

ERISA Legislation -- How It Will Help Chiropractors

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In March and April 1991, legislation to change the Employee Retirement Income Security Act (ERISA) was introduced in the U.S. House of Representatives and the U.S. Senate. This legislation is of great value to all health care providers, including chiropractors.

It has been estimated that 50 to 60 percent of all individuals with health coverage are in self-insured plans governed by ERISA. Almost all companies with more than 500 employees are now self-insured. ERISA pre-empts all state insurance laws including freedom of choice laws.

When doctors bill third-party payers, there is a clear difference in response based on whether the payer is subject to state law or exempt from state law because of ERISA. If a commercial insurance company such as Aetna does not properly pay a claim, and if the insured person is injured as a result, a bad-faith lawsuit may be filed and punitive damages may be awarded. Such remedies provide a powerful incentive for the insurer to pay claims more fairly in the future. Also, because the damage awards can be quite significant, there are many attorneys who will handle these cases on a contingency basis. This creates access to the legal system for the patient.

In the world of ERISA, however, the situation is completely different. Regardless of the severity of injuries that are the direct result of an ERISA plan's unfair claims processing behavior, a lawsuit can only recover unpaid medical costs. Hourly attorney fees may be awarded at the discretion of the judge. Under ERISA, therefore, a plan has no incentive to fairly and expeditiously handle a claim because the courts will only require payment of the amount which should have originally been paid. Punitive and compensatory damages are not permitted.

The new federal legislation will dramatically change the picture. When S.794 and H.R. 1602 become law, insurance companies which process claims on behalf of ERISA plans will be subject to all state unfair claims practice laws. Claimants will not only be able to file bad-faith lawsuits, but will also be able to file complaints with the state insurance department.

ERISA was enacted in 1974 to define and govern employee benefit plans. The original intention was to protect pension plans from fraud and abuse. Late in the process an amendment was added which exempted all ERISA plans from state insurance laws. At the time, literally no one anticipated the problems seen today.

For years, ERISA plans were subject to state unfair claims practice laws. But following a landmark 1987 U.S. Supreme Court decision, *Pilot Life*, the rules were changed. As a result, an ERISA plan cannot currently be held responsible for damages regardless of the pain and suffering inflicted from an unfair claims practice.

Senators Metzenbaum and Kennedy, and Representative Berman are now attempting to reverse the effect of Pilot Life with new legislation. Once passed, the new law will make ERISA plans far more responsive than ever before.

What about the effect on chiropractic? Some states, for example Arizona, have defined discrimination against chiropractors as an unfair claims practice. Therefore, when ERISA plans become subject to state unfair claims practice laws, analysts predict that the Arizona insurance equality law will apply to many self-insured plans. What with the current debate surrounding mandated benefits, it is advantageous for insurance discrimination to be seen for what it really is: an unfair claims practice, not a mandated benefit.

The ERISA bill could have more of a positive impact on the chiropractic profession than any legislation before passed by Congress. Chiropractors in every state should contact their U.S. senators and representatives and ask them to support S.794 and H.R. 1602.

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