



On Your Side

CONTRACT SAFEGUARDS TO AVOID DISPUTES

By Richard Keenan

“On Your Side” is a periodic column focused on strategic and practical ways for billing companies to avoid or resolve billing disputes. Mr. Keenan will be a speaker at the HBMA Fall Annual Conference

In the last column we focused on the promises the billing company makes as it begins a new client relationship. The two key messages were to consider how you market your services in order to prevent sales talk from turning into claims of breach of contract or fraud and how to use your contract to make clear what is expected of both you and your client in order to protect yourself from unreasonable expectations.

Past HBMA programs on contracts have discussed including in your contracts a list or schedule of your services as well as contract provisions that identify the client’s responsibilities, information, and practices so that the client recognizes and agrees you cannot do your job unless the client does its job. The focus of this month’s column is contract provisions that can avoid disputes over some of the operational issues that can arise.

CLARIFY RESPONSIBILITY FOR EXISTING ACCOUNTS RECEIVABLE

Typically, the billing company is going to work for an existing practice. If so, make it clear that your responsibility does not extend to existing accounts receivable at the time your contract begins. If you do take on this added responsibility, write into the contract that you are not guaranteeing results and state clearly how you will be compensated.

Example: Absent a separate written agreement, Client will be responsible for all matters related to Client’s practice prior to the commencement date, including, but

not limited to Client’s billings, collections, accounts receivable, refunding overpayments, and any reimbursements due to third parties. If Client wishes to contract for Billing Company to assist it in such matters, Billing Company will provide a separate proposal.

Identify coding responsibilities

It is critical to delineate each party’s coding responsibilities. If the billing company is assigning procedure and diagnostic codes, then specify the clinical

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information and documentation required by the billing company for coding. If the client will assign procedure and diagnostic codes, then have the client agree that it will be responsible for their accuracy, completeness, and appropriateness. Also, contracts often provide for the client to make someone available to address matters related to your services; you may want the client to designate a “coding representative” to answer questions.

PROTECT CONFIDENTIAL INFORMATION

HBMA programs and materials have addressed HIPPA privacy requirements.

Billing contracts typically cover the confidentiality of information about a client’s patients, including electronically protected health information. More generally, contracts include terms by which both parties agree to protect the confidentiality of each other’s business practices, trade secrets, or other confidential information learned in the course of their relationship and agree not to disclose that information except as required to bill charges or as required by law. In addition, billing companies often include information about the software they use to perform client services as within the scope of confidential information. If you want to use client information for research or statistical compilation purposes, include such a provision in the contract, along with an agreement to keep information that identifies clients and patients confidential.

REPORT RESULTS TO YOUR CLIENT

Billing company practices vary on the commitment to provide a specific list of client reports and how often. If you expect to be paid for any special reports, the contract should state what the charges will be. At a minimum, most clients will expect monthly management reporting of collections. Discuss and agree with your client on what will be a standard monthly package to report on your billing performance and client practice statistics, which you can identify as a contract exhibit.

Accurate, timely reports ensure good communications with your client. They also serve an important role in the event of a dispute or *(continued on page 14)*

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litigation. In cases we have defended, we have relied on a billing company's regular, monthly client reports to defend against claims of poor performance. For example, you may be able to use those reports to compare your results against a predecessor or successor billing company. If the client accepted results of either as satisfactory, and you at least matched those results, your reports can be used to defend your performance. If there is a history of no complaints after receiving your reports, then you will want to use them to show the client approved and accepted your performance as satisfactory.

Often, detail in your reports can identify factors beyond your control that may have negatively affected collections, such as changes in payer mix, contract reimbursement rates, changes in procedure or volumes, and billing delays due to delayed receipt of information needed for billing. Accurate, regular reporting to your client will be key evidence in your defense if you are

challenged for poor performance.

GIVE YOURSELF FLEXIBILITY IN BILLING FOLLOW UP

Assuming you received the right information to bill the right payer, do you want to commit in your contract to a certain level of follow-up efforts or specific follow-up steps, depending on the payer's response? Do you want to commit to the use of specific software tools that follow up for reimbursement? Do you have that capability?

If raised by the client, discuss the fact that detailed rules dictating specific follow-up practices may not be the best approach. Point out that the typical fee structure incentivizes you to do reasonable follow up. Why agree to a set of detailed rules that may be incorrectly used in a dispute to argue that you are responsible for an unpaid bill? As you provide the client with timely and reasonably detailed reports, talk about the results. If you or the client is not happy with those results, talk about

changes that may be needed. However, be cautious in agreeing to overly detailed procedures for billing follow up.

The HBMA website archives, (www.hbma.org), include 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). If you have contract topics to suggest or experiences you would like to share on how you avoided or resolved a client billing dispute, please contact Richard Keenan. ▲

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