

THE HON. SHELLEY BERKLEY, ESQ.

December 11, 2015

George Curry, DC
President
International Chiropractors Association
6400 Arlington Boulevard
Suite 800
Falls Church, VA 22042

Dear Dr. Curry:

I have been contacted by International Chiropractors Association (ICA) members in Nevada who have asked for my perspective on possible Medicare reform language, with the objective of expanding the range of chiropractic services covered and paid for by that federal program. As you may recall, during my years in the US House of Representatives I was an active participant in deliberations on a host of chiropractic-specific issues and proposals and consistently supported efforts to enhance the status of chiropractic in federal legislation.

Regarding Medicare, the current law is quite specific and restrictive and I am certain that you are most familiar with the exact language presently in place. My first observation is that while the present language is restrictive, it most certainly communicates the intent of Congress to cover and pay for subluxation services, and the agency, The Centers for Medicare and Medicaid Services (CMS) has done so, albeit minimally and often begrudgingly, for many decades. I can vividly recall the many requests for assistance by doctors of chiropractic in my district as they sought to address the demands and requirements of Medicare as well as requests from Medicare beneficiaries asking why receiving chiropractic coverage was so difficult and restrictive. On the basis of this experience, I can agree that the time for reforming the role of the chiropractic doctor in Medicare has certainly come.

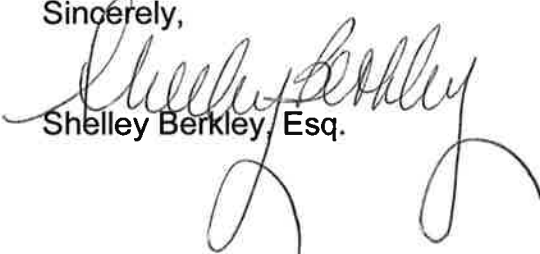
The precise ways and means of expanding coverage for chiropractic services does need, however, to be carefully considered and a united front within the chiropractic profession established before any move is made. This is the essential first step. As a former Member of Congress, I can tell you that competing perspectives and especially competing versions of legislative language almost always bring an issue to a quick standstill. I urge you to avoid this if at all possible. Having said this, I understand that there is a proposal to reform the existing law by simply striking the limiting language from the section that defines physicians under the Act. On this idea, I would simply observe that striking the limiting "subluxation" language would only enable possible expansion of chiropractic coverage on the part of CMS, where coverage decisions are made by policy and regulation, but guarantees nothing. On the other hand, removal of

the section that mandates coverage for manual manipulation, would be a definitive withdrawal of Congress' mandate to cover those services and CMS would most certainly act accordingly. As I have observed over the years, CMS has little affinity for the chiropractic program and would likely welcome such a change as it would eliminate a major portion of the program for them, with all its attendant administrative and political service requirements, and leave what is to be covered, if anything, completely up to agency decision-makers. I do not believe this is a course the profession should even consider.

As to language that would, in fact, secure the objectives the profession is seeking to secure, my strong advice is to craft language that specifies in detail those services that are to be added, leaving nothing to agency interpretation. No authorization that exists in the current law needs to be removed to do this, and again, I would argue against removing the manipulation authority, but suggest deleting the "only" that exists now and itemizing the other services you want added. The greater the detail in any revised statute, the less likely the profession's aspirations are to be thwarted by CMS in the agency's in-house coverage decision-making process.

I wish you the best as you seek greater fairness for chiropractors and Medicare patients alike. As I said above, the time for such reform is certainly at hand. Please feel free to contact me as this process moves forward. I would appreciate being kept informed of the progress and will be happy to help on any level, if I can.

Sincerely,



Shelley Berkley, Esq.