



June 19, 1995

FMLA-63

Dear *Name**,

This is in response to your letter of May 3, 1995, regarding the Family and Medical Leave Act of 1993 (FMLA) final rule published on January 6, 1995, in the Federal Register. Specifically, you request that certain limitations on treatment that a chiropractor may perform in order to be recognized as a "health care provider" for FMLA purposes be eliminated.

The FMLA entitles eligible employees to take leave for a serious health condition (of either the employee or an immediate family member). "Serious health condition" is defined to include an injury, illness, impairment, or physical or mental condition involving either inpatient care or "continuing treatment by a health care provider." In addition, FMLA's medical certification provisions allow an employer to request that leave for a serious health condition "...be supported by a certification issued by the health care provider..." of the employee or family member. Section 101(6) of the Act defines "health care provider" as a doctor of medicine or osteopathy authorized in the State to practice medicine or surgery (as appropriate) or "any other person determined by the Secretary [of Labor] to be capable of providing health care services."

Based on FMLA's legislative history, it is clear that Congress included the medical certification provisions to enable employers to have a check against employee abuse of the law's leave entitlement. Only health care providers' qualified to provide reliable medical information that supports the existence of serious health conditions (as defined by FMLA) can fulfill that role when employers request medical certifications to support FMLA leave requests.

After reviewing definitions under several programs, including rules of the U.S. Office of Personnel Management and Medicare, the Department of Labor developed FMLA's regulatory definition of "health care provider" by beginning with the definition of "physician" under the Federal Employees' Compensation Act (FECA) (5 U.S.C. 8101(2)). Also included from the FECA definition are podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice in the State and performing within the scope of their practice as defined under State law. Added to FMLA's definition are nurse practitioners and nurse-midwives (who provide diagnosis and treatment of certain conditions, especially at health maintenance organizations and in rural areas where other health care providers may not be available) performing within the scope of their practice as allowed by State law. The FMLA's definition includes Christian Science Practitioners to reflect the Congressional intent that such practitioners be included as expressed in colloquies on the floors of both the House and Senate, and reflected in the Committee report accompanying Title II of FMLA applicable to Federal civil service employees. Finally, the definition was expanded to include any health care provider that is recognized by the employer or accepted by the group health plan (or equivalent plan) of the employer.

The rulemaking reflects a careful balancing of public comments on the issue. These comments ranged from employer representatives that supported the most narrow definition of "health care providers" over concerns that other persons would not be qualified to provide the reliable medical information contemplated by FMLA's medical certification provisions, to employee advocate groups that supported an expansive definition to include all those who give treatment of any kind.

We appreciate receiving the benefit of your views in this matter. We believe that the above-mentioned refinements in the final rule should take care of those circumstances where the employer or the employer's plan is willing to accept medical services by a chiropractor that go beyond the treatment specified in the definition.



I hope that this letter has been responsive to your needs. If I may be of further assistance, please do not hesitate to contact me.

Sincerely,

Daniel F. Sweeney
Deputy Assistant Administrator

** Note: The actual name(s) was removed to preserve privacy in accordance with 5 U.S.C. 552 (b)(7).*