Don't Get Burned by the Billing Company:
Avoid These Revenue, Reputation, & Regulatory Risks

By Cheryl Toth, MBA

"It’s a total nightmare!"

The physician’s voice was a mixture of fear and anger. He had hired his cousin's next-door neighbor’s billing company, which had reportedly worked miracles for other practices. But with this physician’s claim volume, the one-woman company quickly fell behind. In an effort to cover her incompetence, the owner/biller limited communications with practice staff, avoided accountability and blamed denials on ‘new payor protocols.’

“By the time the practice caught on, it was down six figures in revenue and facing audit,” says the practice’s attorney Michael Sacopulos, founder of Medical Risk Institute, Terre Haute, IN and General Counsel for Medical Justice. “The practice was required to refund overpayments and borrowed money just to keep the doors open. The physician said the whole experience made him want to join the French Foreign Legion.”

Penny Wise Can Be Business Foolish

This practice, like so many plastic surgeons, made a common mistake: It chose the billing service solely on price, and failed to determine whether the small company had the right experience or business acumen to handle the practice’s accounts.

“Buying based on price is the default criteria for an inexperienced or uneducated buyer,” warns Karen Zupko, President, KarenZupko & Associates, Inc. “You advise patients not to choose a plastic surgeon based on cost. Choosing a billing service based on low rates is an equally bad decision.”

Zupko and Sacopulos frequently see plastic surgeons contract with billing companies because of low fees, without evaluating the risks. These risks range from False Claims Act and HIPAA Omnibus violations to poor collections and a tarnished reputation.

“Many of these are small companies that have no liability insurance, no privacy, security, or document destruction policies, and have never sent a plastic surgeon a Business Associate Agreement (BAA),” Zupko continues. “Some of them don’t even know what a BAA is. Quite simply, that is reckless.”
Low Cost Coup Becomes Collection Nightmare

The service fee should take a back seat to a billing company’s business acumen, reimbursement and practice management knowledge, and understanding of billing and coding rules. Often, it does not, resulting in a wake of poorly managed accounts.

Zupko has been cleaning up a year’s worth of billing service mess for one plastic surgery client. “The company cannot clearly explain who is responsible for following up on patient balances,” Zupko says. “No one is making collection calls. No one collects prior balances from patients coming to the office during the global period. Why? Because the billing company doesn’t post to the software system in the office. Everything is done via fax and email. The staff can’t SEE the patient’s insurance paid. The company does not provide standard reports and the ones I have requested are mysteriously ‘unavailable.’” The practice’s charges are posted many days after the date of service, often, with the wrong date. And the company uses only one adjustment code – ‘insurance adjustment’ – so there is no way for the practice to review denial patterns or easily verify that the write-off is valid.

Consultant Cheyenne Brinson, MBA, CPA has been resolving a cornucopia of problems for a plastic surgeon in the South, who recently let his billing service go. “The company refused to use the practice’s computer system, and wanted the office to send paper Superbills even though the practice was already paperless,” explains Brinson, who works for KarenZupko & Associates. “And every time I asked for a report, they sent an Excel spreadsheet that didn’t make sense.”

Brinson has uncovered tens of thousands of lost revenue. “The service was billing Medicare for inpatient consult codes discontinued in 2010, and never refiled them with the right codes. Denials for legitimate pre-op E&M services were written off instead of being refiled with modifier 57. And no one understood the basics of filing unilateral vs. bi-lateral procedures,” she explains. Brinson also uncovered a two and a half month lapse in the surgeon’s Medicare provider status, due to the billing service’s incompetence. “They didn’t even know they could go to the Medicare site and check his status,” she laments.

Zupko is quick to point out that these kinds of problems are not only the fault of the billing service. “Plastic surgery practices with a mix of insurance and aesthetic cases, often have an out of sight out of mind attitude,” she says. “They don’t ask for reports. They don’t look at EOBs. No one asks questions or meets with the billing service on a regular basis to review performance or accounts.”

