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(L-R) David Glusman and Thomas Reinke of Marcum LLP. Courtesy photos

COMMENTARY

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Health care attorneys can facilitate the best outcomes and protect their clients by focusing on performance measures and billing responsibilities in their billing clauses. This will also facilitate legal representation if things go wrong and litigation is required.

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Billing performance continues to be one of the top management issues affecting contractual relationships in the healthcare industry. In addition to contracts between providers and their outside billing agents, billing performance is also important in management services agreements between integrated health systems and their contracted OR owned partners, such as physician practices, outpatient diagnostic centers, ancillary or therapy providers, and home care or subacute entities.

Health care attorneys can facilitate the best outcomes and protect their clients by focusing on performance measures and billing responsibilities in their billing clauses. This will also facilitate legal representation if things go wrong and litigation is required.

Medical Billing Has Changed Dramatically

Billing for all types of health care providers has become increasingly automated. That trend is been driven by advances in software intelligence and the IT integration between providers and insurance companies. These developments streamline billing steps including charge capture coding, charge entry, claim submission, payment processing and electronic cash receipts. The changes have made billing much more efficient with less human involvement and oversight. In many cases CPT coding procedures have been streamlined, and "scrubbing" software for insurance claims has seemed to improve payment accuracy and cash flow. However, these advances may have their own unique and important downside impact. The automation of billing has led to decreased human analysis of billing activities. In turn that has increased the probability that systemic and undetected errors in reimbursement are occurring on an ongoing basis, resulting in poor billing performance.

An important additional factor is that more medical billing is now performed by large central billing offices that handle many different types of providers. The central billing department in a large integrated health system must have very diverse and complex billing systems with specialized staff dedicated to specific types of providers. The management of diverse billing operations and staff is a challenge. Certain billing clients or billing activities can fall between the cracks.

Skimping on Quality

We are seeing situations where central billing offices have cut back on detailed and analytical reporting for their clients. Simultaneously, the quality of reports issued by billing offices has deteriorated.

One report commonly issued by CBOs is a net collection analysis showing timeliness and net total collections (vs. 100% of charges). These reports commonly show billing performance as high as 95% which suggests very strong performance. However, behind the scenes that performance may be influenced by some level of inappropriately accepting a payer's claim denials and quickly writing off the denials as a contractual allowance.

Another reporting issue is that CBOs are trending to fewer analytical reports. These reports may show write-offs and adjustments with the simple description of "contractual allowance," when data on more specific and informative reasons are readily available. These reports should be based upon the actual remittance advice code that provides information on the specific reason for lack of payment. That will help both the billing office and provider improve collections.

While all of this is going on in billing offices, billing has also become more complex. There are constant changes in procedure codes, claims submission requirements, and insurers' coverage or payment policies. As one example, the AMA's "professional" version of its annual Current Procedural Terminology (CPT) guide is now more than 1000 pages. HCPCS and coding for hospital/facility services is also more complex.

The problem does not lie solely with billing departments and insurance companies. We are seeing situations where provider executives are paying less attention to billing performance for many different reasons. Then, when problems are identified, they need to be able to rely upon their contracts to help resolve things.

Need for Performance Measures in Contracts

All of these factors emphasize the need for billing performance measures in contracts. The terms for the section on billing should include the following categories:

- Billing Analytics Reports—The key measure of billing performance is a set of service and provider analysis reports showing charges, payments, and adjustments by specific code (CPT, HCPCS, DRG, or revenue) and description. In this report the adjustment amount is the critical element because it reflects the amount of billing not collected. Another analytic report analyzes adjustments by showing the specific reasons for

nonpayment. This report of adjustments and contractual allowances should be itemized by remittance advice codes that provide the specific reasons for nonpayment.
- Aged accounts receivable analysis showing outstanding balances by date ranges.
- Collection agency analysis, showing placements and recoveries by collection agency.
- Net collection ratio report tracking monthly cumulative collections based upon the original service date for charges.
- Payer (insurance company) analysis report showing contracted and actual payment rates.

Reports alone are not enough. Billing terms in agreements should include the following additional provisions:

- Delineation of online query and reporting capabilities available to the provider.
- Designation of an account representative from the billing office as the contact person for billing matters.
- List of activities and responsibilities for the account representative, such as coding reviews, and analytical reporting.
- Outline of process and timeliness standards for handling and resolving billing questions.
- Provisions for resolution of unresolved matters.

Termination

The termination clause should specify the billing office's responsibilities in termination and assist the provider in converting to a new billing agent. Along with outlining roles and responsibilities, the contract should specify that all billing data is owned by the provider, not the billing company, with the provision that the data be made available by the billing agent to the provider for an extended time period, in readable form; this means that the data remains installed and accessible on the billing agent's billing software for the defined period. The ability to have an outside consultant review detailed data on behalf of the service provider is also important in drafting agreements.

When Disputes Arise

Formal billing disputes have been increasing, particularly with providers who use outside billing companies. Billing disputes tend to emerge and evolve over time. Disputes that are not quickly resolved can become complex matters for attorneys to manage because the origin, extent and history underlying the problem can become very confusing.

The key challenge here is most often in discovery, in obtaining historical source documents for internal billing steps, and historical documents from insurance companies. Attorneys need to focus on the key sources of data that provide objective, detailed evidence of performance issues. This source is often insurance company remittance advices. These reports provide a level of detail on key billing activities, timetables for submission and processing, and most importantly, the specific problems that occurred with claims and the reasons they were not paid on a timely basis. Original charge capture, coding documents and patient ledgers are the key source documents. Billing contracts should specify record retention policies for all of these documents.

Well-written contracts with expanded clauses for customer access to all underlying data and documentation are an important value-added service to clients.

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