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Page 1 of 1

PENNSYLVANIA AGENCY ACTIONS

DOI levies \$150,000 fine. The Pennsylvania Department of Insurance recently fined Penn State Geisinger Health Plan \$150,000, ordered payment of interest on overdue claims and required other remedies to address deficiencies identified during a routine DOI market conduct examination. DOI found that the HMO violated Act 68 in failing to make prompt payment of clean claims within 45 days. The HMO claimed that payment delays identified by the regulators have been remedied by the conversion to a new claims processing system. The DOI examination occurred prior to final onversion to the new claims processing system.

FEDERAL COURT ACTIONS

Class actions case filed against Aetna – U.S. HealthCare. On October 4, 1999, a proposed class of Aetna – U.S. HealthCare, Inc. subscribers filed a lawsuit in the U.S. District Court for the Eastern District of Pennsylvania. In *Conte v. Aetna-U.S. Healthcare, Inc.*, the subscribers claim that the insurer failed to disclose contractual terms with PCPs that may have the effect of restricting the physicians' exercise of independent medical judgment. The lawsuit is brought under the Employee Retirement Income Security Act (ERISA) and, according to Aetna, is similar to a RICO-based class action against Aetna that was dismissed on September 29 by a federal judge in Pennsylvania.

Negligence claims against HMO allowed despite ERISA defense. In *Bauman v. U.S. HealthCare, Inc.*, the U.S. Court of Appeals for the Third Circuit reversed a federal district court ruling and held that a medical malpractice lawsuits against HMOs are not preempted by ERISA. The Third Circuit ruled that plaintiff's claims were not preempted by ERISA because the claims involved the quality of medical care provided, not the failure to pay for a benefit or process a claim. Commentators observed that this ruling marks the first time the Third Circuit has considered ERISA in a medical malpractice case since its 1995 decision in *Dukes vs. U.S. HealthCare*, 57 F.3d. 350 (3d. Cir. 1995), cert. denied, 116 S. Ct. 564 (1995). This case is one of a group of ERISA preemption cases in which the Department of Labor has filed amicus briefs.

OTHER JURISDICTIONS

Vicarious liability claim against HMO in Illinois. In *Petrovich v. Share Health Plan of Illinois*, the Illinois Supreme Court ruled that a plaintiff had presented sufficient evidence to entitle her to a trial on her claim that an HMO was vicariously liable for the actions of its physicians. The court based its ruling on evidence presented by the plaintiff that the HMO held itself out as the provider of health care and that the HMO effectively controlled the physicians' exercise of medical judgment. Accordingly, the court found that the HMO could not claim that the physician was solely responsible for the resulting harm.

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