Asking a few simple questions before signing up could have avoided the chaos. “We suggest that physicians and managers follow a checklist and get answers to critical questions before they go to contract,” Brinson says. “For instance, which reports are provided each month? What’s the protocol for making follow up phone calls, collecting on overdue accounts, and reconciling accounts? What is the procedure for refunding credit balances? Does someone meet with you monthly to review performance and data?”
The bottom line is that outsourcing is not an exercise in abdication. On the contrary, a trusted, transparent relationship with the billing service is essential for success. “A professionally managed service will insist on meeting whether in person or by phone with the physician and manager regularly,” Brinson says. “It will deliver and interpret useful management data and provide ongoing feedback to help you improve revenue cycle and reimbursement processes.”

Experts also agree that a professional billing service will proactively suggest and/or adapt to process changes that improve efficiency, compliance, and communication for everyone. An unprofessional one will become defensive when confronted, often responding with: ‘that’s how the doctor told us to do it.’

**Protect Your Reputation**

A group of Massachusetts physicians recently got hit with a $140,000 fine after its billing company improperly disposed of private health information (PHI). A journalist found old patient records at a trash transfer station. No patients were harmed by the incident, but the opportunity was there. And for plastic surgeons, Zupko warns, your risk goes beyond the fees. “Your reputation is on the line.”

Sacopulos finds three clauses frequently missing in a billing company’s contract or BAA: *indemnification, insurance coverage, and termination details*. Don your diligence hat and make sure your billing service has all three. And *always* ask your attorney to review the BAA, if they offer you one. “This is not the place to save a few bucks on attorney fees,” warns Zupko.

An indemnification clause holds your practice ‘harmless’ if the billing company submits unintended, fraudulent billing, miscodes on your behalf, or allows your PHI to get into the wrong hands. Insist on one in the service contract or BAA.

And because misconduct is always a possibility, ensure the billing company has errors and omission insurance coverage. “You are entrusting a billing company with patient records and financial data” reminds Zupko, “do you really think it’s a good idea to do business with one that carries no insurance? If the billing company does a substandard job of protecting all those papers and files with your name and the name of your patients on them, and a home-based biller is seen pitching them into the curbside recycling bin by a nosy neighbor – the next thing you know you are a Dateline story.”

In addition to errors and omissions, liability coverage is a must-have for any billing company. If there is a security breach and all your patient records have been hacked, liability coverage provides the funds for breach disclosure communications, potential lawsuits, and other activities necessary to restore your good name.

Insurance is also helpful should it be discovered that the billing service is harboring a felon. “I’ve got five cases in which employees have embezzled money from the billing company or the practice,” Sacopulos says. Billing and collection companies are targets for these characters.
because of the easy access to date of birth, social security number, and photo identification – which have a value of $50 per patient on the black market. Savvy billing services conduct background checks on everyone they hire and contract with, in order to minimize this problem.

As to errors and omissions and liability policy limits, “it depends on the volume of business the practice has, but generally speaking, obtain coverage of $1 million or more for each policy,” Sacopulos advises.

Termination details are the third important clause to include in the contract. “In the old paper days, physicians didn’t think too much about terminating a vendor,” says Sacopulos. “But because everything is now digital, you must insist on termination policies and procedures that protect sensitive data.”

For instance, get written answers to questions about how the billing service will return or destroy PHI. Will it be over an encrypted channel, or delivered on a hard drive or storage media such as flash drives, hard drives, or CD-ROMs? How will data on paper be destroyed? How will the stored images in the vendor’s photocopier hard drive be disposed of? (Remember: digital copiers contain a hard drive.) Termination details should also include the procedure for disabling billing company employee access to your system.

Also critical to your reputation is the billing company’s plan for informing and servicing patient accounts throughout the transition to the next service. Says Zupko, “the last thing you want is for patients to have a negative experience with your practice due to something the billing service did.”

**Beware of Regulatory Risks**

Physicians typically assume their billing company has a razor sharp knowledge of Federal regulations and coding rules. But many small billing companies are so busy getting claims out the door that they fall short of keeping up with the extraordinary regulatory environment in which physicians live. No one attends annual society coding workshops. Ongoing education is limited, if provided at all.

“An uneducated workforce is dangerous,” Zupko warns. “An attitude of ‘I’ve been doing this for 20 years,’ does not illustrate leadership wisdom. Plenty has changed over those 20 years, especially from a regulatory standpoint. If billing company employees are not receiving ongoing education, that’s a red flag that they may not know the most current rules.”

