

Maryland Chiropractic Association Legal and Legislative Report Fall 2016



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Health Care Legislation Maryland 2016 First Interim Report

Introduction

The bills cited and reviewed in this Report are not an exhaustive presentation of all healthcare legislation. Rather, they represent legislation that we believe are the most relevant to chiropractors because, “No man’s life or property is safe while the legislature is in session.” Mark Twain.

Note that most bills discussed below that were enacted have become effective October 1 of this year.

Legislative Issues

The Turf Issues

Last year it was the acupuncturists fighting over their “turf” in the belief that only they could do dry needling. Through the efforts of the Maryland Chiropractic Association (“MCA”), the acupuncturists’ effort to take away this important modality from chiropractors was soundly defeated.

This year, through HB 232, the athletic trainers tried to enlarge the scope of their practice by adding the conditioning and treatment of “tactical athletes” to their authorized services. The MCA carefully analyzed HB 232. It determined that provisions of this legislation would expand the scope of athletic trainers to include physical “conditioning” of firefighters, EMTs, police officers and other public safety workers to better meet the rigors of their jobs. Unfortunately, the bill’s expanded definition of “practice athletic training” would also have allowed athletic trainers to treat and rehabilitate any public safety employee injuries. The MCA advised the legislature that treating on-the-job injuries and rehabilitating injured workers has always been the province of physicians, physical therapists, occupational therapists, and chiropractors. These professions, the MCA made clear, have the appropriate education, skill, and training to treat injuries, provide needed therapies and provide work hardening. The legislature agreed with the

MCA and all provisions of HB 232 that would have allowed athletic trainers to engage in treating or rehabilitating injured workers were removed from this legislation.

HB 1420 introduced this year will separate the massage therapists (“MT”) from the Board of Chiropractic Examiners and provide them with their own licensing board.

In 2008, MCA, at the request of the legislature, agreed to include the licensure of massage therapists within the existing functions of the Maryland Board of Chiropractic Examiners (“MBCE”). The legislature then amended the Maryland Chiropractic Act. The 2008 amendment renamed the MBCE to be the Maryland Board of Chiropractic and Massage Therapy Examiners (“MBCMTE”), authorized the licensure of massage therapists, described their scope of practice and provided for their membership in the MBCMTE.

The practices of massage therapy and chiropractic have a degree of similarity, but are far from coextensive. For that reason, the inclusion of massage therapists (“MTs”) into the licensing structure of the MBCE was not intended to be permanent. Rather, it was an accommodation to provide assistance to MTs in organizing their profession and establishing fair and coherent administrative, licensing and regulatory functions. Even more important, there has been continuous apprehension at allowing MTs to sit in judgment of chiropractors in disciplinary proceedings and involvement in the adoption of chiropractic rules.

As a result of the efforts of the MCA and many of its individual members, HB 1420 passed and will become law October 1, 2016. Thereafter, chiropractors will no longer be bound in association with a profession that has such different education, training, and scope of practice parameters.

In General

In each legislative session there are numerous bills (usually close to 3,000) dealing with all manner of professional practice matters. Relevant bills deal with such matters as: the cost of copying and compliance requirements under HIPAA; assignment of benefits; requirements for chiropractors to bill workers’ compensation claims within 45 days of service; authority to treat by out-of-state team doctors; reimbursement; malpractice; and professional disciplinary matters.

The MCA monitors, analyzes and weighs in on behalf of its members on those bills that, for our profession, have benefits or present problems. As a member you

should, also, feel free to call attention to any legal or legislative issues which you believe merit MCA attention.

Legal Developments

Executive and Administrative Services Agreement

The MCA's agreement with the Shaner Company provided it with an Executive Director and basic administrative services. This Agreement had been in place for a number of years without review and amendments. This Agreement expired and was being performed as a holdover contract. This February a new favorable agreement was negotiated with the Shaner Company. Under this new agreement, the MCA will incur no increased costs other than a negligible annual cost of living increase. The MCA will also have considerable flexibility in controlling the future course and maintenance of services.

