent.

It is recommended that all features utilized by CHCNY during its rating of large group experience rated policies be filed with the Department for approval according to the requirements of Section 4308(b) of the New York Insurance Law and Part 52.40(g)(1) of Department Regulation No. 62.

It is recommended that CHCNY consistently apply all aspects of its experience rating formula to all of its prospective groups.

It is recommended that CHCNY comply with Section 4308(b) of the New York Insurance Law and Part 52.40(g)(1) of Department Regulation No. 62 by not utilizing rate caps or other similar designs in its experience rating formula, unless they have been submitted to and approved by the Superintendent.

It is again recommended that CHCNY comply with the requirements of Section 4308(b) of the New York Insurance Law and Part 52.40(g)(1) of Department Regulation No. 62 by charging rates that are based on strict adherence to the provisions of its experience rating formula filed with the Department and approved by the Superintendent. Further, it is recommended that CHCNY consistently apply all aspects of its experience rating formula to all of its prospective groups.

C. Other Rating Issues

In addition to the items detailed above, the examiner uncovered other practices that affected CHCNY's rates, but which were not addressed in its experience rating formula filed with the Department. These are detailed as follows:

Based on discussions with CHCNY's underwriting personnel and observations of the underwriting folders by the examiner, it was determined that all of the underwriters for CHCNY are allowed to reduce the final rate of a renewal or first year policy by one percent, which is based solely on the underwriters' discretion. This form of subjective judgment, observed in several underwriting cases reviewed, requires no further authorization. There are no required conditions for which the reduction may be based and all underwriters are given the authority to use it.



It is again recommended that the Plan comply with the requirements of Section 4308(b) of the New York Insurance Law and Part 52.40(g)(1) of Department Regulation No. 62, by not utilizing any feature of its large group experience rating formula unless it has been approved by the Department.

Several of the groups in the sample reviewed by the examiner involved groups/members that were located in multiple states. During the review of the rate calculations it was noted that filed rates from these various states were blended into one aggregate rate, using each state's per member per month (PM/PM) data as the basis. According to the Plan, this is done upon the request of the group(s) since this procedure provides for a much less complicated premium billing statement. These "consolidated" premiums are paid directly to Connecticut General Life Insurance Company ("CGLIC"), which under a service agreement with CHCNY, processes and allocates the respective share of premiums back to the CHCNY, and if applicable, other CIGNA health plans.

It was determined that the premiums which were based upon these "blended rates" were passed on to CHCNY without regard to the actual rate filed by CHCNY (and the other CIGNA health plans). Therefore, in cases where these blended rates were applied, the rate/premium allocated back to CHCNY was not in conformity with its filed rating formula. Further, since this blended rate was based upon the average rate for multiple states, the Plan's applied rate generally resulted in lower premiums since premium rates and medical expenses tend to be higher in New York, when compared to other states.

It is recommended that all CHCNY accounts that incorporated blended rates with members of its holding company system be reviewed, and where applicable, the difference between the actual premium received by CHCNY and the premium determined by the Plan's rating formula be remitted to CHCNY, with interest.

It is again recommended that CHCNY comply with the requirements of Section 4308(b) of the New York Insurance Law and Part 52.40(g)(1) of Department Regulation No. 62 by charging rates that are based on strict adherence to the provisions of its experience rating formula filed with and approved by the Department.

Part 98-1.10(a) of the Administrative Rules and Regulations of the Health Department (10 NYCRR 98-1.10) states in pertinent part:

“(a) Transactions within a holding company system to which a controlled HMO is a party shall be subject to the following guidelines:

- (1) the terms of the financial transaction shall be fair and equitable to the HMO at the time of the transaction;
- (2) charges or fees for services performed shall be reasonable; and
- (3) expenses incurred and payments received shall be allocated to the HMO on an equitable basis in conformity with customary accounting practices consistently applied.”

The aforementioned misallocation of blended premiums appears to indicate that the Plan and members of its holding company system were not acting in compliance with the requirements of Part 98-1.10(a) of the Administrative Rules and Regulations of the Health Department (10 NYCRR 98-1.10).

It is recommended that the Plan and members of its holding company system act in accordance with the requirements of Part 98-1.10(a) of the Administrative Rules and Regulations of the Health Department.

