

# BETTER Billing CONTRACTS



WHEN YOU USE AN OUTSIDE billing company, you are putting the financial health of your practice in another's hands. Here's how to make sure you're protected if the company fails to perform.

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Is your billing company doing a good job of billing for your services and collecting your accounts receivable? If you're like many physicians, you may not know. What's worse, you may have trouble finding out.

Billing companies' standard contracts vary widely, but they frequently share common shortcomings. Among the most important of these is the contract's inadequate description of the billing company's obligations. Since physicians often simply sign the company's standard contract without changes, the contract's shortcomings can present problems if you are not happy with the company's performance or if you suspect the company is not doing the job it should be doing.

The contract should provide you with:

- A means of determining how good a job your billing company is doing,
- The right to early termination if you are not satisfied, and
- The ability to transition smoothly to a new billing company.

#### **Determining how good a job your billing company is doing.**

You need to be able to obtain current, detailed and readily understandable information regarding the status of your billing and collections. In our experience, information from billing companies is often difficult to comprehend or poorly organized. You should be able to obtain accounts receivable aging and related information on a patient-by-patient basis, and you may have special requirements depending on your specialty and your practice. The billing company's obligation to furnish you this information should be set forth in the contract, in reasonable detail. You may want to receive this information in a particular way, such as in an Excel spreadsheet or other format compatible with your computer system, in which case this should be specified in the contract.

#### **Right to early termination of the contract.**

Billing company contracts often are for fixed terms of one or two

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years with an automatic renewal for another one or two years, unless either party gives notice of termination a certain number of days before the expiration of the initial term. This is fine so long as you also have the right to terminate the contract at any time *without cause*.

However, all too often there is no such right in the contract. This leaves you with having to claim that you have the right to terminate based on the company's breach of contract, but the billing company is likely to dispute this. You may have difficulty supporting your position, particularly if the company's obligations are set forth in vague terms. In most cases, there should be little difficulty including such a provision in the contract before it is signed, when the company is trying to get your business.

## **Ability to transition smoothly to a new billing company or in-house billing.**

Some billing agreements state that after notice of termination, the company does not have to provide you with your pending billing and accounts receivable information until you pay all of its outstanding invoices. Of course, the reason that you may not have paid those invoices is because the billing company has not been

doing an adequate job. We recommend you delete this overreaching provision from your contract.

Beyond this, it is important that the billing agreement specify the data that will be provided to you upon termination, including the format in which it will be furnished (for example, hard copies with detailed back-up or computer files in Excel format). The agreement should also specify that the data will be provided on or before the termination date of the contract.

In addition, the contract should indicate who is responsible for continued efforts to collect bills for services provided prior to termination. If the terminated company is to have such responsibility, the contract should indicate the length of time that responsibility runs.

## **Beware Various Problem Areas**

We have encountered numerous shortcomings in billing contracts in addition to those mentioned above. Other problem spots include the following:

- Absence of required "business associate" provisions, thereby placing the physician in violation of HIPAA by making confidential information available to a billing company without required contractual protections against disclosure.
- Power-of-attorney provisions giving the company broad authority to take various actions in the physician's name.
- "Limitation of liability" provisions drastically limiting the company's liability under the agreement, irrespective of the company's performance.
- Indemnification provisions running in favor of the billing

company, without a comparable reciprocal provision in favor of the physician and medical practice.

- Absence of any restriction against the company's assigning the contract to another billing company without physician consent.

- Compensation based on gross collections, rather than on net (after refunds).

- Absence of provisions detailing timeframes for the company's performance of its obligations.

- Absence of provisions protecting the physician from the billing company's access to collected amounts. (Don't forget that Medicare reassignment rules prohibit billing companies under percentage-based contracts from receiving and negotiating checks payable to you.)

### Due Diligence Is Essential

The comments above should demonstrate the importance of negotiating the contract, rather than simply signing the billing company's standard agreement. Even before negotiating the terms of the contract, there are important steps—often overlooked—that you can take.

One very simple step is asking for samples of the reports that the company will furnish under the contract. (The billing company should black out patients' names first. If it doesn't, you are on alert that the company may not protect patients' confidential information as required by HIPAA.) If you have questions about any of the reports, ask the company for clarification. Also, if you feel there is a need for additional reports, ask for them and make sure they must be provided under the terms of the contract. The time to

make sure the billing company can provide you with the information you want is before the company starts doing your billing.

Get references to make sure the billing company has experience in your particular specialty, including any ancillaries you may provide, such as imaging services. Additionally, fast and inexpensive online services can provide you with public records information about the company and its principals, including information about legal judgments and any exclusion from participation in the Medicare program. Federal law prohibits you from contracting with entities or individuals that you know or should have known have been excluded from participation in federal healthcare programs. If the company has been involved in a number of lawsuits, it makes sense to look for another billing company.

Lastly, don't turn over your billing until the contract is signed by both parties. One client did this and lost a lot of negotiation leverage because the billing company already had the business. ■

*This article does not address all issues that you must consider, nor does this article completely cover any of the issues that have been discussed. This article is not intended to constitute legal advice and you are advised to consult with an attorney for any related legal matters.*



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