



**THE ATTORNEY GENERAL
OF TEXAS**

January 23, 1990

**JIM MATTON
ATTORNEY GENERAL**

Mr. A. W. Pogue
Commissioner
State Board of Insurance
1110 San Jacinto
Austin, Texas 78701-1998

LO-90-8

Dear Mr. Pogue:

You ask seven questions about insurance company procedures and policy provisions relating to provision of health care services by chiropractors. We believe Attorney General Opinion JM-301 (1985) is dispositive of the legal issues you raise. Several of your questions raise issues of fact, which we cannot address in the opinion process.

All of your questions involve the application of article 21.52, section 3, of the Insurance Code which reads in part as follows:

The payment or reimbursement by the insurance company, association, or organization for those services or procedures in accordance with the payment schedule or the payment provisions in the policy shall not be denied because the same were performed by . . . a licensed doctor of chiropractic There shall not be any classification, differentiation, or other discrimination in the payment schedule or the payment provisions in a health insurance policy, nor in the amount or manner of payment or reimbursement thereunder, between scheduled services or procedures when performed by . . . a doctor of chiropractic . . . which fall within the scope of his license or certification and the same services or procedures when performed by any other practitioner of the healing arts whose services or procedures are covered by the policy. Any provision in a health insurance policy contrary to or in conflict with the

provisions of this article shall, to the extent of the conflict, be void

In Attorney General Opinion JM-301, we addressed questions that were similar to the ones you pose. The opinion examined the language of the statute and some of the legislative history, and determined that the purpose of various amendments to the section "was to permit the insured, not the insurer, to select the kind of practitioner that would perform the services covered in the insurance policy." Attorney General Opinion JM-301, at 3. The opinion stated:

To accomplish the object of the legislation, such discrimination must be prohibited not only when it is the result of expressly discriminatory restrictions but also when it results from discriminatory restrictions disguised as non-discriminatory restrictions limitations on the place or manner in which the service is provided.

Id. at 5.

Your questions numbered 2 and 4 involve insurance contract provisions that limit payment for health care services supplied by doctors of chiropractic but do not limit payment for the same services when they are provided by other practitioners. In Attorney General Opinion JM-301, we said:

Policy provisions which exclude, restrict or limit payment or reimbursement for such services when they are provided by any of the specified practitioners, and do not provide the same exclusion, restriction or limitation on those services when they are provided by a doctor of medicine, are unlawful.

Id. at 4.

The answers to your other questions would require determinations of fact, which we are not authorized to make. We can only point out that article 21.52 of the Insurance Code prohibits discrimination not only in the amount paid for services but also in the "manner of payment or reimbursement." That prohibition on discrimination between practitioners in the manner of payment reaches all areas of

the payment process such as the use of unverified schedules, the use of consultants, and the review of the files. As indicated in our response to your first question, the board is the proper agency to determine whether insurance provisions and procedures are discriminatory.

Very truly yours,



Karen C. Gladney
Assistant Attorney General
Opinion Committee

KCG/er

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APPROVED: RICK GILPIN, CHAIRMAN
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