## 5. COMMISSION ISSUES

As part of the examination of rates, a review was conducted in regard to CHCNY's compliance with statutes regarding the payment of commissions.

### A. Section 308 Submissions

The Insurance Department made two separate requests to all health maintenance organizations regulated by it, including CHCNY, to provide certain information regarding its agents and brokers compensation, in regard to the four percent (4%) limitation prescribed by Part 52.42(e) of Department Regulation No. 62 (11 NYCRR 52.42(e)), which states in part:

“...A health maintenance organization (HMO) issued a certificate of authority pursuant to article 44 of the Public Health Law... may, as authorized by 10 NYCRR Part 98, pay commissions or fees to a licensed insurance broker... No licensed insurance broker shall receive such commissions or fees from an HMO, unless the HMO has filed the actual rate to be paid and included the anticipated expenses for such payments to insurance brokers in its application to amend its community premium rates pursuant to the provisions of section 4308 of the Insurance Law. Such rate shall be incorporated into the HMO's premium rate manual. The actual rate per annum may not exceed four percent of the HMO's approved premium for the contract sold.”

The responses provided by CHCNY included a signed attestation under Section 308 of the New York Insurance Law, confirming the accuracy and completeness of the information provided to the Department.

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

“The superintendent may also address to any health maintenance organization or its officers or any authorized insurer or its officers any inquiry in relation to its transactions or condition or any matter connected therewith. Every corporation or person so addressed shall reply in writing to such inquiry promptly and truthfully, and such reply shall be, if required by the superintendent, subscribed by such individual, or by such officer or officers of a corporation, as he shall designate, and affirmed by them as true under the penalties of perjury...”

The information submitted by CHCNY in response to the Department's requests showed that the Plan paid violated Part 52.42(e) of Department Regulation No. 62, when it paid commissions in excess of the abovementioned four percent (4%) statutory limitation to agents/brokers in 336, 289 and 166 instances, during the years 2002, 2003 and 2004, respectively.

It is recommended that the Plan comply with the 4% commission limitation prescribed by Part 52.42(e) of Department Regulation No. 62.

In response to the Department's finding that CHCNY violated Part 52.42(e) of Department Regulation No. 62, CHCNY sent letters to its producers notifying them that as of April 5, 2005 (the date of the letter), CHCNY would no longer pay compensation, in any form, in excess of four percent for any membership covered by CHCNY. CHCNY also provided the Department with documents showing that the Plan initiated various procedures and controls to ensure its compliance with the aforementioned commission limit. However, the Department did not conduct a verification of these procedures and controls.

B. Excess Commissions

For its New York large group experience rated accounts, the Plan has a 2.5% commission rate built into its rating formula filed with the Department. According to the Plan, the 2.5% commission rate represents an average commission for all New York groups. A review of commission rates for the sampled contracts showed that actual commission rates varied from 0% to 8%. It should be noted that all groups paid at least 2.5% in commissions (as the 2.5% commission rate was "built into the rate") even if the actual commission agreement called for less than 2.5%.

For policies with commission rates over 4%, the groups paid for the excess over 4% through indirect increases in premium rates. For these cases, the Plan did not disclose the actual commission rate being charged to the groups. In several cases, the group's application form showed an initial request for 4% commissions; however, a review of the group's underwriting correspondence files showed that the broker later requested a higher commission rate. A review of the files showed that the actual commissions charged were increased to more than 4 percent. In these instances the Plan did not notify the groups of the "excess commission" (over 4%) that was charged to them. Therefore, the groups were unaware of this "excess" commission charge, as the premium bill did not separate premium and commission charges.

Further, during the review of one underwriting file, the examiner discovered that the underwriter acknowledged that the broker, on its own accord, will "load the rates" to include an additional 3% commission in order to get 7%. The group's rate application in the file indicated a commission rate of 4%, however, the commission agreement between the Plan and the broker called for a commission rate of 7%. The examiner asked the Plan to comment on this matter, but it did not respond to this issue.

It is recommended that the Plan disclose the actual commission rate incorporated into its premiums charged and that its enrolled groups be made aware of the actual commission rate they are paying.

In another case where the application showed a commission rate of 4%, the broker requested a commission rate of 8%, and specifically requested that CHCNY not disclose this on the rate sheet. The examiner observed that the agreement between CHCNY and the broker

called for an 8% commission rate. The Plan stated that it did not know if the group was aware of the (higher) commission rate it was being charged.

