



### ***Third (3<sup>rd</sup>) Party Medical Billing Companies and Services Offshore***

It is common practice for billing companies to send the billing/coding work outside the U.S. This has received scrutiny, specifically as it relates to privacy concerns. While offshore billing is growing in popularity for medical office functions, this practice represents a unique and continuing set of problems for both physician practices and 3<sup>rd</sup> party billers. Undoubtedly, there is a risk (even here in the U.S.), but not like having your business and thus Personal Information handled by one of the companies performing some or all of the services offshore. Oftentimes, because the billing company usually contracts under a U.S. entity, providers may not be aware that the work is being done outside the U.S. or even know exactly what work is being done in those other countries.

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) protects patients' rights to privacy, and requires that "covered entities" properly secure and safeguard protected health information (PHI). While HIPAA has long represented an administrative headache for many small and medium providers, it has only been more complicated by the rise of electronic data processing and transmission.

In 2009, Congress passed the Health Information Technology for Economic and Clinical Health Act (the "HITECH Act") as part of the American Recovery and Reinvestment Act (ARRA). The HITECH Act governs the use and disclosure of e-PHI and related computer systems, and significantly amends portions of HIPAA. For instance, HITECH calls for HIPAA audits, which are currently being conducted around the country. It also created an enhanced penalty structure by which the Office for Civil Rights (OCR) can fine entities up to \$1.5 million dollars per year for wrongful use or disclosure and/or breaches of PHI.

As it relates to outsourced billing, a provider must realize that he/she cannot relieve themselves of their obligations under HIPAA or HITECH by sending many of their administrative functions offsite. Instead, it's just the opposite - providers are responsible not only for their practice, but also the acts of their business associates and their respective subcontractors. Thus, when your 3<sup>rd</sup> party biller/coder is permitted to perform these functions outside of the U.S., the usual and customary incentives providers receive (i.e., cost and efficiency; sending records at the close of business and getting everything back when business starts the next day), these benefits can be overshadowed by the problems presented by HIPAA (i.e., no guarantees that a coding and billing business overseas is HIPAA compliant or even understands the law at all. What you need to know: Is the outside entity taking proactive steps to establish administrative, technical, and physical safeguards for your patients' PHI? Even if they say they are HIPAA compliant, how can you verify that information? To counter this, many outsourced billing companies, such as those in India, will sign a contract indemnifying you for any HIPAA breaches and the resultant penalties. But if something goes wrong (as it inevitably does), obtaining a judgment against the outside entity is next to impossible, takes a substantial amount of time, and costs a lot of money.

Therefore, I strongly encourage my provider clients to, among other things, do their due diligence on the 3<sup>rd</sup> party outsourced billing/coding entity, make sure the company has sufficient safeguards in place (i.e., conduct an on-site inspection), request to see the company's code of conduct and HIPAA-related policies, make sure a HITECH compliant Business Associate Agreement is executed, and only enter into a contract with the company's U.S. legal entity.

<http://www.cms.gov/Regulations-and-Guidance/Guidance/Transmittals/downloads/r9ss.pdf>

"The Centers for Medicare & Medicaid Services (CMS) strictly prohibits any trading partner from outsourcing system functions overseas, unless explicitly authorized in writing by the CMS chief information officer (CIO). System functions include the transmission of electronic claims, receipt of electronic remittance advice or the access to any system for beneficiary and/or eligibility information. Any request for access by an overseas party will be immediately denied by National Government Services pending authorization from CMS." Here is an example of electronic transactions your billing/coding company may handle and the method of handling that could be prohibited.

<p>Dial-up Access is a method of accessing a computer system remotely using telephone lines and a modem. A means of connecting to another computer or a network like the Internet, over a telecommunications line using a modem-equipped computer. [FISCAM].</p>		<p>An example of some electronic transactions 3<sup>rd</sup> party billing company may handle, which may be affected by this prohibition and, therefore, covered: 837I, 837P, 835, 270/271, 997</p>
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