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- DISTRICT OF COLUMBIA
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- NEW YORK

LICENSED TO PRACTICE CHIROPRACTIC IN:
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- VIRGINIA

January 5, 2015

M E M O R A N D U M

For Dissemination to the Field Members

To: NYSCA Officers, Directors, Delegates, District Presidents and General Members, Field Members
From: Karl C. Kranz, DC, Esq.
Executive Director / Staff Counsel
New York State Chiropractic Association

NOTICE:
Revalidation of Chiropractic Provider Enrollment in the State Medicaid Program

File: 2015 - Medicaid

Gentlepersons,

The New York State Department of Health (DOH) has asked the New York State Chiropractic Association (NYSCA) to assist the Department notify field doctors about a **federal requirement** that requires **all** providers to **revalidate their enrollment** with the **state Medicaid Program every five years**. This requirement is made pursuant to the **Patient Protection and Affordable Care Act** (Pub. L. 111-148, 124 Stat. 119, enacted on March 23, 2010), as amended by the **Health Care and Education Reconciliation Act of 2010 (HCERA)** (Pub. L. 111-152, enacted on March 30, 2010) (collectively referred to as the "**Affordable Care Act**" or **ACA**), specifically Title VI — "Transparency and Program Integrity," Subtitle E — "Medicare, Medicaid, and CHIP Program Integrity Provisions," at **§ 6401. "Provider screening and other enrollment requirements under Medicare, Medicaid, and CHIP"**[1] and associated regulations at 42 CFR 455.414.[2]

- With regard to **MEDICARE** . . .

  Section 6401 (a) of the Affordable Care Act (ACA) established a requirement for **all** enrolled providers and suppliers to revalidate their Medicare enrollment information under new enrollment screening criteria. This revalidation effort applies to those providers and suppliers that were enrolled ***prior to March 25, 2011***. Newly enrolled providers and suppliers that submitted their enrollment applications to CMS on or after March 25, 2011, are not subject to this requirement. Between March 25, 2011 and March 23, 2015, Medicare Administrative Contractors (MACs) are supposed to be sending out notices on a regular basis to implement the revalidation process for **each** provider and supplier. According to CMS,

revalidation notices were sent out in batches beginning in 2011 and monthly thereafter. The latest batch was mailed on December 15, 2014. CMS requires providers and suppliers to **wait** to submit a revalidation **only after** being asked by their MAC to do so. Note that 42 CFR 424.515(d) gives CMS the authority to conduct these off-cycle revalidations.[3]

- With regard to **MEDICAID** – the focus of the Notice at issue here . . .

The New York State Department of Health has indicated that the state agency will notify doctors of chiropractic who have billed and received a Medicaid payment in the past two years directly. It appears, however, that certain of these providers may be exempt from revalidating at this time, particularly if she or he has met one of the following criteria:

Since March 25, 2011, the provider has:
1. reported to NYS Medicaid an ownership change that was effective on or after March 25, 2011; or
2. reinstated, reactivated or revalidated her or his participating in the NYS Medicaid Program.

If either of these situations does **NOT** apply to you or your practice, you **must** revalidate your state Medicaid enrollment. **If you do NOT revalidate your enrollment,** the Department warns, **your participation in the state Medicaid program will be terminated**. Further, the DOH indicates, **doctors who have NOT received a Medicaid payment in the last two years will be terminated by the Department without receiving a revalidation notice.** It appears that the Department will be mailing a termination letter since the Department states that instructions in a DOH termination letter will explain how providers can re-enroll in the state Medicaid program, if the doctor chooses to do so.

Further, the Department notes, some doctors of chiropractic may have more than one Medicaid enrollment file/provider number (NPI). The DOH advises that these doctors will received a notice and letter for each provider number she or he possesses. **To keep all provider numbers active, the revalidation process MUST be completed for each provider number separately.**

Even if you are **not** a currently enrolled Medicaid provider, enrolling, or validating your current enrollment information may be a good idea.

