

IN THE MATTER OF THE TERMINATION OF)
THE CONTRACTUAL RELATIONSHIP)
BETWEEN COOPER HOSPITAL/UNIVERSITY) ADMINISTRATIVE ORDER
MEDICAL CENTER AND UNIVERSITY)
HEALTH PLANS, INC.)

THIS MATTER, having been opened by the Department of Health and Senior Services (“Department”) in accordance with the authority set forth at N.J.S.A. 26:1A-15, and N.J.S.A. 26:2J-1 et seq.;

WHEREAS, on or about February 24, 2003, the Department received a copy of a letter, dated February 14, 2003, from Robert G. Mullen, on behalf of Cooper Hospital/University Medical Center (“Cooper”) addressed to Robert J. Nolan of University Health Plans, Inc. (“University”) setting forth an intent to terminate whatever agreement might exist between Cooper and University regarding the provision by Cooper of hospital-based services to University’s members on a non-emergency, non-urgent care basis;

WHEREAS, Cooper’s letter indicates that the only written agreement between Cooper and University had been a letter of intent to contract that was entered into on September 9, 1999, but which Cooper believed expired on November 30, 1999;

WHEREAS, Cooper’s letter suggests that, because no formal written contract existed between University and Cooper, Cooper’s notice of termination could have, and was intended to have, an immediate effect;

WHEREAS, Cooper’s letter stated that, in keeping with N.J.A.C. 8:38-3.5(e), Cooper would afford a 120-day grace period for current University members to continue access to Cooper on an in-network basis, which period would end on June 5, 2003 at 11:59 p.m.;

WHEREAS, termination of a hospital contracts is subject to N.J.S.A. 26:2J-11.1;

WHEREAS, N.J.S.A. 26:2J-11.1 sets forth that, when a contract between a hospital and HMO terminates, both the hospital and the HMO shall abide by the terms of the contract for a period of at least four months following the termination, and establishes additional requirements for HMOs to meet regarding notice to members and other health care providers;

WHEREAS, N.J.A.C. 8:38-2.7(a) requires HMOs to provide the Department and the Department of Banking and Insurance 30 days prior notice of a scheduled termination;

WHEREAS, in order for an HMO to provide at least 30 days prior notice to the Department, the HMO must be permitted at least 30 days prior notice of an intent to terminate a contract;

WHEREAS, whether or not there was a formal, written contract between Cooper and University, both parties held themselves out as if they had a contractual relationship;

WHEREAS, the Department assumes that all contractual relationships between HMOs and health care providers are arranged so as to permit all parties to meet their minimum regulatory obligations, regardless of whether the parties factually comply with their regulatory requirements;

WHEREAS, University is an HMO;

WHEREAS, N.J.A.C. 8:38-3.5 requires an HMO to provide written notice to members and health care providers about the termination of a hospital contract, and the extension period following the date of termination, setting forth the rights and obligations of members in accessing of, and health care providers in referring to the terminated hospital during and after the extension period;

NOW, THEREFORE, IT IS ORDERED on this 26th day of March that:

1. Cooper shall be assumed to have given University 30 days prior notice of its intent to terminate the contract between Cooper and University by virtue of the letter from Robert G. Mullen to Robert J. Nolan dated February 14, 2003, so that the effective date of termination shall be considered to be March 16, 2003.

2. Cooper and University shall abide by the terms of the contractual relationship between Cooper and University with respect to all of University's members, current and future, until at least July 16, 2003, inclusive of that date.

3. University shall provide written notice to members residing in Camden County and contiguous counties and other health care providers of the termination of the contractual relationship between Cooper and University, and the statutory extension period thereof, within no more than 15 business days following March 16, 2003.¹ Notices shall state that members may continue to use, and health care providers may continue to refer members to, Cooper as a network facility through July 16, 2003, but shall also include information about other hospitals in Camden County and in contiguous counties that have contractual relationships with University at which members may obtain services both during and after the extension period.

4. University's written notice(s) to health care providers that have admitting privileges solely at Cooper shall include information about the impact, if any, that the termination of the Cooper contractual relationship may have upon the health care providers' own contracts with University, including continuity of care standards that the health care providers may be required to meet, consistent with N.J.S.A. 26:2S-9.1.

¹ That is, April 4, 2003, inclusive of that date.

5. University shall provide the Department with copies of the written notice to members and health care providers no later than March 31, 2003.

6. University shall pay a fine of Seven Thousand Five Hundred Dollars (\$7,500) for failing to notify DHSS and the Department of Banking and Insurance as required by N.J.A.C. 8:38-2.7(a) for at least 30 days multiplied by \$250 per day, calculating the date of termination to be February 14, 2003, and the end date of the 30 day prior notice period being March 16, 2003.

7. University shall submit payment of the penalties by check or money order made payable to "Treasurer, State of New Jersey," in a single sum no later than the date on which this paragraph becomes effective, as specified in Paragraph 13 of this Order. University shall forward payment to the Director of the Office of Managed Care, P.O. Box 360, Trenton, New Jersey 08625-0360.

8. 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)* completed² to show each of the following:

(1). The current physician network in Camden County;

(2). The number of primary care and specialty care physicians who only have privileges with Cooper, 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

² 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 Camden 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 a secondary contractor provides the services.

(3). The network University expects to be available on July 17, 2003.

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

(1). The current acute care hospitals in Camden 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 July 17, 2003.

(c). A geo-access evaluation report of the hospital and physician networks that will be available to University enrollees on July 17, 2003 in Camden County and the counties contiguous to it, submitted on diskette as well as hardcopy.

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

9. Nothing set forth in this Order shall be interpreted to prejudice the interests of University or Cooper in any legal action, and nothing set forth 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 Cooper.

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

11. 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.

12. All numbered paragraphs of this Order, other than paragraphs 7 and 8, shall be effective as of the date of the Order, and no paragraphs of this Order shall be stayed pending the conclusion of an administrative hearing and the rendering of a final decision by the Commissioner of the Department, except as Paragraph 13 applies.

13. Paragraphs 7 and 8 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, prior to the end of the 30-day period, files with DHSS a written request for a hearing and a written request to Stay the Order with respect to Paragraphs 7 and 8 until the conclusion of an administrative hearing and the rendering of a final decision by the Commissioner of the Department. A request for a hearing shall be accompanied by a written response to the violations set forth in this Order.

14. If either University or Cooper wishes to request an administrative hearing, then University or Cooper shall submit such a request in writing no later than 30 days following the date of this Order to: Office of Legal and Regulatory Affairs, P.O. Box 360, Trenton, New Jersey 08625-0360, or by fax at 609-292-5333.

Questions should be submitted to Marilyn Dahl, Senior Assistant Commissioner at 609-9843939 or to Sylvia Allen-Ware, Director of the Office of Managed Care, at 609-633-0660.

MARILYN DAHL
Senior Assistant Commissioner
Health Planning and Regulation
New Jersey Department of Health and
Senior Services

/s/ Marilyn Dahl

