

IN THE MATTER OF THE TERMINATION	)	ORDER TO SHOW CAUSE
OF THE CONTRACT BETWEEN	)	AND ASSESS
AMERICHOICE OF NEW JERSEY, INC., AND	)	ADMINISTRATIVE PENALTIES
CAPITAL HEALTH SYSTEM	)	

THIS MATTER having been opened by the Commissioner of the Department of Health and Senior Services (hereafter, "DHSS") in accordance with his authority at N.J.S.A. 26:1A-15, and N.J.S.A. 26:2J-1 et seq.;

WHEREAS, DHSS is in receipt of a memorandum from Ronald J. Guy, Chief Financial Officer of Capital Health System (hereinafter, "Capital") to Capital Medical Staff, dated on or about March 18, 2002, stating that, among other things, the contract between Capital and AmeriChoice of New Jersey, Inc. (hereinafter, "AmeriChoice") for Capital's Mercer Campus was terminated November 12, 2001, and that the contract between Capital and AmeriChoice for Capital's Fuld Campus was terminated January 9, 2002;

WHEREAS, N.J.S.A. 26:2J-11.1, which requires that the terms of a contract between a hospital and HMO that is terminated be extended for at least a four-month period following the date of termination, also requires that, following the date of termination, an HMO provide notice to its members and other health care providers with which the HMO is contracted of the extension of the terms of the contract with the hospital, setting forth the options of the members and other health care providers in the receipt of care during and following the conclusion of the four-month extension period;

WHEREAS, N.J.A.C. 8:38-3.5(e) specifies that, when a contract between the HMO and the hospital terminates, an HMO provide notice to members and other health care providers no later than 15 business days following the date of the termination;

WHEREAS, N.J.A.C. 8:38-2.7(a), requires an HMO to provide notice to DHSS and the Department of Banking and Insurance of the expected termination of a contract with a hospital, and to satisfy both agencies that removal of the hospital from the HMO's provider network will not have an adverse impact upon the HMO's ability to meet the network adequacy requirements of N.J.A.C. 8:38-6;

WHEREAS, N.J.A.C. 8:38-2.7(a) requires that such notice be provided at least 30 days prior to the date the expected termination is to occur;

WHEREAS, AmeriChoice has failed to notify DHSS and the Department of Banking and Insurance of any termination of any contracts between it and Capital, in accordance with N.J.A.C. 8:38-2.7(a), and the requisite supporting documentation regarding the adequacy of AmeriChoice's network;

WHEREAS, DHSS has no evidence that AmeriChoice provided notice to members and health care providers in accordance with N.J.S.A. 26:2J-11.1, and N.J.A.C. 8:38-3.5(e);

NOW, THEREFORE, IT IS ORDERED on this 18th day of April 2002 that:

1. AmeriChoice shall show cause to DHSS as to why DHSS should not fine AmeriChoice for violation of N.J.S.A. 26:2J-11.1 and N.J.A.C. 8:38-3.5(e), as well as N.J.A.C. 8:38-2.7(a) with respect to the termination of AmeriChoice's contract with Capital for the Mercer Campus, as follows:

(a) \$250 per day for each day that AmeriChoice has failed to provide at least 30-days' prior notice to DHSS and the Department of Banking and Insurance of the anticipated termination, calculated from October 13, 2001, the 30th day preceding November 12, 2001,<sup>1</sup>

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<sup>1</sup> DHSS is aware that October 13, 2001 was a Saturday, and that most properly, notice should have been provided on or before October 12, 2001 (particularly given that November 12th was a federal holiday in calendar year 2001), but DHSS has knowingly elected not to assess additional penalties for those days.

until the date AmeriChoice either: (1) pays the fine; (2) requests a hearing in accordance with paragraph 12; or, (3) shows cause why it should not be fined, whichever occurs first;

(b) \$250 per day for each day that AmeriChoice has failed to provide notice to members following the date of the termination, calculated from December 3, 2001, the 15th business day following November 12, 2001, until such date that notice is first postmarked to members, in accordance with subparagraph 3(f);

(c) \$250 per day for each day that AmeriChoice has failed to provide notice to health care providers following the date of the termination, calculated from December 3, 2001, the 15th business day following November 12, 2001, until such date that notice is first postmarked to health care providers, in accordance with subparagraph 3(f);

