

APTA Claims Rights to "Correct a Subluxation"

MOTION IN HCFA LAWSUIT REVEALS INTENT

Editorial Staff

As the American Chiropractic Association (ACA) proceeds with its lawsuit against the Medicare Part C regulations that reimburse MDs and DOs (and previously PTs) for spinal adjustments, reimbursement for doctors of chiropractic, Francis Mallon, CEO of the American Physical Therapy Association (APTA) now claims that PTs "perform manual manipulations of the spine to correct a subluxation, where clinically indicated."

The authority for chiropractors to treat under Medicare is spelled out in the Social Security Act Amendments of 1972, Section 1861(r). That section states that chiropractors are authorized to treat by "means of manual manipulation of the spine (to correct a subluxation demonstrated by x-ray to exist)."

"Manual manipulation of the spine to correct subluxations" has always been understood to be a service solely provided by doctors of chiropractic. For over 100 years, not a single other health care profession has understood, much less claimed to address subluxations; of course, "manipulations (adjustments) to correct subluxations" have been maligned for decades by many in the medical profession.

The APTA looks to be attempting to rewrite congressional intent. Mr. Mallon's full text to the court is presented (*Editor's note: The bolded text is our emphasis*).

Supplemental Declaration of Francis J. Mallon (executive officer of the APTA)

Francis J. Mallon declares as follows:

1. I am the chief executive officer of the American Physical Therapy Association (APTA). I submit this supplemental declaration in support of the APTA's motion to intervene in this action. (*Editor's note: To intervene in the ACA lawsuit against Medicare reimbursement.*)
2. Contrary to the claims made by the American Chiropractic Association (ACA) in its memorandum in opposition, physical therapists, *as explained below*, can and do perform manual manipulations of the spine to correct a subluxation, where clinically indicated.
3. As stated in my initial declaration in this case, physical therapists are permitted to perform manual manipulation, including manual manipulation of the spine, in the great majority of the states. In those states, physical therapists are authorized to perform manual manipulation to treat any condition, including manual manipulation of the spine to correct a subluxation.

Six states (Illinois, Iowa, Florida, Minnesota, Nevada, and Utah) prohibit physical therapists

from engaging in chiropractic manipulation. While the meaning and impact of that prohibition is unclear, physical therapists are at the very least permitted to perform manual manipulation to correct a subluxation in the many other states where they are permitted to perform manual manipulation generally.

4. Physical therapists do not typically use the term subluxation, in part because the term is ambiguous and has a variety of different meanings. Medical dictionaries define "subluxation" to mean an incomplete or partial dislocation of a joint, and this is the definition that is generally accepted by physicians and most other health care practitioners. See e.g., *Dorland's Illustrated Medical Dictionary* 1596 (28th ed. 1994) (defining subluxation as "incomplete or partial dislocation"); *Webster's Ninth New Collegiate Dictionary* 1174 (1984) ("partial dislocation (as one of the bones in a joint)."
5. The use of the term "subluxation" by chiropractors has evolved over time. At one time, chiropractors used the term narrowly, essentially to describe a misalignment of a vertebra causing a pinching of a nerve, which chiropractors viewed as the root cause of all disease. See Howard T. Vernon, "Biological Rationale for Possible Benefits of Spinal Manipulation," in *Chiropractic in the United States: Training, Practice, and Research* (Daniel Cherkin, Robert D. Mootz eds., Dec. 1997) (Agency for Health Care Policy and Research Publication No. 98-N002) ("The original chiropractic theory suggested that misaligned spinal vertebrae interfered with nerve function ultimately resulting in altered physiology that could contribute to pain and disease.") In recent years, however, chiropractors have come to use the term much more broadly. This is particularly true since 1972, when Congress first provided that chiropractors' services could be covered by Medicare, but only for chiropractors' treatment of "subluxations" of the spine demonstrated by an x-ray to exist. *The Basic Chiropractic Procedural Manual*, first issued by the ACA in 1973, noted "[t]hrough the years there have been numerous concepts within the chiropractic profession of what constitutes a subluxation. Each of these has had its own rationale and each has had certain validity that has been a contribution to our understanding of this complex phenomenon." See Stephen Barrett, MD, "Some Notes on Subluxation and Medicare" at www.chirobase.org/02Research/oig.html

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(website operated by Stephen Barrett, MD, and Charles E. DuVall, Jr., DC) (quoting the Basic Chiropractic Procedural Manual. The manual then proposed a definition, several pages long, describing the supposed radiologic manifestations of 18 types of "subluxations" including: flexion malposition; extension malposition; lateral flexion malposition; rotational malposition; hypomobility (also called "fixation subluxation"); hypermobility; aberrant motion; altered interosseous spacing; foraminal occlusion; scoliosis, and several conditions in which "gross displacement" are evident.

