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ACA Will Challenge Legality of Medicare Regulations

By Editorial Staff

ACA President Dr. Kurt Hegetschweiler: "The lawsuit represents the final straw in years of behind-the-scenes efforts to lobby the Dept. of Health and Human Services for changes in HCFA's regulatory policy toward the chiropractic profession."

After years of efforts to end discrimination against chiropractic under the Medicare program, the American Chiropractic Association Board of Governors has given the go ahead to pursue legal recourse. The ACA, however, seeks to exhaust all "administrative remedies" before going to federal court.

George McAndrews, the ACA's general counsel and lead counsel in chiropractic's most titanic legal struggle (Wilk, et al. vs. AMA, et al.), will work closely with the ACA, overseeing each step of the administrative and legal challenge.

The ACA House of Delegates has set up a legal action fund to support the administrative appeals, and if that fails, to support a federal lawsuit. If a lawsuit is filed, it may not be for a year or more.

"The lawsuit represents the final straw in years of behind-the-scenes efforts to lobby the Dept. of Health and Human Services for changes in HCFA's regulatory policy toward the chiropractic profession," stated ACA President Dr. Kurt Hegetschweiler.

Dr. Hegetschweiler said that HCFA has "made it clear to us that it feels it does not have the authority to change the current regulatory scheme under its reading of the Medicare statute."

The only recourse then is via Congress or the federal court. "We are aggressively pursuing both options," declared Dr. Hegetschweiler.

The ACA's pre-lawsuit efforts will be directed at demonstrating how HCFA has misinterpreted Medicare's statute barring x-ray ordering and reimbursement for chiropractors. ACA's case will be based on the fact that the HCFA regulation was adopted during a time when the AMA instituted a nationwide boycott of DCs

by declaring it unethical for MDs to associate professionally with chiropractors. The illegal boycott included inducing hospitals under the control of MDs to bar diagnostic assistance and facilities to DCs and their patients.

"Because of this ethical prohibition and pervasive bias, the regulations are overly restrictive and intentionally stacked against chiropractors," said ACA Chairman of the Board Dr. Lowry Morton. "The legal process we will have to go through before we can file the case is long and cumbersome, but it is essential that we follow it properly in order to challenge the very legitimacy of the regulation enacted more than 20 years ago."

Before the ACA lawsuit can be filed these steps must be taken:

- ACA must identify chiropractors who will file a claim for furnished x-ray services, and also chiropractors and radiologists who will file claims for x-rays ordered by the chiropractor and taken by the radiologist. The claims will indicate that the doctors are aware that such services are currently not considered a covered benefit by Medicare, but that claims are being filed to challenge the validity of the existing regulation.
- When the claims are denied, the chiropractors and cooperating radiologists will be required to file a claims appeal for reconsideration. This will result in a telephone hearing with a carrier hearing officer. The claim, if denied, will go to another appellate hearing within the carrier region. If denied again, it will be presented for hearing before an administrative law judge.
- At the administrative law judge hearing stage, the ACA will file a supporting brief outlining the legal reasons why the regulation is overly restrictive, and why Medicare should cover the x-rays ordered or furnished by a chiropractor. Although there is an outside possibility the administrative law judge will rule in ACA's favor, it is much more likely that the appeal will be denied.
- After the administrative law judge stage, the complaint moves to an administrative law appeals council, where ACA may again present evidence that the regulation is overly restrictive. Assuming that the appeals council again rejects the claim, all administrative remedies will have been exhausted, and the case can move to a federal court.

The ACA is urging DCs to contribute to this important campaign to end discrimination against the chiropractic profession under Medicare.



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