2. AmeriChoice shall show cause to DHSS as to why DHSS should not fine AmeriChoice for violation of N.J.S.A. 26:2J-11.1 and N.J.A.C. 8:38-3.5(e), as well as N.J.A.C. 8:38-2.7(a) with respect to the termination of AmeriChoice's contract with Capital for the Fuld Campus, as follows:

(a) \$250 per day for each day that AmeriChoice has failed to provide at least 30-days' prior notice to DHSS and the Department of Banking and Insurance of the anticipated termination, calculated from December 10, 2001, the 30th day preceding January 9, 2002, until the date AmeriChoice either: (1) pays the fine; (2) requests a hearing in accordance with paragraph 12; or, (3) shows cause why it should not be fined, whichever occurs first;

(b) \$250 per day for each day that AmeriChoice has failed to provide notice to members following the date of the termination, calculated from January 31, 2002, the 15th

business day following January 9, 2002<sup>2</sup>, until such date that notice is first postmarked to health care providers, in accordance with subparagraph 3(f);

(c) \$250 per day for each day that AmeriChoice has failed to provide notice to health care providers following the date of the termination, calculated from January 31, 2002, the 15th business day following January 9, 2002, until such date that notice is first postmarked to health care providers, in accordance with subparagraph 3(f);

3. AmeriChoice shall show cause to DHSS within 5 business days following the date of this Order why DHSS should not require AmeriChoice to comply, and establish monetary fines and other penalties for any failure of AmeriChoice to comply, with the following requirements:

(a) In accordance with N.J.S.A. 26:2J 11.1, AmeriChoice shall assure that members residing in the county(ies) in which Capital is located and in adjacent counties within AmeriChoice's service area may utilize services at Capital in accordance with the terms of the health benefits plan under which each member is covered, as if Capital continues to be a network health care facility, for no less than four months from the date of this Order and shall assure that no member who accesses services at Capital during this time period shall be liable for payment of any costs associated with such services in excess of what that member would have been liable for had the member obtained services from a network health care facility. Nothing in this paragraph shall be construed to prohibit AmeriChoice from encouraging members to utilize the services of health care facilities within AmeriChoice's network.

(b) AmeriChoice shall assure that no member who accessed services between the purported date of the end of the statutorily-required four month extension period and the date of this Order at Capital's Mercer Campus shall be liable for payment of any costs associated with

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<sup>2</sup> January 21, 2002 was a federal holiday.

such services in excess of what such members would have been liable for had the members obtained services from a network health care facility.

(c) AmeriChoice shall assure that health care providers that otherwise would have been terminated from AmeriChoice's network because of termination of the agreement with Capital are allowed to continue to provide services to AmeriChoice's members for no less than four months from the date of this Order, at the discretion of the health care provider and the member, and AmeriChoice shall assure that the terms of the contracts between such health care providers remain in effect during this four-month period, except that AmeriChoice shall not prohibit a health care provider from, or penalize a health care provider for, referring a member to Capital for services and/or seeking precertification and preauthorization for services at Capital during this time period.

(1) Nothing in the foregoing subparagraph shall be construed to prohibit AmeriChoice from encouraging such health care providers to utilize the services of health care facilities within AmeriChoice's network in accordance with the terms of the health care provider's contract with AmeriChoice.

(2) Nothing in subparagraph (c) shall be construed to eliminate any obligation that a health care provider and AmeriChoice may have with respect to continuity of care for members in the event that the health care provider's contract terminates either prior to, or at the end of, the four-month period specified in subparagraph (c) above as required by N.J.S.A. 26:2S-9.1 and N.J.A.C. 8:38-3.5 generally.

(d) AmeriChoice shall reinstate the contract of any health care provider that terminated solely as a result of the termination of the Capital contracts, and/or as the result of the statutorily-required four month extension period coming to an end prior to the date of this Order,

at the option of the health care provider, subject to the same terms and conditions as the contract that terminated.

(e) AmeriChoice shall not prohibit any other health care provider from, or penalize any other health care provider for, referring a member to Capital for services and/or seeking precertification and preauthorization for services at Capital prior to the end of the four-month period following the date of this Order. Nothing in this paragraph shall be construed to prohibit AmeriChoice from encouraging any health care providers to utilize the services of health care facilities within AmeriChoice's network in accordance with the terms of the health care provider's contract with AmeriChoice.

