

BEFORE THE BOARD OF CHIROPRACTORS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of)
ARM 24.126.510 endorsement,)
24.126.701 inactive status and)
conversion, 24.126.904 minimum)
requirements for impairment)
evaluators, and the adoption of NEW)
RULE I prepaid treatment plans)

NOTICE OF AMENDMENT AND
ADOPTION

TO: All Concerned Persons

1. On October 14, 2010, the Board of Chiropractors (board) published MAR notice no. 24-126-31 regarding the public hearing on the proposed amendment and adoption of the above-stated rules, at page 2284 of the 2010 Montana Administrative Register, issue no. 19.

2. On November 5, 2010, a public hearing was held on the proposed amendment and adoption of the above-stated rules in Helena. Several comments were received by the November 12, 2010, deadline.

3. The board has thoroughly considered the comments received. A summary of the comments received and the board's responses are as follows:

All comments reference proposed NEW RULE I on prepaid treatment plans.

COMMENT 1: Three commenters stated that the escrow account requirement will put unnecessary financial and time burdens on ethical chiropractors, and may harm more than protect the public because requiring such an account would increase the administrative expenses of moving and tracking funds on a daily basis. The additional expenses would have to be passed on to clients, thus increasing health care costs. The commenters opined that this requirement may result in chiropractors not offering prepaid plans and people not being able to get needed chiropractic care.

RESPONSE 1: Noting that the intent of New Rule I is to protect the public, the board concluded that the public's protection in requiring funds in an escrow account outweighs the potential that chiropractors may not be able to afford to offer prepaid plans. The board also notes that a chiropractor who offers prepaid treatment plans should know that it might require some additional costs.

COMMENT 2: Two commenters stated the premise of increasing complaints about prepaid plans is not reflected in the number of complaints on record. One commenter recalled very few claims of this type over 14 years, and stated that all such complaints were dismissed by the board.

RESPONSE 2: The board notes that complaints before the screening panel are not available to the public and there is no way for the commenters to know how many of the complaints that come before the board are related to prepaid treatment plans.

COMMENT 3: Five commenters stated that the new rule would not prevent future complaints, since unethical chiropractors could still steal patient money without providing services, because the chiropractor controls the escrow accounts. The commenters stated the issue is a chiropractor's ethics, not the system of payment, and suggested the rule will punish the many ethical chiropractors offering prepaid treatment plans, because of an unethical few. The commenters suggested the board continue handling complaints regarding prepaid plans on an individual basis.

RESPONSE 3: The board notes that the chair of the New Mexico Board of Chiropractors reported that the number of payment-for-services complaints before the NM board has decreased with a similar escrow account requirement in place.

COMMENT 4: Three commenters stated that the rule ignores studies that long-term maintenance care or wellness care drastically reduces people's expenditures on visits to medical providers, which prepaid treatment plans support. The commenters urged the board to look at the reason for offering such plans, which is to allow people to invest in their health care in an affordable way. The commenters believe that these plans are a tremendous benefit to the public.

RESPONSE 4: The board agrees that offering prepaid treatment plans may be beneficial to the public, but disputes the existence of studies in peer-reviewed literature that conclude long-term maintenance care or wellness care drastically reduces expenditures on visits to medical providers.

COMMENT 5: Three commenters asserted that patients discontinue care for many reasons and may be unable to complete even prepaid treatments. The commenters stated that most chiropractors will refund the patient's money in such situations.

RESPONSE 5: The board recognizes that many chiropractors will handle financial transactions from prepaid treatment plans ethically, but notes that requiring an escrow account increases patient protection because money will not be paid to the chiropractor until services are rendered.

COMMENT 6: Five commenters stated that if the escrow account requirement is necessary to protect the public, then the requirement should apply to all healthcare professionals who utilize prepayment plans. Since no such escrow requirement exists for dentists, acupuncturists, physical therapists, obstetricians, or orthodontists, the commenters suggested the board put the requirement in statute to apply to all healthcare professionals who utilize prepaid treatment plans. The commenters stated it is inappropriate for chiropractors to be held to a different standard than other professionals.

RESPONSE 6: The board has no authority to require any healthcare practitioners to maintain escrow accounts except Montana licensed chiropractors. Because some chiropractors in Montana are offering prepaid treatment plans, the board has concluded that escrow accounts are necessary to protect the public.

COMMENT 7: One commenter questioned how the board will regulate the new rule's requirements.