The Department notes that if providers need additional helpful information that "[a] great place to start is by accessing the Revalidation Power Point presentation at www.emedny.org/ under the "PROVIDER ENROLLMENT" tab at the top of the eMEDNY screen. A link to the chiropractic enrollment section can be found under "**Provider Enrollment**" tab which will provide chiropractic field doctors with two options:

- Option 1 – "Chiropractor - Individual Billing Medicaid" is to be used by a field doctor is she does provide or will provide medical services and bill medicaid. Enrollment instructions and an online, fillable PDF enrollment form for this option can be found on the linked page. Note as well that this option may require that the doctor provide additional information to complete the enrollment, including, but not limited to:
  - Electronic Funds Transfer (EFT) Authorization - form #701101 (as well as the EFT Attestation form #701102)
  - ETIN Certification Statement for New Enrollments - form #490602
  - Notification of Status as Group-only Practitioner - form #426801
  - Prior Conduct Questionnaire - form #431001
  - Request for Participation as a Group Member - form #610202

  In addition, field doctors should be familiar with the DOH Chiropractor and Portable X-Ray Manual Policy Guidelines and Billing Guidelines (Chiropractor and Portable X-Ray Billing Guidelines, General Professional Billing Guidelines, and General Remittance Guidelines).

- Option 2 – "Chiropractor - Order/Prescribe/Refer/Attend ONLY" to be used by a field doctor that will only Order/Prescribe/Refer/Attend (OPRA) and she will **NOT** be Billing Medicaid for those services. OPRA Enrollment instructions and an online, fillable OPRA enrollment form for this option can be found on the linked page. Note that Medicare enrollment is required as well. In addition, doctors choosing this option may have to file a Prior Conduct Questionnaire - form #431001 to complete this enrollment option. The DOH also indicates that field chiropractors should also be familiar with the DOH Chiropractor and Portable X-Ray Manual Policy Guidelines and Billing Guidelines as well (Chiropractor and Portable X-Ray Billing Guidelines, General Professional Billing Guidelines, and General Remittance Guidelines).

Finally, the state Department of Health notes that a revalidation includes providing information on the provider's ownership, managing employees, agents, and persons with a controlling interest in the practice, as well as providing current addresses, specialties, etc. of the practice and that revalidations **must be completed by March 2016**.

Attached, please find a sample revalidation letter, the state Health Department will be sending out to affected providers.

Q: Is this a new Medicaid program?
A: "New" is a relative concept. This registration and revalidation program is a consequence of Title VI — "Transparency and Program Integrity," Subtitle E — "Medicare, Medicaid, and CHIP Program Integrity Provisions" of the Affordable Care Act as § 6401 enacted in 2010 and regulations adopted by CMS in 2011.

Q: I thought chiropractic services were not covered under the state Medicaid program. Why to I have to enroll and/or revalidate in the program?
A: It is the Association's understanding that, apart from one small and particularized exception, chiropractic care and services have not been a covered reimbursable service under Medicaid for roughly thirty-five (35) years or more.

Specifically, it is the Association's understanding that Article 5 – "Assistance and Care" of New York Social Services Law Title 11 – "Medical Assistance for Needy Persons," § 365-a – "Character and adequacy of assistance" precludes reimbursement of chiropractic care and services at subsection 4(b) as follows:

> 4. Any inconsistent provision of law notwithstanding, **medical assistance shall not include**, **unless** *required by federal law and regulation* as a condition of qualifying for federal financial participation in the medicaid program, the following items of care, services and supplies:
> (b) care and services of chiropractors and supplies related to the practice of chiropractic;[4] (Underlining, italics and emphasis added.)

Further, it is the Association's understanding that, at one time, chiropractic care and treatment were covered Medicaid services, reimbursed by the joint federal, state and local government program but that, outside of one small exception **targeting mainly a select group of principally *Medicare* (not Medicaid) beneficiaries under federal law, reimbursement for chiropractic services was eliminated from the state Medicaid Program pursuant to Chapter 444 of the Laws of 1979**. Indeed, as recently as 2009, chiropractors were advised bluntly to "not submit claims to Medicaid if the patient does **not** have Medicare coverage."[5] (Emphasis added.) While the language in more recent

versions of the state Medicaid billing guidelines relating to chiropractic are not as plainspoken as the 2009 version, nonetheless, the outcome in current guidelines is effectively the same.

It is the Association's understanding that reimbursement of chiropractic services under the state Medicaid program applies only to a limited number of dual eligible **Qualified Medicare Beneficiaries (QMBs)** who qualify both state Medicaid and Medicare coverages, and who are eligible to receive coverage of chiropractic care and services through Medicare with Medicaid serving as the supplemental carrier.

