

IN THE MATTER OF THE TERMINATION)
OF THE CONTRACT BETWEEN)
AMERICHoice OF NEW JERSEY, INC. AND)
BURDETTE TOMLIN MEMORIAL HOSPITAL,)
INC.)

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, AmeriChoice of New Jersey, Inc. ("AmeriChoice") sent notice to DHSS on or about May 24, 2002 of the termination of the contract between Burdette Tomlin Memorial Hospital, Inc. ("Burdette") and AmeriChoice; and

WHEREAS, it appears that the date AmeriChoice sent notice to DHSS was the date of termination of the contract;

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 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 Burdette, consistent with the requirements of N.J.A.C. 8:38-2.7(a); and

WHEREAS, AmeriChoice failed to send notice to members or providers on or before June 17, 2002, consistent with the requirements of N.J.S.A. 26:2J-11.1 and N.J.A.C. 8:38-3.5(e), and instead sent notice on or about August 9, 2002, but has agreed that the statutory extension period shall not begin prior to the date notice of the termination was sent to members and health care providers;

NOW, THEREFORE, IT IS ORDERED on this 3rd day of September, 2002 that:

1. AmeriChoice shall pay a fine of Two Hundred Two Thousand Five Hundred Dollars (\$202,500), determined by multiplying 30 days by \$6750, for failing to provide prior notice of the termination of the contract between Burdette and AmeriChoice to DHSS and the Department of Banking and Insurance in accordance with N.J.A.C. 8:38-2.7(a);¹

¹ This represents the fourth violation by AmeriChoice within a 12-month period of N.J.A.C. 8:38-2.7(a) in relation to a hospital termination that is known to DHSS. The policy of the Office of Managed Care is that when subsequent offenses occur within less than 12 months of the first or previous offense, then the dollar multiplier is determined by multiplying \$250 (and each subsequent result) by 3, to a maximum of \$10,000. Thus, the first violation is multiplied by \$250, the second violation is multiplied by \$750, the third violation is multiplied by \$2250, and the fourth violation is multiplied by \$6750. DHSS has elected not to assess a fine against AmeriChoice for its failure to send timely notices to members because AmeriChoice has agreed that the four-month statutory extension period established by N.J.S.A. 26:2J-11.1 shall not begin to run until the notices have been sent to members and health care providers, and thus, the rights of members and health care providers under the statute are not diminished.

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 8 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. Nothing in this Order shall be interpreted to prejudice the interests of AmeriChoice or Burdette 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 Burdette.

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

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

6. 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.

7. All numbered paragraphs of this Order, other than Paragraphs 1 and 2 shall be effective as of the date of this Order.

8. 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.

9. 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 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