State of Wisconsin \ DEPARTMENT OF REGULATION & LICENSING

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Marlene A. Cummings
Secretary

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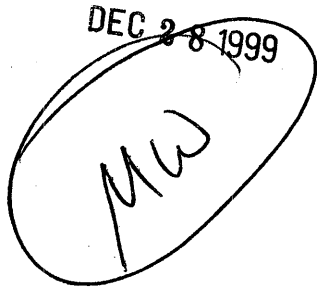
December 23, 1999



Senator Rodney C. Moen
State Capitol
P.O. Box 7882
Madison, WI 53707-7882

Subject: Clearinghouse Rule 98-190

Dear Senator Moen:

On December 15, 1999, representatives of the Chiropractic Examining Board appeared before the Committee on Health, Utilities and Veterans and Military Affairs to present testimony on Clearinghouse Rule 98-190. The committee requested that the board make modifications to the proposed rule. The board met on December 16th and 23rd and agrees to consider modifications to Clearinghouse Rule 98-190.

Sincerely,

John Schweitzer, Legal Counsel

cc: Representative Gregg Underheim
Secretary Marlene Cummings
Myra Shelton, Executive Assistant
James Greenwald, D.C.
Wisconsin Chiropractic Association

ltr113

State of Wisconsin
Department of Regulation and Licensing
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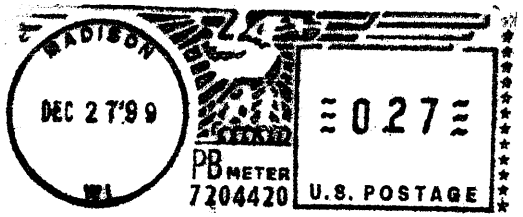

RETURN SERVICE REQUESTED

SENATOR RODNEY C. MOEN
STATE CAPITOL
P.O. BOX 7882
MADISON, WI 53707-7882

AUTO 53707

William L. Carr
President

Wisconsin Association of Health Plans

Nancy J. Wenzel
Executive Director

December 1, 1999

To: Members, Senate Health Committee

From: Julie A. Daggett
Director of Government Affairs

**RE: Clearinghouse Rule (CR) 98-190,
Expansion of Chiropractic Scope of Practice**

Wisconsin health plans urge you to reject the modifications to Chir 4.03 as proposed in CR 98-190.

• **Putting Patient Safety First.** The modifications represent a vast expansion of the chiropractic scope of practice. The language—"the muscle, connective, neurological and associated body tissue related thereto"—would allow chiropractors to treat the entire body. This is certainly well beyond the education and training of the chiropractic profession and, therefore, a threat to the safety of chiropractic patients.

There is very little scientific evidence of the effectiveness of chiropractic for even standard treatment. For example, a 1998 study in the *New England Journal of Medicine* showed that visiting a chiropractor for lower back pain is only slightly better than reading a $1 pamphlet about backaches. An expanded scope of practice would give chiropractors license to treat asthma, neurological disorders and other conditions for which there is no evidence of the effectiveness of chiropractic. This could, in fact, be dangerous for the patient.

• **Chiropractors' Right to Bill.** Under current Wisconsin law, there is already a special independent review process for chiropractic claims denied by insurers (s. 632.875). The law applies if the chiropractor is "acting within the scope of his or her license." An expanded scope of practice would allow chiropractors to bill at will with no benefit to patients.

• **Turning Dross Into Gold.** There is no basis in the Kerkman and Goldstein decisions for the expansion of practice in Chir 4.03. Both of these court cases simply hold that, in examining a patient, a chiropractor must exercise a degree of care, diligence and skill which is exercised by a reasonable chiropractor. These decisions further hold that when a chiropractor determines that a problem is outside the scope of chiropractic treatment, the chiropractor must inform the patient. **Under the vastly expanded scope of practice in Chir 4.03, however, chiropractors would rarely be obligated to refer a patient to a more appropriate health care provider.**

Wisconsin health plans work to ensure that patients receive appropriate chiropractic treatment. An expanded scope of practice as proposed in CR 98-190 would encourage inappropriate treatment and only line the pockets of chiropractors at the expense of appropriate patient care.

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Testimony on CR 98-190
Before The
Committee on Health, Utilities, Veterans
And Military Affairs
December 15, 1999, 1:30 P.M.
201 Southeast, State Capitol

Good afternoon, Chairperson Moen and Committee Members. I am Attorney John Schweitzer, Legal Board Counsel, for the Chiropractic Examining Board. Thank you for the opportunity to give testimony in support of the board's proposed rule, Senate Clearinghouse Rule 98-190.

The rule establishes a duty for a chiropractor to inform a patient if the patient presents a condition which the chiropractor determines is not treatable by chiropractic. The rule avoids creating a responsibility to "refer" the patient to another health care professional. The main reason for this is that a referral to named specialty carries the implication that the chiropractor has diagnosed a non-chiropractic condition and is advising the patient regarding further treatment. A referral to a named specialty might also create liability for mis-diagnosis in an area which the chiropractor does not claim expertise. As a practical matter, if a patient asks where he or she should go, we would expect a chiropractor to suggest that the patient seek further advice from a primary medical caregiver. It is worth noting that M.D.s and D.O.s also do not have a duty to refer in their statutes and rules.

