

STATE OF CALIFORNIA
HEALTH AND HUMAN SERVICES AGENCY
DEPARTMENT OF MANAGED HEALTH CARE

FILED
MAY 05 2014
DEPARTMENT OF MANAGED HEALTH CARE
BY *[Signature]*
Filing Clerk

DMHC Licensees: ALAMEDA ALLIANCE FOR HEALTH
License No.: 933 0328

ALAMEDA ALLIANCE JOINT POWERS AUTHORITY
License No.: 933 0440

TO ALL TO WHOM THIS ORDER IS PRESENTED, the Director (“the Director”) of the California Department of Managed Health Care (“DMHC” or “the Department”), after investigation and **GOOD CAUSE APPEARING THEREFORE**, hereby **ORDERS**, effective as of this date:

PART A

ORDER TAKING POSSESSION OF PROPERTY AND BUSINESS OF ALAMEDA ALLIANCE FOR HEALTH, DMHC LICENSE NO. 933 0328 AND ALAMEDA ALLIANCE JOINT POWERS AUTHORITY, DMHC LICENSE NO. 933 0440

Health and Safety Code sections 1393(b), (c)

1. That the Director hereby takes possession of the property, business, books, records, accounts, offices and premises of Alameda Alliance for Health, Inc., DMHC License No. 933 0328.;
2. That the Director hereby takes possession of the property, business, books, records, accounts, offices and premises of Alameda Alliance Joint Powers Authority, DMHC License No. 933 0440.;
3. Alameda Alliance for Health, Inc. and Alameda Alliance Joint Powers Authority are collectively referred to as Alameda Alliance.;

4. That the Director shall retain possession of the property, business, books, records, accounts, offices, and premises of Alameda Alliance until returned to Alameda Alliance, or until further order of the Director or subject to an order of the court;

5. That Alameda Alliance and its officer, directors, board members, agents, and employees are, effective immediately, enjoined from transacting any of the business of Alameda Alliance, whether in the State of California or elsewhere, or from disposing of, using, transferring, selling, assigning, canceling, alienating, hypothecating, or concealing in any manner or in any way, or assisting any person in any of the foregoing, of the property or assets of Alameda Alliance, and subject to fine and/or imprisonment for failing to comply with this Order;

6. Alameda Alliance and its officers, directors, agents, and employees may act only under the express direction and authority of the Director and those individuals to whom the Director has delegated her authority pursuant to Health and Safety Code sections 1341.2 and 1393(c), and Government Code sections 7 and 11182;

7. That any and all persons having possession, custody or control of any of the books, records, or assets of Alameda Alliance shall immediately deliver any and all of the books, records, or assets in their possession, custody or control to the Director or the agents of the Director at 1240 South Loop Road, in Alameda, California; and,

8. Any person having possession, custody or control of and refusing to deliver to the Director or the agents of the Director any of the books, records, or assets of a plan against which a seizure order has been issued by the Director shall be guilty of a misdemeanor punishable by a fine not to exceed ten thousand dollars (\$10,000) or imprisonment not to exceed one year, or both the fine and imprisonment. (Health & Saf. Code §1393(b).).

9. That this Order shall remain in effect until further order from the Director or an order of the court to the contrary.

PART B

ORDER APPOINTING A CONSERVATOR

Health and Safety Code section 1393(c)

10. That J. Mark Abernathy of Berkeley Research Group, LLC. is hereby appointed to serve as conservator of Alameda Alliance for Health, DMHC License No, 933 0328;

11. That J. Mark Abernathy of Berkeley Research Group, LLC. is hereby appointed to serve as conservator of Alameda Alliance Joint Powers Authority, DMHC License No. 933 0440;

12. That the conservator shall take possession of the property, business, books, records, accounts, assets, offices, and premises of Alameda Alliance pending further disposition of its business;

13. That the conservator shall retain possession until the property, business, books, records, accounts, assets, offices, and premises of Alameda Alliance are returned to Alameda Alliance, or until further order of the Director;

14. That the conservator shall be able to pay necessary costs of the ongoing operation of Alameda Alliance without further formal order of the Director;

