



Dynamic Chiropractic – October 20, 2003, Vol. 21, Issue 22

California Caps Chiropractic Workers' Comp Visits

As we go to press, embattled California Gov. Gray Davis is prepared to sign into law a package of bills designed to reform the state workers' compensation system. The bills, approved by both houses of the California legislature in September, lower reimbursement for services provided by health care practitioners under the state's Medicare program by 5 percent, and place a soft cap on the number of visits to a doctor of chiropractic for work-related injuries.

Of specific importance to the chiropractic profession is Senate Bill 228, introduced by Sen. Richard Alarcon (D-Van Nuys) and coauthored by Sen. John Burton (D-San Francisco). The bill amends section 4604.5 of the California Labor Code to include the following language:

(d) Notwithstanding the medical treatment utilization schedule or the guidelines set forth in the American College of Occupational and Environmental Medical Practice Guidelines, for injuries occurring on and after January 1, 2004, an employee shall be entitled to no more than 24 chiropractic and 24 physical therapy visits per industrial injury.

... (f) This section shall not apply when an insurance carrier authorizes, in writing, additional visits to a health care practitioner for physical medicine services.

The total number of chiropractic visits represents a compromise arrived at after several months of debate. Initial versions of SB 228 called for as few as 15 visits to a DC for the life of a claim, with no provision for additional visits. That number reached as high as 30 in later drafts of the bill, before legislators settled on the 24-visit cap.

Existing California Labor Code requires employers to provide injured workers with "all medical, surgical, chiropractic, acupuncture, and hospital treatment, including nursing, medicines, medical and surgical supplies, crutches, and apparatus, including artificial members, that is reasonably required to cure or relieve the effects of the injury." The "cure or relieve" standard of care imposed by the code is one of the highest in the country, and one that has been open to broad interpretation.¹

Prior to the passage of SB 228, California had no limit on the number or frequency of visits a patient could make to a doctor of chiropractic for a work-related injury. It remains one of a handful of states that allow a DC to be an injured worker's primary treating physician.

Rising workers' compensation costs have been cited as the chief reason for the legislative reforms. According to the Workers' Compensation Insurance Rating Bureau, total workers' compensation costs have more than tripled in the past eight years, from \$9 billion in 1995 to about \$29 billion this year, even though the system is treating fewer workers now than it was eight years ago. Employer insurance premiums have also skyrocketed to an average of \$5.85 per \$100 of payroll - the highest costs in the country - and the cost of workers' compensation insurance has reached twice what it is in some other states. Those numbers are believed to be a major burden on California's economy, which has lost an average of nearly 10,000 jobs per month for the past 30 months.²

In the weeks leading up to the final vote on SB 228, the chiropractic profession made several attempts to have the cap on visits removed from the legislation. According to Kristine Shultz, a lobbyist for the California Chiropractic Association (CCA), some 1,500 chiropractors and their patients "flew in on their own dime" to Sacramento to voice their concerns to the legislature. On Aug. 26, hundreds of DCs and their patients staged a rally outside the state Capitol building to protest the cap on chiropractic visits.³

Legislators acknowledged the scope of the profession's grassroots effort. "I would guess that we received many thousands of letters and petitions, most via fax, from chiropractors and their patients," said Sen. Charles Poochigan (R-Fresno). "There has been a level of advocacy from the grass roots - men and women, small business owners, public employers - that I have never seen before."³ Ultimately, however, DCs and their patients were unsuccessful in having the cap removed.

"If that doesn't change their (legislator's) minds, after hearing personal stories, I don't think more money would have made a difference," added Ms. Shultz.³

The state's chiropractic leaders were quick to voice their opposition to the new legislation. "Capping chiropractic care will not straighten out the problems our workers' compensation system faces," said Dr. Douglas Wilson, president of the California Chiropractic Association (CCA), the state's largest member organization. "Chiropractic care is just five percent of the total costs in workers' compensation. It is impossible that we are responsible for the 300-plus percent increase in premiums that employers are experiencing."⁴

Whether chiropractors are responsible for the system's current problems remains a matter of discussion. However, there are signs from several media sources that the worker's compensation program was being taken advantage of:

- In August, the *Los Angeles Times* reported on the effect the cost of chiropractic workers' compensation bills was having on Safeway, a grocery store chain that operates in 20 states. An analysis conducted by the company revealed that workers injured in California visited their chiropractors an average of 40 times - nearly four times as often as employees in Oregon and Arizona, and almost seven times as often as employees in Texas.

"We have the same checkers and meat cutters and bakers in California as we do everywhere else in the country," offered William Zachary, vice president in charge of workers' compensation for Safeway. "The jobs are the same. The injuries are the same. But the workers in California are utilizing much more treatment. It just doesn't add up." Zachary added that one worker had seen a chiropractor more than 400 times since 1999, and several employees were in excess of 300 visits.⁵

- An eight-state study of workers' compensation trends published by the Workers Compensation Research Institute (WCRI) in 2002 found that California's injured workers visited a chiropractor an average of 34 times per claim - more than double the average of the other states in the study. The study also found that claim costs for chiropractors were "significantly higher" in California than the typical state, an outcome of the inordinate number of visits per claim.⁵
- According to the Workers Compensation Insurance Rating Bureau of California (WCIRB) insurer payments to chiropractors totaled \$235 million in 2002, nearly double the level of five years ago. Based on that information, doctors of chiropractic in California commanded a bigger share of workers' compensation dollars last year than any other medical specialty - generating more fees than even general practitioner physicians.⁵
- The CCA itself may be responsible for at least some of the backlash toward the profession. Earlier this year, Sen. Jackie Speier displayed an ad at a legislative hearing that appeared in the *Journal of the California Chiropractic Association*. The ad referred to the workers' compensation system as "the only golden goose that is really still laying the golden eggs," and promised to show DCs how to "double or

triple their income from the high-profit work comp market." As a result of the controversy, the CCA made changes to its advertising policy.⁵

