

Dynamic Chiropractic

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The Silver Lining in the OIG Report

I'm not waiting around for a federal subpoena to open my eyes, and frankly, I don't think you should, either. It's true, some of our colleagues are only going to cross their fingers and hope for the best. But \$280 million dollars a year in lost Medicare payments is kind of hard to ignore, even if the government's definition of "necessary care" is problematic.

Now, the important question is: What will define our response? Will we simply act out of fear? Or does this crisis provide an opportunity to address some longstanding concerns in our own offices? I'm hoping it's the latter, and I believe I have good reason for my optimism. But before we get to my good hopes, let's make sure we're all starting on the same page here.

If you haven't been living underwater the past several months, you know I'm talking about "the report" from the Office of the Inspector General (OIG) explicitly criticizing chiropractors for malfeasance in Medicare documentation practices, leading to \$280 million in improper payments in 2001. As *Dynamic Chiropractic*¹ and other publications have reported, the Inspector General of the Department of Health and Human Services doesn't have very kind words for our profession: "Based on the volume of medically unnecessary, undocumented, and noncovered services allowed, chiropractic services represent a significant vulnerability for the Medicare program."² Yes, all kinds of other documentation errors by other Medicare providers were noted by the OIG, but DCs seemed to have taken the cake.

If you've followed this story so far, you know that a Chiropractic Documentation Task Force is now in place and will provide a response to the Department of Health and Human Services some time in the coming year. You can bet there's going to be changes in the curriculum of chiropractic colleges and the requirements of state licensing boards. While these changes might not affect you immediately, in all likelihood, you're going to have to jump through some high document hoops in the near future.

Besides the increase of refund and service denials that are on the horizon, the most alarming aspect of this story is the fact that HIPAA laws have effectively made document fraud a federal offense.³ Of course, it's always been illegal, but now there are some teeth behind the law. Yes, there's truly a thick line between improper documentation out of ignorance and purposeful manipulation of third-party payers. But I don't think it takes a great deal of imagination to see how a large, insurance-based practice with improper documentation could spark the interest of the Feds. Especially when the OIG report noted the common practice of bypassing treatment codes by billing for noncovered modalities under "spinal manipulation," which cost Medicare \$24 million in 2001.⁴ While that figure represents only a fraction of the total Medicare payouts that were improperly documented, it nonetheless has drawn the attention of the OIG, and it's the only figure that chiropractors can influence directly. So, even if you're a cash-based lone eagle and Medicare just isn't in your vocabulary, it might be wise to pay attention to the development of this issue, in case your patients ask you about "chiropractic insurance fraud."

Which brings us back to the initial question: Are we going to respond out of fear, or instead, will we seize this opportunity in order to embrace the future? I'm placing my hope in "embracing the future," and let me explain my optimism. There's a silver lining in this dark cloud, and it largely has to do with chiropractic's growing profile among Medicare programs.

As the former chairman of my state chiropractic association's documentation subcommittee, and as vice chairman of the Iowa Board of Chiropractic Examiners, I have reviewed plenty examples of poor documentation firsthand. I've also seen some excellent documentation. I think it's safe to say that many of us fit somewhere in the middle: Our documentation standards are up to snuff in the majority of cases; however, there may be some problem areas we just haven't handled as well as we should. Perhaps it's been for a lack of time, education, proper office management, or maybe some of us didn't quite understand the gravity of the situation.

Poor document practices are nothing new to chiropractic, or to health care in general. The fact that the Department of Health and Human Services believed that chiropractic practices even warranted an investigation for Medicare vulnerability is a sure sign that: (1) they're just simply out to get us; or (2) the need for chiropractic by Medicare patients has finally reached a tipping point where enough funds are leaving state coffers toward chiropractic services to justify a study of what actually goes on in our offices. And I think the latter is a good thing.

Can proper documentation be annoying, confusing, and tedious? It usually is. Can it incite resentment for the whole Medicare system? Often it does. But the OIG report is a sure sign that we're now poised for long-term growth and adaptation into mainstream medical coverage by engaging Medicare policy-makers where it matters to them most: in our everyday documentation practices. It's only going to be in actually establishing a consistent plan of care for every Medicare patient, as is required by law⁵ that we can begin to demonstrate that maintenance services, the villain of the OIG document itself,

are just as important for the spinal health of the labor force as is treating acute and chronic subluxation. After all, it's hard to document long-term, evidenced-based care when there's no documentation of the evidence that the government agency in question will recognize.

Just recently, we learned of the expansion of chiropractic services into the Federal Employee Program standard option.⁶ With these new privileges comes the new responsibility of increased scrutiny of our treatment. And I believe it is a scrutiny that we can easily withstand for the short term with some minor changes in our document processes. Not because we're afraid of the consequences of inaction, but because we see the possibilities that will open when we begin to play with the medical bureaucrats at their level and demonstrate the effectiveness of chiropractic health care. Anyone willing to see this silver lining and adapt their documentation practices accordingly, has taken one step forward in helping us evolve the practice of the future.

References

1. For a recent story, see the Jan. 29, 2006 issue of *Dynamic Chiropractic*: "Chiropractic Organizations Address Documentation Problems."
www.chiroweb.com/archives/24/03/02.html.
2. *Chiropractic Services in the Medicare Program: Payment Vulnerability Analysis*. Department of Health and Human Services, Office of the Inspector General, June 2005. OEI-09-02-00530, pg. 4.
3. See the Jan. 1, 2006 issue of *Dynamic Chiropractic*: Jaffe, Richard. "Are You Committing Insurance Fraud by Doing Expensive, Hi-Tech Testing?"
www.chiroweb.com/archives/24/01/01.html. I'll leave the legal explanations up to him.
4. *Chiropractic Services in the Medicare Program: Payment Vulnerability Analysis*. Department of Health and Human Services, Office of the Inspector General, June 2005. OEI-09-02-00530, p.9.
5. Ibid, pg 11: "Just 28 percent of chiropractic services were provided as part of a written plan of care, and only 23 percent of those plans included specific treatment goals and objective measures to evaluate progress towards those goals. The absence of specific goals was a strong indicator of unnecessary care."
6. See Murray, Kara. "Federal Employee Program Standard Option Now Includes Spinal Manipulation." *ACA News*, January 2006, Vol. 2, No. 1.