15. That the conservator, while in the possession of the property, business, books, records, accounts, assets, offices, and premises of Alameda Alliance, has the same powers and rights, and is subject to the same duties and obligations as the Director with respect to Alameda Alliance;

16. That during the time that the conservator is in possession of the property, business, books, records, accounts, assets, offices, and premises of Alameda Alliance, the rights of Alameda Alliance and of all persons with respect to Alameda Alliance are the same as if the

Director had taken possession of the property, business, and assets of Alameda Alliance, for the purpose of carrying out the conservatorship;

17. That the conservator, while in possession of the property, business, books, records, accounts, assets, offices, and premises of Alameda Alliance, shall have the rights, power, and privileges of Alameda Alliance and its officers and directors for the purpose of carrying out the conservatorship;

18. That all expenses of any conservatorship shall be paid from the assets of Alameda Alliance and shall be a lien on Alameda Alliance which shall be prior to any other lien;

19. That any person having possession of any of the books, records, or assets of Alameda Alliance shall cooperate with the conservator in the performance of his or her duties, under this seizure order or be subject to fine and/or imprisonment;

20. That all agents of Alameda Alliance and all brokers who have done business with Alameda Alliance shall remit all funds collected by them, or in their hands, or deliver enrollee or policyholder lists directly to the conservator, under this seizure order or be subject to fine and/or imprisonment;

21. The conservator shall post a bond with the DMHC as the Director deems proper, which bond shall remain in full force and effect and inure exclusively to the DMHC for the purposes of this appointment of a conservatorship;

22. The conservator shall, within 90 days after the initial appointment, submit a report to the Director, providing a status of the following five business areas: management, operations, quality of care, financial and affiliates and provide a follow up report to the Director every 30 days thereafter; and,

23. The conservator's fees shall not exceed \$400 per hour, senior manager fees shall not exceed \$350 per hour, and staff fees shall not exceed \$200 per hour. The conservator shall provide to the Director a monthly line item account of work performed every 30 days.

24. This Order shall remain in effect until further order from the Director or an order of the court to the contrary.

PART C

FINDINGS BY THE DIRECTOR

25. **ALAMEDA ALLIANCE FOR HEALTH** ("AAH"), is now, and has been, a full service health care service plan as defined by Health and Safety Code section 1345, subdivision (f), and subject to the regulatory provisions of the Knox-Keene Health Care Service Plan Act of 1975 ("the Knox-Keene Act"). AAH is the holder of health care service plan license number 933 0328, which was issued in Sacramento on September 19, 1995, by the Commissioner of the Department of Corporations, predecessor to the Director of the Department. AAH's principal corporate office is located at: 1240 South Loop Road, Alameda, California, 94502, which is in Alameda County. AAH is subject to the Knox-Keene Act and California Code of Regulations, title 28, promulgated pursuant to the Knox-Keene Act.

26. AAH is a governmental health maintenance organization that is separate and apart from the County, and is not considered to be an agency, division or department of the County. AAH is not governed by, nor is it subject to, the Charter of the County and is not subject to the County's policies or operational rules. AAH contracts with hospitals and physicians on a capitation basis. Provider contracts typically contain annual rate change provisions, termination clauses, and risk-sharing provisions.

27. **ALAMEDA ALLIANCE JOINT POWERS AUTHORITY** (“AAJPA”), is now, and at all relevant times has been, a full service health care service plan as defined by Health and Safety Code section 1345, subdivision (f), and subject to the regulatory provisions of the Knox-Keene Act. AAJPA is the holder of health care service plan license number 933 0440, which was issued in Sacramento on December 1, 2005, by the Director of the Department of Managed Health Care. AAJPA’s principal corporate office is located at: 1240 South Loop Road, Alameda, California, 94502, which is in Alameda County. AAJPA is subject to the Knox-Keene Act and California Code of Regulations, title 28, promulgated pursuant to the Knox-Keene Act.

28. AAJPA is a governmental health maintenance organization created by a Joint Exercise of Powers Agreement between the County of Alameda, a charter county and a subdivision of the State of California, and the AAH, executed on September 2, 2005. In creating AAJPA, the County and AAH intended that programs other than Medi-Cal be transferred from the AAH to AAJPA. The AAJPA was created to develop, administer, improve, operate, manage, and maintain a health care service plan, subject to the Knox-Keene Act and title 28 of the California Code of Regulations, which included the enrollment of non-Medi-Cal enrollees, and provided or arranged for all health care services for such enrollees as may be required by the Knox-Keene Act and regulations.