These actions appear to be violative of Section 4308(b) of the New York Insurance Law and Department Regulation No. 62 (11 NYCRR 52), enumerated above, in regard to CHCNY's filed rate plan with the Department. In addition to these statutory violations, the apparent impropriety of allowing the brokers to charge excess commissions on the premiums billed may subject CHCNY to sanctions for contract violations and failure to act within its fiduciary requirements.

It is again recommended that the Plan comply with the 4% commission limitation prescribed by Part 52.42(e) of Department Regulation No. 62.

It is further recommended that CHCNY's board conduct an investigation of the practices detailed above to determine whether any misconduct took place in negotiating rates and determining/charging related commission rates. A copy of such investigation should be provided to this Department within ninety days of the filing of this report on examination.

Additionally, commissions are built into CHCNY's premium rate schedules, thus any change to the commission component could indirectly change the rate charged to CHCNY's policyholders. Consequently, any resulting rate change could be considered charging an unfiled rate and be deemed violative of Section 4308(b) of the New York Insurance Law and Part 52.40 of Department Regulation No. 62 (11 NYCRR 52.40).

It is again recommended that CHCNY comply with the provisions of Section 4308(b) of the New York Insurance Law and Part 52.40 of Department Regulation No. 62.

## **6. CIRCULAR LETTER NO. 9 (1999) - ADOPTION OF PROCEDURE MANUALS**

Circular Letter No. 9 (1999), dated May 25, 1999, “Adoption of Procedure Manuals”, was issued to Article 43 Corporations, Public Health Law Article 44 Health Maintenance Organizations and insurers licensed to write health insurance in New York State. The Circular Letter states in part:

“It is recommended that the board obtain the following certifications annually: (i) from either the company’s director of internal audit or independent CPA that the responsible officers have implemented the procedures adopted by the board, and (ii) from the company’s general counsel a statement that the company’s current claims adjudication procedures, including those set forth in the current claims manual, are in accordance with applicable statutes, rules and regulations...”

The Circular Letter further states in part:

“Of equal importance is the adoption of written procedures to enable the board to assure itself that the company’s operations in other key areas are being conducted in accordance with applicable statutes, rules and regulations. Examples of additional key areas include: ...underwriting and rating...”

CHCNY was unable to provide the examiner with any of the certifications required by the aforementioned Circular Letter, for any year during the examination period. Further, the extensive findings contained in this report substantiate that the Plan’s underwriting and rating procedures, and the oversight of such procedures, are significantly lacking.

It is recommended that the board of directors of CHCNY obtain the appropriate annual certifications required by Circular Letter No. 9 (1999).

It is further recommended that the board of directors of CHCNY directly supervise the corrections and implementation of the processes necessary to have the Plan comply with the recommendations made in this report. Evidence of such oversight should be documented in the minutes of the board of director meetings.

## **7. CIRCULAR LETTER NO. 26 (2000) - POINT-OF-SERVICE PRODUCTS**

Circular Letter No. 26 (2000) - “Point-of-Service Products” (POS), dated August 3, 2000, was issued to Article 43 Corporations, Public Health Law Article 44 Health Maintenance Organizations and insurers licensed to write health insurance in New York. It states in pertinent part:

“...To permit HMOs to better compete in the large group POS marketplace and to address the inappropriateness of using a rating methodology which combines a community rated component with an experience rated component the Department hereby repeals Circular Letter No. 13 (1999) and in its place issues the following guidelines for HMOs and insurers who are writing POS products:

1. The board of directors of an HMO may adopt an experience rated formula for use in rating the in-network component of a large group POS product...

Such formula shall be in keeping with the provisions of Insurance Law Section 4308(b), 10 NYCRR Part 98.5 and 11 NYCRR Part 52.40; and must be filed by the HMO and approved by the Superintendent pursuant to Section 4308(b) and Part 98.5.”

CHCNY utilizes an experience rating formula for its POS product that blends experience-based rates (out-of-network benefits) with adjusted community rates (in-network benefits). However, CHCNY was unable to provide evidence that its board formally adopted an experience rated formula for use in rating the in-network component of its large group POS product, offered in conjunction with CGLIC.

