

STATE OF NEW JERSEY
DEPARTMENT OF HEALTH AND SENIOR SERVICES

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| IN THE MATTER OF |) | |
| OXFORD HEALTH PLANS OF |) | ADMINISTRATIVE |
| NEW JERSEY, INC. AND THE 1998 |) | CONSENT |
| TRIENNIAL ASSESSMENT, AND |) | ORDER |
| INVESTIGATION OF OTHER |) | |
| COMPLAINTS |) | |

This Administrative Consent Order ("ACO") is entered into pursuant to the authority vested in the Commissioner of the New Jersey Department of Health and Senior Services (DHSS) by N.J.S.A. 26:2J-1 et seq. with Oxford Health Plans of New Jersey, Inc. (Oxford) in order to amicably resolve the matters set forth below without need of formal hearing or further litigation, and without any specific admission of liability or fact by either party, with the hope of achieving a more cooperative relationship in the future.

BACKGROUND

DHSS' Triennial Onsite Assessment of Oxford

1. DHSS' Office of Managed Care performed a broadly-based triennial onsite assessment of Oxford pursuant to N.J.A.C. 8:38-2.4 and 2.12 from September 23 through October 2, 1998. This assessment included interviews with Oxford's management and staff, review of Oxford's policies, procedures and other documents and files, in order to evaluate Oxford's compliance with the statutes and rules governing HMOs in New Jersey (N.J.S.A. 26:2J-1 et seq., 26:2S-1 et seq., and N.J.A.C. 8:38, among others) with respect to quality assurance, continuous quality improvement, provider contracts, member rights, utilization management, and appeals and complaint systems, in addition to other subject matter.

2. Pursuant to the assessment, DHSS documented areas in certain of Oxford's policies, practices and procedures which DHSS alleged constituted failures by Oxford to be in compliance with relevant New Jersey statutes or rules. Accordingly, DHSS issued a Statement of Deficiency to Oxford, citing the deficiencies noted by DHSS and requiring that Oxford submit a Plan of Correction (POC) for those deficiencies. Oxford submitted the requested POC for DHSS' review, and DHSS determined upon review that the POC was generally satisfactory for purposes of correcting the cited deficiencies going forward, assuming Oxford properly implements the POC. However, DHSS also determined that certain of the alleged deficiencies documented pursuant to the triennial onsite assessment warrant imposition of a monetary penalty because of the adverse impact the deficiency(ies) had, or may have had, upon one or more health care providers and one or more Oxford members prior to the implementation of Oxford's POC.

N.J.A.C. 8:38-8.3(b)

3. N.J.A.C. 8:38-8.3(b) requires, among other things, that Oxford assure that all determinations made to deny or limit an admission, service, procedure or extension of stay be rendered by a physician, and that Oxford's physician directly communicate with the health care provider making the request for services, or else provide a means by which the health care provider may make further contact with Oxford's physician regarding the denial or limitation. DHSS documented and alleges that Oxford's policies and procedures regarding its utilization management program failed to assure that all determinations subject to N.J.A.C. 8:38-8.3(b) would be directly communicated by Oxford's physician(s) to the health care provider requesting the service, either verbally or in writing, and did not assure that the health care provider could contact Oxford's physician(s) to discuss the denial or limitation. DHSS alleges that Oxford's noncompliance with N.J.A.C. 8:38-8.3(b) resulted in Oxford failing to promote effective

communication among health care providers and those physicians at Oxford making utilization management decisions, to the possible detriment of the health care of Oxford's members, even though DHSS alleges no clear documentation of actual harm.

Without conceding the alleged violation set forth above, Oxford has agreed to the payment of a monetary penalty for the alleged violation calculated not on the number of days of the alleged violation is purported to have occurred, or documented actual harm to any specific member or participating or nonparticipating health care provider, but rather in a flat amount of \$5,000.

N.J.A.C. 8:38-8.6

4. N.J.A.C. 8:38-8.6 requires that Oxford: establish and maintain a formal internal appeal process (generally referred to as a Stage 2 appeal); complete Stage 2 appeals within specified periods of time, depending upon the exigencies of the situation; and, provide members with written notice of a member's right to request an appeal through the Independent Health Care Appeal Program, (IHCAP) established pursuant to N.J.S.A. 26:2S-11 in DHSS¹ if the Stage 2 appeal is not resolved in favor of the member. DHSS documented and alleges that Oxford failed to resolve Stage 2 appeals within no more than 20 business days, or alternatively, to seek approval from DHSS of an extension of the timeframe for resolving the appeal with concurrent notice provided to the member, and thus, failed to be in compliance with N.J.A.C. 8:38-8.6(d) and (e). DHSS alleges that failure of Oxford to comply with N.J.A.C. 8:38-8.6(d) and (e) may have resulted in one or more members whose appeals were ultimately resolved in favor of the member at Stage 2, or in subsequent appeals, having delayed obtaining needed health care

¹ The IHCAP, effective February 4, 1998, was preceded by a right to an external appeal to an independent utilization review organization pursuant to rules promulgated by DHSS at N.J.A.C. 8:38-8.7, operative March 15, 1997. The structure and process of the two appeal mechanisms are essentially the same.

services, or may have resulted in undue delay in resolution of payment for health care services rendered, even though DHSS alleges no clear documentation of actual harm. DHSS further alleges that Oxford's noncompliance with N.J.A.C. 8:38-8.6(d) and (e) resulted in a failure by Oxford to preserve the rights of all members who initiated a Stage 2 appeal.

