

THOMSON, RHODES & COWIE, P.C.

MANAGED CARE LAW UPDATE

Volume III, Issue 1

January 2000

Page 1 of 1

PENNSYLVANIA AGENCY ACTIONS

DOH issues proposed regulations. The Pennsylvania Department of Health issued its long awaited managed care regulations on December 18, 1999. Once adopted, the comprehensive regulatory scheme will supplant existing regulations and statements of policy governing managed care organizations. The proposed regulations set out extensive requirements in all areas of managed care licensure, operations, contracting and enrollee rights. A heading index to the proposed regulations is attached to this Bulletin. The proposed regulations are available online at www.pabulletin.com/secure/data/vol29/29-51/2161.html.

DOI withdraws proposed regulations. On December 22, 1999, the Insurance Department withdrew its proposed managed care regulations from consideration by the Independent Regulatory Review Commission (IRRC). The regulations were originally submitted to IRRC on December 9, 1999. According to the DOI letter withdrawing the regulation, the Department intends to resubmit the regulations at a later date.

FEDERAL COURT ACTIONS

RICO action against Aetna dismissed. On September 29, 1999, the U.S. District Court for the Eastern District of Pennsylvania dismissed a civil action filed under the Racketeer Influenced and Corrupt Organizations Act (RICO) against Aetna, Inc. Plaintiffs alleged that Aetna and its affiliated companies engaged in a scheme to wrongfully induce individuals to enroll by misrepresenting its goals. The pleadings claimed that Aetna's was primarily motivated by its own fiscal and administrative concerns rather than the advertised commitment to the maintenance and improvement of quality health care. The court ruled that the plaintiffs lacked standing to maintain the action that even if standing could be established, the complaint suffered from other defects. Judge Fullam opined that advertising one's commitment to "quality of care" does not serve as the predicate for a fraud claim since such general assertions as to quality are "puffery" and do not constitute a fraudulent inducement, especially where the cost containment provisions are disclosed to prospective members. *Maio v. Aetna Inc.*, No. CIV. A. 99-1969, 1999 WL 800315 (E.D. Pa. Sept. 29, 1999).

Ohio hospitals challenge retroactive imposition of new lab billing standards. On December 29, 1999, the Sixth Circuit reinstated, in part, a declaratory judgment action filed by the Ohio Hospital Association against the Department of Health and Human Services (DHHS). The case arises from a DHHS investigation called the Ohio Hospital Project, in which the government allegedly imposed new billing standards retroactively for outpatient lab tests and then threatened heavy sanctions under the False Claims Act to extract large settlements from member hospitals. The Sixth Circuit affirmed the dismissal of the claims related to the threat of litigation on the basis that the Attorney General, not DHHS, is vested with the authority to make prosecution decisions. The court, however, reinstated the claims that seek a declaration that the new lab billing standards are without legal basis and were not properly promulgated. *Ohio Hospital Association v. Shalala*, No. 97-4217 (6th Cir. Dec. 29, 1999).

A review of recent trends in Managed Care Law, the Update is a monthly publication. All original materials Copyright 2000 by Thomson, Rhodes & Cowie, P.C. The contents of this Publication may be reproduced, redistributed or quoted without further permission so long as proper credit is given to the Thomson, Rhodes & Cowie, P.C. [Managed Care Law Update](#).

The Thomson, Rhodes & Cowie, P.C. [Managed Care Law Update](#) is intended for the information of those involved in the managed care system. The information contained herein is set forth with confidence, but is not intended to provide individualized legal advice in any context. Specific legal advice should be sought out where such assistance is required.

Prior issues are available on request. Please direct inquiries to Jerry R. Hogenmiller or L. Jane Charlton, Thomson, Rhodes & Cowie, P.C., Tenth Floor, Two Chatham Center, Pittsburgh, Pennsylvania 15219, (412) 232-3400, TRC_Law@nauticom.net.