Lest the chiropractic profession think it was singled out by the legislature, a review of SB 228 and the other workers' compensation bills shows that nearly every health care provider in the state is being affected to some degree. Physical therapists, for instance, also are being hit with a 24-visit soft cap on their services, unless additional visits are authorized in writing by an insurer. This reduction alone is expected to reduce total workers' compensation costs by more than \$500 million per year. Among the other reforms:

- New fee schedules have been created for treatment delivered at outpatient surgical centers and treatment facilities. Costs for care delivered at the outpatient surgical centers have been indexed at 120 percent of Medicare, which translates into an estimated \$700 million in savings annually. Prior to passage of the recent legislation, there were no limits in place for what these clinics could charge - a situation Insurance Commissioner John Garimendi described as "out of control."⁶
- The use of generic drugs in workers' compensation cases will be made mandatory unless a specific brand name is prescribed by the treating physician. According to one analysis, institution of a fee schedule could result in a 20 percent savings in the amount paid for drugs to treat injured workers.¹
- The Department of Insurance is now required to adopt minimum qualifications for workers' compensation claim adjusters, and insurers are required to make sure their adjusters meet those qualifications.
- The state's vocational rehabilitation system has been replaced with a new supplemental job displacement benefit for injuries received on or after Jan. 1, 2004.

The combined cuts and limits are expected to generate between \$3 billion and \$6 billion in one-time savings, and approximately \$5 billion in savings each successive year. In theory, the savings could lead to lower insurance premiums for employers. In August, an official at the WCIRB told the *Sacramento Bee* that each \$1 billion in savings could lead to a 4 percent rate reduction.⁷

Wayne Whalen, DC, DACAN, chair of the CCA's Workers Compensation Committee, commented on the bills in an e-mail to *Dynamic Chiropractic*:⁸

"While we are disappointed with the caps, we realize it came close to being far, far worse. At one point, the legislature was considering a two-visit per month limitation on chiropractic care with no appeal process. Knowing that the fate of our patients' health was at stake, CCA threw everything we had into this battle. We provided extensive testimony to the legislature to rebut the contentions of the insurance companies and self-insureds, such as Safeway, which were behind the effort to limit access to chiropractic care. We developed alliances with other organizations that also opposed the caps. We spent countless hours lobbying our representatives, and successfully recruited thousands of doctors and their patients to write, call and fax their legislators. On five days notice, we organized a press conference and rally with 1,500 doctors and patients on the lawn of the state capitol.

"We believe the insurance company studies were slanted to achieve their aim. Several studies from two insurance industry-sponsored research organizations were released with impeccable timing. These studies were used as evidence that there was widespread abuse of the workers' compensation system by chiropractors and that this abuse was a major cost driver of the workers' comp system. CCA fought back with a rebuttal to the flawed studies. We also produced independent data from the state of Texas, and from a carrier in this state that indicates that somewhere between 3 percent and 5 percent of chiropractic doctors are responsible for 80 percent or more of all charges. We tried to argue that the caps unfairly punish all chiropractors and their injured worker patients to address the sins of a tiny fraction of the profession. CCA even provided alternative solutions to the problem of overutilization that did not involve an arbitrary cap on care. Unfortunately, the legislature needed a quick fix to the problem and adopted a 24-visit cap.

"This legislative attack should serve as a wake-up call to the entire profession. Policy makers are demanding accountability and cost-effectiveness, and they won't hesitate to punish the whole profession if we continue to allow overutilization and overbilling to continue. Many won't be paying any longer for care without scientific support. The message to California DCs is clear: We need to fund more and better research, particularly for non-spinal conditions. We also need to consider developing our own defensible, rational treatment guidelines, or guidelines may be foisted on us. Most importantly, we should realize we are all in this together. Chiropractors were targeted in part because of the perception we are a divided profession. One legislator actually said, '... you are being targeted for this cap because you are the runt of the litter.' Chiropractors can be strong if we join together as members of our respective state associations. Additionally, every doctor must commit to a monthly donation to his or her state association's political action committee which helps elect pro-chiropractic legislators.

"We were wounded in this battle, but we dodged the bullet. The battle is not over yet though, not by a long shot. There is still time for us to band together for our common good. Or, we can do what chiropractors usually do when the going gets tough: circle the wagons and shoot inward. The choice is up to us."

References

1. Dickerson M, Vogel N. Accord reached on work injuries. *Los Angeles Times*, Sept. 10, 2003.
2. Ibid.
3. Payne M. All-out lobbying on workers' comp. *Sacramento Bee*, Sept. 14, 2003.
4. Lawrence S. Committee begins work on workers' comp reforms. Associated Press, Aug. 26, 2003.
5. Dickerson M. Chiropractic claims pain California employers. *Los Angeles Times*, Aug. 17, 2003.
6. Avalos G. Workers' comp revamp approved. *Contra Costa Times*, Sep. 13, 2003.
7. Chan G. Painful remedies. *Sacramento Bee*, Aug. 27, 2003.
8. E-mail sent from Wayne Whalen, DC, DACAN, to *Dynamic Chiropractic*, Sept. 19, 2003.



Page printed from:

http://www.chiroweb.com/mpacms/dc/article.php?id=9463&no_paginate=true&p_friendly=true&no_b=true