

STATE OF NEW JERSEY  
DEPARTMENT OF HEALTH AND SENIOR SERVICES

IN THE MATTER OF AMERICHoice OF NEW )	
JERSEY, INC., AND THE TERMINATION OF )	
CAPITAL HEALTH SYSTEM, HACKENSACK )	
MEDICAL CENTER, ATLANTIC CITY )	ADMINISTRATIVE
MEDICAL CENTER, BURDETTE TOMLIN )	CONSENT ORDER
MEMORIAL HOSPITAL AND ATLANTIC )	
HEALTH SYSTEM )	

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 AmeriChoice of New Jersey, Inc. ("AmeriChoice") 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**

1. N.J.S.A. 26:2J-11.1 requires that, when the contracts of hospitals and health maintenance organizations ("HMOs") terminate, the contract terms are to be extended for four months following the date of the termination, and the HMOs need to provide notice to other health care providers and its members in areas served by the terminating hospital of the termination, the extension, and options available with respect to accessing covered health care services.

2. N.J.A.C. 8:38-2.7 requires an HMO to provide notice to the DHSS and the Department of Banking and Insurance ("DOBI") of substantial changes in the HMO's provider network(s).

3. On or about April 18, 2002, the DHSS issued OMC Order 2002-02 ordering AmeriChoice to show cause why it should not be fined and otherwise sanctioned by DHSS for

failing to comply with the requirements of N.J.S.A. 26:2J-11.1 and N.J.A.C. 8:38-2.7 with respect to the alleged termination of Capital Health System (“Capital”) from its network,<sup>1</sup> and requiring AmeriChoice to provide coverage to members for the statutory four-month extension period beginning with the date on which proper notice of the termination and extension period was provided to members. AmeriChoice initially protested against sending out notices requested by DHSS regarding the Capital termination, but ultimately did do so, on or about July 19, 2002.

4. On or about September 3, 2002, DHSS issued OMC Order 2002-04 against AmeriChoice with respect to the termination of its contract with Hackensack Medical Center (“Hackensack”), which apparently was effective on or about April 25, 2002, for failing to provide DHSS and DOBI, as well as members and other health care providers of proper notice pursuant to N.J.S.A. 26:2J-11.1 and N.J.A.C. 8:38-2.7. DHSS ordered AmeriChoice to pay a fine, but did not require any other action because AmeriChoice and Hackensack entered into a new contract on or about July 26, 2002, negating the need for any further notices to members, any additional extension period, or network analysis with respect to the area served by this hospital.

5. On or about September 3, 2002, DHSS issued OMC Order 2002-05 against AmeriChoice with respect to the termination of its contract with Atlantic City Medical Center (“ACMC”), which apparently was effective on or about April 25, 2002, for failing to provide appropriate notice to DHSS, DOBI, other health care providers or members in accordance with N.J.S.A. 26:2J-11.1 and N.J.A.C. 8:38-2.7. DHSS ordered AmeriChoice to pay a fine, and

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<sup>1</sup> DHSS became aware of the alleged termination through a March 18, 2002 note submitted to DHSS (by another carrier) regarding the contractual relationship between Capital and multiple carriers. The March 18, 2002 note stated that the AmeriChoice contract with Capital’s Mercer campus had terminated on November 12, 2001, and Capital’s Fuld campus on January 9, 2002. AmeriChoice has stated that it did not believe that its contracts with Capital terminated on either of those dates. DHSS has not taken a position on the date of contract termination, only on the date from which to calculate the statutory extension period. (AmeriChoice made DHSS aware of all other terminations addressed herein.)

assure coverage for a four-month statutory extension period following the date of notice to the members.<sup>2</sup>

6. On or about September 3, 2002, DHSS issued OMC Order 2002-06 against AmeriChoice with respect to the termination of its contract with Burdette Tomlin Memorial Hospital (“Burdette”), which apparently was effective on or about May 24, 2002, for failing to provide appropriate notice to DHSS and DOBI as well as other health care providers and members in accordance with N.J.S.A. 26:2J-11.1 and N.J.A.C. 8:38-2.7. DHSS ordered AmeriChoice to pay a fine, and assure coverage of a four-month statutory extension period following the date of notice to the members.<sup>3</sup>

7. On or about September 3, 2002, DHSS issued OMC Order 2002-07 against AmeriChoice with respect to the termination of its contract with Atlantic Health System (“Atlantic”), which apparently became effective July 1, 2002,<sup>4</sup> for failing to provide appropriate notice to DHSS and DOBI, as well as members and other health care providers. DHSS ordered AmeriChoice to pay a fine, and assure a minimum four-month continuity of care period following issuance of appropriate notices to members, which AmeriChoice had not yet accomplished on the date of OMC Order 2002-07, but intended to do shortly.

