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Court Says ACA Has Standing to Sue Medicare Managed Care

FEDERAL RULING CLEARS WAY FOR ALLEGATIONS OF HHS UNLAWFUL POLICIES

Editorial Staff

ARLINGTON, Virginia - The U.S. District Court for the District of Columbia has ruled that the American Chiropractic Association (ACA) has standing to sue the U.S. Department of Health and Human Services (HHS) over recent Medicare+Choice guidelines that the ACA says have virtually excluded chiropractic services from the Medicare managed care program. The federal judge's decision comes in response to a September 1999 HHS motion to dismiss ACA's case, claiming that the ACA lacked "standing" and that the District Court lacked jurisdiction to review ACA's claims.

"The judge's ruling in our favor is a huge milestone for the ACA in our lawsuit against the Health Care Financing Administration," said ACA President Dr. James Mertz. "We have a clear win on the standing issue that the ACA has the right to protect the interests of the chiropractic profession and its members, and we are one step closer to bringing this important action before the court."

In a 19-page opinion (http://www.chiroweb.com/special/opinion) released July 7, the judge asserted that ACA has the standing to sue, since "the alleged injuries suffered by ACA members are fairly traceable to the Secretary's (of HHS) conduct," and "the alleged injuries suffered by ACA members are likely to be redressed by a favorable decision in this case."

The ACA filed the lawsuit in November 1998, claiming that new HHS guidelines unlawfully allowed the new Medicare managed care plans to substitute the services of MDs and DOs for those upon which the chiropractic profession was founded. An amended complaint, challenging the validity of an HHS report to Congress on the utilization of chiropractic services, was filed last year.

In its motion to dismiss, HHS argued that ACA must first attempt to have its claims reviewed through an HHS administrative appeals process before a federal court could exercise jurisdiction over the dispute. HHS had argued that the Medicare Act requires that the ACA seek and receive a final decision from HHS before going to federal court and also pointed to a recent U.S. Supreme Court decision in Illinois (*Council vs. Shalala*) to support this argument. However, because of what the ACA sees as the "anti-chiropractic bias that pervades HHS," the association argued that an agency review was "no review at all."

In his July 7 opinion, the judge specifically rejected the government's broad interpretation of the U.S. Supreme Court decision and said a plaintiff may obtain judicial review by a federal court if it could show that going through the agency administrative adjudication of its claim would lead to "no review at all." The judge also noted HHS' argument that Medicare regulations do allow an enrollee, not an organization such as ACA, to request a review and administrative appeal of HMO practices. However, the judge stated that "the court cannot ascertain whether, as a practical matter, those procedures will lead to a review of the remaining claims" or whether requiring ACA to first go through the administrative appeals process "will lead to the equivalent of 'no review at all.'" As a result, the court has asked for a supplemental briefing on the jurisdictional issue from both sides before July 28.

The only count in ACA's lawsuit not upheld in the July 7 opinion dealt with the report by the Secretary of HHS on the utilization of chiropractic services in Medicare HMOs, a victory that was already won by the ACA without having to do battle in court. The first count of ACA's amended complaint challenged the content of the report that was mandated by Congress in 1990.

Although the report was due in 1993, it was not submitted until April 1999 and failed to include the required "recommendations with respect to any legislative and regulatory changes that the Secretary determines are necessary to ensure access to such services." Just last month, the HHS Office of Inspector General (OIG) finally issued a detailed report on the utilization of chiropractic services in Medicare.

The court did find that the ACA had standing to assert its remaining counts. Counts 2 and 3 alleged that the HHS secretary's policies unlawfully permitted non-chiropractors to perform manipulation of the spine to correct a subluxation. Count 4 alleged that the secretary's policies unlawfully permitted a managed care organization to require a referral by a primary care physician before a Medicare patient may visit and receive manual manipulation of the spine to correct a subluxation from a chiropractor. Count 5 alleged that the government has failed to ensure that managed care organizations properly allocate portions of monthly, predetermined sums they received from Medicare for the coverage of manual manipulation of the spine to correct a subluxation.

The ACA has long maintained that the administrative procedures under the Medicare+Choice program do not adequately address the profound and inherent problems contained in HCFA's continued refusal to recognize that only a doctor of chiropractic may perform manual manipulation of the spine to correct a subluxation.

"The ACA is in the battle to the end," avowed Dr. Mertz. "If the court ultimately rules that other procedures must be followed, the ACA will follow them. When the ACA stands up for the rights of doctors of chiropractic and their patients, the whole nation benefits. Never again will we be silent while our members and their patients suffer discrimination."

A complete copy of the judge's Order and Opinion is available for your review at http://www.chiroweb.com/special/opinion.

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