



Who Owns the Data?

AMA AND HBMA COLLABORATE ON A JOINT PAPER

When the good times roll, the smiles won't quit. But when the cracks appear, expressions turn grim and relationships can become difficult. That's why AMA and HBMA decided to collaborate on a topic of huge importance to physicians and their billing companies: Who owns the data? When a physician practice and a billing company decide to part ways, who owns all that patient information—and more importantly, how is it transferred to the owner and who pays? What are the obligations of the billing company, and what can physicians and billing companies expect from each other?

The answers to those questions have kept litigation lawyers busy. Now the AMA and HBMA have generated a white paper that lays out the issues. It wasn't easy and it took a year and a half. "It was extremely difficult for us to articulate the details about data ownership because often what was good for the physician was not good for the billing company and vice versa," says HBMA executive director Brad Lund. "But we kept going back to the table and both sides gave on some positions. In the end, we ended up with a great paper."

Then-HBMA-president Sherri Dumford appointed a task team comprised of two attorneys, Jim Wieland, HBMA's legal counsel at Ober Kaler, and Richard Keenan, an HBMA member and partner at Folger Levin & Kahn, LLP, who brought the application of law to the topic. Two HBMA billing company owners, Dena Mallin of Claims Pro, Inc. and Scott Risley of BilAmerica, added the reality-of-billing-life perspective.

"The goal was to provide a general informational background to AMA members as they work with individual billing companies to negotiate contracts," says Wieland. "It wasn't meant to pre-negotiate a contract. There was no effort to say this is what *has* to be in an agreement. The effort was to present what a physician and billing company might want to consider up front."

The operative words here are "up front." The paper is meant as a guide to issues—a look at worst case scenarios and how to fix them. "It's not meant to resolve what should be a matter of discussion and negotiation," says Keenan. "We leave it to the parties to make their own contracts. Some of these issues may not be important to the practice."

The process took so long because the idea was to move away from the generic, standard clauses of a billing contract

and to address the individual issues that were at stake. "It wasn't enough to say when you are terminating, you need to decide how you are going to give back the data," explains Mallin, who crafted much of the language. "It needed to talk about the format, the time frame, what happens if the practice doesn't pay. It needed real details. Those nitty-gritting considerations had to be worked out."

The collaboration between AMA and HBMA was important because both sides were represented in an issue that often becomes contentious. "If we have common groundwork and have addressed issues on both sides, it's good for both physicians and billers," adds Mallin. "It's fair."

The collaboration also adds weight to the document for both sides. "It gives more validity for the physicians that their own association was involved," says Risley. "HBMA is a vendor and a joint document is more credible when it doesn't involve a sales pitch by a billing company to a practice."

The benefits to HBMA members are twofold. In terms of the billing industry, thousands of doctors will read the information and become aware of the association called HBMA and of the value a billing company provides. On an individual level, a number of small-to-medium-sized clients don't have clauses in their contracts on what is to be done with records when there's a termination with the physician practice. "As a result of the uncertainty, disputes arise," says Keenan. "My hope is that members will use it and look at how their contracts address these provisions."

The paper begins with a strong endorsement of the billing industry: "By outsourcing to a medial billing service, a physician practice may realize increased profitability by decreasing the administrative time and expense involved in the billing process." It goes on to define records and addresses the points to consider and discuss in contractual negotiations on the topics of transfer, retention, access, audits, and record searches.

The AMA has created a flyer and has placed the document on its website at www.ama-assn.org/ama/pub/category/18192.html. HBMA has also placed it on its website, hbma.org, in the "public news" section.

Congratulations to all who made this collaboration possible. ▲