

U.S. Federal Court Rules against HHS Attempt to Dismiss ACA Lawsuit

Editorial Staff

ARLINGTON, VA - In the American Chiropractic Association's (ACA) lawsuit against the Department of Health and Human Services (HHS) over the denial of chiropractic services in Medicare HMOs, the U.S. District Court for the District of Columbia has ruled against the government agency's attempt to dismiss the lawsuit.

The U.S. District Court had ruled July 7, 2000 that the ACA had standing to sue on behalf of the chiropractic profession, but the HHS petitioned the court to dismiss the ACA's lawsuit in favor of having the ACA "exhaust administrative remedies" before it could seek relief from the federal court.

On January 22, 2001, the U.S. District Court ruled that under the applicable standards established by the United States Supreme Court, the ACA is entitled to bring its claim before the federal bench.

ACA President Dr. James Mertz commented: "The ACA has argued the reasonable proposition that chiropractic services should be provided by doctors of chiropractic, because they are the only providers licensed, trained, and educated to perform manual manipulation of the spine to correct a subluxation. Now we will have an opportunity to argue our position before a federal court and not be bogged down in internal administrative gridlock."

The U.S. District Court let stand the ACA's counts 2, 3 and 5, but dismissed counts 1 and 4. Counts 2 and 3 alleged that HHS policies unlawfully permit nonchiropractors to perform manipulation of the spine to correct a subluxation. Count 5 allege that the government has failed to ensure that managed care organizations properly allocate portions of monthly, predetermined sums they receive from Medicare for the coverage of manual manipulation of the spine to correct a subluxation.

Count 1 of the lawsuit was satisfied by the release of an HHS report dealing with chiropractic services under the Medicare HMO program. Count 4 alleged that the HHS Secretary's policies unlawfully permitted a managed care organization to require a referral by a primary care physician before a Medicare patient could visit and receive manual manipulation of the spine to correct a subluxation from a chiropractor. The court dismissed this count, "Because an administrative remedy exists under the Medicare program for the claim alleged in [this count]."

The parties are required under procedures applicable to all court actions to meet within 15 days of the order to discuss the status of the issues and file a report with the court 10 days thereafter.

National Blue Cross/Blue Shield Association Withdraws Motion to Dismiss ACA Lawsuit for Improper Venue

In the ACA's other ongoing legal action (against Trigon Blue Cross/Blue Shield and the national Blue Cross/Blue Shield Association), the Blue Cross/Shield Association had petitioned the court on

December 20, 2000 to dismiss the ACA's case based on "improper venue" (Abingdon, Virginia), claiming that the association did no business in the Western Virginia district, nor had any business contacts there.

However, on January 17, the national Blue Cross/Blue Shield Association withdrew its motion for dismissal on the question of improper venue, acknowledging that documents were discovered that indicate that the company does do business in the district. Blue Cross/Blue Shield's decision to withdraw the motion of dismissal came just one day before the ACA's deposition of Blue Cross/Blue Shield was scheduled to take place.

"With the issue of proper venue now resolved, we will forge ahead with our case," said Mr. McAndrews.

The national Blue Cross/Blue Shield Association is expected to file a new motion to dismiss the case. The ACA will argue that Blue Cross/Blue Shield has exhausted its right to file such delaying motions and must now answer the ACA's complaint.

In August 2000, the ACA, the Virginia Chiropractic Association (VCA), five chiropractors, and 18 chiropractic patients filed suit against Trigon and the national Blue Cross/Blue Shield Association, raising allegations against Trigon of conspiracy; racketeering; extortion; mail fraud; and antitrust violations. The suit also seeks to invalidate the Blue Cross/Blue Shield trademark because of the counts of antitrust and conspiracy.

The impact of this lawsuit on the managed care industry could have far-reaching, national significance beyond Trigon and the Blue Cross/Blue Shield Association. Many Blue Cross/Blue Shield plans and other insurers have adopted policies that single out doctors of chiropractic for special discriminatory treatment. The lawsuit draws into question the legality of this special treatment, drawing upon federal antitrust, trademark and RICO statutes and common law.

FEBRUARY 2001