At the very least, Zupko advises, the billing company staff should be reading the ASPS Coding Column in *Plastic Surgery News*. “And if they ‘specialize’ in plastic surgery, they should also attend an annual ASPS coding course at their own expense.”

A well-trained workforce will be up to speed on two primary regulations: the HIPAA Omnibus Rule and the False Claims Act.
First, the HIPAA Omnibus Rule. Released in January, the Rule holds business associates to a higher standard. “You’re now on the hook for everyone you’re doing business with,” reminds Sacopulos. “Every vendor, every business partner, anyone who has access to patient data.” The rule became mandatory for all business associates on September 23, and requires practices to update their BAAs and make sure vendors such as billing companies have the following in place (See Fig. 1, HIPAA Omnibus Rule Ups the Ante on Business Associates):

1. Privacy policy and procedures
2. Security policy and procedures
3. Breach notification procedure
4. HIPAA training for employees

Plastic surgeons should particularly concerned about the security of electronic communication. “Email is one of the more troubling things I see happening between plastic surgery offices and their billing companies,” Zupko says. “PHI should never be sent by email,” she warns. “Secure messaging and encrypted access must be a baseline requirement for billing companies.” Secure messaging requires an ID and password and is sent over an encrypted channel. In contrast, email is sent over the public Internet.

The Omnibus Rule does not prohibit telecommuting, “as long as the billing company’s employees and contractors maintains home office that meet the identical security and privacy policies your practice does,” Sacopulos explains. “That means, for example, that their children don’t play video games on the same computer used to access our PHI.”

Second, the False Claims Act. Reconstructive surgeons, and any practice that bills Medicare or Medicaid, must confirm that the billing company is current on this Act, which imposes liability for ‘knowingly’ submitting fraudulent claims to the federal government. According to the Centers for Medicare & Medicaid Services (CMS) this includes ‘deliberate ignorance’ of billing and coding facts, and things that ‘the claimant knows (or should know)’ are false.1

Zupko recently worked with a plastic surgeon whose billing company did not understand certain billing fraud guidelines. “I was shocked to find this option on the new client contract: ‘Do you want us to make refunds to patients? – Check yes or no.’ If a physician were to check the ‘no’ box and sign the agreement, a whistleblower would have the documentation needed to turn him in under the False Claims Act.”

Outsourcing the billing can be a good decision, depending on your practice’s needs. Take the time to evaluate all aspects of the relationship – from coding and collections knowledge to privacy, security, and regulation compliance. A little tenacity on the front end will minimize the opportunity for cash flow nightmares and reputational risk.

Cheryl Toth is a consultant and writer with Chicago-based KarenZupko & Associates. She brings more than 20 years of consulting, management, training, software product and executive management experience to her projects.

Fig. 1. HIPAA Omnibus Rule Ups the Ante on Business Associates
4 Essential Elements a Billing Company’s BAA Must Contain

As of September 23, 2013, all business associates must follow the same privacy and security rules as your practice does. No matter how big or small, a billing company must have the following in place.

1. Privacy policy and procedures. How does the billing company maintain patient privacy? For example, employees must have screen savers or privacy screens. And any electronic systems that contain your PHI must be password protected and automatically log people off after approximately 10 minutes.

2. Data security policy and procedures. How does the billing service keep your PHI secure? Is data stored on temporary storage devices such as flash drives protected - and destroyed when no longer needed? How is printed PHI stored, transferred, maintained, and disposed of and who has access to it? Are data transmissions between the practice and the billing company encrypted?

3. Breach notification procedure. An analysis of the 538 breaches submitted to HHS from Aug 2009 - Jan 17 2013 showed the 57% were from business associates.² HIPAA Omnibus requires all business associates to have breach notification procedure in place. A good one includes an after-action review process, so the business associate can evaluate their systems and determine where the breakdown occurred.

4. HIPAA training for employees and subcontractors. All business associate employees must undergo initial and annual HIPAA training, just as your practice employees do. And if the company utilizes subcontractors, they must also complete training – as well as sign their own BAA with the vendor, indicating their agreement to privacy, security, and other policies.