

## Accuracy of information

Here's a bit of language from an actual agreement important not for what it does say but, rather, for what it does not.

**Ancillary Provider Requested Information:** *ANCILLARY PROVIDER represents that to the best of ANCILLARY PROVIDER's knowledge and belief, all documents, information, records and claims provided by ANCILLARY PROVIDER to COMPANY or COMPANY's designees relating to entering into this Agreement and submitted during the term of this Agreement, which documents are hereby incorporated by reference, contain true and correct information, and acknowledges that COMPANY is relying on such information. Additionally, ANCILLARY PROVIDER acknowledges that the Company Rate has been negotiated in good faith based upon ANCILLARY PROVIDER's representations at the time of negotiation regarding ANCILLARY PROVIDER's provision of Health Services. In the event that ANCILLARY PROVIDER decreases the amount of Health Services provided under this Agreement, ANCILLARY PROVIDER agrees to provide advance notice of such a change to COMPANY and to negotiate a proportional reduction in the Company Rate.*

This is written for a facility but you're just as likely to see similar language in a physician agreement. Here you are representing (guaranteeing) to the best of your knowledge and belief that every bit of information provided to the payor (COMPANY) before and during the contact term is accurate/correct. The payor states it will rely upon the accuracy and completeness of that information in the performance of its contractual duties. So this means that the payor is placing **high** value and **great** importance on the accuracy of all information you provide. Though it's not specifically stated a little experience with Managed Care contracting will tell you that if information you provide proves to be inaccurate, that could be used as grounds for termination.

**The Issue:** There is no reciprocal representation to the ANCILLARY PROVIDER that the COMPANY's data and that of all affiliates or those on whose behalf the COMPANY might pay claims will be similarly accurate. Further, there is no statement whereby the COMPANY acknowledges that ANCILLARY PROVIDER will depend on the accuracy of such data in the performance of its contractual duties. This becomes a critical issue in various circumstances, but most obviously when a payor decides to retroactively deny eligibility after it has provided a flawed eligibility confirmation and then takes back payments or offsets against future payments. (**Discussed in great detail on page 83 under Retroactivity.**)

Without a reciprocal guarantee from a payor that its information is accurate and that it will accept responsibility for its errors, let's say in the case of an inaccurate eligibility or benefits confirmation, that payor won't care that you will be the one getting burned. As a consequence you're left forever subject to the collateral financial damage of the errors of others. That's clearly not a two-way street with equal lanes for both parties.



One-sided language as just cited should not stand. Fairness requires a reciprocal representation from the payor that its data, including without limitation any eligibility information or authorization, will be accurate, and an acknowledgment that you will depend upon its accuracy in the performance of your contractual duties. Further, you should not be responsible for any refund or other payment to a payor in the event it provides incorrect information.

**Possible Solutions:** To that end you may wish to seek insertion of something similar to this next suggestion as an addition to the original language. (Attorney consultation recommended.)

*The COMPANY represents and warrants to ANCILLARY PROVIDER that all documents, information, records, authorizations, and approvals provided by the COMPANY or COMPANY's Affiliates related to entering into this Agreement or submitted during the term of this Agreement, including, without limitation, any information regarding any person's eligibility under a Health Benefit Plan, contain true and correct information, and the COMPANY acknowledges that ANCILLARY PROVIDER is relying on such information. The COMPANY agrees that to the extent ANCILLARY PROVIDER receives any form of payment from the COMPANY, any of COMPANY's Affiliates, any Plan, any designee of any Plan, any Covered Individual, or any other person or entity in connection with any services provided by ANCILLARY PROVIDER, and such receipt results from ANCILLARY PROVIDER's good faith reliance on any such information, ANCILLARY PROVIDER shall not be required to disgorge, refund, or repay any such amounts to the COMPANY or any other party, and neither the COMPANY nor any other party shall have the right to offset any such amounts against any other payments due to ANCILLARY PROVIDER.*

Seems fair, doesn't it? Well don't forget this is Managed Care. **And as a rule payors will resist suggested language of this sort for it holds them accountable and removes "wiggle room" that they otherwise enjoy.**

In my opinion if something so obviously fair and equal is rejected then you may wish to consider such rejection as a red flag. After all, if a payor insists that your data must be accurate and complete but the payor will not similarly reciprocate (especially if it's stated in the contract that your failure to provide accurate and complete data can be grounds for termination), then that's disingenuous -- an indication the payor has no concern for what's fair.