It is recommended that CHCNY comply with the requirements of Circular Letter No. 26 (2000) by having its board of directors formally adopt an experience rated formula for the use of rating the in-network component of its large group POS product.



## 8. DEPARTMENT REGULATION NO. 152

Department Regulation No. 152 (11 NYCRR 243.2) - “Records required for examination purposes and retention period”, mandates the various records and formats that insurers must maintain to document certain transactions. Specifically, Parts 243.2(a) and (b)(iv) of Department Regulation No. 152 (11 NYCRR 243.2) state in pertinent part:

“(a) In addition to any other requirement contained in Insurance Law Section 325, any other section of the Insurance Law or other law, or any other provision of this Title, every insurer shall maintain its claims, rating, underwriting marketing, complaint, financial, and producer licensing records, and such other records subject to examination by the superintendent, in accordance with the provisions of this Part.

(b) Except as otherwise required by law or regulation, an insurer shall maintain:

(iv) Other information necessary for reconstructing the solicitation, rating, and underwriting of the contract or policy.”

During the examiner’s review of the large group experience rating process, it was noted that some of the underwriting files provided did not include all the pertinent documentation that supported the final rate calculation. It was noted that the Plan’s underwriters frequently needed to search for relevant documents that were missing from the files, making it difficult for them to “recreate” the final rates.

In some cases, the rate renewal summary sheet did not reconcile to the actual rate utilized by the Plan. In addition, the underwriters had difficulty reconciling the calculations to the final rate, and in one case the underwriter was unable to explain a large rate reduction.

Further, it is the Plan’s policy that the proper level of authorization be validated prior to the application of the underwriter’s “Discretionary Scorecard” and usage of the “Bank Account”, as detailed in Section 4B herein. Some of the underwriting files provided did not contain the

proper authorization on cases where the “Discretionary Scorecard” and “Bank Account” were utilized.

It is recommended that the Plan comply with the requirements of Section 243.2(b)(iv) of Department Regulation No. 152 by maintaining complete and accurate underwriting files.

It is also recommended that the Plan comply with its policy by ensuring that proper authorization for rate changes be maintained in the underwriting files.

## **9. SUMMARY OF COMMENTS AND RECOMMENDATIONS**

<b><u>ITEM NO.</u></b>	<b><u>PAGE NO.</u></b>
A. <u>Misapplication of Filed Formula</u>	
i.     It is recommended that CHCNY comply with the requirements of Section 4308(b) of the New York Insurance Law and Part 52.40(g)(1) of Department Regulation No. 62 by utilizing the annual trend rates, stop-loss pooling charges, retention percentages and credibility factors as contained in its formula submitted to and approved by the Superintendent.	8
ii.    It is recommended that CHCNY comply with the requirements of Section 4308(b) of the New York Insurance Law and Part 52.40(g)(1) of Department Regulation No. 62 by charging rates that are based on strict adherence to the provisions of its experience rating formula filed with and approved by the Superintendent.	8
B. <u>Deviation from Filed Formula</u>	
i.     It is recommended that CHCNY discontinue the use of any component of its large group experience rating process that was not filed with the Department and approved by the Superintendent.	13
ii.    It is recommended that all features utilized by CHCNY during its rating of large group experience rated policies be filed with the Department for approval according to the requirements of Section 4308(b) of the New York Insurance Law and Part 52.40(g)(1) of Department Regulation No. 62.	13
iii.   It is recommended that CHCNY consistently apply all aspects of its experience rating formula to all of its prospective groups.	13
iv.    It is recommended that CHCNY comply with Section 4308(b) of the New York Insurance Law and Part 52.40(g)(1) of Department Regulation No. 62 by not utilizing rate caps or other similar designs in its experience rating formula, unless they have been submitted to and approved by the Superintendent.	14

