

REBECCA RIOS
DEMOCRATIC WHIP
DISTRICT 23



Copy
COMMITTEES:

PUBLIC SAFETY AND HUMAN
SERVICES

TRANSPORTATION

JOINT LEGISLATIVE AUDIT COMMITTEE

STATE SENATOR
FORTY-EIGHTH LEGISLATURE

CAPITOL COMPLEX, SENATE BUILDING
PHOENIX, ARIZONA 85007-2890
PHONE (602) 926-5685
TOLL FREE 1-800-352-8404, X 5-5685
FAX (602) 417-3167
E-MAIL rios@azleg.gov

Arizona State Senate

June 16, 2008

The Honorable Terry Goddard
Arizona Attorney General
1275 West Washington Street
Phoenix, AZ 85007

Dear Honorable Attorney General:

In 1990, the Arizona Legislature passed and Governor Rose Mofford signed into law, ARS 20-461(A) 16 and 20-461(B). This was a bipartisan effort, led at the time by Democrats Alan Stephens, Pete Rios and Art Hamilton, and Republicans Bob Usdane and Bill English.

Shortly after the law passed, then-ADOI Director Susan Gallinger convened a stakeholders' meeting to develop enforcement rules. Subsequently, the Director issued Circular Letter 90-12. Paragraph 3 stated: "Similarly, all deductibles, coinsurance, cost containment measures and quality assurance measures must be structured so as not to discriminate against any type of practitioner addressed by the bill." All insurance representatives at the meeting including those from Blue Cross Blue Shield and CIGNA agreed to this interpretation.

Clearly, the intent of the law was to allow patients to select either medical or chiropractic treatment for covered conditions and have the same level of cost sharing either way. The Legislature wanted an end to financial barriers to health care freedom of choice.

The law was interpreted and enforced consistently and fairly for five full years until a new ADOI Director, Chris Herstam, was appointed by Governor Fife Symington in 1995. Mr. Herstam abruptly withdrew all three earlier Circular Letters and issued a new one, 95-5, which stands today. The chiropractic profession has protested 95-5 continuously since the day it was issued, but ADOI has refused to restore enforcement to the pre-1995 system.

Health insurance companies in Arizona are routinely charging higher co-payments, coinsurance and deductibles for the usual and customary treatment procedures of chiropractic physicians compared to those of medical physicians. This is, we allege, a clear violation of ARS 20-461(B).

On April 24, 2008, Representative Andy Tobin asked Karlene Wenz of ADOI for an official opinion regarding a legislative amendment he was considering. Her response, which is attached, confirmed that ADOI agrees that existing law, specifically ARS 20-461(B), only permits the application of co-payments, coinsurance and deductibles if they do not discriminate against the usual and customary procedures of any physician licensed pursuant to Title 32, Chapters 8, 13, or 17, when policy coverage's include treatment of the condition or complaint.

Page 2
June 16, 2008

Would it not therefore, be illegal, per statute, for a health insurance company to charge separate co-pays for different physicians when those physicians are treating the same diagnosis and/or condition?

We are also concerned about the existence of an "illusory" benefit. Several insurance companies are charging their insured's a co-pay amount that equals or exceeds the amount of their reimbursement to the treating physician. In essence, patients are paying for their own care in its entirety making the coverage for which a premium is paid illusory.

If a patient pays co-pay and the insurance company pays nothing, the insurance company is improperly collecting a premium for that service. This, therefore, becomes an illusory benefit because the patient has the understanding that they are paying a premium for a covered service and that the insurance is paying some part of the cost of that service. It does not seem appropriate that an insurance company can advertise and sell insurance coverage that is 100% paid for by the patient. It does not appear that the patient is receiving any benefit for the premium paid.

If you find that the insurance companies' practices of applying discriminatory co-payments, coinsurance and deductibles for chiropractic procedures compared to medical procedures, and engaging in the provision of illusory benefits, are inappropriate and violating the intent of ARS 20-461, we ask that you take whatever action you deem necessary.

Thank you for your prompt attention to these questions.

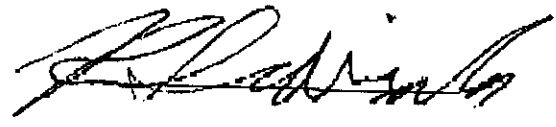
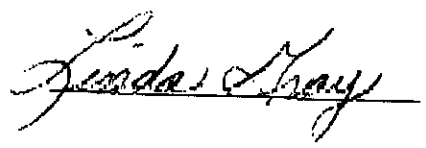
Respectfully,



REBECCA RIOS
State Senator - D-23

Enclosure

RR:cv



From: Karlene Wenz [<mailto:kwenz@azinsurance.gov>]
Sent: Thu 4/24/2008 11:28 AM
To: Andy M. Tobin
Subject: RE:

Rep. Tobin,

Then we'll respond as if it is to be a new subsection, specifically, 20-461(C), (rotator to conform). If this is ultimately NOT where the language is proposed to be inserted, these comments would be void.
20-461

C. COPAYMENTS COINSURANCE AND DEDUCTIBLES MAY BE APPLIED IF THEY DO NOT DISCRIMINATE AGAINST THE USUAL AND CUSTOMARY PROCEDURES OF ANY PHYSICIAN LICENSED PURSUANT TO TITLE 32, CHAPTERS 8, 13, OR 17 WHEN POLICY COVERAGES INCLUDE TREATMENT OF THE CONDITION OR COMPLAINT.

This proposed new subsection repeats existing language, namely a portion of the first clause of 20-461(B), and thus provides no new protections. It would, however, undermine the existing protections of 20-461(B). By not including all of the elements in the first clause of 20-461(B), (preferred provider organization requirements, cost containment measures, quality assurance measures), the proposed 20-461(C) is in conflict with 20-461(B) in that it implies that unequal (discriminatory) application of preferred provider organization requirements, cost containment measures, and quality assurance measures is OK. The Department would have serious concerns with this language as 20-461(C) for that reason.

In answer to your questions about the language's impact on premiums and the health insurance market we do not believe it would have any real or direct impact on either.

Karlene Wenz

(Emphasis added)