



STATE OF OREGON  
LEGISLATIVE COUNSEL COMMITTEE

# 2  
EXHIBIT  
PAGE 1 OF 3

September 12, 2012

Representative Jim Thompson  
900 Court Street NE H388  
Salem OR 97301

Re: Participation of Chiropractic Physicians in Coordinated Care Organization Networks

Dear Representative Thompson:

You have asked for a legal opinion on the following question:

If an Oregon "Coordinated Care Organization" (CCO) refuses to allow any (emphasis in original) chiropractic physicians within the CCO network to act in the capacity of a primary care provider providing primary care services (e.g. annual physical exams, wellness annual counseling, screening and wellness blood work, resting ECGs, lung function testing, nutritional counseling, smoking cessation and obesity prevention and treatment, non-pharmacological treatment of some of the 60 most common health conditions presenting to a primary care office, etc., etc.) [w]ould this violate ORS chapter 414 [section 4, chapter 80, Oregon Laws 2012] which states in part[:]

Section 4. (1) A fully capitated health plan, physician care organization or coordinated care organization may not discriminate with respect to participation in the plan or organization or coverage against any health care provider who is acting within the scope of the provider's license or certification under applicable state law.

The short answer to your question is yes.

Section 4, chapter 80, Oregon Laws 2012, states that a coordinated care organization (CCO) "may not discriminate with respect to participation in the . . . organization or coverage against any health care provider who is acting within the scope of the provider's license or certification under applicable state law." To answer your question, it is necessary to determine, first, whether the services you listed are within the scope of a chiropractic physician's license and, second, whether refusing to reimburse any chiropractic physician who provides those services constitutes the type of discrimination prohibited by the section.<sup>1</sup>

<sup>1</sup> Your question was whether a CCO may refuse to allow any chiropractic physician within the network to act in the capacity of a primary care provider. For purposes of this opinion, I am assuming that this means the refusal to reimburse a chiropractic physician for providing primary care services.

To determine whether primary care services are within the scope of a chiropractic physician's license, I read the Guide to Policy and Practice Questions published by the State Board of Chiropractic Examiners.<sup>2</sup> The guide addressed the following procedures as being within the scope of practice of a chiropractic physician:

- Annual physical exams
- Wellness annual counseling
- Screening and wellness blood work
- Resting electrocardiograms
- Lung function testing
- Nutritional counseling
- Obesity prevention and treatment

# 2  
EXHIBIT  
PAGE 2 OF 3

I also contacted Dave McTeague, Executive Director of the State Board of Chiropractic Examiners. He confirmed that all of the services in your list are within the scope of practice of a chiropractic physician. With respect to "non-pharmacological treatment of some of the 60 most common health conditions presenting to a primary care office," he responded that chiropractors may offer or prescribe over-the-counter drugs and other vitamins or mineral supplements.

The next question is whether the refusal to reimburse a chiropractic physician for providing those services constitutes discrimination with respect to participation in the CCO or with respect to coverage. As is relevant here, the dictionary defines "discriminate" as "to make a difference in treatment or favor on a class or categorical basis in disregard of individual merit." *Webster's Third New International Dictionary of the English Language* (unabridged ed., 2002). By reimbursing for primary care services provided by an allopathic physician, but not for the same services provided by a chiropractic physician, solely on the basis of the physician's license and even though both are licensed to provide the services, a CCO is treating the two classes of physicians differently on a basis other than individual merit in the extent to which the physicians may participate in the organization.

In addition, section 4, chapter 80, Oregon Laws 2012, also prohibits a CCO from varying reimbursement rates based on factors other than quality or performance measures. In the House Committee on Rules work session on the amendments to Senate Bill 1509 (2012), which became section 4, chapter 80, Oregon Laws 2012, I testified that a CCO could vary reimbursement rates based only on quality and performance measures. Representative Freeman further emphasized this point, and the committee adopted the amendment with that understanding. Therefore, a CCO also violates the section by varying reimbursement rates for covered services based only upon the provider's license and not based upon quality or performance measures.

Finally, ORS 414.625 (2)(k) provides that members of a CCO must have "a choice of providers within the coordinated care organization's network." Subsection (4), added by section 20, chapter 8, Oregon Laws 2012, requires the Oregon Health Authority, in selecting CCOs to serve a geographic area, to "optimize access to care and choice of providers." A CCO would be in conflict with these provisions if the CCO refused to permit any of its members to select a chiropractic physician as a primary care physician if that physician is licensed to provide primary care services.

<sup>2</sup> Available online at <[http://cms.oregon.gov/OBCE/publications/Guide\\_to\\_Policy\\_Practice.pdf](http://cms.oregon.gov/OBCE/publications/Guide_to_Policy_Practice.pdf)> (visited September 11, 2012).

Representative Jim Thompson  
September 12, 2012  
Page 3

I hope this answers your question. Please feel free to contact me if you have further questions or concerns.

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Very truly yours,



Lorey H. Freeman  
Senior Deputy Legislative Counsel