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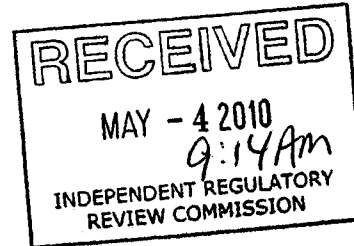
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New Horizon

CHIROPRACTIC CENTER

April 22, 2010

Regulatory Unit Counsel
Department of State
P.O. Box 2649
Harrisburg, PA 17105-2649



RE: Proposed Rulemaking
Reference No. 16A-4315

To Whom It May Concern,

I would like to make public comment on the proposed rulemaking by the state board of Chiropractic published in the Pennsylvania Bulletin on Saturday March 27, 2010.

From what I have been told by past members of the Chiropractic board, the primary goal of the board is to protect the consumer from the profession. In my opinion, the proposed rulemaking by the board in no way accomplishes this goal.

The "Background and Need for the Amendment" section specifically mentions the Worker's Compensation Act and motor vehicle accident laws. This states, "the proposed rulemaking will set forth standards for a licensed chiropractor to follow in those situations." This is a weak rationale at best for the proposed regulations.

Having taught Utilization Review, Peer Review and Independent Examination throughout the United States, I can say with certainty that the process in Pennsylvania is already more regulated than any state that I could think of. Many of the conflicts from the Worker's Compensation Act have been used by the board in this proposed rulemaking. Therefore, I feel that this proposed amendment is not necessary.

Proposed rules would provide that a chiropractor may not perform an independent chiropractic examination or peer review if the chiropractor has previous professional involvement with the patient or chiropractor under review. This does not state "in the same matter" as it does regarding precertification. Therefore, one could read this that a chiropractor could only review the same patient or the same doctor one time and that is it. It does not lead one to believe that you could see the patient for multiple examinations for multiple injuries. Also, why could a chiropractor not do multiple independent examinations on the same patient if it was a longstanding and chronic issue? Would it not be better to have a doctor who is familiar with the case do another examination?

The proposed rulemaking also states that a chiropractor could not do an independent examination if "the chiropractor's impartiality may reasonably be questioned." This is subject to interpretation and the board clearly gives leeway for someone to file a complaint against an examining chiropractor for any reason that they may deem "impartiality."

I have enclosed an article from the Pennsylvania Chiropractic Associations newsletter from February 17, 1998. This article has this to say about reviewing chiropractors: "seldom do they meet the moral, ethical, and professional standards required of examining doctors." The article then goes on to encourage doctors to have their patient's file a complaint with the Bureau of Professional and Occupational Affairs. My point is this. If this is the viewpoint of a trade association in the Chiropractic profession, how many Chiropractic board members are currently members of the Pennsylvania Chiropractic Association or have strong ties to the association? Based upon the above referenced article, would this raise question about the partiality of some of the board members and make the proposed regulations look like they are politically motivated?

I also seem to remember that the Chiropractic Boards Newsletter several years ago also had an article that stated board complaints could be filed.

The proposed rulemaking would require a chiropractor performing an independent examination or peer review to obtain and review the patient record of the treating chiropractor. This is not realistic and is not the reviewing doctor's responsibility. First, a doctor whose treatment is under review would be bound to confidentiality and would have no authorization to release records directly to a reviewing doctor. Second, how would an examination be "independent" if an examining doctor had direct contact with a provider under review. Records for a Utilization Review under the Worker's Compensation Act are always requested by the Utilization Review Organization (URO) by certified mail. Only certain information can be utilized for a Utilization Review and one of the functions that the URO's serve it to assure that the only documentation a reviewing doctor sees for review is the information that the Worker's Compensation Act allows. Third, a chiropractor performing an independent examination or peer review would likely have a contact that only allows the referral agency to provide information used for the review. Lastly, why is there no mention of sanctions against a treating doctor if they fail to provide the records that were requested. Also, who pays for the postage/ expenses for the reviewing doctor to request the records?

The proposed rulemaking also would require a chiropractor performing an independent examination or peer review to provide a copy of the report to the treating chiropractor. In reality, the chiropractor would be responsible to provide the completed report to the party (review company) that requested and paid for the service. The reviewing Chiropractor would likely be bound by contract to only send the report to the requesting source. There would also be confidentiality issues.

