

IN THE MATTER OF THE TERMINATION)
OF THE CONTRACT BETWEEN PHYSICIANS) ADMINISTRATIVE ORDER
HEALTH SERVICES AND CENTRASTATE) AMENDING A PRIOR
MEDICAL CENTER) ADMINISTRATIVE ORDER

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 issued an Administrative Order on September 18, 2000 (hereafter, "September 18th Order") against Physicians Health Services, a/k/a PHS Health Plans (although now named HealthNet of New Jersey, hereafter still referred to as "PHS"), requiring PHS to:

1. pay a fine for violations of N.J.A.C. 8:38-2.7(a), and 3.5(e);
2. assure that members continued to have access to and receive coverage of services rendered through CentraState Medical Center (hereafter, "CentraState") as if CentraState were participating in PHS' network for at least four months from the date of the September 18th Order;
3. assure that members continued to have access to and receive coverage of services rendered through health care providers that contracted only with CentraState as if the health care providers were participating in PHS' network during at least the four month period following the date of the September 18th Order; and
4. issue certain notices pursuant to N.J.A.C. 8:38-3.5(e), regarding the termination of the contract with CentraState, with explanations of rights and obligations in accessing services during the four month period following the date of the September 18th Order and immediately thereafter;

WHEREAS, the September 18th Order was based upon certain facts that were presented to DHSS by PHS and CentraState separately, which facts were at times inconsistent with one another, presented piecemeal and selectively;

WHEREAS, CentraState alleged that it had provided adequate notice of its intent to terminate the contract with PHS effective on or before mid-September, and CentraState had sent letters to its provider community alerting them to the impending contract termination;

WHEREAS, PHS alleged that it believed that it and CentraState were still in negotiations, but acknowledged that it was aware that CentraState believed it had provided notice of an intent to terminate the contract, and that CentraState had sent letters to the provider community alerting them to the impending contract termination, and PHS did not actually dispute the possibility of the contract between PHS and CentraState being terminated in mid-September;¹

WHEREAS, PHS requested an administrative hearing regarding the September 18th Order and a Stay of the September 18th Order;²

WHEREAS, in preparation for the hearing, PHS has presented a provision of the contract that both CentraState and PHS acknowledge was in effect in September 2000, which states that either party to the contract may terminate the contract without cause with 90-days prior notice to the other party, but that the contract will continue in full force and effect during the 90-day notice period and shall then terminate on the last day of the month in which the ninetieth day following such notice occurs;

¹ PHS never stated that it considered CentraState's notice of termination to be adequate, nor are we aware that PHS ever acknowledged any particular date specified by CentraState for termination of the contract prior to September.

² The Stay was granted on October 18, 2000.

WHEREAS, CentraState attempted through various means to declare the contract to be terminated as of September 13, 2000,³ but it now appears that the contract could not terminate prior to the end of any particular month, including September 2000;

WHEREAS, PHS should have provided notice of the termination at least 30 days prior to its occurrence in accordance with N.J.A.C. 8:38-2.7(a) (that is, by no later than August 31, 2000), but did not provide notice until September 11, 2000;

WHEREAS, DHSS is withdrawing its prior position giving weight as to the validity of any specific prior notice of termination presented to PHS by CentraState directly, or indirectly through letters to the community of health care providers, but finds that PHS was sufficiently aware prior to September 11, 2000, of CentraState's intent to terminate the contract to seek to have DHSS intervene in the process;

WHEREAS, the requirement to provide notice to members and other health care providers pursuant to N.J.A.C. 8:38-3.5(e) does not arise until termination actually occurs;

NOW, THEREFORE, IT IS ORDERED on this 20th day of December 2001 that:

1. Paragraphs 1 and 2 of the September 18th Order shall be rescinded.
2. PHS shall pay a fine of Three Thousand Three Hundred Dollars (\$3,300) for failing to notify DHSS and the Department of Banking and Insurance as required by N.J.A.C. 8:38-2.7(a), calculated at \$300 per day for 11 days.
3. PHS shall submit payment of the penalty by check or money order made payable to the State Treasurer of New Jersey in a single amount of Three Thousand Three Hundred Dollars (\$3,300) no later than the date on which this paragraph becomes effective, as specified in

³ At least part of the argument between CentraState and PHS was whether September 13th marked the termination date of the contract, or the end of the statutory four month extension period established by N.J.S.A. 26:2J-11.1. In order to assure protection of PHS' consumers, DHSS took the position that the September date could not classified

Paragraph 4 of this Order. PHS shall submit payment to the Director of the Office of Managed Care, P.O. Box 360, Trenton, NJ 08625-0360.

4. Paragraphs 2 and 3 of this Order shall become effective on the 30th day following the date of this Order, in accordance with N.J.A.C. 8:38-2.14(c), unless PHS notifies DHSS prior to the end of the 30-day period of its intent to continue with the currently-pending administrative hearing, and requests in writing a stay of paragraphs 2 and 3 until conclusion of the currently-pending administrative hearing and a final decision is rendered by the Commissioner of DHSS. Notice of the intent to continue with the currently-pending administrative hearing may be made through DHSS' legal representative of record for the currently-pending administrative hearing.

5. Nothing in this Order shall be interpreted to prejudice the interests of PHS or CentraState 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 PHS or CentraState.

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

7. Nothing in this Order shall be construed to preclude DHSS from taking enforcement action against CentraState 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.

as the end of the statutory four-month extension period, ordering that the extension period would run from a date no earlier than September 18, 2000.

9. All numbered paragraphs of this Order, other than Paragraphs 2 and 3, shall be effective as of the date of this Order.

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.

FOR:

GEORGE T. DIFERDINANDO
ACTING COMMISSIONER
NEW JERSEY DEPARTMENT OF HEALTH
AND SENIOR SERVICES

BY:

MARILYN DAHL
Senior Assistant Commissioner

DATE