

IN THE MATTER OF THE TERMINATION)
OF THE CONTRACT BETWEEN) ADMINISTRATIVE
UNIVERSITY HEALTH PLANS, INC., AND) ORDER
ROBERT WOOD JOHNSON UNIVERSITY)
HOSPITAL)

THIS MATTER having been opened by the Commissioner of the Department of Health and Senior Services (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 received a copy of a letter, dated June 17, 2005, from Robert Wood Johnson University Hospital (RWJUH) to University Health Plans, Inc. (University) indicating that RWJUH wished to postpone the termination of the contract between RWJUH and University from June 27, 2005 until September 15, 2005;

WHEREAS, it appears from the June 17th letter that RWJUH had given notice on March 29, 2005 to University of RWJUH's intent to terminate the contract between them;

WHEREAS, N.J.A.C. 8:38-2.7(a), requires an HMO to provide 30-days prior notice to DHSS and the Department of Banking and Insurance of the possible 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, University failed to provide DHSS with 30-days prior notice of the impending June 27, 2005 termination date of the contract between University and RWJUH, consistent with the requirements of N.J.A.C. 8:38-2.7(a);

NOW, THEREFORE, IT IS ORDERED on this 8th day of August, 2005 that:

1. University shall pay a fine of Fifteen Thousand Dollars (\$15,000), determined by multiplying 30¹ days by \$500,² for failing to provide at least 30-days prior notice of the termination of the contract between RWJUH and University to DHSS and the Department of Banking and Insurance in accordance with N.J.A.C. 8:38-2.7(a);

2. University 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 10 of this Order. University shall submit payment to the Director of the Office of Managed Care, P.O. Box 360, Trenton, NJ 08625-0360.

3. Within 10 business days following the date of this Order, University shall submit the following information, certified to by an officer of University:

(a). A separate *Table 2 (Summary of Physicians by County)* completed³ to show each of the following:

(1). The current physician network in Middlesex counties;

(2). The number of primary care and specialty care physicians who only have privileges with RWJUH, with a written explanation of how many providers in each discipline University expects to leave its network, and the means by which University will address this issue; and

¹ Although DHSS became aware of the termination 9 days prior to the anticipated termination date, DHSS never received notice from University, and is not considering the notice from RWJUH as a mitigating factor.

² Because this represents a second violation of the same rules by University within more than a 24-month but less than a 36-month period, DHSS's policy is to increase the multiplier for the fine, so that the second offense (in which no harm has been documented) is \$500 per day of the violation.

³ In preparation of *Table 2*, University shall not leave blanks or "1s" for any specialist provider category; if out-of-county providers are used to provide or supplement the network for Middlesex county, that number shall be indicated, and followed by an asterisk, which shall provide an explanation on a separate page(s) listing the provider(s) by name, specialty, office address, including county, and hospital affiliation. In preparation of *Table 2*, University shall include behavioral/mental health and substance abuse providers, regardless of whether an ODS provides the services.

(3). The network University expects to be available on January 16, 2006.⁴

(b). A separate *Table 3 (General Acute Hospitals)* completed to show each of the following:

(1). The current acute care hospitals in Middlesex county under contract with University, specifying the number of beds available at each hospital and the services each hospital offers.

(2). The hospitals, beds, and services that will be available on or about January 16, 2006.

(c). A geo-access evaluation report of the hospital and physician networks that will be available to University enrollees on January 16, 2006, submitted on diskette as well as in hardcopy.

(d). Current enrollment charts for Middlesex county by male/female under age 18 and male/female age 18 and over.

(e). A statement that University shall submit, within no more than five business days following the date of actual termination of the contract, copies of all forms of notification letters⁵ to be sent to enrollees who reside in Middlesex county informing them of their options with respect to their health care coverage.⁶

⁴ DHSS acknowledges that University has stated that it and RWJUH are continuing to negotiate, and that the terms of the existing contract may be extended (although no statement to that effect has been provided), but DHSS is setting forth January 16, 2006 as the end of the statutorily-required four-month extension period under the assumption that the contract at issue actually terminates as of September 16, 2005 as stated.

⁵ DHSS is aware that University has contractual obligations with the Department of Human Services to send similar notifications to University's Medicaid enrollees, and acknowledges that University has an opportunity to satisfy its regulatory and contractual notice obligations simultaneously.

⁶ The notice shall include a list of the network hospitals that will be available at the conclusion of the four-month extension period. This notice shall include a statement that the terms of the current contract between University and RWJUH will continue until the end of the extension period, which shall be no earlier than four calendar months following the date of actual termination of the contract.

(f). A statement that University shall submit, within no more than five business days following the actual termination of the contract, copies of all forms of notification letters sent to network health care providers, and specifically physicians that have admitting privileges at RWJUH.⁷

4. Within 10 business days following the date of this Order, University shall submit a list of, at a minimum, the acute care hospitals in each county with which it has a contract for participation, and a letter of agreement or other understanding by which University and the hospital has agreed that University HMO members are permitted to use the hospital without being subject to billing or balance billing. University shall indicate on the list the classification of the agreements with the hospital (for example: executed contract, letter of agreement), whether University includes the hospital in University's directory or actively refers its members there, and the current status of the agreement (for example: in effect, termination notice given, statutory extension period in effect). All of the information submitted by University in satisfaction of this requirement shall be certified to by an officer of University.

5. Nothing in this Order shall be interpreted to prejudice the interests of University or RWJUH 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 University or RWJUH.

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

⁷ This notice shall include a statement that the terms of the current contract between University and RWJUH will continue until the end of the extension period, which shall be no earlier than four calendar months following the date of actual termination of the contract. The notice also shall include an explanation of the right of members to have care continued in accordance with N.J.S.A. 26:2S-9.1.

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

8. 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.

9. All numbered paragraphs of this Order, other than Paragraphs 1 and 2 shall be effective as of the date of this Order.

10. Paragraphs 1 and 2 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 University 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 to Paragraphs 1 and 2 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.

11. If University wishes to request an administrative hearing, University shall submit its request in writing no later than 30 days following the date of this Order to the 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, Deputy Commissioner (609-984-3939), or Sylvia Allen-Ware (609-633-0660), Director of the Office of Managed Care.

FOR:

FRED M. JACOBS, M.D., J.D., COMMISSIONER
NEW JERSEY DEPARTMENT OF HEALTH
AND SENIOR SERVICES

BY:

MARILYN DAHL
Deputy Commissioner

/s/ Marilyn Dahl