



Promises, Promises

BUILD PROTECTION INTO YOUR CONTRACT CLAUSES

By Richard Keenan

“On Your Side” will be a periodic column focused on strategic and practical ways for billing companies to avoid or resolve billing disputes.

HBMA has a history of offering programs and materials to educate its members on billing contracts, as well as recommended practices and provisions to address important compliance issues. In the HBMA website archives (www.hbma.org), you’ll find a number of past program materials on billing contracts, including “Collective Wisdom” Best Practices for Third Party Healthcare Billing Companies, prepared by the Business Practice Committee of the HBMA. See Chapter 2, “Get it in Writing” (The Components of Billing Contracts).

Most companies have developed standard agreement forms, often tailored for a specific client, that attach a schedule of client services, client responsibilities, and a schedule of service fees. Make sure your standard agreement includes provisions that limit your legal and litigation risks by addressing the most likely areas of disputes.

This month’s column will cover contract clauses about the promises made as you begin the client relationship.

Marketing your services: Preventing sales talk from turning into claims of breach of contract or fraud.

How a company’s services are described during marketing and the actual performance results after the contract is signed can lead to disagreements and claims of broken promises. The following steps will help you avoid potential liability for marketing statements.

- **Recognize that in competing for a new client**, you or your staff may often provide an analysis or make statements that you expect to do better than your predecessor. When that happens, make sure that what you and others in your company communicate is your *belief* that you can do better but not a promise.
- **Review your sales materials** and make sure that your sales personnel are careful in the way they describe your company’s goals, expectations, and “targets,” so there’s no implication that you are guaranteeing some particular results.
- **Recognize that in marketing your services**, you or your

sales staff may be tempted or pressed to commit to certain figures. Be careful that any figures you discuss in the contract are clearly stated as *goals* not as *guarantees*. Make your client aware that because, in many instances, the results a billing company achieves for a client are out of its control, it is unreasonable to impose guarantees in the billing contract.

- **Include language in your billing contract to make it clear** that there are no promises or guarantees with respect to any specific collection statistics such as net collection percentage (NCP), gross collection ratio (GCR), days in AR, etc.

- **Include an Integration Clause** to make sure that “sales talk” does not result in a claim that you have guaranteed some particular result.

For example: *This agreement contains the entire agreement of the parties relative to the services to be provided to Client and no representations, promises, inducements, oral or otherwise, between the parties not contained within this agreement shall have any force or effect as between the parties.*

Make sure your standard agreement includes provisions that limit your legal and litigation risks by addressing the most likely areas of disputes.

Use the contract to be clear about what is expected of both parties—and protect yourself from unreasonable expectations.

- **Identify your services for the client.** Many billing companies provide their clients with a detailed scope of services. If you offer a list of tasks for the billing company, is the list exclusive or simply examples? What happens if you do not do each of the tasks listed every time?
- **Make it clear that the billing company is not guaranteeing results.** The billing company is not agreeing to collect but to “seek to collect.” It must be clear that your ability to collect the physicians’ receivables is subject to many factors outside your control.

For example: *Client acknowledges that the timing and amount of collections achieved as a result of the efforts of Billing Company are subject to numerous variables outside the control of Billing Company which include, without limitation, the inability of third parties to accurately process data, receipt by Billing Company of incomplete or inaccurate data, untimely reimbursements or refusals to make reimbursements of* (continued on page 16)

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payers, bankruptcies, belated submission of documentation necessary to bill Client's charges, and disputes between payers and Client arising out of contracts between same.

- **Be careful if you incorporate "industry standard" language.** Distinguish between following industry standards for performance in terms of your efforts versus a promise of results. An example would be a standard to get bills sent out within X days of getting charge tickets and other necessary information versus a promise you will collect a specified amount of money per month or a specific percentage of billings.
- **Detail the client's responsibilities.** What's important is the agreement and recognition by the client that you cannot do your job unless the client does its job. Many companies include in their agreements "Client Responsibilities" terms that will help your sales and operations managers remind physicians that optimal billing performance is a shared responsibility. The agreement needs to contain language which expresses a *spirit of mutuality*, and it is just not the responsibility of the billing company.

For example: *Client agrees that it shall be Client's responsibility to provide to Billing Company complete and accurate information including insurance, demographic, procedure charge, diagnosis and any other information required by Billing Company to perform its services as described herein*

Future "In Your Corner" columns will cover how to limit a billing company's liability when disputes arise, how to deal with changes in the client relationship when it ends, and what to do when a billing company finds itself in a lawsuit. Also, for future columns, if you have questions about billing disputes or have experiences you would like to share on how you avoided or resolved an important client billing dispute, contact Richard Keenan at the email address below or HBMA's Publication Committee Chair, Julie Demerath (julie@badgerbillingservices.com). ▲

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