

# Chiropractic in Workers' Compensation -- A Search for Answers

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Q: Workers' compensation cases are an important part of every chiropractic practice.

A: Not true. In many states chiropractors see few if any workers' compensation patients. A review of the history reveals that in recent years a few states (like Oregon and Florida) have sharply curtailed chiropractic participation in their workers' compensation programs. New Jersey and several other states, due to a provision in their law that gives the employer the sole right to decide on the treating doctor, have effectively reduced or shut out chiropractic treatment. What makes these developments most disconcerting is that these changes have been made at the same time that respected studies (Manga, Manga II, Meade et al.) show chiropractic to be more cost effective than ordinary medical care. It is safe to say that every element of chiropractic participation in workers' compensation varies greatly between the states. Fees, requirements to appear at court, controversy and administrative delay show wide variations. Nobody has ever tried to get a grip on the often severe statewide differences in chiropractic participation in workers' compensation cases. I have received conflicting reports on how the workers' compensation system works from several doctors practicing in the same state.

This article is an effort to gather accurate information about chiropractic participation in all the states. Once we learn just how it is in various states we may be able to come up with some reasonable strategies to improve things. *Dynamic Chiropractic* has been kind enough to participate in this project. With your assistance we can all learn a great deal.

In some states, such as New York, there is an enormous amount of controversy and fairly liberal use of chiropractic consultants who almost routinely find the claimant to be at MMI. In other states there is little controversy and minimal use of consultants. Some states use "scheduled" fees for chiropractic services, while others allow usual and customary fees. I am told that in Nevada a DC must report and re-examine every six visits, and that a claimant must get an attorney if further treatment is disapproved. In Virginia, it is my understanding that a chiropractic panel must approve before a claimant can see a given chiropractor. (Do they do that for medical treatment too?) By contrast, Wisconsin has an excellent program with few problems regarding chiropractic treatment. When the Australian workers' compensation system was undergoing fundamental restructuring, it studied various elements of Wisconsin's smooth operating workers' compensation program.

In some states, DCs are paid a certain fee for an adjustment with additional fees paid for one or two modalities. In other states chiropractic service is "global" and covered under a single office visit fee. In some states chiropractors are paid usual and customary fees for workers' compensation cases; in other states there is a set fee schedule. In New York, the fees are set differently for each of four different areas of the state. Doctors practicing in some states are increasingly driven to produce more reports and more paperwork to satisfy carrier's demands before the check comes. In New York, even after a court rules that a doctor should be paid, the carrier can appeal the decision and hold up payment for treatment for many more months. And even when the carrier's appeal

fails, another obstacle (arbitration) is put in the way of payment. This forces the treating chiropractor to take anywhere from several hours to a full day away from the office to attend an arbitration hearing to justify once again the right to the fees due in the case.

Between court hearings, appeals and the arbitration hearing, a simple workers' compensation case in New York can take more than a year to resolve. And even after that, the doctor may have to appeal to the state insurance department for assistance in getting payment for services. Certain 1996 changes in the disputed bill process are so complex that many doctors are still forfeiting legitimate fees because they do not understand the process involved and/or the use of the new forms.

Why is there so much controversy with chiropractic cases in some states and not much in others? One can only venture a guess at this point. We seek to answer that question by soliciting information from doctors working in the trenches of workers' compensation. If you practice in a state with a reasonable chiropractic environment for workers' compensation cases, your responses to the few questions that appear at the end of this article will be of great help. In like manner, if your state has a great deal of trouble with chiropractic in workers' compensation cases, it will pay to understand each element of those problems.

We see instances in which the chiropractor's opinion regarding disability is honored completely, and others in which it is not allowed. In some states managed care has made great inroads into workers' compensation cases; in others it is still a rarity. It would help to know which states are heavily into managed care and how it is working. The Washington State Court of Appeals recently issued a ruling which grants the insurers the right to sue chiropractors who submit phony billings on behalf of insureds. In its own way this ruling infers that DCs reporting is less credible than other doctors. What do they do with MDs who submit phony billings?

Based on my limited study, it is clear that enormous differences exist in the chiropractic element of workers' compensation in various states. And it appears that the screws are gradually being tightened ever further on chiropractic participation. This may come about quietly in each state, but it is a very deliberate process. As far back as 1990, the president of Liberty Mutual Insurance, Mr. Countryman, convened a high level meeting of insurers, business and labor officials to discuss the "crisis" in workers' compensation. Among other things, this panel discussed chiropractic as a "problem." In spite of this clear warning there has been no concerted effort in our profession to change that attitude. There should be. That is our mission. Our failure to come to grips with the problems we face in the workers' compensation arena will allow these attitudes to harden further.

There is no national clearinghouse for information regarding chiropractic participation in various state workers' compensation programs. There should be: without it we stand to lose even more ground. If the best defense is a good offense, then we should be taking time now to study chiropractic services in workers' compensation in each of the states.