Without conceding the alleged violations set forth above, Oxford has agreed to the payment of a monetary penalty for the alleged violations calculated not on the number of days of the alleged violations are purported to have occurred, or documented actual harm to any specific member or participating or nonparticipating health care provider, but rather in a flat amount of \$5,000 per violation.

N.J.A.C. 8:38-15.2(b)10

5. N.J.A.C. 8:38-15.2(b)10 requires that Oxford's provider agreements, whether written directly between an HMO and a provider, or as a subcontract with a secondary contractor (pursuant to N.J.A.C. 8:38-15.2(a)), shall all contain language specifying the process for an internal provider complaint and appeal procedure consistent with N.J.A.C. 8:38-3.6, to which all participating providers are to have access. DHSS documented and alleges that, although Oxford had established a provider complaint and appeal procedure consistent with N.J.A.C. 8:38-3.6, Oxford's provider agreements with Quest Diagnostics did not include language explaining to providers Oxford's complaint and appeal procedure, the right of all participating providers to utilize the procedure, or the process for utilizing the procedure, and thus, Oxford was not in compliance with N.J.A.C. 8:38-15.2(b)10. DHSS alleges that, because Oxford was not in compliance with N.J.A.C. 8:38-15.2(b)10, Oxford effectively did not afford all participating providers their rights with respect to the submission of complaints and appeals regarding

administrative, management, payment, and quality of care issues alike, even though DHSS alleges no actual harm.

Without conceding the alleged violation set forth above, Oxford has agreed to the payment of a monetary penalty for the alleged violations calculated not on the number of days the alleged violation is purported to have occurred, or documented actual harm to any specific member or participating or nonparticipating health care provider, but rather in a flat amount of \$5,000.

N.J.S.A. 26:2S-9a

6. N.J.S.A. 26:2S-9a² specifies that the contract between HMOs, including Oxford, and health care providers shall state that health care providers will not be penalized or the contract terminated because the health care provider acts as an advocate for a patient in seeking appropriate, medically necessary health care services. DHSS documented and alleges that Oxford's agreements with Quest Diagnostics did not include language in compliance with N.J.S.A. 26:2S-9a, and thus, that Oxford effectively did not afford all participating providers notice of their right to advocate on behalf of a patient without fear of personal consequence for such advocacy, even though DHSS alleges no actual harm.

Without conceding the alleged violation set forth above, Oxford has agreed to the payment of a monetary penalty for the alleged violation calculated not on the number of days the alleged violation is purported to have occurred, or documented actual harm to any specific member or participating or nonparticipating health care provider, but rather in a flat amount of \$5,000.

Other Investigation

² N.J.S.A. 26:2S-9a was enacted in August 1997, and became effective February 4, 1998.

N.J.A.C. 8:38-8.4

7. N.J.A.C. 8:38-8.4 states that any provider acting on behalf of an HMO member with the member's consent may appeal any utilization management determination resulting in a denial, termination, or other limitation of covered health care services, using the appeal procedures required to be established by an HMO pursuant to N.J.A.C. 8:38-8.5 and 8.6 (Stage 1 and Stage 2 appeal procedures, respectively). DHSS has documented through receipt of written requests from Oxford members to submit appeals to the IHCAP, as well as other written complaints on the matter, that Oxford has specifically stated in its correspondence with providers that "[i]n accordance with state regulations, Oxford [] allows additional levels of appeal for Members. This regulation does not apply to contracted providers. The appeal process for contracted providers is stated in [Oxford's] Facility Reference Manual...no further action will be taken."

DHSS alleges that the statement to health care providers and members is inconsistent with New Jersey law, because it implies that only the member may pursue a Stage 2 appeal, even though providers may pursue such an appeal on behalf of a member with the member's consent pursuant to New Jersey law. Therefore, DHSS alleges that Oxford has violated N.J.A.C. 8:38-8.4 because Oxford's actions denied one or more members an opportunity to exercise their right to appeal a utilization management decision through a health care provider acting in the member's behalf.

