

**HOW TO SURVIVE A CHIROPRACTIC AUDIT (PART 1)**

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Dr. Necela, founder of The Strategic Chiropractor, wanted to fill a much needed void to teach the principles of the “business side” of chiropractic in respect to proper billing, coding, documentation, and collections along with sound business management strategies.

As a practicing chiropractor and a former Insurance Claims Analyst, Dr. Necela possesses unique qualifications and experience to help chiropractors achieve this.

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**ARE YOUR INSURANCE PAYERS, MEDICARE OR EVEN PERSONAL INJURY/MOTOR VEHICLE CARRIERS ASKING YOU FOR REFUNDS?**

Over the last several years, you’ve probably noticed an increase in the number of payers auditing chiropractic services. This trend seems to be increasing as is the aggressiveness of the audit. *Translation – payers are asking for more money back, more frequently.*



At times, it may appear that these payers are clearly targeting chiropractors and I will admit that I did exponentially fewer Chiropractic Audit Consults a few years ago than recently. While, in some cases, that may be true, the number of audits has increased for all physicians – regardless of specialty.

If that dreaded letter or visit happens to make its way to your office, here are a few questions you will (or should) be asking.

**1. Can this payer legally audit me?**

Likely the answer is “Yes.” Regardless of whether you are contracted or not, if the payer is reimbursing you or the patient, they have a right to audit that reimbursement and the documentation connected with it.

Occasionally, you can refuse some types of audits. For example, in a case where you are not contracted and an auditor shows up at your door, you may have legal right (depending on your state rules) to prohibit them from coming in. Most payers, however, are aware of these requirements and they will send you a formal notice asking for your records and/or informing you that they will be stopping by.

**2. Do I need an attorney?**

The short answer is “maybe.” Unfortunately, you won’t really know immediately whether an attorney will be necessary and/or useful. Some ethical lawyers will tell you this upfront while others may happily require you to pay them a retainer of a few thousand dollars just in case. If you receive a request for records and the payer winds up coming back and demanding \$437 because you billed, coded or documented a few services incorrectly, the \$3500 attorney may be overkill. On the other hand, if the payer is asking for \$746,000 back and accusing you of fraudulent billing, it might not be a bad idea to get some legal assistance right away.



*I'm familiar with ACOM Health providing this type of comprehensive patient documentation, so it may be good to try their "preventative maintenance route."*

*A lot less than the cost of any audit too!*

Either way, be sure to seek counsel with an attorney who is experienced in dealing with post-payment audits - these are generally healthcare attorneys:

- Don't use your family friend who has a JD or a lawyer who boasts of his litigation skills (earned on criminal trials).
- Don't even assume that your PI attorney is familiar with these cases.
- Look for someone who has handled enough of these cases (double digits at a minimum) to clearly answer your questions, guide you through the process and promotes a strategy that inspires some confidence.

Unfortunately, even though that \$250K demand is huge in your life, chiropractors are pretty much considered small fish in the big pond of healthcare so don't be too surprised if these attorneys are hard to find. Many skilled lawyers won't have time for your "little" case because they are busy defending hospitals and big physician groups that are facing post-payment demands of \$100 Million or more. If you are facing a post-payment demand and uncertain of your strategy or need for an attorney, consider scheduling a Chiropractic Audit Consult and I will give you some recommendations.

### **3. What's my best defense when facing a post-payment demand audit?**

If the insurance audit has resulted in a payer demanding repayment, your best initial defense is to "audit the audit."

At this point, I have seen and worked with hundreds of chiropractic audits and it's hard to generalize about much – except one thing: *the auditors are not always right.*

(Point of clarification: even though I am the first chiropractor to be certified as a Professional Medical Auditor and Certified Professional Coder, I do not audit chiropractors. On the contrary, like this post, my goal is to help defend you in the case of a chiropractic audit and, preferably, teach you how to avoid one altogether!)

Auditing is sometimes more of a subjective business than you wish to realize. It's biased from the start because the auditors earn a commission on the money they take back. And it's a high volume business whereby the more claims they audit, the more money they can make. Unfortunately, this means that, in their rush to get through your claims, they can and do make mistakes. Auditors routinely miss items, make presumptions and fail to give you the benefit of the doubt. In this respect, your best initial defense is to check their work in the same manner that they are auditing yours.



Maintaining accuracy in all documentation can be a wonderful way to withstand this scrutiny and to beat an audit challenge. A good way to accomplish this is through good records. I'm familiar with ACOM Health providing this type of comprehensive patient documentation, so it may be good to try their "preventative maintenance route." A lot less than the cost of any audit too!



#### 4. When do I need assistance?

If you've received a post-payment demand and can't quite figure out how in the world you could have possibly made all those mistakes, and/or how the auditors arrived at the gargantuan post-payment demand, and/or how in the world you are going to afford paying back that amount of money, then now is the time to assemble your defense strategy.

##### Depending on your situation:

- That may mean simply forming an appeal letter as a rebuttal to what the payer is stating or demanding.
- It may mean hiring an attorney.
- May involve a combination of defense maneuvers.

If you need assistance in formulating a defense strategy or discussing your chiropractic audit, consider scheduling a Chiropractic Audit Consult. I certainly can advise you on these matters.

#### 5. How negotiable is the post-payment demand?

When a chiropractor gets a letter that has a demand equal (or greater) to the cost of their home, one of the first questions that pops into their head is: "How can I afford this?"

This is quickly followed by: "Will I have to declare bankruptcy?"

And eventually, most DC's begin to wonder: "Is this figure negotiable?"

Let's start with the last question, as it will affect your actions on the first two. In most cases, payers are open to any "reasonable" settlement. In other words, their audit demand is negotiable. In large audits, this is primarily due to the fact that they may not have physically audited each and every date of service that resulted in a post-payment demand, but that the total amount was arrived at by the process of extrapolation.

If you are unfamiliar with this term, extrapolation can be easily explained as this: if the auditor reviews 50 of your records and finds that you have errors 80% of the time, they extrapolate that finding (through complex statistics) to essentially derive at an equation that states that you must be wrong for 80% of ALL your claims within the



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legally bound time period (generally 18 months). As a result, an audit that determines you were actually overpaid on \$46,000 can easily wind up to demand back several times that amount through the use of extrapolation.

On the flip side, the special investigations unit knows that the auditors use this math and they are aware of its flaws. This increases the chances that you will be able to negotiate your post-payment demand. In some cases, I have been able to help chiropractors end up paying back pennies on the dollar or a fraction of what their original demand was.

Unfortunately, this isn't a rosy topic, but it's a necessary one. For those of you who are in this position, I hope this post can help you navigate these waters.

In Part 2, we will talk more about preventing audits for the rest of you who hope never to use this information!

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