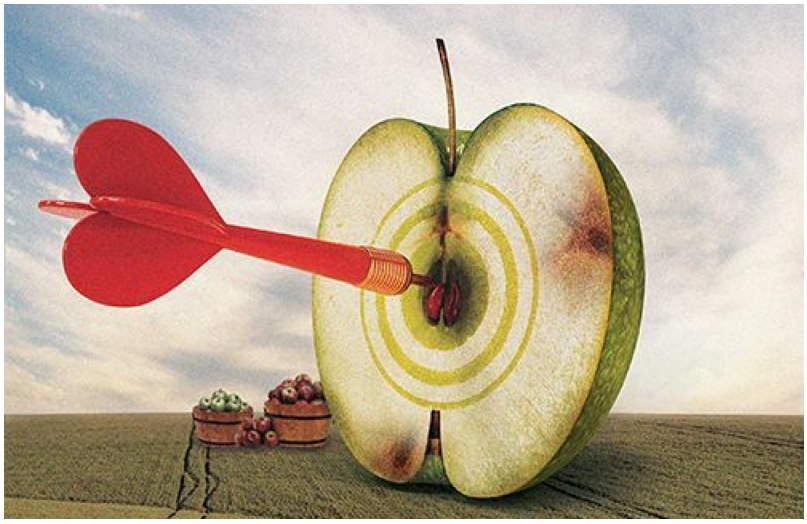
Dynamic Chiropractic



BILLING / FEES / INSURANCE

Targeting the Bad Apples in the Bunch

LATEST OIG REPORT OUTLINES PLAN TO DETERMINE QUESTIONABLE DC BILLING CLAIMS, RECOUP PAYMENTS.

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While everyone was focused on the conversion to ICD-10, the Office of Inspector General for Health and Human Services released a new report on chiropractic titled "CMS Should Use Targeted Tactics to Curb Questionable and Inappropriate Payments for Chiropractic Services." Reflecting services paid in 2013, the report had three objectives: (1) to determine the extent to which Medicare made questionable payments for chiropractic services in 2013; (2) to identify and describe chiropractors with high questionable payments in 2013; and (3) to determine the extent to which Medicare made inappropriate payments for chiropractic services that did not meet certain Medicare requirements in 2013.

Questionable Paid Claims

The OIG developed four measures to identify paid claims that were questionable. Let's examine each of these measures in order.

1. *Treatment Suggestive of Maintenance Therapy.* The OIG used 20 services per beneficiary per year as the threshold for this measure. The OIG considered all of the claims for any beneficiary who had claims in excess of the threshold to be in question, identifying 1,787 chiropractors with questionable payments for claims suggestive of maintenance therapy.

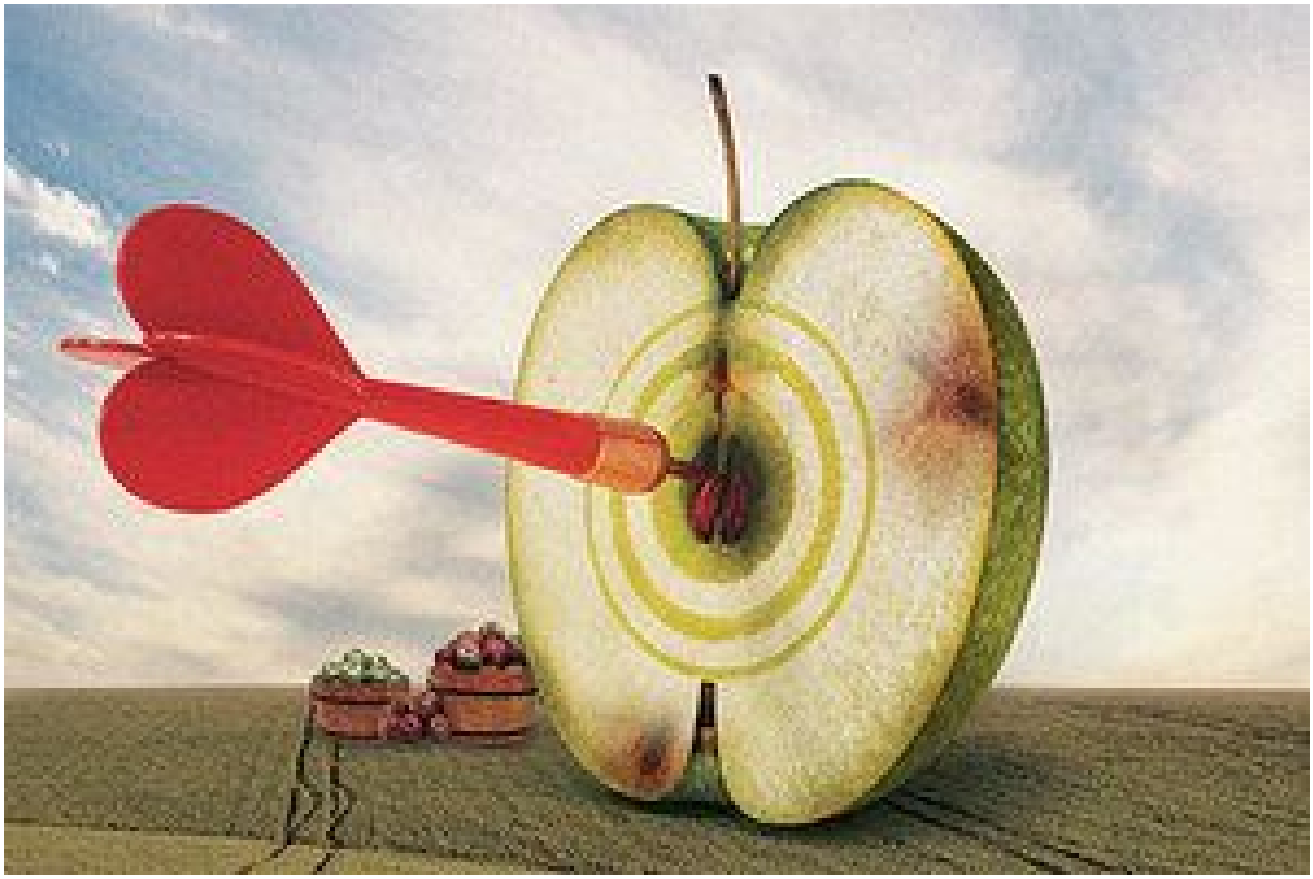
   There are legitimate reasons for a Medicare beneficiary to have more than 20 claims in a year. However, if you are regularly seeing Medicare patients more than 20 times in a year, you are at risk to be reviewed as a result of this report.

