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RULE ADOPTION
LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF CHIROPRACTIC EXAMINERS
INDEPENDENT CHIROPRACTIC EXAMINATIONS

Adopted New Rule: N.J.A.C. 13:44E-2.14

Proposed: August 18, 2003 at 35 N.J.R. 3753(a).

Adopted: November 20, 2003 by the State Board of Chiropractic Examiners, Dr. Mary-Ellen Rada, President.

Filed: July 9, 2004 as R.2004 d.307, with a technical change not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 45:9-14.5 and 45:9-41.23

Effective Date: August 2, 2004.

Expiration Date: June 26, 2006.

Summary of Public Comments and Agency Responses:

The official comment period ended October 17, 2003. The Board received comments from the following individuals:

1. Edwin Barry, DC
2. E. P. Cianciulli, DC, MS
3. Joseph Ciccarelli
4. William Cirino, Jr., DC
5. Rebecca Downing
6. Donald Defabio, DC
7. James N. Dillard, MD, DC
8. Antonio Esposito, DC
9. Glenn Gabai
10. Jay Gordon
11. Michele Guhl, President, New Jersey Association of Health Plans
12. Adam Gwiazdowski
13. Paul Koch

14. Robert LaBruzza
15. Michael Liberman
16. Kathleen K. Mairella, PT, MA, President, American Physical Therapy Association of New Jersey
17. Ivan Nadler
18. Josefin Picarelli
19. Stanley Piltin, DC
20. Jeffrey Schlessinger, DC
21. Frederick Storer
22. Chris Trainor
23. Jonathan Taylor

1. COMMENT: The majority of commenters expressed their support for the proposed rule.

RESPONSE: The Board appreciates the support from these commenters.

2. COMMENT: A commenter seeks clarification of the phrase "at the request of a third party" in the definition of "independent chiropractic examination (ICE)" in subsection (a) of the proposed rule as to whether the rule would regulate utilization management activities of carriers, which the commenter believes would be beyond the scope of the Board's authority. According to the commenter, utilization management activities occur only for the purpose of determining eligibility for reimbursement under health insurance and other benefit plans. The commenter states that if these regulations were deemed to impose a new administrative requirement for health plans, the result would be a significant increase in the cost of health benefit plans that provide chiropractic coverage and the potential degradation of the quality of care. The commenter specifically requests that the rule state that chiropractors performing utilization management actions are not subject to these rules.

RESPONSE: The Board acknowledges that its regulatory authority only governs the practice of chiropractic and that its authority does not extend into the regulation of utilization management activities or other similar activities of health plan administrators. This rule establishes qualifications for chiropractors performing ICEs as well as certain requirements for such examinations. The rule does not impose any requirements for administrators of health plans. The purpose of this rule is to protect the public by ensuring that ICEs are performed in a consistent and thorough manner with sufficient documentation. Such consistency should not only help the public, but also licensees, other medical professionals and administrators of health plans who base treatment decisions on such examinations. The Board believes that adding the requested language to the definition of ICE would be confusing by inferring that the Board has authority to regulate utilization management activities.

3. COMMENT: A commenter questioned whether this proposed rule requires that a utilization review or a reduction of care would require an ICE. The commenter provided support for such a requirement. Another commenter stated that the Board should also provide guidelines as to when an ICE is warranted.

RESPONSE: As mentioned in the Response to the previous Comment, the Board does not have jurisdiction over health plan administration, and, therefore, the Board cannot set requirements nor develop guidelines for when an ICE is necessary.

4. COMMENT: A commenter seeks clarification about "case management" activities which do not ordinarily include any direct contact with the patient, but which include the review by a chiropractor of chiropractic records, chart notes, treatment plans and patient history to determine whether benefits are payable under an insurance policy or health plan.

RESPONSE: The review of a chiropractor's patient records, chart notes, treatment plans and patient history to determine whether benefits are payable under an insurance policy or health plan are covered by an existing rule, N.J.A.C. 13:44E-2.6A, and are unaffected by the adoption of this proposed rule.

5. COMMENT: A commenter questioned the need to outline the procedures performed during an ICE. The commenter also believes that a Doctor of Chiropractic with competent clinical skills should have all the training necessary to complete a thorough examination and prepare a report without this proposed rule. The commenter stated further that if chiropractors are presently performing low-quality ICEs, the licensing standards should be raised.

RESPONSE: The Board has determined from dealing with numerous complaints that there is significant variation in the procedures utilized by chiropractors who perform ICEs, and as a result the Board believes that standardization of this service is imperative. The Board also feels that a newly graduated Doctor of Chiropractic may not have the breadth of experience to fully assess the treatment outcomes of many conditions. Therefore, the Board is adopting a two- year experience requirement consistent with current regulation, N.J.A.C. 11:3- 5.9, concerning qualifications for health care providers who perform medical reviews pursuant to the Automobile Insurance Cost Recovery Act (AICRA).

6. COMMENT: A commenter believes that the proposed rule arbitrarily sets a two-year minimum experience level for conducting ICEs. The commenter would like clarification on the basis of this experience level. The commenter also believes that the requirement under paragraph (b)1 mandating a New Jersey license constitutes protectionism and does not ensure a quality review or examination. Furthermore, the commenter believes that the clinical standards for the performance of an ICE are equivalent to those required for examination of a private patient and that the conduct, ethics and non-solicitation portions of the proposed rule are already in place.

RESPONSE: As mentioned in the previous Response, the Board established a two- year clinical experience level to be consistent with current law, AICRA. The Board believes that these rules provide a positive step forward to ensuring that ICEs are performed in a consistent and professional manner. In addition, since the examination of patients by chiropractors is the practice of chiropractic, it requires a New Jersey license when performed in this State.

