

## **Chiropractors and Patients File Suit Against U.S. Secretary of Health and Human Services Louis Sullivan**

LAWSUIT ATTEMPTS TO END "EGREGIOUS AND CONTINUING DENIAL OF A MANDATED MEDICARE BENEFIT" AGAINST CHIROPRACTIC

Editorial Staff

In a lawsuit filed in the U.S. District Court in Minnesota, 24 patients and three chiropractors are charging Health and Human Services (HHS) Secretary Louis Sullivan, M.D. and the Medicare administration with 19 counts of attempting to prevent Medicare enrollees from receiving needed chiropractic care.

The lead plaintiff (patient) in the lawsuit has apparently had records deleted from her Medicare claim file. This deletion ultimately precluded the administrative appeal process for the review of her claims. One of the goals of the lawsuit is to start a process to enable the Secretary to hold persons responsible for deleting records accountable.

Attorney Paul M. Begich, who filed the action, had this to say: "The lawsuit although brought against the Secretary Sullivan is really a request to the Secretary to work with the chiropractic and senior communities to make sure the mandates of the United States Congress are finally followed by certain HMO plans. These HMO plans have contractually committed to the Secretary that they will provide manual manipulation of the spine to correct a subluxation. In my opinion, certain HMO plans in Minnesota have completely ignored this commitment to the Secretary. Most critically, these same plans are ignoring the commitment they made to the United States Congress, the chiropractic community and seniors when the plans accepted federal Medicare funding. These plans have received thousands if not millions of dollars from the Secretary and Congress to provide manual manipulation of the spine. Since 96% of the manual manipulations in this country are performed by doctors of chiropractic and since certain HMO's continue to allow policies of refusing to refer to doctors of chiropractic and refuse to contract with doctors of chiropractic, you can draw your own conclusions as to whether the money is being used by the plans to provide the mandated benefit or going somewhere else.

"The lawsuit is significant to the chiropractic profession. Government and industry is moving to managed care. This lawsuit will show that unless doctors of chiropractic are allowed in HMO plans the critically necessary health benefit of spinal adjustment will not be provided to American citizens. The American public should not tolerate organized medicine's refusal to allow chiropractic participation in HMO plans."

When Secretary Sullivan's office was contacted, they stated that Secretary Sullivan as a rule does not comment of litigation that is still in progress.

The following are excerpts of the over 1 inch thick complaint filed on July 7, 1992:

*United States District Court  
District of Minnesota  
Fourth Division*

Mary P. LaScotte, Shirley Barth J. Howard Evans, Gwenyth Hochradel, Civil File No. Mildred Houck, Florence Jacobs, Dorothy Jehoich, Myrl Jehoich, Harold Jessen, Doris Johnson, Mabel Kern, Robert Kern, Ethel Kuenzli, Elsie Mason, Florence Quinn, Ambrose Robak, Ann Roen, Freida Scherek, Euline Setterholm, Orval Smith, Emma Stobbe, Charles Tharaldson, Helen Vandergon, Arbuta Wisuri, Dr. Dennis Arne, Dr. Gerald Arne, and Dr. Patrick Napoli,

Plaintiffs, COMPLAINT

vs.

*Louis W. Sullivan, Secretary,  
United States Department of  
Health and Human Services*

Defendant. (DEMAND FOR JURY TRIAL)

1. Plaintiffs bring this lawsuit to finally halt the egregious and continuing denial of a mandated Medicare benefit.
2. First, plaintiffs, who are Medicare enrollees and Medicare providers, request the Court interpret the Medicare law and determine whether the law requires that the Medicare benefit must be provided by Minnesota prepayment Medicare plans upon a showing of reasonable and necessary need for the Medicare covered benefit.
3. Second, the plaintiffs request the Court find that certain prepayment Medicare plans fail to provide and continue to deny the Medicare benefit and that such failures result in both constitutional and statutory violations.
4. Third, the seniors and their providers request the Court invalidate certain actions of the Secretary and direct the Secretary to take specific steps to have legal policies and legal rules applied in the HMO Medicare process.
5. Finally, the plaintiffs seek determinations of the Court that affirmative acts of the Secretary and, most critically, certain failures to act by the Secretary, violate the United States Constitution, the Administrative Procedures Act, and the Medicare laws.
6. This lawsuit affects the rights of over 130,000 seniors enrolled in Minnesota HMO Medicare plans. This lawsuit is a substantive challenge to the rules, policies, methods and practices, and other final decisions of the Secretary and his agent HMO plans. All but one of the plaintiff seniors currently have Medicare benefit claims mired in the HMO Medicare or Medicare administrative appeal process. The HMO appeal process has determined that the plaintiffs' constitutional, statutory and regulatory challenges cannot be resolved or even addressed in such appeal process. The seniors and their doctors again present themselves to this Court and respectfully request the Court intervene and help them.
8. In 1972 Congress amended the Medicare laws to assure that seniors who voluntarily enrolled in the Part B Medicare supplemental insurance program would receive the benefit of manual manipulation of

the spine to correct a subluxation as demonstrated by x-ray to exist (hereinafter the "Benefit").

