IN THE MATTER OF OXFORD HEALTH PLANS (NJ), INC., AND ITS FAILURE TO PROVIDE TIMELY ACCESS TO ITS NETWORK SERVICES	ADMINISTRATIVE ORDER

THIS MATTER having been opened by the Department of Health and Senior Services (hereinafter, "DHSS") in accordance with the authority set forth at N.J.S.A. 26:1A-15, and N.J.S.A. 26:2J-1 et seq.;

WHEREAS, Oxford Health Plans (NJ), Inc. (hereinafter, "Oxford") is a health maintenance organization (hereinafter, "HMO") having been issued a certificate of authority to operate in New Jersey;

WHEREAS, HMOs in New Jersey are required pursuant to N.J.S.A. 26:2J-4a(2)(a) to provide health care services, or benefits therefor, to members in a manner that assures availability and accessibility of adequate personnel and facilities and in a manner that enhances availability, accessibility and continuity of services;

WHEREAS, HMOs in New Jersey are required to establish and implement written policies and procedures regarding the rights of members, but nevertheless the HMO retains significant responsibility to provide members with current, accurate information about accessing covered services and health care providers, assuring that members have choices among network specialists, are provided with assistance in

accessing health care providers with appropriate experience in rendering covered services for the treatment of a member's condition, and are treated with courtesy and consideration pursuant to N.J.A.C. 8:38-9 generally;

WHEREAS, an HMO is required by N.J.A.C. 8:38-9.1(c)1vi to have current information readily available free of charge regarding the health care providers in the HMO's network, but in no instance may an HMO limit access to the information about participating health care providers solely to electronic means;

WHEREAS, Oxford has failed to comply with the requirements of the law with respect to at least two incidences brought to the Department's attention through the Office of Managed Care's complaints investigation process and the Independent Health Care Appeals Program, the facts of which are as follows:

1. Following referral by Member A's PCP, Member A was diagnosed with pancreatic cancer, and told that he needed to see a surgical specialist to treat the specific diagnosis. Both Member A and later, the physician specialist, contacted Oxford.

a. Member A[1] first contacted Oxford on June 9, 2003, and was told by Oxford's personnel that Member A could use a surgeon with the appropriate subspecialty located in New York, and that Member A should review Oxford's on-line network of surgeons accepting Member A's particular product (Oxford's Liberty Plan).

b. Oxford personnel also told Member A that Oxford would try to locate a participating surgeon with the appropriate subspecialty.

c. Oxford has multiple products, including products referred to as Liberty Plan and Freedom Plan, and generally permits health care providers in the Oxford

[1] Member A was typically represented by his son, who is a physician.

networks to choose which products the health care providers will accept for purposes of participation.

d. Member A was unable to locate a surgeon through Oxford's on-line directory with the appropriate subspecialty accepting Liberty Plan members.

e. Oxford never suggested to Member A that he had access to health care providers accepting Freedom Plan members.

f. Oxford erroneously processed Member A's request for a surgical subspecialist as a request for transitional care (which typically occurs after a member currently in a course of treatment changes products, but is permitted to continue receiving services from an out-of-network or out-of-product physician for a period of time), rather than searching for an in-network physician with the appropriate surgical subspecialty. [2]

g. There were numerous phone calls (approximately 20) from Member A to Oxford as well as several calls between Oxford and Member A's primary care physician occurring between June 9 and June 18, 2003, and on multiple occasions, Member A was referred back to Oxford's on-line directory, although there is no evidence that Oxford ever suggested to Member A that he could consider surgeons accepting the Freedom Plan product,[3] nor was there ever any apparent attempt by Oxford personnel to provide other assistance to Member A in trying to navigate or understand the on-line directory, or compare information on the directory with information available to customer service. Although it appears from a review of Oxford's call screens that customer service

[2] Oxford admits that obtaining an in-plan exception for providers that accepted Oxford Liberty Plan members should have been a largely administrative matter that could have been processed quickly, if handled appropriately. With respect to Oxford's processing of the transitional care request, the physician of whom the request was made declined, for obvious reasons.

[3] Indeed, a customer service policy and procedure provided to the Department indicates that customer service personnel are discouraged from providing such information to members, unless the member specifically asks whether they may use physicians participating with the other Oxford products.

flagged Member A's calls on at least two occasions and forwarded the issue to a medical department within Oxford, Member A did not receive assistance from anyone in this other department either. It was not until June 17, 2003, and only after Member A had located a physician with the requisite surgical subspecialty, who was clearly not in Oxford's network, that Oxford began searching for a participating Oxford physician with the appropriate surgical subspecialty.

h. Oxford located multiple participating physicians with the requisite surgical subspecialty, who would accept Member A as a patient, even though none of the physicians actually accepted Liberty Plan members, and accordingly, Oxford denied the in-plan exception for coverage of the services of the surgeon selected by Member A.

i. Member A, believing time was of the essence with respect to treatment of his particular condition, had scheduled surgery with his selected physician on or about the time that Oxford presented the names of the Freedom Plan physicians, and pursued the surgery rather than delaying it, incurring the full costs associated with it.

