

April 12, 2013

The Honorable John Carney
1406 Longworth House Office Building
Washington, DC 20515

The Honorable Peter Roskam
227 Cannon House Office Building
Washington, DC 20515

Dear Congressman Carney and Congressman Roskam:

The American Chiropractic Association (ACA) is a professional society composed of doctors of chiropractic (DCs) whose goal is to promote the highest standards of ethics and essential patient care, contributing to the health and wellbeing of millions of patients. The ACA is the largest association in America representing the chiropractic profession. The ACA recognizes the importance of combating fraud, waste and abuse in federal health care systems and readily offers our support of the PRIME Act -- Preventing Improper Medicare & Medicaid Expenditures.

Development of Fraud and Abuse Policies

Since its inception in 1964, the ACA has strongly opposed fraud and abuse in health care through its own code of ethics and health policies. We take the issue of fraud, waste and abuse very seriously and have taken a strong stand against any form of healthcare fraud. The ACA's House of Delegates (HOD) passed the "Fraud and Abuse Policy"¹ in August of 2001 as part of our ongoing work with federal agencies and the insurance industry to improve the impact of reimbursement and medical review policy on the chiropractic profession. Additionally, in 2003 the ACA released a "Public Anti-Fraud Statement."² It stated, "The ACA, while recognizing the presence of fraud within this profession and all other health care disciplines, opposes any activity that constitutes fraud or any provider that profits from intentional misrepresentation." Finally, in 2004 the ACA's HOD ratified the "Fraud and Abuse Benchmarks" policy.³

Improving Standards for the Chiropractic Profession

The need for the profession to improve its documentation skills became clear in June 2005, when the Department of Health and Human Services' Office of the Inspector General (OIG) released a report on Medicare errors indicating that many of claims submitted by chiropractors contained errors or omissions that failed to justify medical necessity—leading to what the OIG considered inappropriate reimbursements. Since that time the ACA has taken numerous steps to improve standards within the chiropractic profession.

Following the 2005 report, four chiropractic organizations—the Association of Chiropractic Colleges (ACC), the Congress of Chiropractic State Associations (COCSA), the Federation of Chiropractic Licensing Boards (FCLB), and

¹ ACA's "Fraud and Abuse Policy" http://www.acatoday.org/level2_css.cfm?T1ID=10&T2ID=117#40

² ACA's "Public Anti-Fraud Statement" <http://www.acatoday.org/pdf/policyonfraudpublicstatement.pdf>

³ ACA's "Fraud and Abuse Medical Review Benchmarks Policy" http://www.acatoday.org/level2_css.cfm?T1ID=10&T2ID=117#40

ACA—quickly combined ideas and resources to prepare a comprehensive plan to improve the clinical documentation of doctors of chiropractic and the overall climate for federal chiropractic claims. ACA launched a comprehensive online education program, open to all DCs, titled, “*Proper Medicare Documentation,*” providing doctors of chiropractic with tools and information to improve their Medicare documentation. The program also helped reinforce the profession’s commitment to addressing inadvertent errors in documentation and billing.

Additionally, the ACA continuously publishes articles in our Association’s monthly magazine and in the *Journal of the American Chiropractic Association (JACA)* on topics including but not limited to ethical practice, standards for appropriate medical record keeping and Medicare and Medicaid claim submission. The purpose of these articles is to increase general understanding of the Medicare and Medicaid programs as well as keep our members informed and aware of current laws and regulations in order to maintain compliance.

The ACA also publishes and periodically updates its *Clinical Documentation Manual* to assist doctors of chiropractic to better understand generally accepted patient health record practices. The manual has been developed as an educational tool for the chiropractic profession and is intended to reflect current documentation practices. The ACA recently published the third edition of this vital publication and is currently available to the chiropractic profession.

Members of the ACA are also strongly encouraged to have a compliance program in place in their office. We urge each member to develop a compliance manual as recommended by the OIG, perform regular self-audits to ensure that the policies and procedures they have in place meet current CMS requirements, and regularly audit their billing procedures to assure full and accurate compliance. It is the opinion of the ACA that the best defense from possible fraud and abuse allegations is prevention. Keeping members informed of coding changes, documentation guidelines, and compliance with federal, state and local regulations are essential.

Involvement of the Profession in Developing and Administering Fraud and Abuse Rules and Regulations

While typically we think of fraud as billing for services not rendered, soliciting or receiving a kickback or bribe, falsifying information and medical records, the federal government has expanded the list of items that would be included under fraud. Under Medicare, inadvertent billing and/or documentation errors, incorrect coding, as well as billing for items that the Centers for Medicare & Medicaid Services (CMS) determines (after the fact) are not medically necessary, now fall under health care fraud and false claims.

Additionally, we frequently receive reports from members that Medicare Administrative Contractors (MACs) are misinterpreting CMS policy and putting unnecessary requirements on DCs. For example, we recently received reports of a MAC denying claims when a DC used a hand-held adjusting device. According to the Medicare Benefit Policy Manual (Chapter 15, Section 2401.1 – *Manual Manipulation*, page 215), “Coverage of chiropractic service is specifically limited to treatment by means of manual manipulation, i.e., by use of the hands. Additionally, manual devices (i.e., those that are hand-held with the thrust of the force of the device being controlled manually) may be used by chiropractors in performing manual manipulation of the spine. However, no additional payment is available for use of the device, nor does Medicare recognize an extra charge for the device itself.” It is also important to note that MACs are inconsistently applying Medicare criteria across the country and in doing so, payers outside of Medicare are following suit and also administering benefits incorrectly.

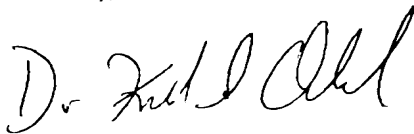
The ACA believes that if inadvertent billing and/or documentation errors are considered to be fraudulent activity, then misinterpretation of CMS policy and failing to properly administer Medicare benefits should also be considered fraud/patient abuse. MACs need to understand CMS administrative rules as they apply to the services provided by a Doctor of Chiropractic. Issues of fraud and abuse are obviously a high priority for the chiropractic profession given the scrutiny we have received from the 2005 and 2009 OIG reports. This is clearly a

concern for our profession and the best way to rectify this is to involve ACA in developing fraud and abuse standards for both Medicare and Medicaid. In order to help facilitate this, a DC or someone with in-depth knowledge of CMS policy in relation to chiropractic as well as chiropractic knowledge and expertise, should be placed on staff at CMS to spearhead these efforts and to ensure they are appropriately administrated.

ACA believes strongly that everyone benefits from anti-fraud initiatives: Patients benefit by having an increased level of trust in providers; federal programs and insurers benefit by saving costs; and providers benefit by protecting the reputation of their profession from the inappropriate acts of an unethical minority. It is to the advantage of the federal programs, the insurance industry and all health care professionals to cooperatively identify and eliminate potentially fraudulent and abusive activities due to its negative impact on the public and the image of all health care professionals.

Once again the ACA thanks you for the opportunity to comment on these critical issues and again offer our support for PRIME Act. If you should have any questions, please feel free to contact Meghann Dugan-Haas, ACA Director of Federal and Regulatory Affairs, at (703) 812-0242 or via email at mdugan-haas@acatoday.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Dr. Keith Overland". The signature is fluid and cursive, with the first letters of "Dr.", "Keith", and "Overland" being capitalized and prominent.

Keith Overland, DC, CCSP, FICC
President, American Chiropractic Association