

IN THE MATTER OF THE TERMINATION)
OF THE CONTRACT BETWEEN)
UNITEDHEALTHCARE OF NEW JERSEY,)
INC., AND CAPITAL HEALTH SYSTEM)

ADMINISTRATIVE
ORDER

THIS MATTER having been opened by the Commissioner of the Department of Health and Senior Services (hereinafter, "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, UNITEDHEALTHCARE OF NEW JERSEY, INC. (hereinafter, "United") forwarded to the Department a letter, dated July 18, 2002, setting forth the following matters:

1. That United had been involved in discussions with Capital Health System, a/k/a Mercer Medical Center and Helene Fuld Medical Center (hereinafter, "Capital") concerning possible termination of the contract between the two entities; and
2. That United sought to continue to negotiate with Capital to develop a new contract; and
3. That United indicated the existing contract would terminate on or about July 15, 2002, if a satisfactory agreement between United and Capital could not be reached; and
4. That on or about July 15, 2002, United made a determination that a satisfactory agreement between United and Capital would not occur; and
5. That by letter dated July 18, 2002 United was notifying DHSS that United and Capital had mutually agreed to terminate the hospital agreement, effective July 15, 2002; and

6. That United believes the statutorily-required four month extension period commenced on July 15, 2002 and expires on November 15, 2002; and
7. That United considers Capital a participating provider under the terms of the current agreement until November 15, 2002; and
8. That United has expressed a desire to continue to negotiate with Capital, as feasible, to reach a new contract prior to the end of the extension period, that is, November 15, 2002;

WHEREAS, N.J.S.A. 26:2J-11.1 requires the terms of a contract between a hospital and HMO that is terminated must be extended for at least a four-month period following the date of termination and also requires that, following the date of termination, an HMO provide notice to its members and other health care providers with which the HMO is contracted of the extension of the terms of the contract with the hospital, setting forth the options of the members and other health care providers concerning receipt of care during and following the conclusion of the four-month extension period;

WHEREAS, N.J.A.C. 8:38-3.5(e) specifies that, when a contract between the HMO and the hospital terminates, an HMO must provide notice to members and other health care providers no later than 15 business days following the date of the termination;

WHEREAS, N.J.A.C. 8:38-2.7(a), requires an HMO to provide notice to DHSS and the Department of Banking and Insurance of the expected 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, N.J.A.C. 8:38-2.7(a) requires that such notice be provided at least 30 days prior to the date the expected termination is to occur; and

WHEREAS, United failed to notify DHSS and the Department of Banking and Insurance of the termination of the hospital contract with Capital, in accordance with N.J.A.C. 8:38-2.7(a), and did not notify either DHSS or the Department of Banking and Insurance until after the date that United indicated was the date of termination of the contract; and

WHEREAS, United, on two previous occasions, failed to notify DHSS of a pending hospital termination at least 30 days prior to the date the contract was scheduled to terminate in accordance with N.J.A.C. 8:38-2.7(a)¹; and

WHEREAS, DHSS had previously advised United that failure to provide notice in accordance with the rules may result in the Department assessing fines and other penalties against United²;

NOW, THEREFORE, IT IS ORDERED on this 29th day of August 2002 that:

1. In accordance with N.J.S.A. 26:2J-11.1, United shall assure that members residing in the county in which Capital is located and in adjacent counties within United's service area may utilize services at Capital in accordance with the terms of the health benefits plan under which each member is covered, as if Capital continues to be a network health care facility, for no less than four months from July 15, 2002, and shall assure that no member who accesses services at Capital during this time period shall be liable for payment of any

¹ In 2001, United terminated hospital contracts with both Kennedy Health System and Our Lady of Lourdes Medical Center but failed to provide DHSS with the required 30 days advance notice. United terminated its contract with Kennedy Health System, effective February 13, 2001. DHSS, however, did not receive written notification of the termination until January 31, 2001. United also terminated its contract with our Lady of Lourdes Health System, effective March 1, 2001, but failed to notify DHSS until February 28, 2001.

² By letter dated March 9, 2001, DHSS notified United that the HMO is required to notify DHSS and the Department of Banking and Insurance of substantial changes to items set forth at N.J.A.C. 8:38-2.2(c)(1) at least 30 days prior to the date when such change is expected to occur and indicated that nonrenewal of a hospital contract constitutes a substantial change. The letter further noted that failure by United to provide notice of a pending hospital termination at least 30 days prior to the date the contract is scheduled to terminate, in accordance with N.J.A.C. 8:38-2.7, may result in the Department assessing fines and other penalties against United.

costs associated with such services in excess of what that member would have been liable for had the member obtained services from a network health care facility within United's network.

2. United shall assure that health care providers that otherwise would have been terminated from United's network because of termination of the agreement with Capital are allowed to continue to provide services to United's members for no less than four months from July 15, 2002, at the discretion of the health care provider and the member, and United shall assure that the terms of the contracts between such health care providers remain in effect during this four-month period, except that United shall not prohibit a health care provider from, or penalize a health care provider for, referring a member to Capital for services and/or seeking precertification and preauthorization for services at Capital during this time period.

a. Nothing in the foregoing paragraph shall be construed to prohibit United from encouraging such health care providers to utilize the services of health care facilities within United's network in accordance with the terms of the health care provider's contract with United.

b. Nothing in paragraph 2 shall be construed to eliminate any obligation that a health care provider and United may have with respect to continuity of care for members in the event that the health care provider's contract terminates either prior to, or at the end of, the four-month period specified in paragraph 2 above as required by N.J.S.A. 26:2S-9.1 and N.J.A.C. 8:38-3.5 generally.