Please take a few minutes to answer these questions. Cut the questionnaire out or make a copy and return it to me at the address below. You can fax the completed form to me at 716-798-0342. If you wish you can answer with additional commentary via email to [jgantner@aol.com](mailto:jgantner@aol.com) If you provide your email address it will help a great deal in clarifying various points. Thanks for your kind assistance.

1. E-mail address: \_\_\_\_\_
2. Your state: \_\_\_\_\_
3. How many years have you been in practice? \_\_\_\_\_
4. Does your state allow the claimant the right to consult a chiropractor directly for treatment

- of a work injury? \_\_\_\_\_ Or must chiropractic treatment be approved by the employer? \_\_\_\_\_
5. Is there an "opt out" provision in your state by which an injured worker can stop medical care and consult a chiropractor for treatment? \_\_\_\_\_
  6. Roughly, what percentage of your practice are workers' compensation cases? \_\_\_\_\_
  7. How many workers' compensation patients are you treating now as legitimate comp. patients? \_\_\_\_\_
  8. Does the carrier pay more than invoice for low back supports? \_\_\_\_
  9. How much do you mark them up? \_\_\_\_\_
  10. In what percentage of your workers' compensation cases must you make a court appearance? \_\_\_\_\_
  11. In what percentage of your compensation cases do insurance carriers controvert your cases/hold up your payment? \_\_ What is the main reason for such controversy?  
\_\_\_\_\_
  12. In what percentage of your comp. cases is your patient sent to a chiropractic IME? \_\_\_\_\_
  13. In what percentage of cases having an independent chiropractic examination (IME) does the chiropractic consultant state the claimant needs further chiropractic (beyond 4-6 visits)? \_\_\_\_\_
  14. In what percentage of comp. cases is your patient sent to an MD for an IME? \_\_\_\_\_
  15. In what percentage of cases does the MD IME state the claimant needs further chiropractic? \_\_\_\_\_
  16. In what percentage of your cases does the IME find the claimant to be at MMI? \_\_\_\_\_
  17. When your comp. patient is sent to the carrier's IME doctor do you have a chance to rebut the IME's conclusions? \_\_\_\_\_ How do you do this in your practice? \_\_\_\_\_
  18. Do comp. carriers pay your usual and customary fees? \_\_\_\_\_
  19. Does your state use a state fee schedule for chiropractic services? \_\_\_\_\_
  20. If your state uses a fee schedule, does it vary for different areas of the state? \_\_\_\_\_
  21. Is the DC required to attend arbitration (or mediation) hearings in your state? \_\_\_\_ If so, in what percentage of cases? \_\_\_\_\_
  22. Can a DC send (direct referral from DC to PhT) a comp. claimant for physiotherapy in your state? \_\_\_\_\_
  23. What is the average routine office call fee for comp. cases in your area? \_\_\_\_\_
  24. What is the average fee for one additional modality in a comp. cases in your area? \_\_\_\_\_
  25. Have some of your comp. cases been sent to an out of state DC for a paper review? \_\_\_\_\_
  26. Would you regard that paper review to have been fair? \_\_\_\_\_
  27. Approximately what percentage of employers in your state use managed care for workers' compensation? \_\_\_\_\_
  28. What percentage of your comp. cases are managed care? \_\_\_\_\_
  29. In compensation cases with managed care, what percentage of your appeals for additional visits are approved? \_\_\_\_\_
  30. How often must you ask to be re-approved? \_\_\_\_\_
  31. How long does it take your office to get paid by the managed care organization for comp. cases? \_\_\_\_\_
  32. In your view, is your office staff generally treated courteously by the people at comp. claims? \_\_\_\_\_
  33. How often (in percentage of cases) are you told that your billings have been lost? \_\_\_\_\_
  34. Would you rate workers' compensation carriers in your state as "good," "fair" or "biased" as it regards chiropractic treatment for injured workers? \_\_\_\_\_
  35. What actions are being taken by your state chiropractic association(s) to improve the

chiropractic environment in your state's workers' compensation program? \_\_\_\_\_

36. What is the name and address of the department that handles workers' compensation cases in your state? \_\_\_\_\_

Doctor, May I solicit your assistance in gathering this information? Together we can learn a great deal. All that will be necessary is for you to answer the questions above and mail them in to me at the following address:

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While you are writing, feel free to add any additional information that you feel might be of help. It would help a great deal if you supplied your email address.

### *References*

1. Private conversation with Mr. Russ Leonard, administrator of the Wisconsin Chiropractic Association.
2. Lundberg A. Best practice in workers' compensation: an Australian perspective. *1996 Workers' Compensation Yearbook*. Significant Publications, LRP Publications, Horsham PA, pp.201-205.
3. *State Farm Fire and Casualty Company v. Edwin Kiniry, DC, et al.* (39212-3-I,) *Slip Opinion*, Sept. 14, 1998).

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