

Testimony to the House Committee on Health Care Regarding House Bill 2523

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Submitted by Laurel Gunderson, Providence MCO

The "Mahonia Hall" reforms of 1990 placed limits on chiropractic and naturopathic treatment, among other reforms. They have significantly reduced the cost of providing workers' compensation insurance and helped to attract new business to Oregon.

The *NW Labor Press* said on May 7, 2010:

"SALEM — With Governor Ted Kulongoski at the 20th anniversary celebration of the Mahonia Hall workers' compensation reforms, it was like old times. Present in the Oregon State Capitol Galleria May 3 were representatives of labor and business, and a crowd of state administrators; absent were chiropractors and trial lawyers, and injured workers."

"The reforms were touted as refocusing workers' comp on workers and employers, and reducing the role of "special interests" that had added costs to the system. The results of the reforms — at the time controversial within labor — have been dramatic."

"It has been the greatest success," Kulongoski told celebrants. Since 1990, Oregon's workers' comp premiums have dropped every year but one. Oregon employers pay 60 percent less today than they did 20 years ago."

"Do you know how much money that is to employers over the last 20 years?" Kulongoski asked. "\$17.5 billion. No other state in the country can claim that statistic."

"Twenty years ago, Oregon employers paid the eighth highest workers' comp insurance rates in the nation. The system was breaking down, recalled Bob Shiprack, longtime executive director of the Oregon State Building and Construction Trades Council, who took part in crafting the reforms. At the time, Shiprack also was an elected state representative from Beavercreek, and chair of the House Labor Committee. Employers paid \$100 in workers' comp premiums for every \$100 in payroll for some occupational classifications. Once injured, workers stayed out for years, sometimes getting addicted to painkillers, Shiprack said, or suffering depression brought on by the joblessness. And there were abuses of the system, including cases of fraud by chiropractors, attorneys and workers."

The *Oregonian* said in January 2010:

"Credit the effort of the late 1980's with fixing this system, in the face of interest-group obstacles" – *The Oregonian, January 2010*, naming workers' compensation reforms among the stories in Oregon in the last 20 years success." The article continues:

"The results of the 1990 reforms are astonishing. Since 1991, Oregon workers' compensation costs have declined more than 60 percent, and Oregon employers have saved 17.4 billion as a result. Worker benefits are at or above the median nationwide, and workplace injury and illness rates in the state have declined more than 50 percent since the late 1980's. Litigation has decreased dramatically, and injured workers today are much more likely to return to work than their predecessors. Perhaps most significant, the system continues to be driven by the parties it affects most: workers and employers. The Management-Labor Advisory Committee, which originated in 1990 remains the forum in Oregon to discuss and resolved workers' compensation issues."

The Mahonia Hall reforms have been such a huge success because they were designed by representatives of employees and employers – together. Medical providers and attorneys were purposely excluded.

With regard to HB 2523, the Management Labor Advisory Committee has not yet had a chance to discuss this bill. It is very important to have this group of management and labor representatives, appointed by the governor, weigh in on all legislation affecting the workers' compensation system.

There are several reasons HB 2523 fails to bring about any improvement to the system.

This bill would make changes to 656.260, which is the statute regarding managed care certification. It does not change 656.005 or 656.245, which are the current statutes that describe the time periods that chiropractors and naturopaths may provide treatment and authorize time loss benefits. Passage of this bill would create inconsistencies.

With regard to Naturopathic Physicians, generally they are not focused on orthopedic injuries, which is the majority of workers' compensation injuries. Additionally, Naturopathic Physicians are generally not familiar with workers' compensation, and tend to be holistically focused. Asking them to focus on an accepted condition or injury could be difficult for them. Many do not take workers' compensation, or indeed any kind of insurance.

Part of the 1990 reforms that created MCOs require MCOs to authorize primary care physicians who are not MCO members to provide care to injured workers when there is a history of treating the injured worker before the injury and the physician and the physician maintains the injured worker's medical records. If an injured worker chose a physician as required by a private health plan, that physician also may treat the injured worker. The intent of the Mahonia Hall group and the legislature was that the relationship a patient has with his or her primary care physician not be disturbed and if the PCP is willing, the PCP should be able to treat the worker.

