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Novel Legislative Proposals and Some Controversy in Arizona

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In 1993, the Arizona Association of Chiropractic (AAC) has launched an innovative legislative program, and has at the same time been confronted with a controversial bill proposed by a single Arizona DC, Terry Rondberg. Chiropractic legislative leaders across the country may find the Arizona situation both interesting and instructive.

AAC has proposed three individual bills this year two of which deal with problems that confront all other states.

In 1990 and 1991 the Arizona State Legislature enacted an addition to the state Unfair Claims Settlement Practice Act (ARS 20-461) which prohibits discrimination against chiropractors. The language was drawn from laws already in force in Florida and Wisconsin. Under the new Arizona law, insurers can only place limitations upon treatment of subluxation or treatment with spinal adjustment if the same limits apply to drug or surgical treatment of the same condition or complaint. For example, a policy could only limit payment for physical medicine or spinal manipulation to $500 if the same policy limited payment for drug surgical medicine to $500. The result of the new law is elimination of arbitrary policy limits so that payment is now made for any treatment that can be shown to be "reasonable and necessary" for the care of a particular condition or complaint.

After the law was enacted, Arizona chiropractors were surprised to find that many insurers had no legal requirement to comply with the law. The reason is that many carriers issue master policies in other states and then mail certificates evidencing coverage to Arizona residents. These policies need only comply with the laws of the state in which they were issued. In almost every case, other states' laws permit insurers to limit payment for spinal adjustment and physical medicine as long as such limits apply equally to MDs and DCs. Therefore, a yearly cap of $500 for physical medicine or spinal manipulation is still legal under these policies.

To solve this problem, legislation was drafted this year which extends the jurisdiction of the Arizona insurance equality law to cover "policies, plans, contracts, coverages and evidences of coverage that are issued for delivery" to Arizona residents. This bill passed the Arizona House of Representatives by a vote of 48-9 on Feb. 2, 93; it is likely that it will be enacted into law. Once this occurs, the certificates issued for delivery to Arizona residents will be subject to the anti-discrimination law even if the original master policy has been issued in another state. It is estimated that enactment of this law will extend the anti-discrimination law to an additional 10% of the Arizona population.

The second AAC initiative is a bill designed to provide a solution for potential abuses in the insurance industry's utilization review process. Insurers by contract must only pay for care that is reasonable and necessary. Some insurers have attempted to reduce costs by denying claims even if the treatment was medically necessary. Unscrupulous insurers have had no difficulty finding doctors and nurses to state that treatment was not needed even if this was not actually the case.

At the present time, the only solution is a lawsuit. Usually bad faith is not involved, therefore the litigation centers around a contract dispute. Attorneys will generally only handle such cases on a retainer and hourly basis. One quote received in Arizona was for a $10,000 retainer before a lawsuit could be filed against an insurer who denied a $1,200 claim. Experts have estimated that such litigation could take 3-5 years. Obviously, litigation is not a viable solution for unfair claims denials.

AAC has proposed a bill which would provide for an expedited and affordable arbitration system. If either the patient or the doctor believe that the denied claim was for necessary treatment, the final determination of necessity of care will be made by a reviewer agreed upon by the doctor and the insurer. If there is a failure to agree upon the name of a reviewer, an arbitrator will be chosen by an arbitration organization selected by the state board of examiners. Such cases will be resolved within 90 days of filing of the dispute, and the losing party will pay the costs which are estimated to be $100-300 per review or arbitration.

AAC is not aware of any other state that has taken this approach. It seems that most states have attempted to require that reviews and IMEs of chiropractic cases be performed by chiropractors who have particular credentials and/or training. It was AAC's judgment that these types of laws still leave open the potential for abuse because insurers would still have the right to hand-pick and pay their own choice of chiropractor. In many cases, "he who pays the piper chooses the tune."

The third bill being supported by the AAC this legislative session would mandate 12 hours per year of continuing education. In Arizona, chiropractors are the only profession without such a requirement. It is likely that a bill will pass easily in 1993.

What about the controversy in Arizona? Would Arizona be Arizona without controversy? Probably not. Consider the following:

The AAC to this author's knowledge is the only democratic chiropractic association that specifically defines "straight" and "mixed" chiropractic and forbids infringement on the practice rights of either type of chiropractor. A member of the "straight" panel and a member of the "mixer" panel serve on the Executive Committee of the association and have veto power over any association action which might harm either branch of the profession. It is widely believed that the AAC is the most open association in the country to both concepts of chiropractic.

Nonetheless, without formally presenting his legislative proposal to the AAC Legislative Committee or Executive Board, Dr. Terry Rondberg hired a "WCA" lobbyist and found a sponsor for a bill which would add Rondberg-crafted definitions of "straight" and "mixer" to Arizona statute. Some observers believe that Dr. Rondberg is primarily attempting to protect "straights" from having to conform to chiropractic practice guidelines developed by consensus of the entire profession, i.e., the Mercy Guidelines.

The reaction of Arizona chiropractic leaders to Dr. Rondberg's initiative was predictable. Many doctors were incredulous that after achieving so much success in developing an association structure that is protective of both branches of the profession, Dr. Rondberg would completely circumvent his own state association and attempt to run legislation on his own. It is very possible that the AAC might have accepted Dr. Rondberg's bill if given the chance to study it in depth prior to the beginning of the legislative session. But his methods, that are perceived by some to be of the "back-door" and "double-crossing" variety, have offended many and damaged the atmosphere for positive meaningful dialogue. In any case, the legislature is so busy in 1993 with substantive issues that it is unlikely that Dr. Rondberg's WCA bill will see the light of day.

Arizona's 1993 legislative issues contain language that may be of interest to many states. Others may wish to prohibit anti-chiropractic discrimination in certificates of coverage that are issued in other states for delivery in their home state. In the quest to end unfair claims denials, other states may wish to study Arizona's utilization review bill. Also, in anticipation of Dr. Rondberg's likely effort to define and protect "straight" chiropractic in statute across the country, states would be well advised to review the Arizona language and prepare for what may come soon in the future.

For copies of the Arizona bills, please ask your state association staff to contact the AAC at (602) 246-0664.

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