Dynamic Chiropractic

Louisiana Chiropractors Fight to Defend Insurance Equality

Kathy Chittom

On November 6, 1989, Judge Joseph F. Keogh of the 19th Judicial District Court in Baton Rouge, Louisiana, ruled that the State Employees Benefits Plan (which provides insurance for employees of the state of Louisiana) "has been administered in an illegally discriminatory, arbitrary and capricious manner insofar as its provisions are applied to chiropractors and without its rules being properly promulgated in accordance with the Administrative Procedures Act."

The lawsuit charging the Board of Trustees (administrators of the plan) with discrimination against chiropractors and state employees seeking chiropractic care was filed by the Chiropractic Association of Louisiana (CAL) in response to changes made to the employees' (insurance) policy which effectively limited reimbursement for chiropractic services to $100 per month. The Association argued that the limitations violated a Louisiana statute which requires insurers and the State Employee Plan to reimburse for services provided by a chiropractor whenever it reimburses medical doctors for those services, provided that the chiropractor is licensed to perform the service.

CAL raised its initial objection to the policy change in 1984, when the Board of Trustees first proposed the arbitrary limitation on "chiropractic" services. The proposal came as part of an overall restructuring of the payment provisions of the insurance plan.

Historically under the state plan, all health care providers, regardless of class of specialty, were reimbursed for covered services at 80% of the submitted claim. Under the new proposal, health care providers were to be reimbursed at 80% of the usual and customary fee for the service rendered. In testifying before the legislative oversight committee, the executive director for the plan, James McElveen, claimed that by implementing usual and customary guidelines, administrators could more accurately render cost projections and thereby more effectively control costs. What Dr. McElveen did not share with the committee, until directly confronted, was the fact that not all providers were to be dealt with in the same fashion.

While it was true that all other providers were to be reimbursed, generally speaking, at 80% of usual and customary figures, chiropractors were singled out for special handling.

According to language proposed at the time, "Services for a doctor of chiropractic---(were to be reimbursed)---"with the following limitation: the Program will pay 80 percent of eligible charges incurred, said charges not to exceed $1,000 for any covered person per calendar year." Eligible charges shall further be limited to $100 for any covered person per calendar month."

Outraged at the double standard being proposed, CAL engaged legal counsel and prepared to challenge the limitation. Over the course of the next several months, the association appeared before the legislative oversight committee and at a public hearing arranged for commentary on the proposal. However, the charges of discrimination fell on deaf ears, so the organization turned its attention to two courses of action.

First of all, legislation was filed by the Chairman of the House Health and Welfare Committee mandating that the State Plan comply with the insurance equality statute governing reimbursement for chiropractic services. Similar legislation was also filed in the senate. Special provisions in each bill activated the law immediately upon signature of the governor. The legislature overwhelmingly supported the legislation and it was signed into law by the governor one day after the effective date of the board's newly-proposed reimbursement regulations.

In the meantime, in response to charges of discrimination, administrators of the employees' plan chose to alter the policy language addressing chiropractic services. Conspicuously missing in the rewrite was the word "chiropractic." And, the limitation which actually went into effect read as follows:

"Outpatient treatment in connection with the detection or correction by manual or mechanical means of structural imbalance, distortion, or subluxation in the human body for purposes of removing nerve interference when such interference is a result of or related to distortion, misalignment, or subluxation of or in the vertebral column, with the following limitations---"

With that revision, administrators of the plan boldly claimed that they were not discriminating against a class of provider because the limitation applied to any provider offering the defined service. Believing the intent of the board of trustees to be transparent and having exhausted all other avenues, the Chiropractic Association of Louisiana, in an effort to preserve its insurance equality statute, filed suit against the state of Louisiana. And, in November of 1989, justice was served.

In setting forth his reasons for judgment, Judge Keogh concluded that the evidence introduced during the trial of the case "clearly preponderates in plaintiff's favor in establishing that the State Employees Benefits Plan---is in violation of L.S.A. RS 22:668 (the insurance equality statute), 42:851.2 and 40:1299.65 and is thus void. It is therefore the judgment of this Court that a permanent injunction issue to the Board of Trustees of the State Employees Group Benefits Program prohibiting the Board from restricting payment of claims for chiropractic services on the basis of Article 3, Paragraph G, Subsection 24---" (that section defining chiropractic services)---"of the program and further ordering the Board of Trustees to pay claims for chiropractic services in accordance with Article 3, Paragraph C and the schedule of benefits of the program."

In commenting on the court's decision, Dr. Donald Marx, president of CAL, said that the ruling will offer relief to those state employees seeking chiropractic treatment who, for the past six years, have been denied proper reimbursement on claims for service. As elated as Louisiana chiropractors were to learn of the favorable decision, they know all too well that they will be facing an appeal of the ruling. And although confident that the preponderance of evidence will result in affirmation of the decision, they do not approach the final outcome with eager anticipation. The problem -- a lack of funds to continue the fight.

Louisiana has not only had to contend with the state's actions, but the actions of a private carrier as well. In February of 1988, the Federal Court for the Eastern District ruled in favor of Guarantee Trust in a summary judgment against a Louisiana chiropractor. That court held that Guarantee Trust's policy, which contained a limitation almost identical to the one found in the state's plan, did not violate the insurance equality statute. CAL first learned of the case when the court's ruling came down and moved quickly to intervene. Regretably, the Federal Appeals Court, in August of 1989, upheld the lower court's decision by a 2-1 vote. This fight, too, has been costly -- and, in more ways than one.

To date, the cost of defending Louisiana's insurance equality statute has exceeded $90,000.

Payment of over one-half of that debt has come from the general operating budget of the Chiropractic Association of Louisiana and with only 200 members, the organization is faced with the very real prospect of having to call a halt to its defense of freedom of choice. In the spring of 1989, owing $17,000 in attorneys fees and no longer able to draw from its general fund, the Association appealed to chiropractors statewide for donations. Within a month, Louisiana chiropractors raised $35,000 for the newly-founded Chiropractic Legal Defense Fund; within seven months the money had been spent.

The year 1989 ended with the Legal Defense Fund depleted and CAL owing $5,000 in attorneys fees. As 1990 begins, Louisiana chiropractors face certain appeal of the decision in CAL v. the State. And, now, the stakes are higher than ever before, because only a favorable decision in this case can negate the overall impact of the Federal Appeals Court decision.

Editor's note: The Chiropractic Association of Louisiana must raise the necessary funds to continue their fight to preserve insurance equality in Louisiana. Otherwise, a vigorous appeal by the state of Louisiana's Board of Trustees of the State Employees Group Benefits Program to the injunctive ruling could seriously jeopardize the hard-earned freedom of choice for state employees who seek chiropractic care.

Our support to help them meet the legal costs of this on-going battle is desperately needed. If every chiropractic could donate just $10, it would represent a handsome assistance. "Many hands make light work of a heavy load." Send your $10 check today to:

Chiropractic Association of Louisiana
3070 Teddy Drive
Suite A
Baton Rouge, Louisiana 70809
(504) 924-6978