Chiropractors are not recognized as PCPs in private, non-work comp insurance. Yet non-MCO chiropractors were given access to injured workers enrolled in an MCO under this same statute in 2013. However, when they submitted the 2013 bill they did not ask for additional time to treat injured workers beyond the 18 visits/60 days, whichever comes first, that they won in a previous bill that extended the time they could treat. Now, they are asking to serve as attending physicians, along with naturopaths, "for the life of an injured worker's claim."

If an injured worker needs time loss benefits beyond 18 visits or 60 days, whichever comes first, how will the injured worker with a chiropractor or naturopath as an attending physician get those benefits? Per ORS 656.005 and 656.245, only an attending physician may authorize time loss benefits. The chiropractor could not refer to another physician to authorize time loss benefits, unless the other physician assumed the role of attending physician. Therefore, it seems there is no benefit and many complications in changing 656.260 in the way that HB2523 proposes to do.

Additionally, there would be difficulties with a chiropractor referring to an MD or DO for additional services. MDs and DOs generally think of chiropractors as ancillary service providers, and we would anticipate that many chiropractors would end up losing their patients by making referrals and therefore may not make the necessary referrals.

Providence MCO has well over 100 chiropractors on our panel, and we do not feel that this house bill is necessary, and in fact would be destructive. It would require additional resources and staff. It would be confusing to insurers and other providers. The original Mahonia Hall reforms were enacted partly because of widespread abuse by chiropractors of palliative care allowances and treatments that were prolonged, expensive and not beneficial. We encourage the Committee not to support this bill, or at least make sure it gets proper review before the Management and Labor Advisory Committee.

We have been assured support of our position by the Oregon Self-Insurers' Association.

In conclusion, as noted by the Oregonian (Jan. 2010) the workers' compensation system should focus on the parties it affects most – workers and employers, not providers who continue to lobby for expanding authority not supported by the needs of workers and employers. This bill is not about workers' access to medical care, there is no access issue. It is about providers who want unlimited access to patients.

Thank you.

Providence MCO

Providence Managed Care Organization has been certified by DCBS to serve Oregon employers and employees since 1990, the year that the Mahonia Hall workers' compensation reforms brought managed care into existence.

Providence MCO is housed within Providence Health Plans, and shares the resources of Providence Health and Services. Providence Health Plans serves over 390,000 members. Providence MCO's surgical criteria and medical management guidelines are reviewed by the board-certified physicians on the Providence MCO physician advisory committee in conjunction with the health plan's advisory committee. Standards of care are the same for injured workers as they are for health plan members.

Providence MCO partnered with Chironet (now The CHP Group) in 1989 to provide access to credentialed chiropractors. The CHP Group then expanded to include naturopaths, acupuncturists, and licensed massage therapists. This partnership continues to this day, and Providence MCO is pleased with the rigorous credentialing process and the quality of the panel The CHP Group provides. The CHP group helped us develop our policies with regard to complementary providers, and they assist with case management as needed.

New California Law Limits Workers' Compensation Visits to Chiropractors

Stephen Barrett, M.D.

Chiropractors are notorious for "keeping their patients coming back." Many advise everyone to have their spine checked for "subluxations" and "adjusted" throughout life. Many chiropractors advise people whose symptoms have stopped to keep coming back for "preventative maintenance. Some chiropractors are networked with attorneys (and even medical doctors) to provide unnecessary tests and treatment to injured works and auto accident victims. Partly as a result, in many states, workers' compensation programs has become so expensive that employers have asked their state legislature to limit the amount of chiropractic coverage.

In 1992, *Florida Trend* magazine published a cover story on "why chiropractors get blamed for fueling the cost of workers' compensation." The author concluded that, "Workers' compensation is fraught with abuse, but no other players in the system rile business more than the chiropractors." A spokesman for the American Insurance Association even said that, "Sometimes I think of workers' comp as the chiropractic full-employment act." Some health-insurance companies called for limits on chiropractic treatment, and some wanted chiropractors out of the WC system altogether. The main complaints were about exaggerated diagnoses, overtreatment, and aggressive marketing aimed at patient retention from cradle to grave. The author also noted:

Less scrupulous attorneys turn to chiropractors, hoping they will give injured workers the highest impairment rating and extend treatment for as long as possible. The chiropractors who play the game are then rewarded with a steady stream of clients provided by their unspoken lawyer/partners.

