

Delegating Services (e.g., Massage Therapy) to Unlicensed Staff – Must Carriers Reimburse?

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Recently, DK Coding and others completed an extensive research project on the issue – *Must an insurance carrier reimburse for services delegated to trained-but-unlicensed support staff?* The research was initiated based on the concerns of subscribers and clients in Pennsylvania whose efforts to legitimately delegate **massage therapy** have been hampered by the limitation. The research was immediately published in the form of an online Advisory and made available to subscribers of the consortium. A synopsis was also published and made available to the general public. For a copy of the synopsis, visit www.providerpro.net, and click on “What’s New?”

The Advisory sets forth a series of compelling arguments that under Pennsylvania law, health insurance carriers such as Highmark Blue Shield and Independence Blue Cross may in fact have a **duty** to reimburse providers for properly-delegated services, irrespective of the language in the plans / provider agreements.

For instance, a Pennsylvania Professions and Occupations statute expressly says that chiropractors can delegate services which do not require the *“formal education or training in the practice of chiropractic.”* While many supporting arguments can be made that massage therapy does not require the formal education or training in the practice of chiropractic, here is just one. Did you know that the State of Pennsylvania actually licenses and accredits – i.e., empowers – educational institutions within the State to train and certify massage therapists? Based on these and other facts, a strong argument can be made the State of Pennsylvania itself takes the position that massage therapy does not require the *“formal education or training in the practice of chiropractic.”*

Added to this, two particular insurance statutes specifically state that carriers must honor and recognize scope of practice laws when it comes to reimbursement. Additionally, the Advisory points to a Pennsylvania Insurance Department “Notice” that states that when chiropractic benefits are *mandated* by the state (such as in the case of automobile insurance coverages), carriers are required to reimburse services properly delegated by chiropractors. True, chiropractic benefits are not actually *mandated* under Pennsylvania law in the health insurance context. *However, shouldn't the same principle apply when a health insurance carrier voluntarily assumes a duty to provide chiropractic benefits? Shouldn't the same principle apply when various state insurance laws say that the carrier must recognize scope of practice laws?*

Still further, many health benefits plans and provider agreements (the controlling insurance contracts) contain provisions which specifically state that they will abide by the law of a given state, such as Pennsylvania. For example, a recent provider agreement of Independence Blue Cross reads: *“Governing Law. This Agreement shall be governed by, and construed, and enforced in accordance with the laws of the State....”*

Still further, the Advisory examines two different online opinions published by Highmark Blue Shield. One of the opinions says it will not pay for massage therapy when delegated to unlicensed individuals. The other reads somewhat differently and suggests that the carrier should pay for properly-delegated services.

All of which raises a very important issue. When a state recognizes that a service such as massage therapy can be performed by trained-but-unlicensed individuals, when a state specifically says that chiropractors can delegate services to support personnel, when a carrier's controlling contracts say that the carrier will follow state law, and when one or more online opinions suggests that the carrier may in fact have a duty to reimburse for properly delegated services, **how can the carrier say it will not reimburse for the delegated service?**

Arguably, it can't.

The Advisory concludes with a number of practical suggestions for providers. DK Coding works closely with area attorneys on these types of issues. If for any reason you or your attorney needs to speak with us regarding these issues, please feel free to give us a call.

It should be pointed out that in publishing the Advisory, the intent wasn't so much to focus on the law in Pennsylvania and / or on the chiropractic profession *per se*, or on any given carrier. The purpose was to begin gathering information about whether the same type of problem is occurring in various states. In addition, the purpose was to provide a *methodology* by which providers in any state, and in any profession, and with respect to any given carrier, can begin to address similar kinds of limitations imposed by that carrier. Undoubtedly, there will be other states, other professions, and other situations where the delegation / reimbursement issue will arise.

A synopsis or full version of the Advisory is currently available on the ProviderPRO.net web site. For a copy of this synopsis or full version, visit www.providerpro.net, and click on “What’s New?”