Without conceding the alleged violation of N.J.A.C. 8:38-8.4, or any resultant harm to members or participating or nonparticipating health care providers thereby, Oxford has agreed to pay a penalty calculated not on the number of days of each violation, or documented actual harm, but rather in a flat amount of \$10,000.

N.J.A.C. 8:38-8.5

8. N.J.A.C. 8:38-8.5 requires that Oxford: establish and maintain an informal Stage 1 appeal process; complete Stage 1 appeals within specified periods of time, depending upon the exigencies of the situation; and, provide members with written notice of their right to proceed to a Stage 2 appeal, if the Stage 1 appeal is not resolved in favor of the member. Through receipt of complaints and appeals, DHSS documented and alleges that Oxford was not in compliance with N.J.A.C. 8:38-8.5 because Oxford's notices to members failed to advise members of their right to request a Stage 2 appeal when the resolution of the Stage 1 appeal was not in the member's favor, and thus, Oxford failed to properly protect or preserve the rights of its members to make appeals of an adverse utilization management decision in a timely manner. DHSS alleges no clear documentation of actual harm to a member.

Without conceding the alleged violation set forth above, Oxford has agreed to the payment of a monetary penalty for the alleged violation calculated not on the number of days the alleged violation is purported to have occurred, or documented actual harm to any specific member or participating or nonparticipating health care provider, but rather in a flat amount of \$5,000.

N.J.S.A. 26:2J-5.1 and N.J.A.C. 8:38-16

9. N.J.S.A. 26:2J-5.1 requires that HMOs pay claims within certain timeframes, and pay interest for failure to comply with those timeframes. Further, N.J.A.C. 8:38-16, implementing N.J.S.A. 26:2J-5.1, required HMOs to: pay "clean" claims within 60 days of receipt; provide notice that a claim is not "clean" within 45 days of receipt of the claims, specifying the reasons why the claims have been determined not "clean"; and, pay corrected claims within 90 days of receipt of the necessary information to make the claim "clean."

DHSS' Office of Managed Care received complaints from several health care providers regarding failure by Oxford to pay timely on multiple claims submitted between October 1998 and June 1999, as required by New Jersey law. DHSS subsequently provided notice of receipt of the complaints to Oxford by letter dated June 15, 1999, along with the documentation provided to DHSS by the health care providers, and requested that Oxford respond as to the disposition of the claims.

Oxford admitted that it failed to comply with the requirements of N.J.A.C. 8:38-16 with respect to at least some of the claims submitted by the health care providers. However, DHSS and Oxford stipulate that the number of days for which the admitted failure to comply is uncertain for each and every incident, that the question of whether Oxford has failed to appropriately pay claims in most other cited instances remains in dispute, with any amount of interest actually owed and paid, or owed and unpaid also in dispute. Without conceding any violation of N.J.S.A. 26:2J-5.1 or N.J.A.C. 8:38-16, and consistent with the stipulations set forth herein, Oxford has agreed to pay a flat amount of \$80,000.

N.J.A.C. 8:38-2.7 and N.J.A.C. 8:38-15.3

10. Oxford submitted notice to DHSS and the Department of Banking and Insurance of its intent to enter into a contract with Heritage New Jersey Medical Group (Heritage) as required by N.J.A.C. 8:38-2.7(a)2. Pursuant to the contract, Heritage would provide medical management and utilization management for Oxford's Medicare contracts. DHSS issued a letter on August 14, 1998 conditionally approving the Oxford and Heritage contract for the limited purpose of permitting Oxford to notify its Medicare providers of the Oxford and Heritage arrangement, but otherwise stated that final approval was conditioned upon review and approval by DHSS of policies and procedures applicable to the contract to ensure conformance with N.J.A.C. 8:38

generally, including the provider agreements as required by N.J.A.C. 8:38-15.3, and the utilization management program, as well as the written, affirmative approval of the Department of Banking and Insurance. DHSS alleges that the conditions of the August 14, 1998 letter were not met, and that any actions taken by Oxford and Heritage with respect to the contract exceeding the actions permitted by the August 14, 1998 letter were taken without approval of DHSS or the Department of Banking and Insurance.

Without conceding that the conditions were not met, resulting in violations of N.J.A.C. 8:38-2.7 or 15.3, Oxford has agreed to pay a penalty calculated not on the number of days of each violation, or potential or documented actual harm, but a flat amount of \$10,000 per each rule alleged to have been violated.

ORDER

NOW, THEREFORE, DHSS and Oxford agree and stipulate to the following terms and conditions:

1. Oxford shall pay a penalty of a single sum of One Hundred Forty Thousand Dollars (\$140,000), composed of the aforementioned monetary penalties agreed to above as follows: Twenty-Five Thousand Dollars (\$25,000) for the five alleged violations documented by DHSS pursuant to the triennial onsite assessment (N.J.A.C. 8:38-8.3(b), 8.6(d), 8.6(e), 15.2(b)10 and N.J.S.A. 26:2S-9a); Ten Thousand Dollars (\$10,000) for the alleged violation of N.J.A.C. 8:38-8.4; Five Thousand Dollars (\$5000) for the alleged violation of N.J.A.C. 8:38-8.5; Eighty Thousand Dollars (\$80,000) for the violation of N.J.A.C. 8:38-16; and Twenty Thousand Dollars (\$20,000) for the alleged violation of N.J.A.C. 8:38-2.7 and 15.3 combined.