According to the "New York State Medicaid Program Chiropractor Manual Policy Guidelines,"

> "Medicaid payment to Medicaid enrolled chiropractors is limited to deductibles and coinsurance, as appropriate, for Medicare approved services. A chiropractor **must accept assignment** of Medicare claims for QMBs. Medicaid enrolled chiropractors are also prohibited from billing QMBs for payment of any deductible or coinsurance costs. The combined Medicaid and Medicare payments must be considered as payment in full for chiropractic services provided to QMBs by Medicaid enrolled chiropractors.
>
> * * *
>
> "Coverage of Medicare Coinsurance and Deductibles for Chiropractors
>
> "Limited Enrollee Coverage
>
> "The Medicaid Program permits payment toward Medicare deductibles and coinsurance, as appropriate, for certain Medicare Part B services provided to a select group of elderly and disabled Medicare beneficiaries with low income and limited assets. These individuals are known as Qualified Medicare Beneficiaries (QMBs).
>
> "QMBs are individuals who have applied to Medicaid through the local department of social services and have been determined eligible for Medicaid payment, as appropriate, of Medicare premiums, deductibles and coinsurance for Medicare approved services."[6]

Although a limited number of people qualify for coverage as QMBs, as the population ages, it is almost certain that more individuals will qualify under this dual benefit program as well. Doctors of chiropractic who live in or around areas where there is a growing population of QMBs may want to consider enrolling in this program if they are not enrolled already.

Q: Does this revalidation program expand patient access to chiropractic services by Medicaid patients in New York?

A: No, not necessarily. The revalidation program is not an expansion of Medicaid services in New York. That said, chiropractic services under the state's Medicaid program may expand marginally but only to the degree that Medicaid patients in New York also qualify for Medicare coverage making them dual eligible Qualified Medicare Beneficiaries as noted above.

Q: Shouldn't getting Medicaid coverage for chiropractic benefits be a legislative priority?

A: Yes. For several sessions the NYSCA legislative agenda included bills to restore chiropractic and the funding for chiropractic care and services in the state's Medicaid program. To date, however, the

legislature has not shown any interest in acting on these legislative measures. To the contrary, in an ill-conceived attempt to cut some of the enormous amount of resources the state spends on Medicaid care and services, in the recent past some gubernatorial candidates have campaigned on the promise of eliminating chiropractic from Medicaid. This is particularly ironic since, aside from the few QMBs that qualify for Medicaid benefits under federal Medicare rules, chiropractic is not now and has not been a part of the Medicaid program in New York since 1979. There are no funds to be cut from the state Medicaid program by eliminating chiropractic because chiropractic is not covered currently within Medicaid. Rather, the Association has argued that the state's attitude is short-sighted, since studies continue to show that chiropractic is an efficacious and cost-effective substitute for the care and treatment of musculoskeletal conditions and complaints, particularly back pain when compared to standard medical care and surgery.[7] Consequently, the NYSCA feels that chiropractic care should be a covered service expense under Medicaid that will save the state some precious resource dollars. So far, however, the state Legislature has been unmoved to chiropractic's appeals.

Q: I noted that the New York State Medicaid Program Chiropractor Manual Policy Guidelines referenced above, state that "Medicare limits payment for chiropractic services to treatment by a state licensed chiropractor by means of manual manipulation of the spine to correct a subluxation demonstrated by X-ray." Wasn't the Medicare X-ray requirement eliminated some time ago?

A: Yes. The NYSCA has asked the state Department of Health to amend or modify the Department's chiropractic guidelines.

The DOH Chiropractor and Portable X-Ray Manual Policy Guidelines indicate in at least two places that "Medicare limits payment for chiropractic services to treatment by a state licensed chiropractor by means of manual manipulation of the spine to correct a subluxation demonstrated by X-ray."

- The Policy Guidelines at "Section I – Requirements for Participation in Medicaid" stipulate the following:

  > "Limited Chiropractic Service Coverage
  >
  > Covered chiropractic services are limited to those services approved by Medicare. Medicare limits payment for chiropractic services **to treatment by a state licensed chiropractor by means of manual manipulation of the spine to correct a subluxation demonstrated by X-ray**."

- Similarly, "Section II – Chiropractic Services" of the state Policy Guidelines indicates that:

  > "The New York State Medicaid Program will only reimburse an enrolled chiropractor for deductibles or coinsurance, as appropriate, when Medicare approves the procedure.
  >
  > "Scope of Services
  >
  > "Covered chiropractic services are limited to those services approved by Medicare. Medicare **limits payment for chiropractic services to treatment by a state licensed chiropractor by means of manual manipulation of the spine to correct a subluxation demonstrated by X-ray**."

