

## Michigan DCs Accuse Blue Cross/Blue Shield of Discrimination

MULTI-COUNT CIVIL SUIT FILED

Editorial Staff

The Michigan Chiropractic Association (MCA), representing the interests of hundreds of practicing doctors of chiropractic, filed a civil lawsuit on March 12 against Blue Cross/Blue Shield of Michigan (BCBSM). The 20-page complaint alleges that BCBSM has committed repeated breaches of a state law that regulates nonprofit health care corporations, and that it has improperly interpreted the scope of chiropractic practice in Michigan, thus preventing hundreds of thousands of patients from receiving the care the health insurer advertises is available.

At issue is whether BCBSM, through its interpretation of Michigan Public Act 350, along with its provider class plan, physician participation agreements, subscriber agreements and reimbursement policies, is taking actions that a) deprive chiropractors from being reimbursed properly and from using certain procedures included in the chiropractic scope of practice; and b) restrict the diagnostic methods used by DCs to treat patients.

"The main goal of the suit is to level the playing field so that chiropractors can take care of their patients based on clinical need and not arbitrary insurance company financial goals," explained MCA President Dr. Ken Hughes.

The MCA's complaint alleges that BCBSM "has committed prior and continual breaches of the contract by its improper interpretation of the scope of chiropractic and the services for which reimbursement is allowed, as well as by its failure to provide equitable relief for those provider services for which it does allow reimbursement." The suit charges the insurer with five specific counts:

1. Breach of contract and violation of Public Act 350. Public Act 350 requires that BCBSM prepare and submit a provider class plan to the insurance commissioner for approval. In its provider class plan, BCBSM lists "provid[ing] equitable reimbursement to DCs [doctors of chiropractic] in return for high quality services which are medically necessary" as one of its cost objectives. The provider class plan also "strives to limit increases in total DC payments per member while, at the same time, providing equitable reimbursement to DCs for medically necessary services" through its reimbursement policies. Other sections of Michigan law state that a health care corporation "shall not restrict the methods of diagnosis or treatment of professional health care providers who treat members," and the scope of chiropractic in Michigan allows DCs to perform "diagnosis, including spinal analysis," to determine the existence of subluxations or spinal misalignments that necessitate chiropractic care.

The MCA claims that BCBSM has violated the provider class plan and its underlying contracts by not providing equitable reimbursement to its members in return for the medically necessary services that are and have been delivered to subscribers; that its refusal to pay for or reimburse activities that fall within the scope of chiropractic "constitute a restriction on the methods of diagnosis or treatment of professional health care providers who treat members"; and that it has

breached other contracts by refusing to follow evaluation and management codes adopted for chiropractors by the American Medical Association. The count also alleges that the state's insurance commissioner failed to properly enforce both the provider class plan and Public Act 350, and should be ordered to do so.

2. Differing compensation for identical services. Public Act 350 provides that chiropractors are entitled to reimbursement for certain health care services in instances in which certificates establish coverage for those services. The suit alleges that BCBSM "is prohibiting chiropractic physicians from receiving the same amount of reimbursement other providers receive for identical covered services by, among other things, refusing to pay for multiple adjustments where more than one vertebra is adjusted while at the same time reimbursing other physicians for multiple adjustments under the same circumstances." According to MCA, using a method of reimbursement that sanctions multiple payment levels for identically covered services violates Public Act 350 and the provider class plan, and constitutes a form of unlawful discrimination.

3. Scope of chiropractic practice. According to the suit, BCBSM "consistently misinforms chiropractic physicians and their patients that it does not provide reimbursement for certain covered services," including the use of hot and cold packs, massage, traction and neuromuscular re-education. In fact, many of those services are within the scope of chiropractic in Michigan, but by refusing to reimburse chiropractors for them, BCBSM "has wrongfully asserted that the services are outside the scope of chiropractic."

4. Breach of contract, based on prior settlement. In 1999, the Michigan Chiropractic Council (the MCA's forerunner) and the Michigan Chiropractic Society (MCS) reached a settlement agreement following a complaint filed against BCBSM, which included, among other things, a breach-of-contract claim. The 1999 settlement agreement outlined the terms for a more comprehensive settlement document (to be prepared by all three organizations working cooperatively), and required BCBSM to work with the MCA in developing appropriate criteria for emergency visits. The MCA alleges that the health insurer has failed to cooperate in preparing a more comprehensive settlement agreement, thus breaching the 1999 settlement, which has caused the MCA to suffer economic and other damages.

5. Violation of public policy for termination of trust agreement. In March 2003, Dr. Hughes wrote a letter advising all Michigan doctors of chiropractic of BCBSM's decision to incorporate the American Chiropractic Network (ACN) into the reimbursement protocol for its PPO network providers. The letter mentioned "the lies that are being used to garner support for the ACN program," and that the program "is not consistent with the scope of practice of Michigan chiropractors." The following month, Dr. Hughes wrote an article advising chiropractors of the "evils" that would befall the chiropractic profession with the BCBSM-ACN agreement. In May, after learning about the article and letter, BCBSM terminated its trust agreement with Dr. Hughes.

In the current suit, the MCA claims "although Dr. Hughes requested that BCBSM provide him with a reason" for being terminated, "BCBSM has failed to provide any such reason." It further claims that the insurer terminated the trust agreement "based solely on Dr. Hughes' actions in speaking out against the alliance between BCBSM and ACN in his position as president of the MCA," which violated his rights under the First Amendment. The termination has caused Dr. Hughes to suffer damages related to loss of earnings, embarrassment, humiliation, emotional distress and loss of potential patients.

According to Dr. Bill Goss, chair of the Michigan Chiropractic Legal Action Committee, "Blue Cross arbitrarily denies claims that are within the scope of accepted treatment, and they are moving toward a model of care that is based on pain instead of accepted objective findings." The problem

with such a model, he explained, is that pain is not the only way to determine whether or not a patient needs care. Denying coverage for chiropractic care simply because a patient is not in pain, Goss said, would be "like telling a dentist they can't fill a cavity unless their patient is experiencing pain."

Goss emphasized that as the lawsuit makes its way through the legal system, gaining financial support from MCA members and the profession will be tantamount to the association's case. "We also need chiropractors to keep us informed of abuses so we can update the attorneys as the suit continues," he said.

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