

IN THE MATTER OF THE TERMINATION )  
OF THE CONTRACT BETWEEN AMERIGROUP )  
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 (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, AMERIGROUP New Jersey, Inc. (hereinafter, "Amerigroup") sent to DHSS a letter dated March 21, 2002, setting forth the following:

1. That Amerigroup had received a letter dated July 21, 2001 from Capital Health System (hereinafter, "Capital"), by which Capital intended to serve Amerigroup with 30-day notice of termination, with termination apparently to be effective on September 1, 2001; and
2. That Amerigroup sought to negotiate with Capital, and believed that the termination notice was suspended during the course of the negotiations; and
3. That on or about March 11, 2002, Capital made a determination that a satisfactory agreement between Amerigroup and Capital would not occur<sup>1</sup>; and
4. That Amerigroup sought to obtain agreement from Capital that the contract between the two parties had terminated as of March 11, 2002, with the four-month extension period required by N.J.S.A. 26:2J-11.1 running from that date through July 12, 2002; and

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<sup>1</sup> A letter from Ronald J. Guy, CFO of Capital, to the Medical Staff of Capital, dated on or about March 18, 2002, states that the contract with Amerigroup terminated December 30, 2001, and that, despite ongoing discussion with Amerigroup, the prior day Amerigroup served notice of termination to Capital, thus ending any chance of reconciling contractual disputes between the two parties.

5. That Capital took the position that the contract between it and Amerigroup had terminated on September 1, 2001, and accordingly, the statutorily-required four month extension period had commenced on that date and ended on December 31, 2001; and
6. That Amerigroup believes it has no alternative but to act upon the position established by Capital, and agree that the four-month extension period has run out; and
7. That Amerigroup believes its members may only continue to utilize the services of Capital for emergency services, and that currently pregnant members planning to deliver at Capital have been identified and Amerigroup case managers will work with such members and their health care providers to arrange for appropriate continuity of care services, and Amerigroup will work with Capital for such circumstances;

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, 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;

WHEREAS, Amerigroup did not provide notice to members and health care providers in accordance with N.J.S.A. 26:2J-11.1, and N.J.A.C. 8:38-3.5(e), and still has not done so;

WHEREAS, Amerigroup failed to notify DHSS and the Department of Banking and Insurance 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 well after the date that Amerigroup now appears to agree was the date of termination of the contract;

NOW, THEREFORE, IT IS ORDERED on this 15th day of April 2002 that:

1. In accordance with N.J.S.A. 26:2J 11.1, Amerigroup shall assure that members residing in the county(ies) in which Capital is located and in adjacent counties within Amerigroup'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 March 11, 2002 (the date that Amerigroup states in its March 21, 2002 letter that Capital determined an agreement could not be reached between the parties, and the date Amerigroup sought agreement from Capital to utilize as the termination date of the contract between Capital and Amerigroup), and shall assure that no member who accesses services at Capital during this time period shall be liable for payment of any 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. Nothing in this paragraph

shall be construed to prohibit Amerigroup from encouraging members to utilize the services of health care facilities within Amerigroup's network.

2. Amerigroup shall assure that health care providers that otherwise would have been terminated from Amerigroup's network because of termination of the agreement with Capital are allowed to continue to provide services to Amerigroup's members for no less than four months from March 11, 2002, at the discretion of the health care provider and the member, and Amerigroup shall assure that the terms of the contracts between such health care providers remain in effect during this four-month period, except that Amerigroup 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 Amerigroup from encouraging such health care providers to utilize the services of health care facilities within Amerigroup's network in accordance with the terms of the health care provider's contract with Amerigroup.

b. Nothing in paragraph 2 shall be construed to eliminate any obligation that a health care provider and Amerigroup 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. Amerigroup 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. Nothing in

this paragraph shall be construed to prohibit Amerigroup from encouraging any health care providers to utilize the services of health care facilities within Amerigroup's network in accordance with the terms of the health care provider's contract with Amerigroup.

4. Amerigroup shall provide written notice to members and health care providers within no more than 15 business days following the date of this Order, specifically regarding the termination of Capital from Amerigroup's network. The notice shall explain the options available for obtaining health care services both 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. Within no more than 3 business days following the date of this Order, Amerigroup shall submit to DHSS for review and approval the notices it intends to mail to its members and health care providers in accordance with Paragraph 4 above.

6. Amerigroup 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 Amerigroup'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 Amerigroup's ability to meet the network adequacy requirements for the certificate of authority issued to Amerigroup, or, alternatively, what actions Amerigroup will take prior to the end of the four-month period established by this Order to assure that Amerigroup does meet the network adequacy requirements for the certificate of authority issued to Amerigroup.

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

8. Nothing in this Order shall be construed to limit or eliminate any notice standards with which Amerigroup may be required to comply in accordance with its contract with, and regulations of, the State's Medicaid Program.

9. Amerigroup shall pay a fine of Ten Thousand Dollars (\$10,000) 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 40 days multiplied by \$250 per day, calculating the date of termination to be March 11, 2002, with at least 30 days prior notice being February 9, 2002<sup>2</sup>;

10. Amerigroup shall pay a fine of Two Hundred and Fifty Dollars (\$250) per day for each day that Amerigroup fails to provide notice to members as required by N.J.A.C. 8:38-3.5(e) of the termination of the contract between Amerigroup and Capital, beginning after April 1, 2002, that date being the fifteenth business day following March 11, 2002;

11. Amerigroup shall pay a fine of Two Hundred and Fifty Dollars (\$250) per day for each day that Amerigroup fails to provide notice to health care providers as required by N.J.A.C. 8:38-3.5(e) of the termination of the contract between Amerigroup and Capital, beginning after April 1, 2002, that date being the fifteenth business day following March 11, 2002.

12. Amerigroup 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 18 of this Order. Amerigroup shall

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<sup>2</sup> DHSS is aware that February 9, 2002 is a Saturday, and that most properly, the notice should have been received on or before February 8, 2002, but DHSS has knowingly elected not to add an additional day to the penalty.

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

13. Nothing in this Order shall be interpreted to prejudice the interests of Amerigroup 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 Amerigroup or Capital.

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

15. 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.

16. 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.

17. All numbered paragraphs of this Order, other than Paragraphs 9, 10, 11 and 12, shall be effective as of the date of this Order.

18. Paragraphs 9, 10, 11 and 12 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 Amerigroup 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 9, 10, 11 and 12 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.

19. If Amerigroup wishes to request an administrative hearing, Amerigroup 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:

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MARILYN DAHL  
Senior Assistant Commissioner