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FEDERAL COURT ACTIONS

District Court dismisses RICO claim against Aetna. Plaintiffs sued various HMO plans offered by Aetna under the Racketeer Influenced and Corrupt Organizations Act, alleging that Aetna had engaged in a nationwide fraudulent scheme to attract enrollees by advertising its commitment to maintain and improve quality of care when, as plaintiffs alleged, Aetna's commitment was primarily driven by fiscal and administrative considerations. The U.S. District Court for the Eastern District of Pennsylvania dismissed the claims on two grounds. First, the court ruled that plaintiffs lacked standing to sue because they had not suffered any injury due to a denial of benefits or inferior quality care. Second, the court ruled that the complaint, itself, was defective because the advertising representations regarding the commitment to quality of care constituted "puffing" rather than fraudulent inducement. In addition, the court found that the plaintiffs had failed to allege a proper "enterprise" for purposes of RICO.

FEDERAL REGULATORY ACTIVITIES

OIG and HCFA issue special advisory bulletin on EMTALA. Hospitals may not delay emergency screening and stabilization treatment for managed care enrollees in order to obtain prior authorization from managed care plans. According to the OIG and HCFA, this guidance makes clear that, despite the terms of any managed care agreements, hospitals must provide the medical screening and stabilization required under the law. The bulletin recommends "best practices" for hospitals to comply with the law. Among other things, the guidelines require patients to be informed that the hospital will provide medical screening and stabilizing treatment regardless of the patient's ability to pay.

OIG establishes new safe harbors under anti-kickback law. The OIG has issued a final rule creating 8 new safe harbors and clarifying 6 previously issued safe harbors under the Anti-Kickback Act. The new safe harbors cover investments in Ambulatory Surgical Centers and group practices, referral arrangements for specialty services, cooperative hospital services organizations and the following four activities if they occur in medically underserved areas, as defined by HHS: joint ventures, practitioner recruitment, sales of physician practices to hospitals and subsidies for obstetrical malpractice insurance. An interim final rule also provides two new shared risk safe harbors applicable to arrangements involving managed care plans. The clarifications of existing safe harbors pertain to large and small entity investments, space rental, equipment rental, personal services and management contracts, referral services and discounts.

HHS announces proposed CHIP patient protection regulations. HHS has issued proposed regulations that would extend patient protections to children enrolled in the CHIP program. The proposed rule governs access to specialists and emergency services, anti-gag protections and appeal procedures.

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