(f) AmeriChoice shall provide written notice to members and health care providers within no more than 15 business days following the date of this Order, specifically regarding the termination of Capital from AmeriChoice's network. The notice shall explain the options available for obtaining health care services both during the four month period established pursuant to this Order, including the right of members to continue accessing services at Capital as if Capital were still a network facility, consistent with the terms of subparagraphs 3(a) and 3(b) above. The notice shall also explain the options available for obtaining health care services after the end of the four-month time period.

(g) Within no more than 3 business days following the date of this Order, AmeriChoice shall submit to DHSS for review and approval the notices it intends to mail to its members and health care providers in accordance with subparagraph 3(a) through 3(e) above.

(h) AmeriChoice shall submit documentation to DHSS and the Department of Banking and Insurance within no more than 15 business days following the date of this Order explaining how removal of Capital from AmeriChoice's network, and other health care providers

whose contracts may terminate at the end of the four-month period because of the termination of Capital, does not have an adverse impact upon AmeriChoice's ability to meet the network adequacy requirements for the certificate of authority issued to AmeriChoice, or, alternatively, what actions AmeriChoice will take prior to the end of the four-month period established by this Order to assure that AmeriChoice does meet the network adequacy requirements for the certificate of authority issued to AmeriChoice.

(i) In the event that AmeriChoice is unable to supply documentation pursuant to subparagraph 3(g) above that satisfies DHSS and the Department of Banking and Insurance that AmeriChoice can meet the network adequacy requirements, AmeriChoice shall submit an application to modify its certificate of authority accordingly.

4. Nothing in this Order shall be construed to limit or eliminate any notice standards with which AmeriChoice may be required to comply in accordance with its contract with, and regulations of, the State's Medicaid Program.

5. AmeriChoice shall submit payment of the penalties by check or money order made payable to the State Treasurer of New Jersey in a single sum no later than the date on which this paragraph becomes effective, as specified in paragraph 11 of this Order. AmeriChoice shall submit payment to the Director of the Office of Managed Care, P.O. Box 360, Trenton, NJ 08625-0360.

6. Nothing in this Order shall be interpreted to prejudice the interests of AmeriChoice or Capital in any legal action, and nothing in this Order shall be interpreted to prejudice the interests of health care providers or members in any legal action that has been or may be brought against AmeriChoice or Capital.

7 Nothing in this Order shall be construed to preclude DHSS from taking enforcement action against AmeriChoice for related matters not set forth herein.

8. Nothing in this Order shall be construed to preclude DHSS from taking enforcement action against Capital in this same matter or for matters related to this matter but not set forth herein.

9. Obligations under this Order 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 subject to limitation or discharge in a bankruptcy proceeding.

10. All numbered paragraphs of this Order, other than subparagraphs 1(a) through 1(c) and 2(a) through 2(c), and paragraph 5 shall be effective as of the date of this Order, and AmeriChoice shall comply with the provisions effective as of the date of this Order until AmeriChoice has accomplished each such provision of the Order, or DHSS issues a subsequent order suspending compliance with such a provision.

11. Subparagraphs 1(a) through 1(c) and 2(a) through 2(c) and paragraph 5 shall not become effective until 30 days following the date of this Order, in accordance with N.J.A.C. 8:38-2.14(c), unless AmeriChoice files with DHSS, prior to the end of the 30-day period, a written request for a hearing, and a written request to Stay the Order with respect subparagraphs 1(a) through 1(c) and 2(a) through 2(c) and paragraph 5, in whole or in part, until an administrative hearing has been concluded and a final decision is rendered by the Commissioner of DHSS. A request for a hearing shall be accompanied by a written response to the violations set forth in this Order.



12. If AmeriChoice wishes to request an administrative hearing, AmeriChoice shall submit its request in writing no later than 30 days following the date of this Order to Carole Slimm, Office of Legal and Regulatory Affairs, P.O. Box 360, Trenton, NJ 08625-0360, or by fax at (609) 292-5333.

Questions regarding this Order should be submitted to Marilyn Dahl, Senior Assistant Commissioner (609-984-3939), or Sylvia Allen-Ware (609-633-0660), Director of the Office of Managed Care.

FOR:

CLIFTON R. LACY, M.D., COMMISSIONER  
NEW JERSEY DEPARTMENT OF HEALTH  
AND SENIOR SERVICES

BY:

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MARILYN DAHL  
Senior Assistant Commissioner