The language of the rule also avoids referring to the word "medical" at any point. This is in large part because the board in this rule is codifying the law which has developed in Wisconsin regarding the distinct areas of responsibility of medical doctors and chiropractors. Language in a 1958 Supreme Court case (State v. Grayson, 5 Wis. 2d 203, 206, 92 N.W.2d 272) said "chiropractors ... are authorized to treat the sick only to the extent authorized by their chiropractic license". An Attorney General's decision from 1979 (OAG 95-97, 68 Op. Att'y Gen 316) picked up this language and restated it as "chiropractors licensed by the Chiropractic Board have only such authority to treat the sick as authorized by the legislature". The distinction between a chiropractor and a medical doctor was continued by court decisions in Kerkman v. Hintz, 142 Wis. 2d 404, 418 N.W.2d 795 (1988), Goldstein v. Janusz Chiropractic Clinics, S.C., 218 Wis.2d 683, 582 N.W.2d 78 (Ct. App. 1998), and Murphy v. Nordhagen, 222 Wis.2d 574, 588 N.W.2d 96 (Ct. App. 1998) To insert the word "medical" into this rule would confuse that distinction and lead to great uncertainty over the proper spheres of practice, advice and review to be performed by both chiropractors and medical doctors.

The change in the language of sec. Chir 4.03 from "adjacent tissue" to "the muscle, connective, neurological and associated body tissue adjacent thereto" is made to be more specific about the portions of the human body upon which a chiropractor is trained to practice.

Thank you for your time and consideration. On behalf of the Chiropractic Examining Board, I ask for your support and approval of the proposed rule.

State Medical Society of Wisconsin
Working together, advancing the health of the people of Wisconsin

TO: Senator Rodney Moen, Chair
Members, Senate Committee on Health, Utilities,
Veterans and Military Affairs

FROM Eric Jensen, JD, Associate Director
Government Relations

DATE: December 15, 1999

RE: Proposed Chiropractic Clearing House Rule 98-190

On behalf of the State Medical Society of Wisconsin, thank you for the opportunity to provide testimony in regard to Rule 98-190. The State Medical Society supports the duty to recognize and refer embodied in proposed Chir 6.03, however strongly opposes the proposed amendments to Chir 4.03.

Chir 6.03

The Chiropractic Examining Board originally considered a version of Chir 6.03 that would have created a duty for chiropractors to *evaluate* a patient, recognize conditions beyond their education, training, skills and experience, or scope of practice, and *refer* the patient to an appropriate health care provider. Such a duty would help ensure that patients receive complete and appropriate services and treatment, and enhance cooperation among health care providers. SMS testified in support of this version of Chir 6.03 before the CEB.

The current version of Chir 6.03 before you today is considerably weaker, and consequently much less beneficial to patients. This version requires only that once a chiropractor's evaluation reveals a patient's condition to be "not treatable through chiropractic means," a chiropractor need only "recommend that the patient seek additional advice or care." By this language, a recommendation that a patient consult the internet might suffice, and under this version of 6.03, there is not even a duty to recommend that a patient seek the assistance of an *appropriate health care provider*.

The SMS believes the original version of proposed Chir 6.03 was much more favorable for Wisconsin's patients, and would be more likely to enhance cooperation among health care providers. However, codification of this duty (in fact a codification of a chiropractor's duty as outlined in the Goldstein v. Janusz Chiropractic decision) is a step forward, and the SMS would support adoption of this portion of CR 98-190.

Chir 4.03

The current chiropractic code defines a chiropractor's scope of practice as, "the application of chiropractic science in the adjustment of the spinal column, skeletal articulations and adjacent tissue..." The rule proposed by the Chiropractic Examining Board would substitute the phrase

"the muscle, connective, neurological and associated body tissue related thereto" in place of "adjacent tissue" in two places. The State Medical Society strongly objects to these changes.

There are many tissues in the human body, however there is not a tissue in the body that would not be considered "related to" the spine, joints, muscles, tendons and ligaments, or the central nervous system. Thus, if this phrase is adopted into rule, the practice of chiropractic in Wisconsin would include the application of chiropractic science to any tissue -- or any condition -- in the human body. This would represent the most significant expansion of the chiropractic scope of practice possible.

The Goldstein decision outlined a duty to recognize and inform that the CEB seeks to codify in Chir 6.03. This duty to recognize and inform is based on the existing language of Chir 4.03 and the previous Kerkman v. Hintz Supreme Court decision. Under proposed Chir 6.03 a chiropractor must only recognize and inform if the patient's condition is "not treatable through chiropractic means." If the scope of practice in Chir 4.03 is expanded in a nearly unlimited fashion, then no tissue or condition is "not treatable through chiropractic means," and the duty in proposed Chir 6.03 is meaningless. This would destroy the CEB's stated purpose of creating Chir 6.03, would be a great disservice to the patients of Wisconsin, and would serve to diminish cooperation among the health care community.

