Dynamic Chiropractic

CHIROPRACTIC (GENERAL)

WCA Legislation: Will It Harm Us and Help the AMA?

James Edwards, DC

Recently, Congressman Don Manzullo (D-IL) introduced HR 2560 in the U.S. House of Representatives, claiming it would be good for the chiropractic profession. It was endorsed by the World Chiropractic Association (WCA). When I read the WCA's news release about the bill, I directed American Chiropractic Association legal counsel Tom Daly to give his opinion relative to what it would and would not do.

For those of you who do not know Mr. Daly, I can tell you he is without peer when it comes to legislative, regulatory, reimbursement and legal expertise with regard to issues affecting the chiropractic profession. He is viewed as the premiere expert on such matters, not only by the ACA, but by the National Association of Chiropractic Attorneys, who named him its 1997 "Attorney of the Year" for his work on the new chiropractic manipulative treatment (CMT) codes and their relative values in Medicare's "resource-based relative value scale" (which are now at issue in the Manzullo bill). Mr. Daly is highly trusted and respected by chiropractic leaders because the many victories accomplished by the profession over the last several years are, by no small measure, a direct result of his wise counsel and expert advice.

(Also, allow me to emphasize: Representative Manzullo is a strong chiropractic supporter who no doubt thought his bill would be beneficial to doctors of chiropractic. Unfortunately, according to Mr. Daly, this bill would have serious negative consequences for the chiropractic profession, including a strong negative impact at the state level.)

Here is a brief background about the bill. The proposed legislation envisions the "separate treatment of chiropractors" through the following:

1. Chiropractors would be removed from the definition of "physician" under §1861(r) of the Social Security Act. Also removed would be the current definition of chiropractic services, i.e., "treatment by means of manual manipulation of the spine (to correct a subluxation)."
2. "Chiropractic services" would be added as "medical and other health services" under §1861(s)(2) of the Social Security Act, and such services would be defined to include "clinically necessary care by means of adjustment of the spine (to correct a subluxation) performed by a chiropractor legally authorized to perform such adjustment by the state or jurisdiction in which such care is provided." Chiropractic services would also include physical exams; radiological exams; and specialized diagnostic instruments used in the practice of chiropractic. Such services could only be provided by a chiropractor.
3. The term "subluxation" would be defined under the statute.
4. The new "chiropractic services" category would be added to the definition of "physician services" under §1848(j)(3) of the Social Security Act for the purpose of calculating payment for physician services under the resource-based, relative value scale (RBRVS) fee schedule.

Sounds ok, right? Wrong! According to Mr. Daly, this legislation would devastate chiropractic reimbursement both within and outside of Medicare, including workers' compensation programs; Blue Cross/Blue Shield plans; med-pay programs; and all forms of third-party reimbursement that

in any way utilize the Medicare RBRVS system or the AMA-CPT coding procedures. In addition, the enactment of this provision would provide ammunition to those entities, on a state level, that would seek to either eliminate or block the ability of a chiropractor to refer to him- or herself as a "physician," and ironically, serve the legislative policy goals of the American Medical Association (AMA).

The reasons for Mr. Daly's views are:

1. The loss of the ability of a chiropractor to utilize Evaluation and Management (E&M) codes. In 2002, the AMA began a process by which it sought to develop "evaluation and assessment" (E&A) codes for "nonphysician (sic) health care professionals." The stated objective of the AMA-CPT-5 was to "review and evaluate weaknesses of the current system for coding the provision of health services by nonphysician (sic) health care professionals." According to the current chiropractic representative to the AMA-CPT Health Care Professionals Advisory Committee (HCPAC), the podiatrists, optometrists and chiropractors have, to date, been effective in resisting the efforts of AMA-CPT to deny them the ability to utilize E&M codes because of their status as "physicians" under the Medicare statute at ¤1861(r)(3), (4) and (5), respectively. The psychologists, who currently may not utilize E&M codes, are actively seeking "physician" status within CPT to secure the ability to utilize these codes.

The removal of DCs from §1861(r), thereby eliminating their status as "physicians" under Medicare, would give the AMA-CPT committee free reign in its attempt to eliminate the ability of doctors of chiropractic to use the physician-level E&M codes. In its place, DCs would be relegated to utilizing the non-physician-level E&A codes, which will have a substantially lower relative value, for RBRVS purposes. Therefore, all third-party payers that utilize AMA-CPT coding procedures and the RBRVS fee schedule will pay substantially less to chiropractors, who may no longer use the higher-valued and varied E&M code, but rather the more limited non-physician-level E&A code.

It is critical to note that the AMA has a very limited view as to the definition of a "physician." While HR 2560 is undoubtedly well-intentioned, its aim of removing chiropractors from the definition of "physician" under the Social Security Act is nevertheless in complete lockstep with the legislative goals of the AMA. Current AMA policy states:

1. The AMA (policy H-405.988) definition of "physician" is an individual who has received a "doctor of medicine" or "doctor of osteopathy" degree, following a successful completion of prescribed course of study from a school of medicine or osteopathy. (Res. 33, A-89)
2. In addition, there is the AMA (policy H-405.976) definition of a "physician": The AMA urges all physicians to insist on being identified as physicians, and to sign only those professional or medical documents identifying them as such. The AMA will review and revise its own publications, as necessary, to conform with its House of Delegates' policies on physician identification and physician reference, and will refrain from any definition of physicians as health care providers. The AMA supports seeking immediate modification of the Social Security laws to change the definition of a physician to conform with AMA policy. The AMA will seek legislation prohibiting the use of the term "physician" as a descriptor other than in the context of a medical doctor (MD) or doctor of osteopathy (DO) (Res. 243, A-91; Reaffirmed BOT Rep. I-93-25; Reaffirmed Sub. Res. 712, I-94; Res. 241, A-97; emphasis added).