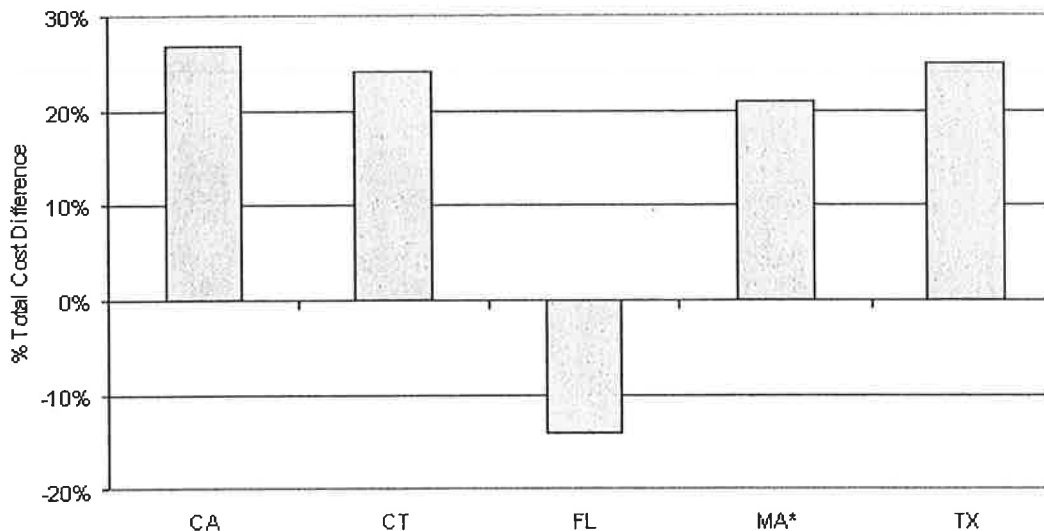
The payback for a lawyer comes in the medical expenses: The larger the expenses, the more the lawyer can expect, with legal fees paid by the insurer. . . . If a carrier disputes a claim . . . the lawyer can rack up hefty costs for time-consuming depositions and pre-trial appearances. Meanwhile, the chiropractor continues to provide treatment [1].

Two studies have focused attention on the problem in California. The first one, published by the Workers Compensation Research Institute of Cambridge, Massachusetts, analyzed 28,539 workers' compensation cases involving back strains and sprains in California and four other states and concluded:

- Chiropractic care could achieve the same outcome at lower costs if the number of visits were limited (see Figure A).
- Chiropractor-directed physical medicine care costs 30% more than physician-directed care and achieved the same outcomes as measured by duration of temporary disability.
- The higher number of visits that chiropractors use per case is the major driver behind the higher physical medicine payments.
- In Florida, chiropractic care achieved the same outcome at lower cost than physician-directed physical medicine care in Florida where reimbursement rules place strict limits on the number of chiropractic visits per case that will be reimbursed by workers' compensation payors. The fact that treatment and billing practices by Florida chiropractors result in lower medical costs while achieving a similar duration of disability as physician-directed care may provide lessons that other states can draw from.

- Physical medicine services are most often used for back injuries, representing 41% of all injuries that receive such services. This is not surprising because back injuries -- mostly strains and sprains -- represent one-quarter of all workers' compensation injuries, so they are disproportionately more likely to receive physical medicine services.
- In most cases, physicians manage care and arrange for physical medicine, either within or outside their organizations. Chiropractors are involved in about 13% of the cases, two-thirds of which are under the exclusive care of chiropractors.
- The average payment per workers' compensation claim was 30% higher in chiropractor-treated cases in California, Connecticut and Texas to achieve the same duration of disability as they are in physician-directed care. That's because chiropractor-treated claims involve more than double the number of visits, although the payment per visit is 19% to 24% lower.
- On average, chiropractors use 137% to 158% more visits that provide physical medicine services and 74% to 90% more visits for which office visits are billed. By contrast, in Florida, chiropractor-treated claims are 10% less expensive than similar physician-treated claims to achieve the same duration of disability. Medical costs per claim are 14% lower to achieve the same outcome.
- Florida chiropractors appear to treat and bill differently from chiropractors in other states. For example, Florida chiropractors treat with an average of eight visits per claim for claims with more than seven days of lost time from the job. Chiropractors in the other study states treat these cases with an average of 14 to 35 visits per claim. And Florida chiropractors are less likely to bill for office visit codes, and when they do, they bill for fewer visits.
- Part of the reason for the different results is that Florida law mandates absolute limits on the number of chiropractic visits per case -- the lesser of 18 visits or eight weeks of treatment.
- Cases treated exclusively by chiropractors have much longer durations of physical medicine services. Nearly one-quarter have durations of 15 weeks or more. Only 35% have durations of 4 weeks or less.
- The shortest durations of physical medicine treatment involve cases in which physicians manage treatment. In these cases, physical medicine services are either provided internally, externally by physical therapists or through hospital providers. Between one-half and three-quarters receive two weeks or less of services and more than three-quarters receive four weeks or less. About 5% have durations of physical medicine services of 15 weeks or more.
- Cases treated by both chiropractors and physicians, either sequentially or concurrently, have the longest durations of treatment with 43% having durations of 15 weeks or more [2,3].