1. Many chiropractors now use the term "subluxation" so broadly that it essentially includes any spinal impairment. See, e.g., American Chiropractic Association, "Chiropractic: State of the Art, 1994-95," at <http://www.amerchiro.org/shared/chiart2.htm#pc> (discussing "variant forms of subluxations" and noting that "the term 'subluxation' assumes a broader and more diverse meaning in chiropractic than in classical literature"); The Association of Chiropractic Colleges, "Issues in Chiropractic," (The Subluxation), <http://www.chirocolleges.org/paradimt.html> (defining subluxation as "a complex of functional and/or structural and/or pathological articular changes that compromise neural integrity and may influence organ system function and general health").

2. No matter which of the definitions set out above is utilized, physical therapists can and do perform manual manipulations of the spine to correct a subluxation where clinically indicated. This is true even though, in most cases, physical therapists would not use the term "subluxation" to describe the condition they were treating. See, generally, American Physical Therapy Association's *Guide to Physical Therapist Practice* S215 (2d ed. 2001) (including "mobilization/manipulation" among the appropriate procedural interventions for patients with "impaired joint mobility; motor function; muscle performance; range of motion; and reflex integrity associated with spinal disorders").
3. The Health Care Financing Administration (HCFA) defines a subluxation of the spine as a "motion segment in which alignment, movement integrity, and/or physiological function of the spine are altered although contact between joint surfaces remains intact." The HCFA *Carriers' Manual*, Part 3, Chapter II, § 2251.2(A). Physical therapists routinely provide patients with manipulation services that treat conditions covered by this broad definition, and are routinely reimbursed therefore by Medicare.
4. In addition, because chiropractors - including the ACA in this case - define the term "subluxation" so broadly as to include any impairment of the spine, the ACA's contention that physical therapists are prohibited from engaging in manual manipulation of the spine to treat a "subluxation" would make it impossible for physical therapists to treat any spinal ailment with manual manipulation, as physical therapists routinely do at the present time. Although I am unaware of any records that show the extent of dollar reimbursement of physical therapists under the Medicare program specifically for manual manipulation of the spine, Medicare data issued annually by HCFA show that in 1999, the latest year for which statistics are available, Medicare allowed charges of almost \$25 million for physical therapist services falling within code CPT 97140, which covers manual therapy techniques including mobilization/manipulation of the spine.

The statements made by CEO Mallon make the APTA's position quite clear. As far as they are concerned, doctors of chiropractic are restricted (under Medicare) from treating anything but a subluxation, while physical therapists can (and do) treat everything.

In a response to Mallon's statements, the ACA has argued that:

"When chiropractors were finally added to the Medicare program, only chiropractors engaged in manual manipulation of the spine to correct a subluxation of the spine. Indeed, manual manipulation of the spine to correct a subluxation was considered a uniquely chiropractic service and in fact, the rest of the medical community thought such diagnosis and treatment to be outside the realm of medicine, and discouraged the use of, or association with, any and all chiropractors.

"However, the fight continues, as those who for decades claimed that manual manipulation of the spine to correct subluxations was 'voo doo,' 'hocus-pocus' and/or 'quackery,' now claim they are qualified to practice it and treat patients via 'manual manipulation of the spine' - a different category of service.

"It should be specifically set forth that the American Physical Therapy Association (APTA) does not use the full definition 'manual manipulation of the spine to correct a subluxation of the spine,' except when quoting the statute or the ACA. The APTA repeatedly uses the terms 'manual manipulation of the spine' and just 'manual manipulation' as if the terms are synonymous with the full definition of the statute.

"The language in the statute is very narrow in scope, specifically identifying a uniquely chiropractic treatment and makes no mention of physical therapists. Physical therapists are not 'physicians' under any definition of the statute in question, which made chiropractors 'physicians' to deliver the unique chiropractic service.

"In fact, manipulation of the spine is defined by the American Physical Therapy Association as 'manual mobilization.' (See Exhibit 3, 'Taking Care of Your Back,' American Physical Therapy Association, p.8.) 'Mobilization' is defined as 'low-velocity (nonthrust) passive motion that can be stopped by the patient.' (See Exhibit 4, 'Manipulation of the Cervical Spine,' *Physical Therapy*, Vol. 79, 1 (January 1999); Regardless of whether the judge grants the APTA request for status as an intervener and allows their testimony to be entered, the chiropractic profession should hear loud and clear what the APTA is saying. Their words are unambiguous. The APTA believes that physical therapists can do everything doctors of chiropractic can do and more."

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