

Calif. DCs Face Workers' Compensation Dilemma

SB 354 WOULD REQUIRE MD AUTHORIZATION AFTER 15 VISITS

Wayne M. Whalen, DC, FIACN, FICC

By Wayne M. Whalen, DC, DACAN

If a California senator has her way, chiropractors won't be able to treat injured workers for more than 15 visits without medical doctors' permission. Sen. Jackie Speier, (D-Hillsborough), long an adversary of the chiropractic profession, has introduced SB 354, which would make it illegal for insurers to cover chiropractic care for more than 15 visits without MD authorization under the state workers' compensation system.

California businesses have been hit with substantial increases in workers' compensation premiums recently, the product of numerous factors. In the early 1990s, premium pricing was deregulated; the result was below-cost, predatory pricing to capture market share. That strategy unraveled when stock profits plummeted as the "dot-com" boom ended, and premiums now reflect the cost of doing business. In the interim, many insurance carriers went out of business or left the state. Last year, the state legislature passed a measure to dramatically increase payments to injured workers; that measure was supposed to be coupled with anti-fraud and other provisions to offset those increases. Unfortunately, with California's budget more than \$20 billion in the red, those reforms will go largely unimplemented.

The attack on chiropractic began last fall with the release of a paper by the Workers' Compensation Research Institute (WCRI), an industry-sponsored organization based in Massachusetts. The report compared various provider groups and various states, and concluded that in California, chiropractic doctors' costs to return an injured worker to the job were 30 percent higher than comparable medical care. The data used to support the conclusions were "proprietary" and never released; to date, while multiple subsequent similar reports have been circulated widely among capitol decision makers, the study itself has not been published officially, and is not subject to true peer review.

"One problem is that we have not been able to actually review the data on which these studies have been based," noted Kristine Schultz, director of governmental affairs for the California Chiropractic Association (CCA). "The insurers can essentially say whatever they wish, and use whatever numbers they wish, because the data is 'proprietary' and not subject to peer review."

Since then, multiple "studies" have been released targeting chiropractic treatment and costs.² They allege that chiropractic costs are out of control (and a major factor in the rising costs of workers' compensation), based on overutilization.

Last year, Sen. Speier drafted a bill to prevent DCs from performing Department of Motor Vehicles physicals, after a deranged driver drove his truck into the state capitol, causing serious damage to the building. The connection to chiropractic? The driver's DMV physical had been performed a year earlier

by a DC. Sen. Speier opined that performing a Snellen eye-chart test was the practice of optometry, and therefore outside the chiropractic scope of practice. It was only through the diligent efforts of the CCA that the bill was ultimately defeated.

Given the rising premiums, California businesses are screaming for relief, and the legislature is scrambling to accommodate them. No fewer than 59 bills targeting workers' compensation have been proposed, and nearly all target health-care providers. Why providers, and why DCs in particular? The studies promulgated by the WCRI, as well as others by the California-based, insurance-funded group California Workers' Compensation Institute (CWCI) have all focused on rising costs for providers, and DCs are singled out. The reports from these organizations show steadily increasing costs per claim for all providers, and in particular, chiropractors are painted as the number-one group in terms of payment, ahead of all other providers, including orthopedists and physical therapists. Further, these reports purport to show that chiropractic care is much more expensive on a case-average basis (\$2,066 for DCs, \$835 for MDs and \$731 for PTs), although they admit that DCs are involved in only 5 percent of all cases.¹

On April 2, Sen. Speier's bill was heard in the Senate Insurance Committee. The committee is chaired by Speier, so the CCA legislative team anticipated the bill would be voted out of the committee in deference to its author. More than 15 representatives of insurance carriers, grocery chains, the Chamber of Commerce, and even the California Medical Association were permitted to testify at length in favor of the bill. In contrast, testimony by the opposition, including myself, representing the CCA; Dr Reed Phillips, testifying on behalf of the Southern California University of Health Sciences; Carl Brakensiek, of the California Society of Industrial Medicine and Surgery (CSIMS); and a representative of the California Applicants Attorneys Association, was cut short.

Unfortunately, many of our arguments fell on deaf ears when an advertisement touting a chiropractic seminar to "double or triple" workers' compensation income from the "high profit" market, with testimonials bragging of increases of income of "over \$30,000," was passed around by Sen. Speier. The effect of the ad was immediate and devastating.

"Once they saw that ad, they never heard any other testimony," noted CCA Legislative Department Chair Bill Updyke, DC. "It will be hard to overcome."

The bill passed on a voice vote with no objection, but fortunately, it was "double referred," meaning it will be heard next in the Senate Labor and Industrial Relations committee - a decidedly more impartial venue, according to CCA Governmental Affairs Director Kristine Schultz. Overcoming both the insurance lobby's loaded studies and the embarrassing advertisements widespread in our journals will be much more challenging.

Meanwhile, 58 other bills that could impact the workers' compensation system in California also are making their way through the legislature. These include bills to:

- reduce provider fees to 120 percent of Medicare fees;
- require all doctors who treat injured workers to be certified;
- establish a "one-pay" system, eliminating personal-injury and workers' compensation;
- mandate a utilization schedule;
- essentially eliminate subjective factors of disability, such as pain;
- mandate that all injuries must be predominantly caused by work to qualify for compensation;
- and

- prevent injured workers who rehabilitate themselves from being compensated if they are disabled again.

As if that were not enough, the CCA is tracking and lobbying several other significant bills confronting the chiropractic profession, including a bill to allow PTs to diagnose and perform manipulation, another to license naturopaths, and yet another to expand the scope of practice of athletic trainers.

"Who is protecting the profession from these devastating bills?" wonders CCA President Peter Spenser. "Only one organization: the CCA. Only CCA has the resources, personnel and experience to take on these important battles."

Less than 25 percent of licensed California doctors of chiropractic belong to their state association, although membership has been increasing recently as doctors begin to understand the ramifications of complacency and leaving the work for "someone else."

Interested doctors may obtain additional information by contacting the CCA office at 1-800-455-2221. If you want to help, send donations to the CCA Political Action Committee (1600 Sacramento Inn Way, Ste. 106, Sacramento, CA 95815), or better yet, become a CCA member!

References

1. Victor R, Eccleston S. *WCRI Flashreport*, March 2003, FR-03-03, Cambridge, MA.
2. *Changes in Utilization of Chiropractic Care in California Workers' Compensation, 1993-2000*. California Workers' Compensation Institute (CWCI) 2003.

Wayne M. Whalen, DC, DACAN
Workers' Compensation Chair,
California Chiropractic Association Santee, California
drwwhalen@aol.com

Editor's note: This article discusses the status of SB 354 as of press time. As legislative activity is ongoing, please contact Kristine Schultz, CCA Governmental Affairs Department Director (916-648-2727, ext.130, or kschultz@calchiro.org), for current information on the bill, or visit the CCA Web site: www.calchiroassn.org.

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