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ACA CHIROPRACTORS



Hands down better.

May 22, 2025

The Honorable Abigail Slater
Assistant Attorney General, Antitrust Division
United State Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

RE: Docket No. ATR 2025-0001, Comments on DOJ's Anticompetitive Regulations Task Force

Dear Assistant Attorney General Slater:

The American Chiropractic Association (ACA) submits the following comments regarding the launch of the Department of Justice (DOJ) Anticompetitive Regulations Task Force. ACA comments are directed specifically at healthcare barriers, participation and coverage issues facing both providers and patients.

ACA is the largest professional organization in the United States representing doctors of chiropractic (DCs). ACA members lead the chiropractic profession through collaborative relationships in public health, support for research and evidence-based practice, and increasingly as trusted members of integrated healthcare delivery teams to ensure the health and well-being of the estimated 35 million Americans who seek chiropractic services each year.

DOJ can help lessen, and ultimately eliminate, access barriers to high-value non-drug, non-surgical services for pain management by working with Congress, related departments and agencies to do the following:

- **Support passage and implementation of the Chiropractic Medicare Coverage Modernization Act (H.R. 539/S.106).** This bipartisan legislation will enable beneficiaries to access Medicare-covered services allowed under a chiropractor's state licensure. The current statute only allows coverage of "manual manipulation of the spine to correct a subluxation." Needed legislation would not add any new reimbursable services to Medicare that are not already covered services and delivered by existing providers. H.R. 539/S.106 would simply seek a modification of existing statute to ensure that doctors of chiropractic are allowed to furnish and order "existing covered services" that they are currently permitted to do under state law.
- **Restore doctors of chiropractic (DCs) as ordering/referring providers.** Department policy effective Feb. 26, 2010, included chiropractic medicine among the list of provider specialties approved to order or refer beneficiary services. The linked guidance has since been removed from the website. On Oct. 11, 2011, part of the policy was rescinded and replaced with a version that removed chiropractic medicine from the list of providers who can order and refer Medicare services. No other information changed.
- **Revise rehabilitative support for musculoskeletal care MIPS Value Pathway (MVP).** The 2025 Physician Fee Schedule modifies an episode-based cost measure MVP regarding Rehabilitative

Support for Musculoskeletal Care. The proposal adds five quality measures, adds one improvement activity and removes two improvement activities, all of which are again aimed at promoting rehabilitative support for beneficiaries. While chiropractors utilize evaluation and management codes as part of their standard course of care, by federal statute the codes are not payable under Medicare. This limitation in the model still severely limits the ability of chiropractors practicing in Medicare to demonstrate the true value they would provide by participating in the proposed MVP.

- **Promulgate rulemaking regarding Sec. 2706(a) of the Public Health Service Act.** Included in the Affordable Care Act was a bipartisan provision that would end discriminatory practices by insurers based on provider type. Despite a statutory deadline passed three years ago, Health and Human Services (HHS) is one of three agencies, along with Treasury and Labor, that have failed to act on this latest congressional directive. HHS and other departments involved must adhere to congressional intent and end coverage discrimination, allowing providers to practice within the full scope of their licensure.
- **Allow chiropractors to participate in the National Health Service Corps (NHSC).** NHSC is comprised of healthcare professionals who provide badly needed healthcare services in a variety of geographic areas known as HPSAs (Health Professional Shortage Areas), a designation determined in conformance with Section 332 of the Public Health Service Act. Facilities such as federally qualified community and rural healthcare centers can also be designated HPSAs. To help place health professionals in HPSAs, NHSC manages loan repayment and scholarship programs. In return for practicing in a designated HPSA for two years, these programs offer financial assistance (typically up to \$50,000) to repay student loans and expenses associated with obtaining an eligible health provider's degree. Healthcare providers who qualify for these programs include allopathic and osteopathic physicians, nurse practitioners, certified nurse midwives, physician assistants, dentists, registered dental hygienists, Health Service psychologists, licensed clinical social workers, licensed professional counselors, marriage and family therapists, and psychiatric nurse specialists. However, chiropractors are not allowed to participate, even if a designated HPSA or site requests a DC.
- **Allow DCs to serve in the U.S. Public Health Service Commissioned Corps.** The U.S. Public Health Service (USPHS) Commissioned Corps is comprised of approximately 6,000+ well trained, highly qualified public health professionals dedicated to delivering the nation's public health promotion and disease prevention programs and advancing public health science. Officers in the Corps provide healthcare services in a variety of locations and venues, including care to members of the U.S. Coast Guard, U.S. prisons and at community health centers. Health professionals allowed into the Corps include medical physicians, dentists, nurses, pharmacists, dieticians, psychologists, social workers, physical therapists, occupational therapists, veterinarians, speech pathologists, audiologists, and others. Even though virtually all types of healthcare providers are included, doctors of chiropractic have never been eligible to be commissioned into the Corps.
- **Issue New Antitrust Safety Zones for Physician Collaborative Efforts**
In February of 2023, the DOJ withdrew the DOJ/Federal Trade Commission antitrust "safety zones" relating to collaborative efforts between healthcare "competitors." The agencies kept in place the agencies' 2000 Antitrust Guidelines for Collaborations Among Competitors, which are viewed as not providing the same degree of detailed guidance as the prior antitrust "safety zones" on health care provider collaborations. This has caused some health care professionals to question whether their particular collaborative arrangement, such as those trying to coordinate

care between providers who are not employed by the same entity and want to participate in some of the now historical, value-based incentive programs, may now be subject to antitrust scrutiny. Providers, especially small practices, also worry that the agencies are signaling their intent to bring enforcement actions, and that their collaborative arrangement may be the target for the agencies to "regulate by enforcement." Therefore, it is the recommendation of the ACA that the agencies once again issue clear and precise antitrust "safety zones" which apply a liberal "rule of reason" standard which fully recognizes the overall favorable effect on healthcare competition and patient health of legitimate collaboration arrangements between and among healthcare professionals.

- **Lift Barriers to Non-Opioid Treatments Through the Indian Health Service**

There are 574 federally recognized Tribes in the United States, with approximately 2.1 million Tribal members. This population is the most underserved and often isolated group of people in the country, experiencing poverty, poor health outcomes and the highest mortality from opioid overdoses. Tribes are guaranteed health care by treaty with the federal government; however, the Indian Health Service (IHS) is consistently under-funded and under-staffed medically —and is not staffed with chiropractic physicians at all. IHS is the last remaining healthcare agency not to utilize chiropractic services per current guidelines, leading to substandard neuromusculoskeletal care and a higher distribution of opioid and other pain medication prescriptions compared with other populations. DOJ is urged to work directly with the Tribes and IHS to ensure non-opioid centered treatments are more easily accessible.

ACA appreciates the opportunity to provide comments on this issue. If you have any questions regarding our remarks, please contact John Falardeau, ACA Senior Vice President for Public Policy and Advocacy, at jfalardeau@acatoday.org or (703) 812-0214.

Sincerely,

A handwritten signature in black ink, appearing to read "Marcus Nynas, DC". The signature is fluid and cursive, with the initials "DC" written at the end.

Marcus Nynas, DC
President