2. *Potentially Upcoded Claims.* Approximately 10 percent of all paid chiropractic services are for the highest CPT code, 98942. The OIG set the threshold for this measure at doctors who billed

out 97.7 percent of their claims at CPT code 98942, determining 1,450 exceeded the threshold for this measure. The overuse of CPT code 98942 is a problem that stems primarily from a misunderstanding of how the code should be used.

3. *Potential Sharing of Beneficiaries*. The OIG "identified the threshold as 52.5 percent of a chiropractor's beneficiaries who received services from another chiropractor. For chiropractors whose percentage exceeded the threshold, we considered all of their payments for the beneficiaries seen by other chiropractors to be questionable." The OIG identified 4,216 doctors who exceeded the threshold in this measure.

4. *Unlikely Number of Service Hours Per Day.* The OIG established 16 hours as the threshold for this measure, and considered all of a chiropractor's claims on any day that met or exceeded the threshold as "questionable."



The OIG identified a total of 16 chiropractors who exceeded the threshold for this measure. (Not a significant number and hardly worth mentioning.)

Improper Paid Claims

The OIG also developed three measures to identify paid claims that did not meet Medicare requirements for payment:

1. *Claims Lacking a Covered Primary Diagnosis.* "These claims lacked a primary diagnosis code that was covered by Medicare based on CMS's guidance and the local coverage determination where the chiropractic service was provided." A total of 17,640 chiropractors were identified as

having at least one claim paid without the correct primary diagnosis, totaling $20,709,516.

This is fairly straightforward: Medicare requires a 739.X primary diagnosis everywhere except in Jurisdiction N (Florida, Puerto Rico and the Virgin Islands). Any claim without this primary diagnosis should be denied. Even though almost 39 percent of the profession was identified as having filed at least one claim without a correct primary diagnosis, this only accounted for 4.1 percent of the claims paid. This would seem to indicate most of these instances were simply clerical errors.

2. *Claims for Duplicate Services.* "These claims were for services provided on the same day for the same beneficiary with the same diagnosis and procedure codes and the same chiropractor." A total of 225 chiropractors were identified as having filed claims for duplicate services.

3. *Claims Lacking the AT Modifier.* "These claims lacked the AT modifier, which indicates active treatment and is required for payment." The OIG identified a total of 30 chiropractors who had claims paid without the AT modifier.

I tend to group these last two measures together because they only totaled about 1,000 claims – an insignificant percentage of the total claims filed for 2013. The duplicate claims could easily be simple clerical errors. As for claims paid without the AT modifier, that is not the chiropractor's fault. The doctor did the right thing by signifying the care was maintenance by omitting the AT modifier and the MAC paid the claim anyway. How could the chiropractor possibly be at fault in this instance?