3. United shall not prohibit any other health care provider from, or penalize any other health care provider for, referring a member to Capital for services and/or seeking precertification and preauthorization for services at Capital during this time period.

4. United shall provide written notice to members and health care providers no later than August 5, 2002, specifically regarding the termination of Capital from United's network. The notice shall explain the options available for obtaining health care services during the four month period established pursuant to this Order, including the right of members to continue accessing services at Capital as if Capital were still a network facility, consistent with the terms of Paragraphs 1, 2 and 3 above. The notice shall also explain the options available for obtaining health care services after the end of the four-month time period.

5. United shall submit documentation to DHSS and the Department of Banking and Insurance within no more than 15 business days following the date of this Order explaining how removal of Capital from United's network, and other health care providers whose contracts may terminate at the end of the four-month period because of the termination of Capital, does not have an adverse impact upon United's ability to meet the network adequacy requirements for the certificate of authority issued to United, or, alternatively, what actions United will take prior to the end of the four-month period established by this Order to assure that United does meet the network adequacy requirements for the certificate of authority issued to United.

6. In the event that United is unable to supply documentation pursuant to Paragraph 5 above that satisfies DHSS and the Department of Banking and Insurance that United can meet the network adequacy requirements, United shall submit an application to modify its certificate of authority accordingly.

7. United shall pay a fine of Fifty-One Thousand Five Hundred and Seventy-Nine Dollars (\$51,579) 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 33 days multiplied by \$1,563³ per day, calculating the date of termination to be July 15, 2002, with at least 30 days prior notice being June 14, 2002;

8. Should United have failed to notify members by August 5, 2002 of the termination of the contract between United and Capital, as required by N.J.A.C. 8:38-3.5(e), United shall pay a fine of Six Hundred and Twenty-Five Dollars (\$625)⁴ per day for each day that United fails to provide the required notice to members. DHSS shall assess penalties beginning after August 5, 2002, that date being the fifteenth business day following July 15, 2002.

9. Should United have failed to notify health care providers by August 5, 2002 of the termination of the contract between United and Capital, as required by N.J.A.C. 8:38-3.5(e), United shall pay a fine of One Thousand Five Hundred and Sixty-Three Dollars (\$1,563)⁵ per day for each day that United fails to provide the required notice to health care providers. DHSS shall assess penalties beginning after August 5, 2002, that date being the fifteenth business day following July 15, 2002.

³ The minimum fine for a first offense is \$250 per day. This is United's third violation of N.J.A.C. 8:38-2.7 in less than a 24-month period. DHSS believes it is appropriate to increase the fine when a pattern of violations becomes evident. If all three violations had occurred in a 12-month period, the minimum fine per day would have been tripled for each subsequent violation. The fine for a violation occurring 12 months but less than 24 months from the originally-noted violation is calculated using a multiplier of 2.5, thus: $(\$250 \times 2.5) = \625 . DHSS has rounded the dollar amount up to the next whole dollar.

⁴ United's failure to provide notice to members within the time period set forth at N.J.A.C. 8:38-3.5(e), more specifically August 5, 2000, would represent the second subsequent offense occurring in less than a 24-month period. The fine for a second violation occurring more than 12 months but less than 24 months from the date of the original violation is calculated using a multiplier of 2.5, thus: $(\$250 \times 2.5) = \625 .

⁵ As noted above, the minimum fine for a first offense is \$250 per day. United failed to provide notice to providers within the timeframe set forth at N.J.A.C. 8:38-3.5(e) when United terminated hospital contracts with both Kennedy Health System and Our Lady of Lourdes Health System. The termination with Capital represents the third similar offense in less than 24 months and subjects United to a penalty for a third subsequent offense. The fine for a violation occurring 12 or more but less than 24 months from the same prior offense is calculated using a multiplier of 2.5 resulting in a fine of \$1,563 per day for each violation, as noted in footnote 3 above.

10. United 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 16 of this Order.

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

11. Nothing in this Order shall be interpreted to prejudice the interests of United or Capital 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 United or Capital.

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

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

14. 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.

15. All numbered paragraphs of this Order, other than Paragraphs 7, 8, 9, and 10, shall be effective as of the date of this Order.

16. Paragraphs 7, 8, 9, and 10 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 United 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 7, 8, 9, and 10 until an administrative hearing has been concluded and the Commissioner of DHSS renders a final decision. A

request for a hearing shall be accompanied by a written response to the violations set forth in this Order.

17. If United wishes to request an administrative hearing, United 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.

FOR:

CLIFTON R. LACY, M.D., COMMISSIONER
NEW JERSEY DEPARTMENT OF HEALTH
AND SENIOR SERVICES

BY:

MARILYN DAHL
Senior Assistant Commissioner