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Chiropractic on the Medicare Chopping Block

ACA Readies Legal Battle

By Editorial Staff

Chiropractic and Medicare: It's been one long battle. First, the chiropractic profession had to fight to be included under Medicare; then chiropractic had to fight to get rid of the x-ray requirement to demonstrate the existence of a spinal subluxation before treating a patient; and now chiropractic is fighting to keep Medicare patients from being sent to the MDs, osteopaths and PTs for spinal manipulation.

The latest Medicare fight concerns Medicare Part C, which came into existence with the passage of the 1997 Balanced Budget Act. Part C is essentially Medicare's managed care plan, and comes to us from the people at the Health Care Financing Administration, department of Health and Human Services.

For chiropractic, the problem with Medicare Part C is that it authorizes spinal manipulations by MDs, osteopaths and PTs.

"If this regulation is implemented, chiropractic is basically threatened with elimination from the Medicare Part C program," said Tom Daly, the ACA's legal council.

Should we be concerned about Part C? Yes, because Medicare seeks to shift those under Medicare plans A and B to Medicare Part C. In Mr. Daly's estimation, the Medicare Part C program "is in fact the future of Medicare." He added: "If the language goes through as it is currently written, chiropractic will be nothing more than a potential option" for Medicare plans.

Legal Action

So, once again, chiropractic is gearing up for a battle. The American Chiropractic Association in a conference call to the chiropractic media presented its case. ACA General Council George McAndrews, the Chicago attorney that lead chiropractic in the Wilk trail, gave an eloquent and cogent overview of

chiropractic's precarious position in Medicare and the legal strategy the ACA is pursuing. Mr. McAndrews' words tell the story best:

"We are witnessing once again the type of external assault on the chiropractic profession that existed at least from 1962 (when the AMA's Committee on Quackery was formed) until 1990, when the Wilk case was finally completed with an injunction prohibiting the AMA from interfering with medical physician contact with doctors of chiropractic.

"During the Wilk case, it became obvious that the public health officials associated with the department at that time (Health Education and Welfare, which today is Health and Human Services) were fully aligned with the AMA's program to eradicate chiropractic. They worked to prevent chiropractic from being included in Medicare in 1965. In 1968, a report to secretary Cohen was made after what Congress thought was an unbiased study on chiropractic. The proof is, and we had plenty evidence of it during the Wilk trial, that the AMA and other medical groups worked to fix that report so that it was absolutely negative to chiropractic. Chiropractic did not get into Medicare until 1972.

"We have collected the legislative history of that (Medicare), which was completely unknown at the time, and exactly how the language got into the statute. The language was very limiting. The language said chiropractors will be considered physicians in Part B of Medicare to the extent that they manipulate the spine to correct subluxation shown on x-ray to exist. Both the ACA and ICA objected to that narrow language, but it went through. The purpose of that narrow language was to restrict chiropractic.

The language went so far as to require payment for the required x-rays. That language was included to act as an entry barrier for senior citizens wanting chiropractic.

"In 1972, medical physicians characterized the subluxation complex utilized by chiropractors as sheer quackery: a figment of the imagination. By putting "subluxation" in the Medicare legislation, we intended it to be a chiropractic benefit for senior citizens that would only be available from doctors of chiropractic. From 1965 to 1972, we find that the osteopaths didn't use the term subluxation. They used spinal or osteopathic lesion. The osteopaths had their own philosophical basis for the term, connotation and explanation.

"In the medical literature going back to 1960 to 1972, we find physiatrists like John McMillan Menell, MD, who manipulated the spine to correct a 'joint dysfunction.' The medical literature and the testimony in

the Wilk case was that a subluxation to the medical world was less than a luxated vertebra. Tongue and check, I would say when you have a luxated medical vertebra, you're like Christopher Reeve, you're no longer mobile.

"So the benefit was not only for chiropractors limited to spinal manipulation, but spinal manipulation to correct a subluxation demonstrated by x-ray to exist. The ACA in 1997 got the Congress to remove the requirement for 'demonstrated by x-ray.' But the statute still says 'manipulation to correct a subluxation.' That is chiropractic language. Nobody else is trained to do it. The medical and osteopathic world denies that the subluxation complex exists, and if you go back to 1972, they called it 'sheer quackery.'

"This is important because today the medical profession is now announcing (and they have since 1994, but now they're coming out very clearly) saying that HMOs can deliver the chiropractic benefit by using osteopaths, MDs, and PTs. They do this against a very suspicious background. In 1990, Congress ordered the secretary of HHS to submit a report on the utilization on chiropractic services in HMOs, and to determine who it was that was delivering those services. The original statute said a final report was to be delivered in 1993. In 1994, the word "final" was taken out of that statute, but they were still obligated to deliver the report. The ACA has consistently asked HHS to give us the results of that report. To our knowledge, they have not submitted the report. To our knowledge, they have not offered to give us any information about any report, not even that they tried to obtain the information. Quite recently, they told us to run our own study, which is a ridiculous situation, as Congress ordered them to run it.

"The ACA did a call-around (to survey HMOs), and submitted it to HCFA. Now HCFA is saying that what the ACA submitted was 'hearsay,' which again is ridiculous, because that's the only way you're going to get an HMO to respond since you don't have the power of subpoena.

"Sometime next week (week of Oct. 12-18), when we have completed all our congressional background study and all the documentary study (we're going through almost a million documents from the Wilk case) to make certain all our soldiers are lined up, we will be filing a petition for the issuance of a writ of mandamus. This is a mandatory injunction compelling an officer, administrator or an agency to carry out its assigned duties. We are going to demand that secretary Shalala (HHS and HCFA) either submit the report ordered by Congress, or explain why they haven't over the past nine years. We believe the public health officers at HCFA believe that if they stall long enough, the HMOs will respond that they all give a chiropractic benefit, but they do it using PTs under prescription order from MDs and osteopathic physicians.

"We think that when the Medicare Part C regulations are finalized in January, we will then move for a different type of injunction. We will move to enjoin the dissemination and utilization of the new regulation that says that MDs, osteopaths and PTs are competent to deliver manual manipulation for the correction of a subluxation.

We're ready to go. We'll file the first action next week (Oct. 12-18). The next action will probably be in January. We'll ask the court to expedite it to action because of the grave harm to chiropractors, both as a professional and as individuals, and to the patients of chiropractors if that type of regulation is issued.

"The Medicare language will obviously hurt the profession. It will eradicate the concept of subluxation, and our philosophical basis for subluxation. It will certainly hurt the individual chiropractor, because theoretically it could eliminate chiropractors from access to any HMO, particularly if HMOs think they can use the Medicare language with the captive PTs under the direction of gatekeeper MDs. More importantly, it will do incalculable damage to senior citizens who outside of the HMO network have grown used to using doctors of chiropractic who are uniquely trained to detect and correct subluxation."

Legal Action Fund

The ACA is beseeching DCs and chiropractic associations across the country to contribute to a legal action fund. Taking on the government health bureaucracy is a daunting and expensive proposition. Send your donations to:

Legal Action Fund/HCFA Lawsuit

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