Furthermore, during testimony before the CEB on proposed changes to Chir 4.03, chiropractors testified both in favor of and against changing the rule and expanding the scope of practice. This testimony demonstrated a clear division among the chiropractic community as to what tissues and conditions chiropractors are educated and trained to treat. Many of our primary care members also work in concert with, and refer patients to chiropractors for treatment where benefit to the patient has been demonstrated. We are unaware, however, that the greater scientific community has either demonstrated or recognized that chiropractic can benefit conditions beyond those limited to the spine, joints and directly associated muscles and connective tissues. We believe this is also the extent to which the average patient believes chiropractic can be valuable. Until such a time as a consensus is reached among the chiropractic, scientific or patient communities, we believe the scope of practice should be no greater than that level recognized by all -- or, consistent with existing Chir 4.03 as interpreted by Kerkman and Goldstein.

For all of these reasons, we strongly oppose the proposed changes to Chir 4.03.

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Tommy G. Thompson
Governor

Marlene A. Cummings
Secretary

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November 22, 1999

NOV 23 1999

Senator Rodney C. Moen
Room 403, 100 N. Hamilton St.
P.O. Box 7882
Madison, WI 53707-7882

Dear Senator Moen:

The Chiropractic Examining Board has sent a proposed rule, Clearinghouse Rule # 98-190, to your committee. The Board wishes to reinforce its support for this rule and explain briefly what it is intended to do, and what it is not intended to do.

The rule establishes a duty for a chiropractor to inform a patient if the patient presents a condition which the chiroprator determines is not treatable by chiropractic. The rule avoids creating a responsibility to "refer" the patient to another health care professional. The main reason for this is that a referral to named specialty carries the implication that the chiropractor has diagnosed a non-chiropractic condition and is advising the patient regarding further treatment. A referral to a named specialty might also create liability for mis-diagnosis in an area which the chiropractor does not claim expertise. As a practical matter, if a patient asks where he or she should go, we would expect a chiropractor to suggest that the patient seek further advice from a primary medical caregiver. It is worth noting that M.D.s and D.O.s also do not have a duty to refer in their statutes and rules.

The language of the rule also avoids referring to the word "medical" at any point. This is in large part because the board in this rule is codifying the law which has developed in Wisconsin regarding the distinct areas of responsibility of medical doctors and chiropractors. This distinction was created by the courts in the Kerkman and Goldstein cases. To insert the word "medical" into this rule would confuse that distinction and lead to great uncertainty over the proper spheres of practice, advice and review to be performed by both chiropractors and medical doctors.

The board urges you and the Health, Utilities, Veterans and Military Affairs Committee to approve the rule as drafted.

Sincerely,

James Greenwald

James Greenwald, Acting Chair

William L. Carr
President

Wisconsin Association of Health Plans

Nancy J. Wenzel
Executive Director

December 16, 1999

To: Insurance Commissioner Connie O'Connell

From: Nancy J. Wenzel
Executive Director

RE: Comments on Draft 4 of Clearinghouse Rule (CR) 98-190-Managed Care

Thank you for the opportunity to make final recommendations on CR 98-190. The Wisconsin Association of Health Plans truly appreciates the willingness of the Office of the Commissioner of Insurance (OCI) to take into consideration the views of Wisconsin HMOs during the promulgation of this important rule.

The Association has two outstanding recommendations for modifications to CR 98-190. **Both recommendations are technical changes that were agreed to previously during discussions between OCI staff and HMOs.**

- **Ins 9.33, Grievance Procedure** (Pg. 17-18, (1)(a))

  Recommend modifying as follows: "Each managed care plan and limited service health organization plan shall incorporate within its policies, certificates or outline of coverage, if required, the definition of a grievance in s. INS 9.01 (5). The managed care plan or limited service health organization plan shall develop an internal grievance procedure that shall be described in each policy and certificate issued to enrollees at the time of enrollment or issuance. ~~The insurer shall provide a notice within each policy and certificate issued to enrollees describing that if a provider denies of a request for a referral from an enrollee, the enrollee has a right to additionally request the referral from the insurer.~~ In accord with s. 609.15 (1) (a), Stats., managed care plans and limited service health organization plans shall investigate each grievance."

  Rationale: Language advocates for insurers to make decisions by overriding the judgement of providers. Deletion clarifies that providers, not insurers, are responsible for making referral decisions.

- **Ins 9.35, Continuity of Care** (Pg. 21, (1)(a))

  Recommend modifying as follows: "Upon termination of a provider from a managed care plan, the plan shall notify all affected enrollees of the termination and each enrollee's options for receiving continued care from the terminated provider not later than 30 days prior to the termination, or upon notice by the provider if less than 30 days notice is provided."

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Rationale: It is common practice for providers to give less than 30 days notice as a contract negotiation tool. Therefore, insurers would not always be able to comply with the 30 day requirement. (NOTE: Additional language was suggested and agreed to during the September 28 rule meeting with Representative Underheim.)

Thank you again for your consideration of the comments of Wisconsin HMOs on the managed care rule. Please call me if you have any questions.

cc: Eileen Mallow
Office of Representative Gregg Underheim
Office of Senator Rod Moen