

IN THE MATTER OF THE TERMINATION)
OF THE CONTRACT BETWEEN) ADMINISTRATIVE
AETNA HEALTH, INC. AND BURDETTE) ORDER
TOMLIN MEMORIAL HOSPITAL, INC.)

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 received an inquiry from the New Jersey Hospital Association on or about November 12, 2002, regarding the termination of Burdette Tomlin Memorial Hospital, Inc. ("Burdette") as a participating hospital for Aetna Health, Inc. ("Aetna");¹ and

WHEREAS, it appears that Burdette terminated its participation with Aetna effective on or about November 1, 2002; and

WHEREAS, DHSS contacted representatives of Aetna, who confirmed on or about November 18th that Burdette and Aetna no longer had a participation agreement as of November 1, 2002, and that the agreement had begun its extension period as required by N.J.S.A. 26:2J-11.1;² and

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 substantial changes, including but not limited to changes or reductions in the provider network that may have an adverse impact upon the HMO's ability to meet the network adequacy requirements of N.J.A.C. 8:38-6, as well as termination of a contract with a hospital; and

¹ The inquiry was related to the extension of participation with respect to what turned out to be a self-funded PPO-type of product.

WHEREAS, Aetna failed to provide DHSS with 30-days prior notice of the termination of the contract between Aetna and Burdette, consistent with the requirements of N.J.A.C. 8:38-2.7(a);

NOW, THEREFORE, IT IS ORDERED on this 3rd day of December, 2002 that:

1. Aetna shall pay a fine of Seven Thousand Seven Hundred and Fifty dollars (\$7,750), determined by multiplying 47 days (counting from October 2, 2002 through November 18, 2002) by \$250, for failing to provide prior notice of the termination of the contract between Burdette and Aetna to DHSS and the Department of Banking and Insurance in accordance with N.J.A.C. 8:38-2.7(a).

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

3. Aetna shall assure that its HMO members, at a minimum, have access to Burdette for at least the duration of the four-month extension period, which ends on or about March 1, 2003.

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

² N.J.S.A. 26:2J-11.1 requires that the terms of a terminated contract between a hospital and HMO be extended for at least a four-month period following the date of termination, and that, following the date of termination, the HMO provide notice of the extension period to enrollees and other health care providers.

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

- (1). The current physician network in Cape May County;
- (2). The number of primary care and specialty care physicians who only have privileges with Burdette, with a written explanation of how many providers in each discipline Aetna expects to leave its network, and the means by which Aetna will address this issue; and
- (3). The network Aetna expects to be available on March 2, 2002.

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

- (1). The current acute care hospitals in Cape May County under contract with Aetna, 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 March 2, 2002.

(c). A geo-access evaluation report of the hospital and physician networks that will be available to Aetna enrollees on March 2, 2002, submitted on diskette as well as hardcopy.

(d). A current enrollment chart for Cape May County by male/female under age 18 and male/female age 18 and over.

³ In preparation of *Table 2*, Aetna 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 Cape May 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*, Aetna shall include behavioral/mental health and substance abuse providers, regardless of whether a secondary contractor provides the services.

(e). Copies of all forms of notification letters to be sent to enrollees who reside in Cape May County informing them of their options with respect to their health care coverage, including 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 Aetna and Burdette will continue from November 1, 2002 until the end of the extension period, which shall be no earlier than March 2, 2003.

(f). Copies of all forms of notification letters to be sent to network health care providers, and specifically physicians that have admitting privileges at Burdette. This notice shall include a statement that the terms of the current contract between Aetna and Burdette will continue from November 1, 2002 until the end of the extension period, which shall be no earlier than March 2, 2003. 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.

5. Within 10 business days following the date of this Order, Aetna shall submit a list of, at a minimum, the acute care hospitals in each county with which it has a contract for participation, a letter of agreement or other understanding by which Aetna and the hospital has agreed that Aetna HMO members are permitted to use the hospital without being subject to billing or balance billing. Aetna shall indicate on the list the classification of the agreements with the hospital (for example: executed contract, letter of agreement), whether Aetna includes the hospital in Aetna'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 Aetna in satisfaction of this requirement shall be certified to by an officer of Aetna.

6. Nothing in this Order shall be interpreted to prejudice the interests of Aetna or Burdette 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 Aetna or Burdette.

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

8. Nothing in this Order shall be construed to preclude DHSS from taking enforcement action against Burdette 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 Paragraphs 1 and 2 shall be effective as of the date of this Order.

11. 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 Aetna 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.

12. If Aetna wishes to request an administrative hearing, Aetna 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.

MARILYN DAHL
Senior Assistant Commissioner

/s/ Marilyn Dahl