

## Who's Bad?

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Once again, the Office of the Inspector General (OIG) has released its findings of "Inappropriate Medicare Payments for Chiropractic Services."<sup>1</sup> And while [the latest report](#) clearly points to areas of record-keeping and billing that require our attention, there is an issue of evenhandedness that also deserves to be addressed. To better understand, let's compare the report with a similar report titled "Medicare Payments for Facet Joint Injection Services."<sup>2</sup>

This comparison is reasonable on many levels: Both reports were issued by the same inspector general: Daniel R. Levinson; both reviewed data from 2006; both were released at approximately the same time (within eight months of one other); and both found that "Medicare inappropriately paid" in excess of \$100 million for each form of care. Given the last point, you would expect fairly even treatment in both reports. But let's look at the facts.

### Findings

The following observation is included in the [facet injection report](#): "Sixty-three percent of facet joint injection services allowed by Medicare in 2006 did not meet Medicare program requirements, resulting in approximately \$96 million in improper payments." On the other hand, the chiropractic report notes: "47 percent of all allowed chiropractic claims" were paid for care "that medical reviewers determined to be maintenance therapy (\$157 million), miscoded (\$11 million), or undocumented (\$46 million)." Assuming that the numbers here are correct, 63 percent of facet joint injection billing was inappropriate, while only 47 percent of chiropractic billing was inappropriate, mostly because it was considered maintenance care.

### Recommendations

Both reports recommend taking "appropriate action regarding the undocumented, medically unnecessary, and miscoded services identified in our sample." The recommendations for facet injections included "[strengthening] program safeguards to prevent improper payment for facet joint injection services." While this seems reasonable, recommendations for chiropractic are much more emphatic:

- Implement and enforce policies to prevent future payments for maintenance therapy (OIG's first recommendation).
- Ensure that chiropractic claims are not paid unless documentation requirements are met (OIG's third recommendation).

Given this sharp contrast in language, one would think it was chiropractors who received "improper payments" for almost two-thirds of all services, rather than providers of facet injections.

### Agency Comments and OIG Response

The final part of the executive summary includes comments from the [Centers for Medicare & Medicaid Services](#) (CMS) on the OIG's recommendations, as well as the OIG's response to those

comments. Again, for facet injections, the OIG comments seem quite reasonable: "CMS described steps that it will take to address our recommendation to strengthen program safeguards for facet joint injection services. CMS agreed with our recommendations to clarify billing instructions for bilateral services and to take appropriate action on services paid in error in our sample."

It is clear that the OIG is satisfied with the response from the Medicare folks. But not so in the chiropractic services report. Clearly, the CMS response was not good enough for the OIG:

"In response to the first recommendation, CMS indicated that the objective data required to impose a national cap on the number of chiropractic services does not currently exist. In response to the third recommendation, CMS described the current process contractors use to review provider claims with a greater likelihood of payment error, but CMS indicated no change in future practice to prevent claims without required documentation from being paid in error. We ask that in its final management decision, CMS more clearly indicate whether it concurs with our first and third recommendations and what steps, if any, it will take to implement them."

This comparison is not to suggest that as a profession, chiropractic does not need to clean up our documentation. What it does clearly point to is the apparent bias between how the OIG reports chiropractic reimbursement as opposed to other forms of health services.

The most telling indictment of the OIG's low opinion of chiropractic can be found simply by comparing the title of each report. With facet injection providers guilty of a whopping 63 percent of improper services, the facet report is titled: "Medicare Payments for Facet Joint Injection Services." With chiropractors guilty of an embarrassing, but substantially lower percentage of improper services (47 percent), the chiropractic report is titled: "Inappropriate Medicare Payments for Chiropractic Services" (emphasis added). Now I have to ask you, Mr. Levinson, what could be more telling?

### *References*

1. "Inappropriate Medicare Payments for Chiropractic Services." Department of Health and Human Services, Office of Inspector General, May 2009; OEI-07-07-00390.  
[www.oig.hhs.gov/oei/reports/oei-07-07-00390.pdf](http://www.oig.hhs.gov/oei/reports/oei-07-07-00390.pdf).
2. "Medicare Payments for Facet Joint Injection Services." Department of Health and Human Services, Office of Inspector General, September 2008; OEI-05-07-00200.  
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