

ZPIC Alert: Chiropractor-Owned Multidisciplinary Practices Around the Country are Under Increasing Scrutiny and Audit by State Medical Boards and CMS Medicare Contractors.

(October 14, 2013): Over the last six months, we have noted a significant increase in the number of audits initiated against Chiropractor-owned and / or managed multidisciplinary practices and clinics. Typically, these integrated medical practices and clinics employ at least one Chiropractor (typically in an ownership or managerial capacity), along with multiple Doctors of Medicine (MDs), Doctors of Osteopathy (DOs). Physician-extenders such as Nurse Practitioners (NPs) and Physician Assistants (PAs) are also commonly employed in these multidisciplinary practices and clinics.

The purpose of this article is to examine Chiropractor-owned and / or managed, integrated, multidisciplinary practices which employ MDs, DOs and physician extenders in order to provide a wide range of care and treatment services. While there are a number of benefits to such a model, both State regulatory entities and Federally-contracted Zone Program Integrity Contractors (ZPICs) working for the Centers for Medicare and Medicaid services (CMS) have shown their concern regarding these organizations. Depending on the jurisdiction, a number of State regulatory entities have questioned the appropriateness of the model itself. ZPICs and other CMS Medicare contractors have initiated (or, in some cases, are in the process of initiating) a review or audit of various claims submitted to Medicare for coverage and payment.

I. Why have Chiropractors Worked to Integrate Other Medical Services Into Their Practice?

While you may disagree, it has been our observation that many Chiropractors have an entrepreneurial spirit. This has manifested itself in a growing number of Chiropractor-owned and managed multidisciplinary practices which provide health care services other than merely those associated with chiropractic care. Depending on the State, integrating other medical services into a chiropractic practice isn't always easy – there are often a number of statutory and / or regulatory barriers to be overcome. Examples of the Chiropractor-owned multidisciplinary practices we have recently seen have included:

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Pain management clinics.

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Multidisciplinary clinics which also offer complimentary and alternative medicine therapy options.

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Industrial medicine clinics (often focusing on Workman's Compensation cases).

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Orthopedic clinics focusing on back injuries, spinal compression problems and victims of automobile accidents.

Chiropractic practices choosing to transition over to a multidisciplinary model have often found that they are better equipped to address the health problems of their patients. This is often due to the fact that an integrated DC / MD practice typically greatly expands the scope of care and treatment services available to patients. This multidisciplinary approach provides patients with a convenient one-stop care and treatment option.

From a financial standpoint, Chiropractor-owned integrated / multidisciplinary practices and clinics have also found that this business model opens up a number of previously-unavailable opportunities. As you are aware, only a few chiropractic services qualify for coverage and payment under Medicare. While private payor plans typically cover a somewhat wider scope of services, many Chiropractors have essentially built their business on cash-pay patients. The addition of MDs, DOs and physician extenders has permitted integrated practices to expand their scope of medically-reimbursable services, many of which now qualify for coverage and payment by Medicare and private payor programs. While there are both patient-care and financial benefits to the integrated, multi-disciplinary model, there are also a number of challenges you should consider prior to setting up this type of practice or clinic.

II. Challenges to be Considered:

A. State Regulatory Considerations:

Depending on the State, it may be illegal for anyone other than a medical physician to own a medical practice. For example, many jurisdictions still prohibit the ***"Corporate Practice of Medicine."*** In such States, it is illegal for a corporation to practice medicine. Moreover, a corporation cannot employ a physician to provide medical care and treatment services.

Although every State is different, if your State prohibits the Corporate Practice of Medicine, it may be against the law for a corporation or for a non-physician individual (including a Chiropractor) to own or control a physician practice or clinic which provides professional physician services. Therefore, we strongly recommend that prior to setting up a Chiropractor-owned, multidisciplinary practice or clinic, you should contact a qualified health lawyer to assist you maneuvering through the myriad statutory and regulatory requirements governing this complex area of law. Several lawyers here at Liles Parker can assist you in addressing this issue.

As a final point in this regard, should you choose to set up an integrated practice or clinic, it is essential that you have a full understanding of both your State's Chiropractic Practice Act and the Medical Practice Act governing the physicians you intend to employ.

B. Current Audit Challenges:

In recent months, many Chiropractor-owned or controlled multidisciplinary practices and clinics have been advised that their organizations will be placed on prepayment review or that their prior-paid claims are being subjected to a postpayment audit by a ***"Zone Program Integrity Contractor" (ZPIC)***, such as AdvanceMed, Health Integrity, SafeGuard Services, NCI or Cahaba.^[1] As with other health care providers, most of these CMS-contractor audit actions have been generated as a result of data-mining. Other reasons for audit and / or review have included: patient complaints, competitor complaints and referrals from State Medical Boards. A minority of cases have also included audit initiatives focusing on specific Evaluation & Management (E/M) levels and / or perennially-problematic modifiers, such as

modifier 25. Modifier 25 audits examine whether a “**significant, separately identifiable E/M service**” was provided by the same physician on the day that a separate, billable procedure was also provided. Regardless of the reason for audit, if your integrated practice or clinic is audited, it is essential that you engage qualified health law counsel to advise you on your options for responding to an inquiry by a ZPIC.

