

IN THE MATTER OF THE FAILURE OF)
EMPIRE, HEALTHCHOICE HMO, INC.,)
d/b/a WELLCHOICE HMO OF) ADMINISTRATIVE ORDER
NEW JERSEY TO TIMELY SUBMIT ITS)
ANNUAL ASSESSED PER LIFE FEE)

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, N.J.S.A. 26:2J-23c requires health maintenance organizations (“HMOs”) submit a payment of \$1.50 per life per year annually no later than July 15 for the preceding calendar year;

WHEREAS, the Department calculated the mean number of lives for each HMO using enrollment information reported by the HMO in its required quarterly and annual reports, without inclusion of Medicare or Medicaid lives, if any, and reduction of the mean total lives by any lives covered under the Federal Employee Health Benefits Plan reported on an HMO’s Annual Supplement;

WHEREAS, Empire HealthChoice HMO, Inc. d/b/a WellChoice HMO of New Jersey (“Wellchoice”) is an HMO;

WHEREAS, the Department calculated that WellChoice had an average of 12,013.75 lives for the 2003 calendar year, multiplied the number of lives by \$1.50 and assessed a fee of \$18,020.63 against WellChoice;

WHEREAS, the Department notified WellChoice of the assessment by a letter addressed to Daniel P. McCarthy, President of WellChoice, dated May 28, 2004;

WHEREAS, the May 28, 2004 letter to Daniel P. Mc Carthy setting forth the assessment was sent by regular mail and facsimile to the address and corrected facsimile numbers on file with the Department;

WHEREAS, the May 28, 2004 letter included the instructions for submitting payment as well as instructions for obtaining more information should the letter's recipient have questions;

WHEREAS, WellChoice did not submit the required fee to the Department on or before July 15, 2004;

WHEREAS, WellChoice having submitted the required fee on July 22, 2004, failed to timely submit the required fee on or before July 15 as set forth in the May 28, 2004 letter;

NOW, THEREFORE, IT IS ORDERED on this 9th day of August that:

1. WellChoice shall pay a fine of One Thousand Two Hundred and Fifty Dollars (\$1,250), determined by multiplying 5 business days by \$250, for failing to submit its annual assessed per life fee on or before July 15, 2004 in accordance with N.J.S.A. 26:2J-23c.

2. WellChoice shall submit payment of the fine to the Director of the Office of Managed Care by check or money order made payable to "Treasurer, State of New Jersey," in a single sum no later than the date this paragraph becomes effective, as specified in paragraph 5 of this Order.

3. 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.

4. All numbered paragraphs of this Order, other than paragraphs 1 and 2 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 5 applies.

5. Paragraphs 1 and 2 shall become effective 30 days following the date of this Order, in accordance with N.J.A.C. 8:38-2.14(c), unless WellChoice, prior to the end of the 30-day period, files with the Department a written request for a hearing and a written request to Stay the Order with respect to paragraphs 1 and 2 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.

6. If WellChoice wishes to request an administrative hearing, then WellChoice shall submit such a request in writing no later than 30 days following the date of this Order to: Director, 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, Deputy Commissioner, at 609-984-3939 or to Sylvia Allen-Ware, Director of the Office of Managed Care, at 609-633-0660.

MARILYN DAHL
Deputy Commissioner

/s/ Marilyn Dahl