2. Significantly lower valuation for the new chiropractic adjustment code. The proposed legislation would change the term "manual manipulation of the spine to correct a subluxation" to "adjustment of the spine to correct a subluxation." The view of the chiropractic experts working most closely with the CPT and AMA/Specialty Society RVS Update Committee (RUC) processes is that this change in statutory terminology would require a corresponding change to the CPT definition and

the assignment of a new relative value in conformance with the Medicare RBRVS as provided under §1848.

In 1996, ACA achieved a major milestone for the profession by establishing a set of CMT codes with a corresponding relative value similar to the then-existing osteopathic manipulative treatment (OMT) codes. At the time, Medicare commented: "We agree with the recommendations of the RUC HCPAC Review Board that the chiropractic manipulative treatment codes represent services and physician work that essentially parallel those of the osteopathic manipulation codes" (61 Fed. Reg. 59545, 11/22/1996) The proposed change in the statutory language would require a new definition, as well as the assessment of a new relative value for the "adjustment" service. Such a process would provide an opportunity for the opponents of the chiropractic profession to argue against the implementation of the existing relative values for the CMT codes, and for the implementation of lower relative values comparable to physical medicine codes.

Significantly, the chiropractic profession could not use as reference the existing OMT codes, as it had done in 1996, because the definition will have been specifically changed from "manipulation" to "adjustment." It is almost certain that the resulting relative values for the new chiropractic adjustment codes would be significantly less than those for the current CMT codes. This reduction in relative value would impact not only Medicare reimbursement, but the reimbursement for every third-party payer (i.e. workers' compensation; med-pay; Blue Cross/Blue Shield; and insurance plans that may utilize Medicare RBRVS as a guide for relative values). The impact on reimbursement across the board would be substantial and reach into the tens of millions of dollars per year for the entire profession.

3. The status of "physician" under state law. Currently, 30 states permit doctors of chiropractic to refer to themselves as "chiropractic physicians." Such permission provides them with important recognition and status under state law not afforded to nonphysician practitioners. In 1973, chiropractors were first included in the Medicare definition of "physician." Since then, this federal status has been used in many states to both obtain physician status, and to guard against attacks on physician status by the opponents of chiropractic. The elimination of the physician status under Medicare would be a powerful incentive for such opponents to seek corresponding loss of status in various state legislatures. The loss of such Medicare status would eliminate an important argument that doctors of chiropractors are and should be considered physicians under state law.

Here are Mr. Daly's summary and recommendations:

"The above-referenced proposal, with its centerpiece recommendation to eliminate chiropractors as 'physicians' under the Medicare program, as well as to change the definition of the services that chiropractors provide under Medicare, would have a devastating and far-reaching impact on chiropractic reimbursement, both within and outside of Medicare. There simply is not a more potentially destructive step that this profession could take than to support the enactment of this proposed federal legislation. The possible negative impact of the proposed changes on the AMA-CPT process, the Medicare RBRVS process and on state authority to utilize the term 'physician,' cannot be overemphasized. The proposal, while seeking to create a separate and distinct, yet limited (as compared to the ACA legislative proposal) category for chiropractic services under Medicare, may also severely impact those systems under which chiropractors are being reimbursed and those systems which currently recognize doctors of chiropractic as physicians."

Mr. Daly concludes: "The ACA should devote whatever effort is required to defeat this proposed legislation. ACA members should be encouraged to contact their members of Congress in opposition to HR 2560 and to support ACA's legislative proposal, which preserves the 'physician' status and offers broader Medicare coverage of chiropractic services."

It was for these reasons that I strongly urged state associations to take no action that would promote or support HR 2560. Aside from the bill's fatal flaws, its introduction at this time, and the grassroots action associated with it, detracts from the serious effort to enact the chiropractic pilot program ("expanding chiropractic reimbursement") contained in S.1, the Senate version of the Medicare prescription drug bill now in conference with the House of Representatives.

Fortunately, HR 2560 has garnered little support in Congress to date, and the likelihood of its passage is remote. Nevertheless, we will have to continue to expend valuable "political capital" to make sure the harmful provisions do not become law.

Unfortunately, this illustrates once again what can happen when an association, lacking legislative maturity and without due regard for the ramifications, introduces a bill (and quickly convinces another association to sign on) for the purpose of gaining headlines. Nevertheless, the ACA has supplied the legal analysis to both groups and Congressman Manzullo's office, and hopes to convince him and the ICA to withdraw their support of the legislation.

James Edwards, DC
Chairman, ACA Board of Governors
Board officer, ACA-PAC
Austin, Texas
jamesedwards@jamesedwards.com

SEPTEMBER 2003