These stipulations are not correct. Demonstration of a subluxation by X-ray is no longer a Medicare requirement on the part of chiropractic physicians providing care pursuant to the federal Social Security Act (SSA). For example, SSA, Section 1861, subsection (r) – "Physicians," paragraph (5)

provides:

> "(5) a chiropractor who is licensed as such by the State (or in a State which does not license chiropractors as such, is legally authorized to perform the services of a chiropractor in the jurisdiction in which he performs such services), and who meets uniform minimum standards promulgated by the Secretary, but only for the purpose of sections 1861(s)(1) and 1861(s)(2)(A) and only with respect to treatment by means of manual manipulation of the spine (to correct a subluxation) which he is legally authorized to perform by the State or jurisdiction in which such treatment is provided.

Subsection (s) – "medical and other health services" of § 1861 at paragraphs (1) and (2)(A) intimate:

> "(s) The term "medical and other health services" means any of the following items or services:
>
> (1) physicians' services;
> (2) (A) services and supplies (including drugs and biologicals which are not usually self-administered by the patient) furnished as an incident to a physician's professional service, of kinds which are commonly furnished in physicians' offices and are commonly either rendered without charge or included in the physicians' bills (or would have been so included but for the application of section 1847B);

Further, the U.S. Department of Health and Human Services (HHS) Center for Medicare and Medicaid Services (CMS), Chiropractic Services manual notes at page 1:

> "Effective for claims with dates of service on or after January 1, 2000, an x-ray **is not required** to demonstrate the subluxation."[8] (Emphasis and underlining added.)

The obligation by chiropractic doctors to "demonstrate a subluxation by X-ray" was eliminated by the Balanced Budget Act of 1997, Title IV–Medicare, Medicaid, and Children's Health Provisions, Subtitle F--Provisions Relating to Part B Only, Chapter 1--Services of Health Professionals, subchapter b–Other health care professionals, § 4513. No x-ray required for chiropractic services.

> SEC. 4513. NO X-RAY REQUIRED FOR CHIROPRACTIC SERVICES.
>
> (a) In General.--Section 1861(r)(5) (42 U.S.C. 1395x(r)(5)) is amended by **striking** ``demonstrated by X-ray to exist''. <<NOTE: 42 USC 1395x note.>>
> (b) Effective Date.--The amendment made by subsection (a) applies to services furnished on or after January 1, 2000. <<NOTE: 42 USC 1395x note.>>
> (c) Utilization Guidelines.--The Secretary of Health and Human Services shall develop and implement utilization guidelines relating to the coverage of chiropractic services under part B of title XVIII of the Social Security Act in cases in which a subluxation **has not been demonstrated** by X-ray to exist. (Emphasis added)[9]

Even though the relevant federal law was changed more than fourteen (14) years ago, the New York State Medicaid Program Chiropractor Manual Policy Guidelines indicate that it is still necessary for chiropractors to demonstrate a subluxation of the spine by X-ray in order for a chiropractor to perform

manual manipulation of the spine on a Medicare/Medicaid patient. This is incorrect and is no longer the case. The NYSCA has asked the Department of Health to revise and update the Chiropractic Manual Policy Guidelines to reflect this change made to the Medicare Law more than a decade ago.

If field members have additional questions about Medicaid and this revalidation program in particular, the NYSCA invites field doctors to contact the Association with your questions. If the Association cannot provide you with answers directly, the NYSCA will refer the questioner to someone in the Department of Health who may be able to provide the answers to questions received from the field.

cc: NYSCA Board of Directors
NYSCA House of Delegates
NYSCA Legislative Counsel

References

1. Patient Protection and Affordable Care Act (H.R. 3590) (Pub. L. 111-148, 124 Stat. 119, enacted on March 23, 2010). Accessed Jan 3, 2015 at: http://www.gpo.gov/fdsys/pkg/PLAW-111publ148/html/PLAW-111publ148.htm

2. TITLE 42—Public Health, CHAPTER IV—CENTERS FOR MEDICARE & MEDICAID SERVICES, DEPARTMENT OF HEALTH AND HUMAN SERVICES (CONTINUED), SUBCHAPTER C—MEDICAL ASSISTANCE PROGRAMS, PART 455—PROGRAM INTEGRITY: MEDICAID, Subpart E—PROVIDER SCREENING AND ENROLLMENT

   §455.414 Revalidation of enrollment.
   The State Medicaid agency must revalidate the enrollment of all providers regardless of provider type at least every 5 years.