RESPONSE 7: The board will consider complaints of licensees violating the new rule on an individual basis and in the same manner as other allegations of unprofessional conduct.

COMMENT 8: One commenter stated that (2) lacks clarity and is confusing as to what "all treatment appropriate" means and includes.

RESPONSE 8: The board agrees and is deleting (2) in its entirety.

COMMENT 9: One commenter asserted that the board lacks the authority to regulate fees the board charges, or the manner to collect or use those fees (whether prepaid or not), and stated this is a matter for the Montana Attorney General.

RESPONSE 9: The board determined that the board does have the required authority pursuant to 37-1-131(1)(a), 37-1-319(4), and 37-12-201(4), MCA.

COMMENT 10: Two commenters suggested that the board should require preferred providers for private insurance and participating Medicare providers to have escrow accounts for patients who utilize those types of insurance, in case a refund is deemed to be appropriate.

RESPONSE 10: The board notes that prepaid treatment plans and insurance refunds are two completely different things, and the board is only concerned with up-front patient expenditures. Insurance refunds are for patients that have paid for services already rendered, so an escrow account would not be warranted.

COMMENT 11: Three commenters asserted that the documentation requirements in (1)(b) are already sufficiently addressed in the board's unprofessional conduct rule at ARM 24.126.2301(1)(r). The commenters stated that the rule is discriminatory because it applies different documentation standards to chiropractors utilizing prepaid treatment plans than those who do not. The commenters further opined that if these requirements are necessary, they should apply to all chiropractors, whether or not they offer prepaid treatment plans.

RESPONSE 11: The board agrees that the documentation requirements should not be different for chiropractors offering prepaid treatment plans, and is amending New Rule I accordingly. The board decided that it is not necessary to specify every required provision in a chiropractor's contract with patients, and is further amending the rule accordingly.

COMMENT 12: A commenter asserted that the public is sufficiently protected under ARM 24.126.2301(1)(s), which provides it is unprofessional conduct for chiropractors to enter into a contract that obligates a patient to pay for future services, unless the contract provides for a full patient refund for services not received within a reasonable amount of time.

RESPONSE 12: The board notes there is a deficiency in ARM 24.126.2301(1)(s), since it does not require chiropractors to safeguard client money by keeping it in an account separate from the chiropractor's money until services are rendered.

COMMENT 13: Five commenters opposed the new rule because it will hold chiropractors who utilize prepaid plans to a higher standard of care than other chiropractors. One commenter suggested that the new rule should apply to all chiropractors and recommended the board delete (2) in its entirety.

RESPONSE 13: The board agrees that the requirements in (2) and (3) should apply to all chiropractors, and is deleting the sections from New Rule I at this time.

4. The board has amended ARM 24.126.510, 24.126.701, and 24.126.904 exactly as proposed.

5. The board has adopted NEW RULE I (24.126.412) with the following changes, stricken matter interlined, new matter underlined:

NEW RULE I PREPAID TREATMENT PLANS (1) through (1)(a)(ii) remain as proposed.

(b) Maintain in the patient's file the following:

~~(i) A proposed treatment plan, including enumeration of all aspects of evaluation, management, and treatment planned to therapeutically benefit the patient relative to the condition determined to be present and necessitating treatment.~~

~~(ii) A a contract for prepayment of services outlining beginning and ending dates and a proposed breakdown of the proposed treatment frequency, types of modalities, and procedures included in the contracted treatment, methods of evaluating the patient's progress or serial outcome assessment plan, method of recording or assessing patient satisfaction, and any necessary procedures for refunding payments provided for any care not received within a reasonable amount of time.~~

~~(iii) A consent for treatment document specifying the condition for which the treatment plan is formulated, prognosis and alternate treatment options.~~

~~(2) The chiropractor is responsible for providing all treatment appropriate and necessary to address and manage the condition, including unforeseen exacerbations or aggravations within the chiropractor's licensure that may occur during the course of time for which the contract is active. This does not include alternative services procured by the patient or treatment by providers other than the treating chiropractor or those under the chiropractor's direct supervision.~~

~~(3) If nutritional products or other hard goods including braces, supports, or patient aids are to be used during the proposed treatment plan, the contract must state whether these items are included in the gross treatment costs or if they constitute a separate and distinct service and fee.~~

BOARD OF CHIROPRACTORS
JOHN SANDO, DC, PRESIDENT

/s/ DARCEE L. MOE
Darcee L. Moe
Alternate Rule Reviewer

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State March 14, 2011