Page 3

If a Chiropractor sent a Utilization Review report under the Worker's Compensation Act directly to a chiropractor under review, this would be a clear violation to the Worker's Compensation Rules and Regulations. Also, under the Worker's Compensation Act, Chiropractors under utilization review would get a copy of the report by certified mail. Providers also receive a copy of the report under the automobile law making this provision moot.

The proposed rulemaking also would require chiropractors performing an independent examination or peer review to actively practice 20 hours a week. This is already in the Worker's Compensation Act. I totally agree with this. However, the board may effectively be restricting trade and the right for a doctor to perform these services. What about a doctor who becomes disabled and cannot practice. Why could they not be allowed to do certain peer review services as a source of income?

As stated previously, I do not feel that the proposed rulemaking is necessary as many of these issues are already covered by the applicable laws. If the board were truly interesting in protecting the consumer, there would be a provision that requires chiropractors performing an independent examination or peer review service to file a complaint/ notify the board when they suspect fraud, abuse, and malpractice in the cases that they review. Reviewer's could also be required to report poor record keeping and failure to meet minimum practice standards to the board.

The proposed rulemaking as it is currently written is one-sided against a percentage of the profession that performs independent examinations and peer review services. The Worker's Compensation and automobile laws have appeal processes. The board has not even made a compelling argument why these amendments are necessary but the board, in my opinion, clearly seems to target these doctors of chiropractic performing review work.

Thank you for the opportunity to submit this information.

Sincerely,



Gregg J. Fisher DC

Enclosures

The Newsletter

of the Pennsylvania Chiropractic Association

pca

The mission of the Pennsylvania Chiropractic Association is to promote fair and equitable access to the highest quality of chiropractic care within the Commonwealth of Pennsylvania.

Volume Three, Number Two

February 17, 1998

Inside This Issue

- 1 HealthAssurance/HealthAmerica Responds
- 1 Legislative Alert
- 2 District Meetings
- 5 The Feds Are Coming!
- 6 District Updates
- 7 District Updates
- 10 PCA Continuing Education Calendar
- 12 Worker's Comp Update
- 12 Patient Rights
- 13 Phil English Town Meeting
- 14 PCA Member News
- 15 PCA/ICA Sponsor Seminars
- 15 The IMMAX Corporation
- 16 Chiropractic Demographics
- 17 Revenue Sharing Ruling
- 17 Suits Against Anthem
- 19 Classified Advertisements

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HealthAssurance/HealthAmerica responds to the PCA's Attorney

For some time many western Pennsylvania chiropractors have had payment for physical modalities and procedures other than spinal manipulation regularly denied by a preferred provider organization, HealthAssurance. The reason for this denial has been stated on Explanations of Benefits as: "This service is considered ineligible under your benefit plan when rendered by this type of provider." Inquiries by chiropractic offices have made it clear that payment for these services is available for such services in other types of offices but not in chiropractic offices.

In an attempt to rectify what the PCA considers to be an illegal practice, our legal counsel wrote to HealthAmerica, the parent company for HealthAssurance. In a reply from Alicia M. Hawkins, Assistant General Counsel for HealthAmerica, HealthAmerica has denied discrimination by provider type. Ms. Hawkins stated that denials for these

services could have been made for a number of reasons such as exhaustion of a physical therapy benefit in a particular policy or in the case of network participating chiropractors because of a capitated arrangement for all physical therapy services. In the letter, HealthAmerica refused to undertake an independent review of all chiropractic claims, as PCA had requested, for therapy modalities and procedures denied since May 1, 1996. They did offer, however, to review individual denials of claims.

PCA had hoped that Ms. Hawkins letter would signal a change in HealthAssurance's practice. Reports from chiropractic offices to date, unfortunately, have not borne this out. At this time, if your office has been affected by HealthAssurance's discriminatory practices, the PCA requests that you do the following:

1. Request reconsideration of any physi-

Continued Page 8

Legislative Alert!

State Bill 100 with the Corman Amendment — We need your patients' support!

Senate Bill 100 is to be reported out of the Appropriations committee in mid February. Senator Corman will propose his Patient Access Amendment on the floor of the Senate mid-February to mid-March. The amendment defines chiropractors as specialists. Allows patients to go out of network upon referral from the primary care provider for specialty care and allows the patient to choose the specialty/specialist. The patient would have to pay a 20% co-

insurance as a disincentive. Chiropractors would be reimbursed 80% of the managed care rate and would be able to bill the difference to the patient.