**ITEM NO.****PAGE NO.**

- v. It is again recommended that CHCNY comply with the requirements of Section 4308(b) of the New York Insurance Law and Part 52.40(g)(1) of Department Regulation No. 62 by charging rates that are based on strict adherence to the provisions of its experience rating formula filed with the Department and approved by the Superintendent. Further, it is recommended that CHCNY consistently apply all aspects of its experience rating formula to all of its prospective groups. 14
- C. Other Ratings Issue
- i. It is again recommended that the Plan comply with the requirements of Section 4308(b) of the New York Insurance Law and Part 52.40(g)(1) of Department Regulation No. 62, by not utilizing any feature of its large group experience rating formula unless it has been approved by the Department. 15
- ii. It is recommended that all CHCNY accounts that incorporated blended rates with members of its holding company system be reviewed, and where applicable, the difference between the actual premium received by CHCNY and the premium determined by the Plan's rating formula be remitted to CHCNY, with interest. 16
- iii. It is again recommended that CHCNY comply with the requirements of Section 4308(b) of the New York Insurance Law and Part 52.40(g)(1) of Department Regulation No. 62 by charging rates that are based on strict adherence to the provisions of its experience rating formula filed with and approved by the Department. 16
- iv. It is recommended that the Plan and members of its holding company system act in accordance with the requirements of Part 98-1.10(a) of the Administrative Rules and Regulations of the Health Department. 16
- D. Section 308 Submissions
- It is recommended that the Plan comply with the 4% commission limitation prescribed by Part 52.42(e) of Department Regulation No. 62. 18

**ITEM NO.****PAGE NO.**

In response to the Department's finding that CHCNY violated Part 52.42(e) of Department Regulation No. 62, CHCNY sent letters to its producers notifying them that as of April 5, 2005 (the date of the letter), CHCNY would no longer pay compensation, in any form, in excess of four percent for any membership covered by CHCNY. CHCNY also provided the Department with documents showing that the Plan initiated various procedures and controls to ensure its compliance with the aforementioned commission limit. However, the Department did not conduct a verification of these procedures and controls.

18

E. Excess Commissions

i. It is recommended that the Plan disclose the actual commission rate incorporated into its premiums charged and that its enrolled groups be made aware of the actual commission rate they are paying. 19

ii. It is again recommended that the Plan comply with the 4% commission limitation prescribed by Part 52.42(e) of Department Regulation No. 62. 20

iii. It is further recommended that CHCNY's board conduct an investigation of the practices detailed above to determine whether any misconduct took place in negotiating rates and determining/charging related commission rates. A copy of such investigation should be provided to this Department within ninety days of the filing of this report on examination. 20

iv. It is again recommended that CHCNY comply with the provisions of Section 4308(b) of the New York Insurance Law and Part 52.40 of Department Regulation No. 62. 20

F. Adoption of Procedure Manuals – Circular Letter No. 9 (1999)

i. It is recommended that the board of directors of CHCNY obtain the appropriate annual certifications required by Circular Letter No. 9 (1999). 21

ii. It is further recommended that the board of directors of CHCNY directly supervise the corrections and implementation of the processes necessary to have the Plan comply with the recommendations made in this report. Evidence of such oversight should be documented in the minutes of the board of director meetings. 21

**ITEM NO.****PAGE NO.**G. Point-of-Service Products – Circular Letter No. 26 (2000)

It is recommended that CHCNY comply with the requirements of Circular Letter No. 26 (2000) by having its board of directors formally adopt an experience rated formula for the use of rating the in-network component of its large group POS product.

22

H. Department Regulation No. 152

i. It is recommended that the Plan comply with the requirement of Section 243.2(b)(iv) of Department Regulation No. 152 by maintaining complete and accurate underwriting files.

24

ii. It is also recommended that the Plan comply with its policy by ensuring that proper authorization for rate changes be maintained in the underwriting files.

24

Appointment No. 22091

**STATE OF NEW YORK  
INSURANCE DEPARTMENT**

I, GREGORY V. SERIO, Superintendent of Insurance of the State of New York,  
pursuant to the provisions of the Insurance Law, do hereby appoint:

**Froilan Estebal**

*as a proper person to examine into the affairs of the*

**Cigna HealthCare of New York**

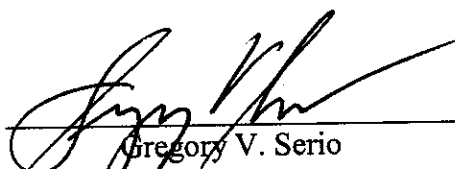
*and to make a report to me in writing of the said*

**Company**

with such information as he shall deem requisite.

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

this 11th day of September 2003

  
\_\_\_\_\_  
Gregory V. Serio  
Superintendent of Insurance