Figure A Chiropractor Cases Cost More Than Physician Cases To Get Same Outcome



*Although statistically significant at the 10% level, these and the other results for Massachusetts may be produced by data limitations in the way physicians and hospitals are distinguished.

The second study, published a few months later by the California Workers Compensation Institute (CWCI), analyzed data from 134,312 cases in which a chiropractor was identified as a service provider on work injury claims from accident years 1993 to 2000. The Institute reported:

- More than one out of every six California workers' compensation treatment dollars paid to classified medical providers paid for chiropractic care, even though proportion of claims in the system involving chiropractic services declined from 8.0% in 1993 to 6.1% in 2000.
- The average amount paid for chiropractic care on these claims climbed more than 75% (\$1,100) as the average number of visits per claim rose 48%, the average number of procedures per claim more than doubled, and the average number of unique procedures performed by chiropractors during the course of each claim increased 27%.
- Snapshots of the average payments, average number of visits, and average number of procedures per claim at 12 and 24 months after injury showed that the increased utilization of chiropractic services started early in the life of the claim, indicating that chiropractic providers became more aggressive in the way they treat injured workers. The result has been a significant increase in chiropractic costs in California workers' compensation, with more dollars now spent on chiropractic services than on any other classified medical specialty.
- The California Chiropractic Association reports that between 1995 and 2000, the number of licensed chiropractors in California grew from 9,879 to 12,600, a 27.5% increase. At the same time, however, workers' compensation claim frequency declined and the number of injured workers in California fell from 825,000 to 787,000, a 4.6 % drop. Thus, the ratio of chiropractors to injured workers increased by one-third from 1.2 per 100 in 1995 to 1.6 per 100 in 2000. The combined effect of an increase in the number of chiropractic providers servicing fewer injured workers with higher levels of chiropractic services per claim increased both the average cost per claim and the overall cost of chiropractic care in California workers' compensation [4].

In 2003 , the California legislature held a hearing on a bill (SB 354) that called for limiting chiropractic care without special authorization to 15 visits per claim. This provision was subsequently removed by an amendment, but a representative of the California Chiropractic Association made an interesting comment about the hearing:

Unfortunately, many of our arguments fell on deaf ears when an advertisement touting a chiropractic seminar to "double or triple" workers' compensation income from the "high profit" market, with testimonials bragging of increases of income of "over \$30,000," was passed around by Sen. Speier. The effect of the ad was immediate and devastating [5].

California Senate Bill 228, which took effect on January 1, 2004, states that for injuries occurring on or after that date, an employee shall be entitled to no more than 24 chiropractic and 24 physical therapy visits per industrial injury. The law, part of a 6-bill package intended to curb runaway costs, was passed in the wake of two reports which concluded that the costs of treating back strains and sprains for injured workers with physical medicine services, such as manipulations, exercise, hot and cold packs and massage were greater when the care was directed by chiropractors than when it was managed by physicians.

In 2005, the California Worker's Compensation Institute (CWCI) concluded that SB228 had sharply reduced the cost of chiropractic and physical therapy. SB 228 states that employees shall be entitled to no more than 24 chiropractic and 24 physical therapy visits per industrial injury. The CWCI study found that since January 2004, the average number of chiropractic visits per case has been about 50%% lower and payments per chiropractic claim have been nearly nearly 60% lower than they were in 2002. For physical therapists, the average number of visits per claim dropped about 44% and the total cost per claim dropped about 48%. At the time implementation began, payments for physical therapy and chiropractic manipulation together comprised 37% of all California workers' compensation outpatient costs [6].

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