8. AmeriChoice requested a hearing with respect to all five of the Orders, and DHSS forwarded the hearing requests to the Office of Administrative Law.<sup>5</sup> Payment of the fines has been stayed accordingly. AmeriChoice disseminated all required notices, and AmeriChoice

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<sup>2</sup> AmeriChoice sent notices to members and providers regarding the ACMC termination on or about August 9, 2002.

<sup>3</sup> AmeriChoice sent notice to members and providers regarding the Burdette termination on or about August 9, 2002.

<sup>4</sup> Subsequent to receipt of OMC Order 2002-07, AmeriChoice representatives stated that the termination was not effective until the end of July, in which event, the notice provided to the State may have been timely. However, AmeriChoice has not submitted anything in support of the late-July termination date.

<sup>5</sup> A hearing was requested separately for OMC Order 2002-02 (involving Capital), with the request for a hearing consolidating the latter four Orders.

submitted requested network information,<sup>6</sup> as well as information on corrective actions it was undertaking to avoid repetition of these problems in the future.

9. Without admitting any violation of the statutes or regulations, AmeriChoice has offered, in satisfaction of the five orders addressed herein, to withdraw its requests for hearings, pay \$100,000, and to make certain operational changes within its organization, including:

a. Changes in data collection and tracking systems with regard to its provider contracts, particularly those involving hospitals, hospital systems, physician hospital organizations, and integrated delivery systems;

b. Changes in training of personnel with respect to data collection, monitoring and regulatory requirements regarding provider networks and notices of changes in networks to multiple entities; and

c. Changes in information to be disseminated to members and health care providers regarding terminations of hospitals.

10. DHSS agrees to accept the amount offered and the implementation of the operational changes specified by AmeriChoice in lieu of any further action with respect to the five Orders addressed herein.

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<sup>6</sup> It may be noted that, in addition to maintaining Hackensack in its network, AmeriChoice submitted information indicating that ACMC and Burdette will continue to be a participating provider for AmeriChoice's network as well.

**ORDER**

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

1. AmeriChoice shall implement the operational changes indicated, and shall show proof of implementation of such operational changes to DHSS, within no more than 45 days following the effective date of this ACO.

2. Within ten (10) business days following the execution by all parties of this ACO, AmeriChoice shall submit the single sum of One Hundred Thousand Dollars (\$100,000) 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 Sylvia Allen-Ware, Director, Office of Managed Care.

3. In the event that AmeriChoice does not remit the sum of One Hundred Thousand Dollars (\$100,000) 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:58-10 et seq.

4. This ACO shall not serve as satisfaction of any contractual or regulatory obligation that may attach to AmeriChoice with respect to any party other than DHSS. Nothing in this ACO shall be interpreted to prejudice the interests of any health care providers or members or other State agency in any legal action that has been or may be brought against AmeriChoice with respect to issues that may be related to the actions resulting in the Orders now being settled herein by way of this ACO.

5. Neither this ACO nor any of the five Orders addressed herein shall be construed as expressing DHSS' position as to the exact date on which any of the contracts addressed in this

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AmeriChoice and AHS have not been able to entertain a new contract.

ACO terminated, only the date on which the statutorily-required extension period was required to be considered in effect for the purposes of complying with the Orders addressed in this ACO.

Force Majeure

6. If any event occurs that AmeriChoice believes will or may cause delay in the achievement of any provision of the ACO, AmeriChoice 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. AmeriChoice shall take all necessary action to prevent or minimize any such delay.

7. If DHSS finds that (a) AmeriChoice 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 AmeriChoice, and (c) AmeriChoice 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.

8. If DHSS determines that either AmeriChoice has not complied with the notice requirements of paragraph 6, or that the event causing the delay is not beyond the control of AmeriChoice, or that AmeriChoice 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 AmeriChoice and the length of any such delay attributable to those circumstances shall rest with AmeriChoice. Increases in costs or expenses incurred by

AmeriChoice in fulfilling the requirements of this ACO shall not be a basis for an extension of time.

General Provisions

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

10. AmeriChoice, for itself and on behalf of its insurers, agents, employees, heirs, executors, personal representatives, successors and assigns, agrees to the terms described in this ACO, in final settlement of any and all claims it has or may have with respect to the adequacy or correctness of the violations listed in OMC Orders 2002-02, 2002-04, 2002-05, 2002-06 and 2002-07, and releases the State of New Jersey and its Departments, officials, insurers, agents, employees, heirs, executors, personal representatives, successors and assigns from all claims, demands, damages causes of action or suits which have been, could have been or might have been made or prosecuted on account of any conduct of any party occurring at any time with respect to any pending or possible claim relating to OMC Orders 2003-02, 2002-04, 2002-05, 2002-06 and 2002-07, and the violations cited therein.

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

12. AmeriChoice'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.

13. 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.

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

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

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

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

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

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

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

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DATE

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THELMA DUGGIN  
PRESIDENT AND CEO  
AMERICHOICE OF NEW JERSEY, INC.

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DATE

*/s/ Clifton R. Lacy, M.D., February 10, 2003*  
*Thelma Duggin, March 31, 2003*