3. U.S. Department of Health and Human Services (DHHS), Centers for Medicare and Medicaid Services (CMS), Medicare Revalidations. Accessed Dec 27, 2014 at: http://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/MedicareProviderSupEnroll/Revalidations.html

4. New York State Social Services Law, Article 5 – Assistance and Care, Title 11 – Medical Assistance for Needy Persons, § 365-a – Character and adequacy of assistance, subsection 4.(b).

5. New York State Medicaid Program, Chiropractor and Portable X-ray, 150002 Billing Guidelines, Version 2009 – 1 (05/07/09), p. 31. Accessed Dec 18, 2014 at: https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0CCAQFjAA&url=https%3A%2F%2Fwww.emedny.org%2FProviderManuals%2FChiropractor%2FPDFS%2Farchive%2FChiropractor_Billing_Guidelines-2009-1.pdf&ei=nnaUVPSqNam1sATx_YLgAw&usg=AFQjCNHQ5MxJh_Z0akCso2eBD4rOc2UWeg

6. New York State Medicaid Program Chiropractor Manual Policy Guidelines, Version 2007 – 1 November 1, 2007, Section III. Basis of Payment for Services Provided, p. 6 of 9. Accessed December 18, 2014 at: https://www.emedny.org/ProviderManuals/Chiropractor/index.aspx

7. Zhou Y, Irwin S. (editorial) Back Pain: How to Avoid Surgery? British J Med Pract 2009; 2(1): 4-5.

"Treatment of low back pain remains a dilemma. In the USA more than 300 thousand (300,000) back surgeries are performed each year. For about 10% to 39% of patients, pain may continue or even get worse after back surgeries.(1) This condition is called failed back surgery syndrome. In the USA, about 80,000 new cases of failed back surgery syndrome are accumulated each year.(2) Pathological changes such as recurrent disc herniation, arachnoiditis, scar tissue formation, poor surgical indication, misdiagnosis, and surgical technique failure can all contribute to the failure of surgery. Pain after back surgery is difficult to treat. Many patients have to live with pain for the rest of their lives with severe disability." (Citations omitted.)

8. Department of Health and Human Services, Centers for Medicare & Medicaid Services, Chiropractic Services. Medicare Learning Network, ICN 906143 October 2013. Accessed December 18, 2014 at: http://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNProducts/downloads/Chiropractic_Services_Booklet_ICN906143.pdf

9. Balanced Budget Act of 1997, Title IV–Medicare, Medicaid, and Children's Health Provisions, Subtitle F--Provisions Relating to Part B Only, Chapter 1--Services of Health Professionals, subchapter b–Other health care professionals, § 4513. No x-ray required for chiropractic services. Accessed December 19, 2014 at: http://www.gpo.gov/fdsys/pkg/PLAW-105publ33/html/PLAW-105publ33.htm

NEW YORK
state department of
HEALTH

Howard A. Zucker, M.D., J.D.
Acting Commissioner of Health

Sue Kelly
Executive Deputy Commissioner

Date: May 1st, 2014
Provider ID: [redacted]
COS: [redacted]

[redacted]

Dear Provider:

Federal regulation 42 CFR Part 455.414 requires State Medicaid agencies to revalidate the enrollment of all providers on a periodic basis. The required form to revalidate your enrollment under the Provider ID listed above is available at https://www.emedny.org/info/ProviderEnrollment/index.aspx. Your completed form must be mailed, with all required documentation and fee (if required), to the address provided on page 2 of the form. We must receive your revalidation form within 90 days of the date of this letter. Failure to respond will result in termination of the provider ID listed above.

You are exempt from revalidating at this time if you meet one of the following criteria:

Since March 25, 2011 you:

1. reported to NYS Medicaid an ownership change that was effective on or after March 25, 2011; or
2. were reinstated, reactivated or revalidated by NYS Medicaid.

If you believe you meet one of the exemption criteria, send an e-mail to providerenrollment@health.ny.gov . Include your Provider ID (listed above) in your e-mail. We will review our records and respond to you. Failure to notify us can result in termination of your participation with NYS Medicaid.

If you have questions about the revalidation process, please go to www.eMedNY.org and under the Provider Enrollment tab choose "Revalidation Information", or contact the eMedNY Call Center at (800) 343-9000. We look forward to your continued participation in the NYS Medicaid Program.

Sincerely,

Jonathan Bick
Director
Division of OHIP Operations
Office of Health Insurance Programs