The amendment has taken countless hours of work by the PCA legislative committee and the Allied Health Care Coalition. The PCA has taken the lead and has integrated the Fellowship Dr. Greg Caldwell, to have Senator Doyle Corman republican

Continued on Page 8

The Feds...

continued from Page 5

the government pays for and the documentation is not up to their standards, also you are required by federal law to submit all reimbursable services performed on Medicare patients whether you accept assignment or not.

Here are several other reasons:

1. The patients of Medicare age are the fastest growing segment of the population.

2. There is talk of allowing people age 62-64 to buy into Medicare.

3. With all the studies that are being performed proving the effectiveness and cost efficiency of chiropractic, the current insurance system will not be able to deny our usefulness.

4. With the aging population, our services will be in more demand than what they are currently. With the improved documentation it is easier to show that we keep patients out of the hospitals and nursing homes. The need for pain relievers is reduced and the general health of our patients is better.

5. Also, with improved documentation, it will be harder for the adjusters to cut our claims on a review because of the documented medical necessity.

NOW THAT YOU HAVE THE INFORMATION THAT YOU NEED FOR MEDICARE DOCUMENTATION, THE DATE OF THESE GUIDELINES ARE TO BE IMPLEMENTED HAS BEEN PUSHED BACK TO JULY 1, 1998. You have been given a reprieve. Do not wait to start improving your note taking. Do it Now!

Pennsylvania Chiropractic Association is preparing to put on three seminars about Documentation and the Guidelines that were discussed in this article in multiple regions in the state. See the following page to register for this important program which is brought to the membership at a discounted rate.

Newsletter Contributors

Roy Love, DC; Rick Mason, DC; Len Lenhart, DC; Dave Watto, DC; Phyllis Spikes, Mark Bradshaw, Esq.; Norman Hetrick, Esq.; Robert L. Shuster, Esq.; Mark Minuto, DC; W. Kieth Parish, DC; Roger Coldren, DC.

Martin/Worker's Comp Update

Most of you will recall the PCA victory in the Martin case. Martin stood for the proposition that an injured employee could treat with a chiropractor, where no chiropractor appeared on an employer's list of five medical providers. Naturally, in light of subsequent statutory revisions, this is now the "list of at least six" providers.

Although the Martin case has not been specifically referenced in the subsequent statutory and regulatory revisions, there is a good argument that Martin remains viable and applicable where no chiropractor appears on a list of at least six, or where an employee has not signed an acknowledgment that he or she is aware of the employer's list of at least six. Jim Kutz at Eckert Seamans has prepared guidelines for using the Martin rationale to obtain payment for treating injured workers during the first 90 days. These materials were part of Mr. Kutz's handouts at PCA workmen's comp seminars conducted last year. The home office has additional copies of these materials which can be forwarded to you upon request.

Patient Rights — Review the work of Reviewing Doctors

It has been several years since the state introduced the "peer review" process for handling automobile and work-related injuries. Back then, the topics of discussion between employers, insurance companies and politicians were cost-containment and increased accountability for providers of health care.

Today, the peer review process frequently seems like little more than a shield for insurance companies to limit and micromanage patient care. While utilizing doctors of chiropractic as their reviewing doctors, they allegedly evaluate the medical necessity and reasonableness of care. Of course, the doctors who conduct these reviews do so solely by scanning pieces of paper. They never see the patient. They never examine the patient. Seldom do they meet the moral, ethical and professional standards required of examining doctors.

Commonly, these review doctors offer guidelines as the basis for their opinions - none of which are accepted as standards of care by the State Board of Chiropractic. Yet, the laws in Pennsylvania permit them to be paid for their actions and protect them from litigation.

Our patients have been victimized long enough, while not every denial is necessarily actionable, if you suspect that one of your patients has been improperly denied insurance benefits, there is a state agency who can REVIEW the work of the reviewers! Your patients can contact the Bureau of Professional and Occupational Affairs at the following address to request a Complaint Form:

Bureau of Professional and Occupational Affairs
P. O. Box 2649
Harrisburg, PA 17105-2649
1-800-822-2113