

Dynamic Chiropractic



NEWS / PROFESSION

Fighting Unfair Insurance Reimbursement in New Jersey

ANJC, ACA COMPLETE ADMINISTRATIVE HEARING AGAINST HORIZON BLUE CROSS BLUE SHIELD; DECISION EXPECTED BY LATE SEPTEMBER/EARLY OCTOBER.

Last year, New Jersey chiropractors, dissatisfied for years with their treatment by Horizon Blue Cross and Blue Shield of New Jersey on a number of issues, teamed up with the American Chiropractic Association (ACA) and brought their complaints to the New Jersey Department of Banking and Insurance (DOBI) for resolution. The DOBI then transferred the dispute to the Office of Administrative Law to make detailed findings of fact with regard to Horizon's reimbursement practices as they relate to chiropractors practicing in New Jersey.



The issues brought before the Administrative Law Judge include: 1. whether Horizon is improperly reimbursing chiropractors by failing to pay them for significant, separately identifiable Evaluation & Management (E&M) services performed on the same day as a chiropractic manipulation; 2. whether Horizon is improperly reimbursing chiropractors by failing to pay them separately for performing physical modalities on the same day as a chiropractic manipulation; 3) whether the denial of certain services by Horizon constitutes discrimination in violation of state anti-discrimination and insurance equality laws; and 4. whether Horizon's in-network fee schedule for

chiropractors, which is set at 80 percent of Medicare rates, is improper.

Horizon contended that it adequately reimburses chiropractors for both E&M and physical modalities through its payment for chiropractic manipulative treatment (CMT) and that it is proper to bundle reimbursement for these separate services into the CMT reimbursement. Horizon also contended that its reimbursement policies are not discriminatory and that its fee schedule is properly set by market forces.

It is important to note the legal background in New Jersey as it applies to chiropractic reimbursement. According to New Jersey law, Horizon is compelled to provide insurance coverage for chiropractic benefits if it writes insurance policies that cover medical expenses in the state. Therefore, Horizon must provide chiropractic benefits to its insureds if it provides benefits for other medical specialties. New Jersey law further requires that whenever an insurance policy provides for reimbursement for any service within the scope of chiropractic practice, the chiropractor is entitled to reimbursement for the service, and that reimbursement should be construed in favor of chiropractic reimbursement. Based upon these statutory provisions, the ANJC and ACA contended that Horizon's reimbursement practices were in violation of New Jersey law and must be stopped.

In July 2006, a four-day hearing was held before the Administrative Law Judge, with ANJC Legal Counsel, Jeffrey Randolph, Esq., and ACA Legal Counsel, Thomas Daly, Esq., spearheading the ANJC/ACA case. The ANJC/ACA legal team presented three witnesses, all with outstanding qualifications, who provided concrete testimony in support of our positions. Frank Stiso, DC, provided testimony regarding all of the overall issues and his experience as a member of the Horizon Medical Policy Committee. Phil Santiago, DC, testified regarding the physical modality and reimbursement issues based upon his extensive experience as a former Board of Chiropractic Examiners' member and as a chiropractic college professor who teaches physical modalities to students. Finally, the ANJC/ACA flew Craig Little, DC, a member of the AMA CPT Coding Panel, in from California to provide testimony on the Evaluation & Management and physical modality issues. ANJC Executive Director Sigmund Miller, DC, monitored the proceedings and provided some key insight on issues that arose during the trial.

Horizon put up a spirited defense at the hearing and did raise some cogent arguments that could hold some weight with the Administrative Law Judge. First, Horizon presented the "Medicare does it, why can't we?" defense. Horizon stressed the fact that Medicare pays for manipulations only and not for E&M or physical modalities, and that since many carriers, including Horizon, follow Medicare's lead, there is nothing wrong with them bundling E&M and physical modalities into the manipulation reimbursement.

Second, Horizon used the "You signed a contract which allows us to do this" defense. With regard to in-network chiropractors, the Horizon network participating provider agreement is very general and states that, "by signing this contract, you agree to accept what we pay you and to abide by our policies as we change them from time to time." Thus, Horizon has a plausible argument that, as it applies to in-network chiropractors, the chiropractors contractually agreed to accept the bundling of E&M and physical modalities into manipulation and to accept the fee schedule no matter what it is. Horizon also pointed out that if a chiropractor is out of network, they can bill the patient for what Horizon does not pay for and be made whole that way.

Third, Horizon presented the "Our competitors do it, so why can't we?" defense. Horizon did present Explanation of Benefit forms that appear to show some other insurers pay at rates comparable or even below Horizon, on occasion, and they also have policies that bundle the E&M and physical modalities into the manipulation reimbursement. Most other insurers also pay

osteopaths at higher rates than chiropractors, so Horizon is not alone in this regard.

The ANJC/ACA believe they presented stronger witnesses with superior credentials than Horizon, and expectations are high that the Administrative Law Judge will rule in the ANJC/ACA's favor on a majority of the issues presented. Both sides now have until Sept. 16, 2006, to submit post-hearing summation briefs. At that point, the Administrative Law Judge has 45 days to issue his decision to the Department of Banking and Insurance, which can accept, reject or modify the judge's opinion. Once the DOBI issues its determination, either side can appeal to the Appellate Division of the Superior Court within 45 days if they are dissatisfied.

Should the judge issue a favorable decision in this case, it could have far-reaching impact, not only for chiropractors practicing in New Jersey, but also nationwide as precedent against improper reimbursement practices being perpetrated by third-party payers.

Editor's note: Look for a follow-up article detailing the outcome of this important case in an upcoming issue of *DC*. A decision is expected by late September/early October 2006.

Submitted by the Association of New Jersey Chiropractors

SEPTEMBER 2006