High Questionable Payments

Chiropractors With High Questionable Payments. "After calculating the total amount of questionable payments paid to each chiropractor, the OIG identified chiropractors who received high amounts of questionable payments." Of note, a total of $10,618,801 was paid to therapists who provided physical therapy or occupational therapy services on the same day as paid claims to chiropractors with high questionable payments.

There are definitely medically necessary reasons for a patient to receive physical therapy services on the same day as a chiropractic treatment. There are also legal and proper ways physical therapy services can be provided to a Medicare beneficiary in a chiropractic office so those services will be paid by Medicare. The OIG also stated that more than half of the money paid was paid to a mere 16 therapists.

Key Findings

- "Of the $502 million that Medicare paid in 2013 for chiropractic services, $76.1 million was for claims that were questionable based on our four measures of questionable payment. Payments for these claims represent 15 percent of the Medicare payments for chiropractic services in 2013. In total, 16 percent of chiropractors (7,191) paid by Medicare in 2013 received questionable payments for chiropractic services. Almost half of these payments were for claims suggestive of maintenance therapy, which we identified through high average numbers of claims per beneficiary per chiropractor."

- "In 2013, 962 (2%) of the 45,490 chiropractors paid by Medicare received $38 million of the $76 million in questionable payments. These 962 chiropractors (hereinafter, chiropractors with high questionable payments) received 9 percent ($43.6 million) of all Medicare payments for

chiropractic services in 2013. We identified 87 percent of their payments as questionable."

For chiropractors with high questionable claims, 53 percent of their claims were suggestive of maintenance therapy and 30 percent of their claims were for CPT code 98942.

OIG Recommendations

The OIG made the following recommendations to the Centers for Medicare and Medicaid Services:

- Establish a more reliable control for identifying active treatment
- Develop and use measures to identify questionable payments for chiropractic services
- Collect overpayments based on inappropriately paid claims
- Ensure that claims are paid only for Medicare-covered diagnoses
- Take appropriate action on chiropractors with questionable payments

Two of these recommendations should be of particular interest to you, the doctor of chiropractic, particularly when you read the specific actions the OIG recommends:

"Take appropriate action on the chiropractors with questionable payments. We identified 7,191 chiropractors with questionably paid claims, 962 of whom received half of the questionable payments. In a separate memorandum, we will provide CMS with information on chiropractors with high questionable payments, so that it may take action. CMS and/or its contractors should review their claims and take appropriate action. Such actions could include: (1) recouping inappropriate payments; (2) educating providers on proper billing; (3) making referrals to law enforcement; (4) imposing payment suspensions; (5) revoking billing privileges; or (6) taking no action, if the payment is determined to be appropriate."

The names of the 962 doctors who have been identified as chiropractors with high questionable payments will be sent to CMS and will be reviewed to determine which payments, if any, are inappropriate. The actions taken after that could be any one or combination of the six listed above.

"Collect overpayments based on inappropriately paid claims. CMS should collect the $20.7 million in payments that resulted from the inappropriate claims we identified. In a separate memorandum, we will refer these claims to CMS for collection."

The 809,945 claims identified as resulting in overpayments will be sent to CMS so the money can be recouped. These overpayments involved 17,751 doctors.

"How Does This Affect Me?" Take-Home Points to Consider

Right about now, you are probably asking yourself, "OK, so how does this affect me?" Good question. Before I answer, I have to give some credit to the OIG, which has been producing reports on chiropractic since 1986. This is the first one which does not broadly paint the entire profession as a bunch of doctors of questionable ethics, but instead focuses on the small minority who appear to be acting in a questionable manner. I feel this is progress. There are still things the OIG does not understand about us, but this appears to be the best report yet.

Now, back to that question of how this affects you. If your actions fall into one of the categories that would classify you as a chiropractor with high questionable payments, you are going to be reviewed, possibly in more detail than the average review. The most dangerous thing you can do is say to

yourself, *I am not doing anything wrong, so I have nothing to worry about*. That you have no intent to violate the regulations does not mean you are not violating one or more regulations you do not clearly understand.

If you believe you fall into one of the above categories, my best advice to you is to review your procedures as soon as possible. If you submitted one (or more) of the 809,945 claims inappropriately paid, that payment will be recouped. You can expect to receive a demand letter at some time in the future.

Medicare continues to increase its scrutiny of chiropractic because we have an extremely high percentage error rate. This report gives us some insight into some possible causes of that high error rate. Until our error rate is brought down to an acceptable level, Medicare will continue to review chiropractic claims. The best action you can take *right now* is to review your Medicare procedures (documentation, coding and billing) to ensure you comply with Medicare's laws, rules, and regulations. For further protection, consider consulting a certified compliance consultant to assist you in developing and installing an office compliance program.

Author's Note: For a complete copy of the latest OIG report, join my mailing list. The final welcome email links you to a copy of the report.

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