

**IN RE:
TUFTS HEALTH PLAN
OF NEW ENGLAND, INC.**

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**CONSENT AGREEMENT
Docket No. MCINS 99-07**

This document is a Consent Agreement, authorized by 5 M.R.S.A. § 9053(2) entered into by and among Tufts Health Plan of New England, Inc. (hereafter "Tufts") and the Superintendent of the Maine Bureau of Insurance (hereafter also the "Superintendent"). Its purpose is to resolve, without resort to an adjudicatory proceeding, a violation of Bureau of Insurance Rule Chapter 850(8)(E)(5).

FACTS

1. Tufts has been licensed by the State of Maine as an HMO since August 26, 1996.
2. The Superintendent of Insurance is the official charged with administering and enforcing Maine's insurance laws and regulations.
3. Pursuant to Bureau of Insurance Rule Chapter 850(8)(E)(5), a written notice of an adverse utilization review determination must, among other things, include the principal reasons for the determination and the instructions for requesting a written statement of the clinical rationale, including any clinical review criteria used to make the determination.
4. On July 17, 1997, the Superintendent issued Bureau of Insurance Bulletin 265, Utilization Review Determinations. That bulletin advised of the adverse utilization review determination notice requirements of the Health Plan Improvement Act, 24-A M.R.S.A. § 4303(4)(A)(1), and Rule 850(E)(5). Notably, the bulletin advised:

It has come to the Bureau's attention that adverse utilization review determinations sometimes fail to communicate any meaningful explanation for the reviewer's conclusion that a requested service is not medically necessary. Examples would include denials on the grounds that the requested services "is not medically necessary" or "does not reflect the most efficacious or effective care possible for this diagnosis."... Conclusory statements of the sort described above simply repeat the decision rather than "stating the basis for the decision" as required by law.

5. On February 4, 1999, Tufts issued an adverse utilization review determination letter to pediatric physician Dr. Amato Poselli, Jr., then the primary care physician for Tufts members Mallory and Maisy Cyr. The letter was copied to Mallory's and Maisy's parents, Anna and Michael Cyr, and stated in relevant part:

Based on Dr. Letourneaus' review of the information submitted by you and Androscoggin Home Health regarding the requested coverage of seventy (70) hours of Private Duty Nursing per week, she has partially authorized 60 hours of your request. It was determined that 48 hours have been authorized for coverage as medically necessary, 12 hours per week have been

authorized as an exception to benefit until 6/1/99 to provide for additional teaching and the remaining 10 hours per week are denied. The remaining 10 hours of private duty nursing services are not a covered benefit. Please note that this is a determination of the availability of benefits. Clinical decisions related to the patient's care are solely the responsibility of the attending physician.

While the letter may be construed to suggest the health plan at issue provides for only 48 hours a week of Private Duty Nursing, Tufts has confirmed to the Bureau that the denial of benefits was made on the grounds that the requested level of services were not medically necessary. Tufts subsequently reversed its position on appeal and has now authorized the requested level of services.

CONCLUSIONS OF LAW

6. Tufts violated Bureau of Insurance Rule Chapter 850(8)(E)(5). The adverse determination letter excerpted at paragraph 4 above, provided no explanation for the initial decision to deny services, and failed to include instructions for requesting a written statement of the clinical rationale used to make the determination.

COVENANTS

7. A formal hearing in this matter is waived and no appeal will be made.

8. At the time of executing this Agreement, Tufts shall pay to the Maine Bureau of Insurance a penalty in the amount of two thousand dollars (\$2,000.00) payable to the Treasurer of the State of Maine.

9. In consideration of Tufts' execution of and compliance with the terms of this Consent Agreement, the Superintendent agrees to forgo pursuing any disciplinary measures or other civil sanction for the actions described in paragraph 6 above other than those agreed to in this Consent Agreement.

MISCELLANEOUS

10. Tufts understands and acknowledges that this Agreement will constitute a public record within the meaning of 1 M.R.S.A. § 402, and will be available for public inspection and copying as provided for by 1 M.R.S.A. § 408.

11. It is understood by the parties to this Agreement that nothing herein shall affect any rights or interests that any person not a party to this Agreement may possess.

12. This Consent Agreement may only be modified by the written consent of the parties.

13. Tufts has been advised of its right to consult with counsel and has, in fact, consulted with counsel before executing this Agreement.

FOR TUFTS HEALTH PLAN OF NEW ENGLAND, INC.

Dated: _____, 1999

By: _____
Signature

For: _____
Typed Name

Typed Title

Subscribed and Sworn to before me
this _____ day of _____, 1999.

Notary Public

FOR THE MAINE BUREAU OF INSURANCE

Dated: _____, 1999

Alessandro A. Iuppa
Superintendent of Insurance

STATE OF MAINE
KENNEBEC, SS.

Subscribed and sworn to before me
this _____ day of _____, 1999.

Notary Public/Attorney-at-Law

**FOR THE MAINE
ATTORNEY GENERAL**

Dated: _____, 1999

**Judith Shaw Chamberlain
Assistant Attorney General**