

**FINAL ORDER**  
EFFECTIVE 7/16/2018

BEFORE THE COMMISSIONER OF INSURANCE  
OF THE STATE OF KANSAS

In the Matter of the Proposed Exemption of  
Cigna Corporation

)  
)

Docket No. 72957

ORDER

Now comes on this 28th day of June, 2018 before the Commissioner of Insurance for disposition of the request of Cigna Corporation (hereinafter "Applicant") dated April 19, 2018, for an Order, pursuant to K.S.A. 40-3304(e)(1), exempting Applicant from the filing and approval requirements of K.S.A. 40-3304(a).

This Order shall become effective as a Final Order, without further notice, upon the expiration of the fifteen (15) day period if no request for hearing is made, pursuant to K.S.A. 77-542.

FINDINGS OF FACT

1. The Commissioner of Insurance has jurisdiction over this matter pursuant to K.S.A. 40-103 and K.S.A. 40-3301, *et seq.*
2. Applicant has requested an exemption pursuant to K.S.A. 40-3304(e) from the merger and acquisition approval requirements of the Kansas Insurance Holding Companies Act, specifically those requirements stated in K.S.A. 40-3304(a).
3. Cigna Dental Health of Kansas, Inc. (hereinafter "Cigna Company") is a Kansas prepaid dental service plan. Applicant is the ultimate controlling person of Cigna Company.
4. Express Scripts Holding Company (hereinafter "Express Scripts") is a Delaware Corporation. No subsidiary of Express Scripts is a Kansas domestic insurance company or health maintenance organization.
5. Halfmoon Parent, Inc. ("Holdco") is a Delaware corporation and a wholly owned subsidiary of Applicant. Halfmoon I, Inc. ("Merger Sub 1") is a Delaware corporation and a wholly owned

subsidiary of Holdco. Halfmoon II, Inc. ("Merger Sub 2") is a Delaware corporation and a wholly owned subsidiary of Holdco.

6. As part of the proposed merger, Merger Sub 1 will merge with and into Applicant, with Applicant as the surviving entity (the "Cigna Surviving Corporation"). Concurrently, Merger Sub 2 will merge with and into Express Scripts, the separate corporate existence of Merger Sub 2 will cease, and Express Scripts will continue as the surviving corporation (the "Express Scripts Surviving Corporation"). As a result of the Merger, each of the Cigna Surviving Corporation and the Express Scripts Surviving Corporation will become a direct, wholly owned subsidiary of Holdco, and Holdco will become the new top-tier holding company of the Cigna Company.
7. Upon the closing of the Merger, Cigna-legacy shareholders collectively are expected to own approximately 64% of Holdco, and Express Scripts-legacy shareholders collectively are expected to own approximately 36% of Holdco.
8. Following the Merger, Holdco will be renamed Cigna Corporation ("New Cigna").

#### CONCLUSIONS OF LAW

K.S.A. 40-3304(a) provides, in part, as follows:

(a) . . . no person shall enter into an agreement to merge with or otherwise to acquire control of a domestic insurer or any person controlling a domestic insurer unless, at the time any such offer, request or invitation is made . . . such person has filed with the commissioner of insurance and has sent to such insurer, a statement containing the information required by this section, and such offer, request, invitation, agreement or acquisition has been approved by the commissioner of insurance in the manner hereinafter prescribed.

K.S.A. 40-3302(f) provides:

(f) "Insurer" means any corporation, company, association, society, fraternal benefit society, health maintenance organization, nonprofit medical and hospital service corporation, nonprofit dental service corporation, reciprocal exchange, person or partnership writing contracts of insurance, indemnity or suretyship in this state upon any type of risk or less except lodges, societies, persons or association transacting business pursuant to the provisions of K.S.A. 40-202, and amendments thereto.

Attorney General Opinion 89-112 provides:

“Prepaid service plans are generally not considered to be the business of insurance. Fundamentally, such plans are similar to insurance because the subscriber pays a fee in return for a promise to deliver services under certain contingencies. Annotation, Prepaid Legal Services Plans, 93 A.L.R. 3d 199 (1979). However, insurance is defined by our courts as a contract to indemnify another against certain risks. The business of the promisor must include as its principal purpose and object as assumption of the risk. State, ex rel. v. Anderson, 195 Kan. 649, 662-63 (1965). In short, there must be a transfer of risk arising from a fortuitous event. Prepaid plans generally do not involve an assumption or transfer of such risk, because they generally allow the subscriber to receive the benefit of the agreement at their own choosing.”

K.S.A. 40-3304(e) provides:

(e) The provisions of this section shall not apply to:

Any offer, request, invitation, agreement or acquisition which the commissioner of insurance by order shall exempt therefrom as: . . . (2) as otherwise not comprehended within the purposes of this section.

Based upon the information enumerated in the Findings of Fact contained in paragraphs #1 through #8 above, and the representations made on behalf of Applicant, the Merger was not comprehended within the purposes of this section. Form filings required by K.S.A. 40-3304(a) are mandated with the change in control of a Domestic “insurer”. K.S.A. 40-3302(f), excludes, by non-inclusion, prepaid dental service plans from the definition of “insurer.” Therefore, prepaid dental service plans fall outside the requirements of K.S.A. 40-3304(a).

**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:**

1. The Applicant shall be exempt from the application of the formal filing and approval requirements of K.S.A. 40-3304(a) as it may be deemed to apply to the merger recited above.
2. The Commissioner of Insurance retains jurisdiction over this matter to issue any and all future Orders deemed appropriate or take such further action as necessary to dispose of this matter.

IT IS SO ORDERED THIS 28th DAY OF JUNE 2018, IN THE CITY OF TOPEKA, COUNTY OF SHAWNEE,

STATE OF KANSAS.



A handwritten signature in black ink, appearing to read "Ken Selzer".

Ken Selzer  
Commissioner of Insurance

By:

A handwritten signature in black ink, appearing to read "Grace Lancaster".

Grace Lancaster  
Staff Attorney

## NOTICE OF RIGHTS

Applicant is entitled to a hearing pursuant to K.S.A. 77-537. If the Applicants desire a hearing, they must file a written request for a hearing with:

Diane Minear, General Counsel  
Kansas Insurance Department  
420 S.W. 9<sup>th</sup> Street  
Topeka, Kansas 66612

This request must be filed within fifteen (15) days from the date of service of this Order. If Applicant requests a hearing, the Kansas Insurance Department will notify them of the time and place of the hearing and information on the procedures, rights of representation, and other rights of the parties relating to the conduct of the hearing, before commencement of the same.

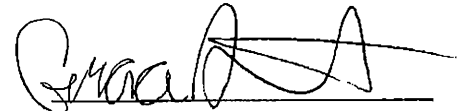
If a hearing is not requested in the time and manner stated above, this Order shall become effective as a Final Order upon the expiration of time for requesting a hearing, pursuant to K.S.A. 77-601 et. seq. In the event Applicant files a petition for judicial review, pursuant to K.S.A. 77-601 et. seq., the agency officer to be served on behalf of the Kansas Insurance Department is:

Diane Minear, General Counsel  
Kansas Insurance Department  
420 S.W. 9<sup>th</sup> Street  
Topeka, Kansas 66612

**Certificate of Service**

I hereby certify that a true and correct copies of the foregoing Order and Notice of Rights was forwarded via first class mail, postage prepaid on **June 28, 2018** to:

Stephanie H. Dobecki  
Sidney Austin LLP  
One South Dearborn Street  
Chicago, IL 60603  
SDOBECKI@SIDLEY.COM  
ATTORNEY FOR APPLICANT

  
Grace Lancaster  
Staff Attorney