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Empire faces fine for state violations

By ROSEMARY METZLER LAVAN
Daily News Business Writer

Empire Blue Cross and Blue Shield will be hit with a fine of at least \$1 million by the state for denying health coverage to some customers and overcharging others, sources said.

The state Insurance Department is expected to announce a fine of between \$1 million and \$2 million against New York's largest health insurer as early as today.

If, as expected, the fine is over \$1 million it will be the largest penalty ever levied against a health insurer by the agency and the third largest fine levied against any insurer.

State insurance investigators, who have been probing Empire's actions since last year, will charge that the insurer:

- Denied advanced chemotherapy and bone marrow treatments to some women with breast cancer, while approving these treatments to others who sued the insurer over the matter.
- Denied in-vitro fertilization procedures to some customers while approving the procedure for others.
- Overcharged customers by passing along rate increases before they were to take effect.
- Discriminated against certain health-care providers who performed the same procedure. Empire-paid physical therapists for procedures, for example, but denied payment to chiropractors who performed identical procedures.

Empire officials would not comment on the charges yesterday nor would the state insurance department.

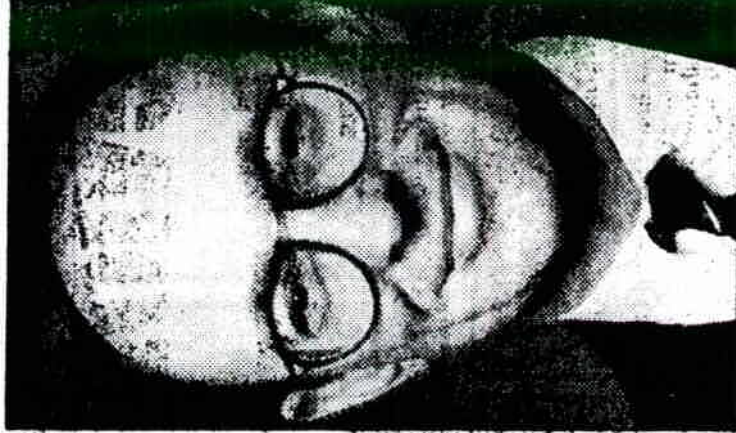
The insurer may be required to refund the overcharges, which are believed to be well in excess of \$1 million, sources familiar with the matter said.

Manhattan attorney Dwight Yellen said he is encouraged by the state's forthcoming action. But he said it is too late for some Empire policyholders who were refused treatment for breast cancer.

Yellen filed a class action suit in Manhattan Federal Court in 1994 on behalf of breast cancer patients who were denied chemotherapy and bone marrow treatment by the insurer.

Yellen said that at least one of the women in the suit — Pary Kleih, a Brooklyn mother of two — died last year after fighting Empire for three months to get the treatment she needed. When the coverage was finally approved, her disease had progressed too far, he said.

"It was too little, too late," Yellen said. "She was denied the treatment for several months. How can you measure the cost of her life and others?"



EMPIRE: CEO Michael Stocker is working to repair the insurer's image.

Insurer has also been slow to move into the managed care business. Following the state fine, officials are expected to require Empire to hire an independent auditor to report on the progress the insurer is making in resolving any violations, sources said.

The state action comes at a time when Empire, under chief executive Michael Stocker, is working to repair its tarnished image and improve its finances. Over the last five years, the insurer has lost more than half its policyholders. Today it has 4.8 million. The