

Actions Speak Louder Than Words

By James Edwards, DC

Recently, leaders from other organizations irresponsibly stated "little or no progress" had been made in the Department of Health and Human Services' (HHS) Centers for Medicare and Medicaid Services lawsuit, and that a legislative solution would have been the best option. I would like to use this column to give you a few "insider insights" about what has been attempted and accomplished as a result of the HHS lawsuit that seeks to prevent other providers from correcting subluxations under Medicare.

After reading the misstatements noted above, I immediately directed ACA attorneys to compile a comprehensive summary of all administrative, legislative, political and legal activities relative to the issue. Although I knew a great deal of work had been done, not even the chairman of the board realized the depth and breadth of our actions. (A complete listing can be accessed at www.acatoday.com.)

The first surprise I got was that our efforts began on this issue 13 years ago, in 1990, when, of all things - a legislative solution was attempted!

Spurred by increased concern that the chiropractic benefit was not being delivered by DCs, the ACA passed legislation to study the extent to which Medicare HMOs make chiropractic services available to beneficiaries. The legislation provided that the HHS secretary include specific recommendations necessary "to ensure access to such services." Unfortunately, **the HHS completely ignored the law!**

A second legislative solution was attempted shortly before the lawsuit was filed on Nov. 12, 1998.

The ACA worked with Senators Tom Daschle (D-SD) and Tom Harkin (D-IA) to include report language in the omnibus budget bill that would reaffirm congressional intent that treatment

by means of manual manipulation of the spine to correct a subluxation performed by a chiropractor is a covered benefit under Medicare. Unfortunately, the language was ultimately stripped from the report by a senior House staffer.

The third and final legislative solution was attempted in March 1999. At the request of the ACA, Representative Barbara Cubin (R-Wyo) introduced House Concurrent Resolution 62, which stated treatment by means of manual manipulation of the spine to correct a subluxation is a uniquely chiropractic service and should be guaranteed for beneficiaries as a choice in the new Medicare+Choice program. The resolution did not receive sufficient support, and its failure to pass was utilized later by the HHS in pleadings before the federal district court. In other words, legislative efforts were not successful in achieving the desired result, and were **used against us in court!**

The other surprising thing about the summary of activities I received was **how much has been accomplished** as a direct result of the legal action. Consider the following impressive results to date:

- The issuance of an Office of Inspector General survey and study, first mandated by Congress in 1990, was not provided until the initiation of ACA's lawsuit in 1999. The study showed clearly the virtual elimination of the chiropractic benefit in managed-care organizations contracting with Medicare. The government released this data a **mere 61 days after the ACA filed suit.**
- The determination by the federal court that the ACA **does have standing to sue** on behalf of its members to enforce those members' interests in preserving the chiropractic benefit of manual manipulation of the spine to correct a subluxation, under the Medicare program.
- The complete reversal of the prior Medicare policy that permitted physical therapists to provide the chiropractic benefit to Medicare patients, and the issuance of a new policy that states, among other things, that managed care organizations **may not utilize physical therapists to provide the Medicare-covered physician service of manual manipulation of the spine to correct a subluxation.** That one victory, more than justifies every penny that has been spent. However, litigation will continue until MDs and DOs also are prohibited from providing subluxation care.

So, the next time you read that "little or no progress" has occurred, or that a legislative solution would have been the best option, you will have the "insider insights" to know that those claims are simply untrue!

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