

IN THE MATTER OF THE TERMINATION)
OF THE CONTRACT BETWEEN) ADMINISTRATIVE
AMERICHoice OF NEW JERSEY, INC. AND) ORDER
THE HOSPITALS OF SAINT BARNABAS)
HEALTH SYSTEM)

THIS MATTER having been opened by the Commissioner of the Department of Health and Senior Services (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, AmeriChoice of New Jersey, Inc. (AmeriChoice) sent notice to DHSS on or about July 8, 2005 of the termination of the contract between AmeriChoice and Saint Barnabas Health System's hospitals (St. Barnabas); and

WHEREAS, it appears that the effective date of the termination is July 31, 2005;

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

WHEREAS, N.J.S.A. 26:2J-11.1, which requires that the terms of a contract between a hospital and HMO that is terminated be extended for at least a four-month period following the date of termination, 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 in the 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 provide notice to members and other health care providers no later than 15 business days following the date of the termination;

WHEREAS, AmeriChoice has indicated that it is preparing the required notices to members and providers, but DHSS has not as yet seen the notices;

WHEREAS, following verbal correspondence, AmeriChoice submitted additional documentation suggesting that, although St. Barnabas sent written notice dated June 30, 2005 to AmeriChoice of St. Barnabas' intent to terminate the contract with AmeriChoice, AmeriChoice did not receive notice of St. Barnabas' June 30th letter until July 7, 2005, which in turn, suggests that AmeriChoice's notice of July 8, 2005 to the Department of the impending termination was expeditious;

WHEREAS, the notice of termination from St. Barnabas did not set forth a cause for the termination, or a provision of the contract upon which notice of the termination was premised;

WHEREAS, it appears that AmeriChoice did not question the legal propriety of the St. Barnabas notice of termination the contract between St. Barnabas and AmeriChoice;

NOW, THEREFORE, IT IS ORDERED on this 22nd day of September, 2005 that:

1. AmeriChoice shall pay a fine of Five Thousand Two Hundred and Fifty Dollars (\$5,250), determined by multiplying 7 days by \$750,¹ for failing to provide at least 30-days prior

¹ Because this represents a second violation of the same rules by AmeriChoice within a 12 month period (see OMC Order 2005-11), DHSS' policy is to increase the multiplier for the fine, so that the second offense (in which no harm has been documented) is \$750 per day of the violation.

notice of the termination of the contract between St. Barnabas and AmeriChoice to DHSS and the Department of Banking and Insurance in accordance with N.J.A.C. 8:38-2.7(a);

2. AmeriChoice 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 10 of this Order. AmeriChoice shall submit payment to the Director of the Office of Managed Care, P.O. Box 360, Trenton, NJ 08625-0360.

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

(a). A separate *Table 2 (Summary of Physicians by County)* completed² to show each of the following:

(1). The current physician network in Essex counties;

(2). The number of primary care and specialty care physicians who only have privileges with St. Barnabas, with a written explanation of how many providers in each discipline AmeriChoice expects to leave its network, and the means by which AmeriChoice will address this issue; and

(3). The network AmeriChoice expects to be available on December 1, 2005.³

² In preparation of *Table 2*, AmeriChoice 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 Essex 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*, AmeriChoice shall include behavioral/mental health and substance abuse providers, regardless of whether an ODS provides the services.

³ DHSS acknowledges that AmeriChoice has stated that it and St. Barnabas are continuing to negotiate, and that the terms of the existing contract may be extended (although no statement to that effect has been provided), but DHSS is setting forth November 30, 2005 as the end of the statutorily-required four-month extension period under the assumption that the contract at issue actually terminates as of July 31, 2005 as stated.

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

(1). The current acute care hospitals in Essex county under contract with AmeriChoice, 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 or about December 1, 2005.

(c). A geo-access evaluation report of the hospital and physician networks that will be available to AmeriChoice enrollees on December 1, 2005, submitted on diskette as well as in hardcopy.

(d). Current enrollment charts for Essex county by male/female under age 18 and male/female age 18 and over.

(e). Copies of all forms of notification letters sent to enrollees who reside in Essex county informing them of their options with respect to their health care coverage,⁴ 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 AmeriChoice and St. Barnabas will continue until the end of the extension period, which shall be no earlier than four calendar months following the date of actual termination of the contract.

(f). Copies of all forms of notification letters sent to network health care providers, and specifically physicians that have admitting privileges at St. Barnabas. This notice shall include a statement that the terms of the current contract between AmeriChoice and St.

Barnabas will continue until the end of the extension period, which shall be no earlier than four calendar months following the date of actual termination of the contract. 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.

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

5. AmeriChoice shall submit a Plan of Correction to the Department setting forth the actions AmeriChoice shall implement as are necessary or appropriate to ensure that AmeriChoice is able to fully comply with its regulatory requirements, including the provision of at least 30-days prior notice to the Department of termination of a contract with a hospital when termination is not the result of an alleged breach or other cause for which care is unavailable under the terms of the contract between the hospital and the HMO.

⁴ DHSS is aware that AmeriChoice has contractual obligations with the Department of Human Services to send similar notifications to AmeriChoice's Medicaid enrollees, and acknowledges that AmeriChoice has an opportunity to satisfy its regulatory and contractual notice obligations simultaneously.

6. Nothing in this Order shall be interpreted to prejudice the interests of AmeriChoice or St. Barnabas 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 AmeriChoice or St. Barnabas.

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

8. Nothing in this Order shall be construed to preclude DHSS from taking enforcement action against St. Barnabas separately 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 AmeriChoice 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 AmeriChoice wishes to request an administrative hearing, AmeriChoice shall submit its request in writing no later than 30 days following the date of this Order to Sylvia

Allen-Ware, Director of the Office of Managed Care, at P.O. Box 360, Trenton, NJ 08625-0360,
or by fax at (609) 633-0807.

Questions regarding this Order should be submitted to Sylvia Allen-Ware (609-633-
0660), Director of the Office of Managed Care.

/s/Marilyn Dahl

MARILYN DAHL

Deputy Commissioner

Department of Health and Senior Services

c: Sylvia Allen-Ware
Director, Office of Managed Care