July 21, 2025

Where There's a Bill, There's a Way: Understanding Key Nuances of Medical Billing Contracts Before You Sign

When a healthcare provider hires a third-party billing company, the goals are clear: streamline revenue cycle operations, ensure timely collections, and reduce administrative burden. While outsourcing billing may offer operational efficiencies, it also introduces significant legal and financial risks—especially if the billing agreement isn't thoroughly reviewed and negotiated.

From solo practitioners to group practices, ambulatory surgery centers, and mental health treatment facilities, all healthcare organizations need to understand the fine print of their billing contracts. Below are key provisions to watch for and why they matter.

Liability for Billing Error

Who is liable when something goes wrong? Many billing contracts contain broad disclaimers stating that the billing company is not responsible for any coding or claims errors, even when the company prepares and submits all claims on your behalf. That means if a payer audit reveals improper billing, the healthcare provider (not the billing vendor) is on the hook for recoupments, penalties, or even fraud allegations. Healthcare providers need to make sure the agreement clearly defines who is responsible for coding accuracy and claims submissions and under what circumstances the billing company bears any liability.

Compensation: Percentage of Collections and Beyond

While it's common for billing companies to charge a percentage of collections, that's often just part of the story. Many agreements include additional fees for services such as denied claim handling, appeals, use of software platforms, or other ancillary charges that can significantly increase your costs. It's important to understand whether the percentage is based on gross collections, net collections, or simply charges submitted and whether the billing company still collects its fee even when a claim is denied or sent to collections. It's also important to understand whether the billing company remains entitled to the payment if collections decline due to the billing company's own errors, such as refunds or recoupments. Ultimately, the compensation structure should be transparent, aligned with your expectations, and tied to the actual performance of the billing company to ensure you're not paying for services that fall short of your expectations.

Indemnification: Who Protects Whom?

Many billing contracts require healthcare providers to indemnify the billing vendor for any losses arising from the provider's acts or omissions but don't provide reciprocal protection when the billing company is at fault. Ideally, the contract should include mutual indemnification. At the very least, the billing company should indemnify the healthcare provider for damages resulting from its own negligence, breach of contract, violations of the Health Insurance Portability and Accountability Act (HIPAA), or misconduct.

Dispute Resolution, Jurisdiction, and Legal Costs

If a dispute arises between a healthcare provider and a billing company, the options for resolution are often dictated by the contract, and they may not be favorable to the provider. Many agreements require mandatory arbitration at a preset location, which could be in a distant state. Agreements may also include a provision that the prevailing party shall be paid for all costs incurred as a result of the proceeding, including attorneys' fees, which potentially increases financial risk. It is critical to carefully review where and how disputes will be resolved, whether arbitration is required, who will bear the costs, and which state's law will govern the agreement. These provisions can significantly impact a provider's legal rights and negotiating leverage in the event of a conflict.

Termination Rights: Can You Walk Away?

Even the best vendor relationships can deteriorate over time, making it essential to examine the termination provisions in your billing contract carefully. Identify whether you have the ability to terminate the agreement without cause and with reasonable notice (for example, 30 to 90 days), and whether the billing company has the same right. Review whether any penalties or fees apply for early termination. Contracts with long initial terms, automatic renewal clauses, or restrictive termination conditions can leave healthcare providers locked into unfavorable arrangements with limited recourse if the vendor fails to perform.

Time Limits on Bringing Claims

Some contracts include time limitations that govern how long you have to raise a dispute or bring a claim. For example, the agreement may require you to notify the billing company of any dispute within 90 days or lose the right to recover damages entirely. However, some payer audits can take months to determine whether the billing contractor submitted the claims correctly. Make sure you understand and negotiate any time limitations for bringing claims, especially since billing errors may not be discovered for years.

HIPAA Compliance and the BAA

Medical billing companies are considered "business associates" under HIPAA, which means that any agreement with them must include a compliant business associate agreement (BAA). However, not all BAAs offer the same level of protection. A strong BAA should comply with HIPAA and HITECH; require the billing company to implement appropriate administrative, technical, and physical safeguards; and address how subcontractors will maintain compliance. It should also include clear breach notification obligations and provide for indemnification if the billing company is responsible for a data breach. To ensure there is money to pay a breach claim, we often suggest adding a requirement in either the BAA or the agreement that the vendor maintain cyber insurance coverage. A weak or missing BAA can leave your practice vulnerable to serious regulatory and financial consequences in the event of a data breach.

Audit Rights and Record Retention

Does the agreement allow you to audit the billing company's performance or access documentation in the event of a payer audit or dispute? You should have clear rights to inspect records and verify that services are being performed appropriately and that documentation is retained for the required HIPAA and payer audit periods.

Data Transfer and Transition Assistance at Termination

When the relationship with a billing company ends, the transition process can become challenging if the contract doesn't require the vendor to cooperate. Some agreements are silent on post-termination obligations, which can leave providers scrambling to access critical data and maintain continuity in billing operations in order to sustain cash flow. To avoid disruption, the contract should require the billing company to transfer all billing data and patient accounts in an electronic, readable format; provide final reports in a short time period not to exceed 30 days; and cooperate with any new billing vendor. These obligations should be fulfilled promptly and without the imposition of excessive exit fees that could hinder a smooth transition.

Subcontracting and Offshoring

If the billing company uses subcontractors or offshore personnel, the agreement should address such arrangements clearly. The contract should require the vendor to provide prior notice or obtain your consent before engaging subcontractors, particularly those located outside the United States. It should also impose specific security and HIPAA compliance obligations on any subcontractors involved in handling protected health information. The agreement and the BAA should also provide that subcontractors are bound by the BAA and held to the same legal and regulatory standards as the primary billing vendor.

Conclusion: Don't Sign Blindly

A billing contract is more than a formality. It governs how your revenue is managed, how risks are allocated, and how your practice will respond to audits, denials, and disputes. Whether you're a solo provider or part of a multisite organization, reviewing and negotiating your billing agreement is essential risk management.

If you're considering hiring a billing company or renewing an existing agreement, consult with legal counsel before signing. The best time to address billing contract risks is before they become liabilities.

Day Pitney's healthcare attorneys routinely assist clients in reviewing and negotiating medical billing agreements, including provisions governing compliance, liability, HIPAA protections, and vendor oversight. We also represent providers in billing audits and disputes when problems arise.

Authors

Phoebe A. Roth
Senior Associate

New Haven, CT | (203) 752-5045

proth@daypitney.com

Mindy S. Tompkins
Partner

Hartford, CT | (860) 275-0139

mtompkins@daypitney.com