

## No More Using PTs to Correct Subluxations

HHS POLICY LETTER SPELLS MAJOR VICTORY FOR ACA AND DCS

Editorial Staff

ARLINGTON, VA - The Department of Health and Human Services (HHS) has issued a new policy directive that under Medicare+Choice, nonphysician physical therapists cannot provide manual manipulation of the spine to correct a subluxation. The directive is a major victory in the American Chiropractic Association's lawsuit against HHS to prohibit non-DCs from providing manipulation of the spine to correct subluxations under the Medicare program.

In a January 15, 2002 revision to an "operational policy letter" originally issued in 1994, Medicare's Center for Beneficiary Choices writes: "The (Medicare) statute specifically references manual manipulation of the spine to correct a subluxation as a physician service. Thus, Medicare+Choice organizations must use physicians, which include chiropractors, to perform this service. They may not use nonphysician physical therapists for manual manipulation of the spine to correct a subluxation." (Emphasis added.)

"The ACA is extremely pleased that Secretary Tommy Thompson and his department have formally recognized the unfairness and injustice to doctors of chiropractic and their patients that the 1994 operational policy letter imposed," said ACA Chairman Dr. James Edwards. "We will continue the ACA's lawsuit to guarantee that no one other than doctors of chiropractic can deliver the chiropractic service since only the issue of illegal use of physical therapists has been resolved," he added.

The ACA filed its lawsuit November 9, 1998,<sup>1,2,3,4</sup> claiming that HHS guidelines unlawfully allowed Medicare managed care plans to substitute the services of other health care providers for services that should have legally been performed by doctors of chiropractic. Specifically challenged in the ACA's lawsuit was the 1994 operational policy letter (now revised by the January 15, 2002 policy letter).

A report filed with Congress by the Office of the Inspector General (OIG) on January 13, 1999 showed that 29 percent of the Medicare managed care plans were using physical therapists to provide manual manipulation to Medicare enrollees under the 1994 policy letter.<sup>5</sup> The study also revealed that of the four Medicare managed care organizations surveyed, their average percentage of beneficiaries receiving chiropractic care was only 1.55 percent. This was down sharply from the Medicare fee-for-service utilization of 4.15 percent.<sup>6</sup>

"The infamous policy letter (of 1994) gave the green light to Medicare HMOs to misappropriate taxpayer dollars to pay nonphysician physical therapists to deliver the chiropractic physician service of 'manual manipulation of the spine to correct a subluxation,'" explained ACA President Dr. Daryl Wills.

The issuance of the revised policy letter follows seven years of intense, but futile, negotiations between ACA and the prior Secretary of HHS, Donna Shalala.<sup>7</sup> Those negotiations culminated in the ACA's lawsuit filed against her and her department more than three years ago.

ACA representatives say they will vigorously monitoring managed care organizations to see that they fully comply with the new directive and the law in providing chiropractic services to the nation's senior citizens. If not, ACA representatives say they will take, or encourage the taking of, legal steps to ensure compliance. The ACA will also continue to pursue the other counts in its ongoing lawsuit with HHS pertaining to the improper provision of the chiropractic service by medical doctors and doctors of osteopathy.

A complete copy of the operational policy letter can be found at: [www.chiroweb.com/opl](http://www.chiroweb.com/opl).

### References

1. Chiropractic on the Medicare chopping block. *Dynamic Chiropractic* November 2, 1998. <http://www.chiroweb.com/archives/16/23/01.html>.
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3. Court says ACA has standing to sue Medicare managed care. *Dynamic Chiropractic* August 6, 2000. <http://www.chiroweb.com/archives/18/17/01.html>.
4. A complete copy of the ACA's complaint can be found at: <http://www.chiroweb.com/forum/acacomplaint.html>.
5. *Chiropractic Services Covered by Medicare Managed Care Organizations* (OEI-04-97-00494). Office of Inspector General. Submitted January 13, 1999. <http://www.chiroweb.com/dynamic/documentation/hcfa.html>.
6. Is the HCFA lawsuit important? *Dynamic Chiropractic* May 3, 1999. <http://www.chiroweb.com/archives/17/10/17.html>.
7. ACA officials powwow with Donna Shalala. *Dynamic Chiropractic* May 22, 1995. <http://www.chiroweb.com/archives/13/11/18.html>.

### The Basics of Medicare

Medicare is the federal health insurance program for people 65 years of age and older, and some disabled people under 65. It is administered by the Centers for Medicare & Medicaid Services (CMS), formally the Health Care Financing Administration (HCFA). Medicare is the largest health insurance program in the U.S. (covers 39 million Americans).

There are two Medicare programs:

- The original Medicare plan (a certain amount of hospital coverage is paid; patients pay deductibles and a percentage of the cost for private fee-for-service);
- Medicare+Choice plans, which include:
  3. managed care plans
  4. private plans

Both programs have two parts:

- Part A (hospital insurance) - most seniors don't pay for Part A
- Part B (medical insurance) - Under Medicare+Choice plans, most seniors pay a monthly fee (about \$54 per month)

Part B covers doctor services, outpatient hospital care, and health care services that Part A does

not cover, such as chiropractic, physical and occupational therapy, and some home health care. Part B helps pay seniors for these services that it deems medically necessary.

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