7. COMMENT: A commenter provided a suggestion that the two-year clinical experience requirement be increased to five years because it can take that long for a chiropractor to provide sufficient care for a patient to reach "maximum chiropractic benefit." In addition, the commenter believes that a five-year requirement may prevent new chiropractors, who may have more financial concerns than a chiropractor in a more-established practice, from being "take(n) advantage of" by insurance companies.

Another commenter believes that the proposal should require that the chiropractor performing ICEs has five-years' clinical experience and maintains a clinical practice in New Jersey as an active, attending chiropractor. In addition, the commenter believes that if the attending chiropractor is board certified, the examining chiropractor should also be board certified.

RESPONSE: The Board considered a more stringent experience requirement and noted that the American Chiropractic Association recommends a requirement of three to five years' clinical practice experience for chiropractors performing ICEs. However, pursuant to the AICRA, New Jersey health care providers, including chiropractors, need two years' experience to perform ICEs; therefore, the Board believes that its rules should be consistent with that law. Furthermore, the Board has jurisdiction only over chiropractors licensed to practice in New Jersey and their conduct in this State. The Board does not believe it necessary to interfere in the practice of chiropractors by requiring that they maintain a clinical practice in New Jersey as an active, attending chiropractor.

8. COMMENT: A commenter inquired about addressing the issue of chiropractors practicing out of a valid office and not just using several doctors' offices to perform examinations. In addition, the commenter inquired about what the Board will do if a chiropractor performed a "biased" examination and/or lies or makes invalid statements in a report.

RESPONSE: Presently, the Board licenses individual chiropractors and does not license chiropractic offices. It would not be appropriate to require chiropractors performing ICEs to have an office when other licensees are not required to do so. Furthermore, the Board strongly believes that anyone who suspects that a chiropractor is practicing contrary to

the standards established by statute or regulation should inform the Board of the situation for proper investigation and enforcement.

9. COMMENT: A commenter stated that he believed that any change must protect the patient and offer the legal ability to seek damages from those performing ICEs who recommend denial of care or who change or alter the doctor/patient relationship when such action is unsupported. The commenter stated that examiners performing ICEs are not held accountable for their actions relating to the denial of care.

RESPONSE: As discussed in previous Responses, the Board only has jurisdiction over the practice of chiropractors licensed by the Board. The Board cannot create a legal cause of action nor provide any other legal redress against health plan providers.

10. COMMENT: A commenter provided a suggestion that chiropractors who perform ICEs should be limited to perform a maximum of two ICEs per month as a disincentive for chiropractors to build financial relationships with insurance companies such that a patient's care would become secondary to that relationship. The commenter also suggest the imposition of fines and license revocation if the chiropractor does not perform proper examinations and reports.

RESPONSE: The Board believes that it would be inappropriate to restrict the number of ICEs performed by a chiropractor assuming the ICEs are being performed correctly. If a chiropractor is not performing ICEs correctly, the Board should be informed in order to initiate investigation and corrective measures.

11. COMMENT: A commenter states that the Board should also provide standards for attending and/or treating chiropractors to prevent them from interfering or subverting the ICE process.

RESPONSE: The Board believes that present law, particularly N.J.S.A. 45:1- 21(e), addresses this concern. If a chiropractor interferes with the independent examination of a patient, the interference may be considered professional misconduct. In addition, a chiropractor who interferes with an ICE by failing to provide a copy of a patient's records to a patient's authorized representative, such as a medical insurance carrier requesting an ICE, within 30 days of a request would be in violation of N.J.A.C. 13:44E-2.2(e)1.

Federal Standards Statement

A Federal standards analysis is not required because the adopted new rule is governed by State statute and is not subject to Federal requirements or standards.

Full text of the adoption follows :

<< NJ ADC 13:44E-2.14 >>

13:44E-2.14 Independent chiropractic examinations

(a) For the purposes of this section, "independent chiropractic examination" means the taking of a history and the performance of a clinical examination of a patient conducted in this State by a chiropractor, other than the attending chiropractor, at the request of a third party, for the purpose of evaluating the patient's current condition and the preparation of a written report.

(b) A chiropractor performing an independent chiropractic examination in the State of New Jersey shall:

1. Hold a valid license to practice chiropractic in the State of New Jersey pursuant to N.J.S.A. 45:9-41.8 or 45:9-41.10; and

2. Have at least two years of clinical experience post-licensure if licensed after <<-the effective date of this section->> <<+August 2, 2004+>>.

(c) A licensed chiropractor performing an independent chiropractic examination shall:

1. Complete a patient record pursuant to N.J.A.C. 13:44E-2.2;
2. Document in the patient record and report the nature and extent of records reviewed including other information presented such as results of diagnostic imaging and/or diagnostic testing;
3. Perform and document in the patient record and in any resulting report a history, clinical examination and a chiropractic analysis or diagnosis, pursuant to N.J.A.C. 13:44E-1.1(b), which includes the specific tests, examinations or observations performed, and the results and evaluation of these specific tests, examinations or observations together with a review of the patient's response to prior care.
4. Document the clinical rationale for an opinion expressed with respect to the patient's present condition in the patient record and report;
5. Not make any recommendations directly to the patient for alterations in care by the attending chiropractor except with respect to the advice required by N.J.A.C. 13:44E-2.2(f)3. If such advice of an abnormality or condition is given to the patient and referral to another health care professional is recommended, such findings shall be documented in the patient record and report;
6. Not solicit the patient for care; and
7. Author and sign the independent chiropractic examination report.

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