Non-Discrimination in Reimbursement of Chiropractors

This year the MCA also joined the American Chiropractic Association and other state associations in letting Optum Insurance know that its proposed per diem reimbursement of chiropractors was both unwise and likely unlawful. This proposal would only apply to chiropractors and not affect medical doctors and other healthcare professionals. As such, we made it clear that the MCA would not tolerate this discrimination and that it violated applicable anti-discrimination laws, including Section 2706 of Affordable Care Act. The MCA will continue to monitor this situation, communicate with Optum, and consider taking appropriate action if Optum should move forward with this proposal. Any efforts to complain to CMS or engage in actions against Optum require that the MCA first tried to get compliance by Optum and assistance from the state.

Antitrust and Licensing Boards

Antitrust Issue

Federal antitrust law prohibits groups and entities from engaging in anticompetitive activity. There is an exception for bona fide activities authorized and supervised by the state. However, the FTC has been actively challenging

healthcare licensing boards that restrict competition without clear state authority. The MCA believes that healthcare licensing and regulatory authority must be both preserved and be compliant with antitrust law. However, it has advocated for state oversight protection to ensure that no single health licensing board unfairly restricts the authority of other healthcare providers to practice their trade or profession.

Last year the Supreme Court ruled in favor of the FTC finding that healthcare licensing boards do not have sovereign immunity from federal antitrust laws unless they were subject to active supervision by a non-market participant state official or agency. Since this ruling, Maryland and most other states have been scrambling to meet this requirement by restructuring the operation of their health licensing boards.

The MCA is carefully monitoring and participating in efforts to reformulate Maryland licensing boards to ensure this state's chiropractors have fair licensing procedures that are free of predatory actions of other professions.

Direct Member Services

The MCA diligently works to keep its members apprised of important legal developments and professional practice requirements. In this regard, the MCA and its legal counsel have produced a substantial number of guidance articles and legal forms for its members. Documents produced for you guidance, include:

- Informed Consent for Chiropractic Patients;
- Reporting Child Abuse;
- Participating, Opting Out, and Declining Involvement in Medicare;
- Accommodating Deaf Patients under the ADA;
- What to Do When the Investigators Arrive;
- Waivers of Co-Pay;
- Pay Per Lead & Other Marketing Agreements; and
- Time of Service Discounts

Legal Counsel and the MCA, subject to the below caveat, also regularly responds to or provides information to help members with their individual questions and concerns. Recently, we have responded to a range of questions, including:

What should I do when the insurance company inspectors arrive and want to inspect my practice?
How do I register a trade name?
How do I handle an insurance company demand for repayment?
Can I be sued for copying practice protocols from a management consulting company's web site?
What do I do when an insurance company will not pay for physical therapy rendered by a chiropractor?
How much can I charge for providing a patient record?
How do I sell my practice or just my patient list?
How do you pay marketers and promoters?
Can I waive the copay for this patient or these patients?
What happens if a patient demands I change my treatment code or diagnosis?
What happens to a practice on death or retirement?
How can I hire a physical therapist or medical doctor?

So, what's your question?

Caveats

This report, listed articles and efforts to respond to member questions are not legal advice and do not constitute an attorney client relationship. These educational efforts are only intended as a guide or review of basic facts and law. The purpose of these educational efforts is to help practitioners spot issues for discussion and further inquiry; they are not a substitute for obtaining advice from your legal counsel or the government officials responsible for administering these laws.

The reader is further advised that laws, regulations and especially published policies of state and federal agencies are constantly subject to amendment and changes in interpretation. Finally, reliance on MCA and counsel efforts in setting practice protocols or as a defense to government action is further limited in that audit and enforcement actions are always, to some degree, subject to the discretion of government officials.

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