9. In August of 1974 the Secretary published final rules governing chiropractic Medicare participation and, most critically, recognized a chiropractic provider's status as a point of entry provider in the Medicare health care delivery system. In comments to the final rules the Secretary directed: (c) The fact of enactment of the amendment (section 273 of Pub. L. 92-603) requires rejection of the suggestion from medical sources that chiropractic should not be allowed to be a separate and distinct point of entry to health care.

24. To implement the TEFRA legislation, the Secretary announced proposed rules in the spring of 1984 and for the first time in Medicare and HMO Medicare, the Secretary also proposed the "choice of practitioner" rule. The proposed rule and now final rule provides:

If more than one type of practitioner is qualified to furnish a particular item or service, the organization may select the type of practitioner to be used. 42 C.F.R. 417.414 (b) (4).

25. Over 29,900 seniors and their doctors of chiropractic filed comments and warned the Secretary that adopting the choice of practitioner rule would guarantee that no plan would refer to doctors of chiropractic. The seniors and their doctors also notified the Secretary that such lack of referral could lead to the elimination of chiropractic provider participation in HMO Medicare which could guarantee the elimination of a mandated Part B Medicare service, manual manipulation of the spine to correct a subluxation demonstrated by x-ray to exist.

Parties

33. Defendant Louis W. Sullivan is the Secretary of the United States Department of Health and Human Services.

34. The HMO plans are Part B Medicare HMO/CMP prepayment health plans that receive federal monies to provide health care to Part B Medicare enrollees in the Minnesota geographic area.

## Count One

The HMO Medicare Law Requires That the Benefit Must Be Provided

## Count Two

Certain Minnesota HMOs Are Not Providing the Benefit

## Count Three

Denial of Constitutional Right to Equal Protection Under the Laws and Injunction

## Count Four

Denial of Constitutional Right to Due Process and Injunction

## Count Five

Declaratory Relief and Injunction

## Count Six

Illegal Delegation of Authority by the Secretary

Only Congress can eliminate a Medicare provider. HMO plans are systematically eliminating chiropractic participation. The "Choice of Practitioner Rule" is currently being used to eliminate chiropractic providers. The Secretary should take affirmative steps to stop such plan conduct.

## Count Seven

Providing the Manual Manipulation Benefit

## Count Eight

Reversal of Decisions of the Administrative Law Judge and Other Relief

## Count Nine

Reversal of Errors of Appeals Council and Other Relief

## Count Ten

Illegal Proposed Rules on Senior Aggregation of Claims

## Count Eleven

Proposed Penalty Rules

## Count Twelve

Illegal Substitute Benefit, Therapeutic Equivalent Benefit and Exhaustion Policies, Illegal Procedural Rules and Illegal Final Decisions

Editor's Note: The complaint list a number of "illegal final decisions" that are simply incredible. Be watching in the next issue of Dynamic Chiropractic for the complete list.

## Count Thirteen

Violation of the HMO Medicare and Medicare Statutes, the Administrative Procedures Act, the Freedom of Information and Privacy Acts and United States Constitution

## Count Fourteen

Illegal Recommendation Review

## Count Fifteen

Illegal Chiropractic Review Policy

The Network Design Group apparently has a secret unpublished policy whereby their chiropractic consultant can NOT review a case in which no referral to a chiropractor was made.

## Count Sixteen

The HMOs are the Secretary's Agents

## Count Seventeen

Request for Declaratory, Injunctive and Mandamus Relief: Health Care Prepayment Plans

## Count Eighteen

Request for Relief Concerning Certain Substantive Decisions of the Secretary

## Count Nineteen

Request for Declaratory Relief, Relief in Nature of Mandamus, Decertification and Injunction

Editor's Note: All state and national chiropractic associations as well as individual chiropractors should support this lawsuit for the benefit of chiropractic patients, especially senior citizens. This suit should be of great concern to senior's organizations (such as the American Association of Retired Persons - AARP) as well. The results of this action may determine the future or elimination of chiropractic care in the managed care format. For more information on how you can help support this critical effort, please contact:

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