Prepayment Reviews: Unlike postpayment overpayment assessments, there is not an effective administrative overpayment process for health care providers placed on prepayment review. We recommend that you consult with legal counsel if your practice is placed on prepayment review. There are three points to keep in mind in such cases:

- (1) It is often in your best interest to continue to submit claims for review and not hold them. Even if they are denied, at least you can initiate the postpayment appeals process as soon as possible and hopefully begin to restore cash flow;
- (2) It is often helpful to engage qualified health law counsel to review your claims and generate a report that can be sent to the ZPIC, pointing out that the claims do, in fact, qualify for coverage and payment.
- (3) Think outside of the box—no provider can survive on prepayment review over a long period if a significant portion of their payor mix is Medicare. Contact your health law counsel to discuss possible options for seeking remedial action to have the prepayment review lifted.

Postpayment Audits: Over the last decade, ZPICs have aggressively pursued alleged Medicare overpayments from Chiropractors, Physicians and other health care providers around the country. Specific actions taken have included:

- (1) Using statistical sampling and extrapolation. While the Medicare Program Integrity Manual sets out the basic requirements for a ZPIC to conduct a statistical sampling, ZPICs have been permitted to use sampling methodologies that differ from those prescribed by CMS.

ZPIC reviews have often alleged significant claims coverage concerns. Identified error rates of 100% by ZPICs are not uncommon. They then seek a full refund of all claims submitted by an individual provide.

- (3) **Multiple errors often identified.** Due to the massive amount of minute technical requirements imposed on providers, ZPICs are often able to identify and allege multiple technical and substantive errors in many of the claims which they review.

Medicare Revocation Actions: Over the last year, we have seen a sharp increase in the number of Medicare revocation actions taken. The reasons for revocation have varied but have typically been associated with alleged violations of a health care provider’s participation agreement. In some cases, the ZPIC contractors found that the provider had moved addresses and had not properly notified Medicare. In other cases, a health care provider was alleged to have not been cooperative or refused to participate in a site visit. As a participating provider in the Medicare program, your organization must fully meet each of its obligations under the agreement in order to remain in the program.

ZPIC Referrals for Civil and Criminal Enforcement: ZPICs are actively referring health care providers to the Department of Health & Human Services, Office of Inspector General (OIG)

(which can in turn refer a case to the Department of Just (DOJ) for possible civil and / or criminal enforcement) when a case appears to entail more than a mere overpayment. However, just because a referral is made doesn't mean that it will be prosecuted. In many instances, OIG and / or DOJ will decline to open a case for a variety of reasons (such as lack of evidence, insufficient damages, etc.).

What Sources of Coding / Billing Data are used by ZPICs? ZPICs are required to use a variety of proactive and reactive techniques to identify and confront any potentially improper or fraudulent practices. As set out in Chapter 2 of the *Medicare Integrity Policy Manual (MIPM)*, ZPICs have access to and utilize a wide variety of data sources. Primary data sources include the “*National Claims Data System*” and local data compiled by the contractor in an effort to identify “unusual utilization patterns.” Some of the secondary data sources relied on by ZPICs include:

- Reports issued by HHS-OIG and the General Accounting Office (GAO);

- HHS-OIG Fraud Alerts;

- Complaints from beneficiaries and their families and providers;

- Referrals by other Medicare contractors, CMS components, State Medicaid Fraud Control Units (MFCUs), DOJ (including U.S. Attorney's Offices), and other federal program personnel;

- Referrals from State Medical Licensing Boards; and

- Overpayment data.^[2]

III. Final Thoughts:

Chiropractor-owned and / or controlled practices and clinics currently appear to be ***under the proverbial microscope***. While there is little, if any, action that can reduce your likelihood of being targeted for an

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audit due to data-mining, there are a number of effective steps that you can reduce your risk of liability if an audit or investigation is initiated. The design, implementation and adherence to provisions set out in an effective compliance plan can greatly improve your efforts to fully meet your statutory and regulatory requirements under the law.



Robert W. Liles, JD, MBA, MS, serves as Managing Partner at the health law firm of Liles Parker, Attorneys and Counselors at Law. Robert represents Chiropractors, Physicians and other health care providers around the country in connection with State Medical Board actions, Medicare audits and other health law issues. Please give Robert a call for free consultation. He can be reached at: 1 (800) 475-1906.

[1] Zone Program Integrity Contractors (ZPICS) such as AdvanceMed, Health Integrity, SafeGuard Services, NCI or Cahaba are contracted to work for the Centers for Medicare and Medicaid Services (CMS).

[2] CMS, *Medicare Program Integrity Manual*, § 2, available at

<https://www.cms.gov/manuals/downloads/pim83c02.pdf>