29. Alameda Alliance’s Knox-Keene Act violations, some of which are fully described below, constitute grounds for disciplinary action pursuant to Health and Safety Code section 1386, subdivision (b)(6).

30. The continued operation of Alameda Alliance constitutes a substantial risk to its subscribers or enrollees. (Health & Saf. Code §1386(b)(5).) A symptom of Alameda Alliance's financial distress is Alameda Alliance's negative tangible net equity (TNE) (as defined in California Code of Regulations, title 28, section 1300.76(e)) which has been deficient for the past 10 months, and which is the most critical measure of a health plan's financial health. (Health & Saf. Code, § 1376.) Health plans doing business in California are required to have a minimum TNE to ensure liquidity. (Cal. Code Regs., tit. 28, §1300.76.) Alameda Alliance self-reported a TNE level of \$4,096,134 below the statutory minimum for the quarter ending June 30, 2013. Alameda Alliance's independent auditor submitted its certified annual report on December 31, 2013, with a going concern opinion based on this TNE deficiency. In Alameda Alliance's most recent self-reported financial statement, dated March 31, 2014, the TNE deficiency was reported to be \$4,439,471.

31. Adding to the Department's financial concerns about Alameda Alliance is the backlog of approximately 280,000 claims that has accumulated as a result of Alameda Alliance's failed launch of its new claims processing system. Because Alameda Alliance's ability to process claims has been severely limited since January 1, 2014, it has insufficient data from which to determine liability. Instead, it is estimating liabilities and making payments to providers based on estimates only, in lump sums, without interest as may be appropriate, resulting in underpaying some providers while overpaying others. Failure to have and demonstrate a procedure for prompt payment of claims is a violation of the Knox-Keene Act. (Health & Saf. Code, § 1375.1(a)(3).) Failure to timely pay each claim is a separate violation of the law. (Health & Saf. Code, §§ 1371, 1371.35; Cal. Code Regs., tit. 28, § 1300.71(g).) Alameda Alliance has engaged in an "unfair

payment pattern” by engaging in these violations on a repeated basis. (Health & Saf. Code, § 1371.37(c)(3); see also Cal. Code Regs., tit. 28, § 1300.71(a)(8)(K).)

32. Alameda Alliance has been made aware of these deficiencies, and has been advised of the need to resolve these significant issues. Toward that goal, in February, Alameda Alliance and the Department agreed upon benchmarks to measure Alameda Alliance’s progress towards its financial recovery. Alameda Alliance has failed to meet these agreed benchmarks. One crucial benchmark required Alameda Alliance to achieve 50% auto-processing of professional services (such as doctors) and durable medical equipment claims. In late April, Alameda Alliance advised the Department that it will have processed only 18% of its claims backlog by May 1, 2014. This failure to meet important benchmarks towards resolving Alameda Alliance’s dire situation is a demonstration that Alameda Alliance lacks the organizational and administrative capacity to furnish in a reasonable and efficient manner the health care services for which its enrollees have contracted. (Health & Saf. Code, § 1367(g); Cal. Code Regs., tit. 28, § 1300.67.3(a).)

33. Alameda Alliance is unable and/or unwilling to remedy these conditions, as demonstrated by its declining financial health and continued failure to resolve/correct deficiencies identified in its own financial reports to the Department and in the certified annual financial statement filed by its independent auditor in 2013.

34. Alameda Alliance is in such condition that irreparable loss and injury to the property and business of Alameda Alliance or its enrollees may occur unless the Director acts immediately in accordance with Health and Safety Code section 1391, subdivision (b), and is grounds for conservation under Health and Safety Code section 1393, subdivision (c).

35. This Order is supported by the facts as determined by DMHC's investigation of Alameda Alliance.

36. This Order shall remain in effect until further order from the Director or an order of the court to the contrary.

Dated: 5/5/14



Michelle Rouillard
MICHELLE ROUILLARD
Director
Department of Managed Health Care