2. Within ten (10) business days following the execution by all parties of this ACO, Oxford shall submit the single sum of One Hundred Forty Thousand Dollars (\$140,000) by bank

draft payable to the Treasurer, State of New Jersey, through the New Jersey Department of Health and Senior Services, P.O. Box 360, Trenton, New Jersey, 08625-0360, sent to the attention of Elisabeth Salberg, Director, Office of Managed Care.

3. In the event that Oxford does not remit the sum of One Hundred Forty Thousand Dollars (\$140,000) as set forth in Paragraph 2 above, DHSS may institute a summary proceeding for collection of such penalty in accordance with the Penalty Enforcement Law, N.J.S.A. 2A:58-1 et seq.

Force Majeure

4. If any event occurs that Oxford believes will or may cause delay in the achievement of any provision of the ACO, Oxford shall notify DHSS in writing within three (3) calendar days of becoming aware of the delay or anticipated delay, referencing this paragraph and describing the anticipated length of the delay, the precise cause or causes of the delay, any measures taken or to be taken to prevent or minimize the delay, and the time required to take any such measures to prevent or minimize the delay. Oxford shall take all necessary action to prevent or minimize any such delay.

5. If DHSS finds that (a) Oxford has complied with the notice requirements of the preceding paragraph, (b) any delay or anticipated delay has been or will be caused by fire, flood, riot, strike or other circumstances beyond the control of Oxford, and (c) Oxford has taken all necessary actions to prevent or minimize the delay, DHSS shall extend the time for performance hereunder for a period no longer than the delay resulting from such circumstances.

6. If DHSS determines that either Oxford has not complied with the notice requirements of paragraph 4, or that the event causing the delay is not beyond the control of Oxford, or that Oxford has not taken all necessary actions to prevent or minimize the delay, failure to comply

with the provisions of the ACO shall constitute a breach of the requirements of this ACO. The burden of proving that any delay is caused by circumstances beyond the control of Oxford and the length of any such delay attributable to those circumstances shall rest with Oxford. Increases in costs or expenses incurred by Oxford in fulfilling the requirements of this ACO shall not be a basis for an extension of time.

General Provisions

7. This ACO shall be binding on Oxford, its successors, assigns, any trustee in bankruptcy or other trustee, or any receiver appointed to a proceeding in law or equity.

8. Nothing in this ACO shall preclude DHSS from taking enforcement action against Oxford for matters not set forth herein or the investigations conducted in connection therewith, and Oxford reserves all rights to appeal, challenge or otherwise contest should any such action be taken. If Oxford complies with the terms and conditions of this ACO, then DHSS shall not take enforcement action against Oxford for the alleged violations set forth herein. However, if Oxford violates any of the terms of this ACO, then DHSS may take any enforcement action it deems appropriate for any violations set forth herein.

9. Oxford's failure to comply with any of the terms and conditions of this ACO shall entitle DHSS to enforce as a Final Agency Order the terms and conditions of this ACO.

10. Obligations under this ACO are imposed pursuant to the police powers of the State of New Jersey for the enforcement of law and the protection of public health, safety, and welfare and are not intended to constitute a debt or debts which may be limited or discharged in a bankruptcy proceeding.

11. Oxford shall not contest the authority or jurisdiction of DHSS to issue this ACO, nor shall Oxford contest its terms in any action to enforce the provisions of this ACO.

12. Nothing in this ACO shall constitute a waiver of any statutory right of DHSS to require Oxford to undertake additional measures regarding the alleged violations contained herein as determined necessary by DHSS to protect the health, safety or welfare of Oxford's members or the general public, nor of any statutory right of Oxford to contest such requirements, should DHSS act pursuant to this paragraph.

13. No modification or waiver of this ACO shall be valid except by written amendment made to this ACO, duly executed by Oxford and DHSS.

14. This ACO shall be governed and interpreted under the laws of the State of New Jersey.

15. The individuals executing this ACO have the authority to bind Oxford and DHSS respectively to the terms of the ACO.

16. This ACO shall be effective from the latest date of execution by either party.

CHRISTINE GRANT, COMMISSIONER
NEW JERSEY DEPARTMENT OF HEALTH
AND SENIOR SERVICES

DATE

KEVIN HILL, CEO
OXFORD HEALTH PLANS OF
NEW JERSEY, INC.

DATE

Effective March 10, 2000