2. Member B presented at an emergency department in severe pain, and ultimately underwent an emergency radical orchiectomy, which was performed by an out-of-network urologist.

a. Member B's primary care physician recommended that Member B undergo a retroperitoneal lymph node dissection as soon as possible as a follow-up treatment for the cancer which prior to the radical orchiectomy had not been diagnosed.

b. Member B attempted to locate an Oxford-participating surgeon with the requisite subspecialty able to take him as a patient within an optimal amount of time, [4]

[4] Member B was told by his physician that the surgery needed to be performed as soon as possible, suggesting no more than a six week window following the emergency treatment.

but without success, and thus, requested an in-plan exception to use an identified urologist.

c. Oxford denied the request 13 days later, stating that there were network surgeons available, but refusing to provide Member B with the names of the surgeons, instructing him instead to look through Oxford's list of participating urologists and *call them all until one could be found to perform the surgery.*

d. Member B complied with the Oxford instructions, and called every urologist in the county in which he lived, but none could perform the procedure due to either lack of time or expertise. Member B called Oxford again to obtain the names of capable surgeons, and was again instructed by Oxford personnel to search Oxford's network himself for an appropriate surgeon.

e. Member B resubmitted the name of an out-of-network surgeon that Member B believed to be qualified for purposes of obtaining approval of an in-plan exception, not only for the surgery, but for the follow-up care as well, because of the complications that were possible with the particular procedure involved. [5]

f. Member B had not received any response from Oxford on the request for the in-plan exception after 25 days, at which time, Member B made a complaint to the Department, and the Department contacted Oxford. Oxford's Clinical Appeals Department disagreed that the procedure was time-sensitive, but nevertheless, approved the in-plan exception shortly after the Department raised the matter with Oxford.

[5] It may be noted that, about this time, Oxford determined that Member B was a traditional HMO member, and did not have any out-of-network benefits (having previously identified Member B as a Freedom Plan enrollee), making the decision on the in-plan exception that much more important.

WHEREAS, the Department has reason to believe based on the information presented in the course of the investigation of these two matters that these two cases, which occurred very close in time, are not entirely isolated events, albeit the number of similar cases may be limited;

WHEREAS, the Department finds that on at least two occasions Oxford has failed to provide health care services, or benefits therefore, to its members in a manner that assures availability and accessibility of adequate personnel and facilities in a manner that enhances availability, and accessibility and continuity of services;

WHEREAS, on at least two occasions Oxford limited access to information about participating health care providers solely to electronic means and failed to provide appropriate assistance to a member;

NOW THEREFORE, it is hereby Ordered on this 10th day of November that:

1. Oxford shall pay a fine of $20,000 in one lump sum, made payable by check or money order to "Treasurer, State of New Jersey," no later than the date this paragraph becomes effective, to the Director of the Office of Managed Care, P.O. Box 360, Trenton, NJ 08625-0360, for the following:

a. $10,000 for its failure to meet the requirements of N.J.S.A. 26:2J-4a 2(a) with respect to Member A and Member B, with each violation assessed at $5,000.

b. $10,000 for its failure to meet the requirements of N.J.A.C. 8:38-9 with respect to Member A and Member B, with each violation assessed at $5,000.

2. Oxford shall submit a Plan of Correction within 20 days from the date of this Order setting forth with specificity how it has or will revise its operations to assure

compliance with the requirements of N.J.A.C. 8:38-9, including providing appropriate assistance to members in finding available specialists willing and able to render the covered services at issue to members in a timely manner.

a. The Plan of Correction shall specify short-term actions to assure that members are given assistance in locating an appropriate health care provider or are provided the appropriate materials to locate one in a timely manner. Moreover, the Plan of Correction shall delineate long-term actions to assure systemic problems are corrected and do not recur in provider referral, member services, and delays in the granting of in-plan exceptions for participating providers.

b. The Plan of Correction shall include the dates when corrective actions are to be completed, and the goals accomplished.

c. In no event shall any date for completion of a corrective action be more than 30 days later than the date of submission of the Plan of Correction.

d. To the extent that Oxford believes that actions it has taken recently on its own initiative have achieved some or all of the goals for a short-term and/or long-term solution to its systemic problems, Oxford shall provide empirical information supporting its belief when it submits its plan of correction.

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

4. 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.

5. All numbered paragraphs of this Order, other than Paragraph 1 shall be effective as of the date of the Order, and no paragraphs of this Order shall be stayed pending the conclusion of an administrative hearing and the rendering of a final decision by the Commissioner of the Department, except as Paragraph 7 applies.

6. Paragraph 1 shall become effective 30 days following the date of this Order, in accordance with N.J.A.C. 8:38-2.14 (c) unless Oxford, prior to the end of the 30-day period, files with the Department a written request for a hearing and a written request to Stay the Order with respect to Paragraph 1 until the conclusion of an administrative hearing and the rendering of a final decision by the Commissioner of the Department. A request for a hearing shall be accompanied by a written response to the violations set forth in this Order.

7. If Oxford wishes to request an administrative hearing, then Oxford shall submit such a request in writing no later than 30 days following the date of this Order to: Director, Office of Legal and Regulatory Affairs, P.O. Box 360, Trenton, New Jersey 08625-0360, or by fax at 609-292-5333.

Questions should be submitted to Marilyn Dahl, Deputy Commissioner, at 609-984-3939 or to Sylvia Allen-Ware, Director of the Office of Managed Care, at 609 633-0660.

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MARILYN DAHL
Deputy Commissioner

/s/Marilyn Dahl