

Session 304

Using UTBMS Codes to Manage Insurance Risk Exposure

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Clearing the Billing Jungle

How Task-Based Billing Improves Law Firm Relationships¹

By Robert S. Hamrick, Esq. with Molly L. George

The goal of the Horace Mann Insurance Company is to ensure the best legal representation for our insured. Quality representation rests on the foundation of our relationships with hundreds law firms who represent our insured in all fifty states. Without good overall rapport and effective communications, the entire structure is weakened and made inefficient.

As lawyers, we are all familiar with the headaches law firm invoices create for us as we attempt to slash through a tangled jungle of bills, with each firm presenting its own format with, at best, cryptic explanations. You may have suspected some firms of billing "gamesmanship," a decoding challenge worthy of Sherlock Holmes. Multiply this problem exponentially by the thousands of individual claims with which insurance companies works annually, and you see the acute importance for Horace Mann of reviewing our billing protocols.

Before joining Horace Mann in 1997, I was in practice as a private litigator for twenty-five years. I had overall responsibility for twenty-five lawyers in my firm. I can therefore see the issues and problems that arise from both sides of the fence.

One of the challenges I undertook at Horace Mann was to eliminate the friction with law firms arising from invoicing practices, and while doing so, gather cost data to use as benchmarks to measure law firm performance and plan department budgets. I believe the fastest way to get there is to standardize all law firm billing under the Uniform Task-Based Management System (UTBMS) developed by the American Corporate Counsel Association (ACCA) and the ABA in 1995.

Jonathon P. Bellis, a partner at Price Waterhouse Coopers, worked closely with the ACCA and the ABA to create the task-codes. He says, "Our overriding goal was to simplify, streamline, and standardize (law firm billing). We were reacting to an explosion of billing standards. We were more in the spirit of, 'Don't go invent your own. Let's create something everyone can live with.' "

Adopting UTBMS billing codes at Horace Mann was the first essential step in simplifying our law firm billing process. In 1998, after reviewing the billing verification software products that employ the UTBMS codes, we chose Professional Fee Manager™ (PFM), an off-the-shelf software produced by PeerPoint Technologies, Inc., Houston, Texas. I selected Professional Fee Manager because, in addition to using UTBMS billing codes, it is the only software I am aware of that generates cost data that we can break down by selected criteria, depending on what we want to measure.

Horace Mann requires that all firms representing our insured (approximately three hundred) conform to the PFM system with guidelines for billing established by our company. This includes utilizing the UTBMS codes in firm billings submitted in ASCII format. In those situations where the law firm, for whatever reason, is unable to comply, we have implemented an interim step with Annapolis Technologies. Annapolis Technologies takes the attorney bills and reconfigures the invoice using UTBMS coded on an ASCII disk

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We are providing all panel counsel with these guidelines that set forth the criteria necessary to utilize the PFM system for billing and review. PFM allows us to measure individual law firm costs against an average computed task, time, and billing rate. PFM flags any exceptions to the guidelines immediately so we can address them with the firms. It also allows us to set benchmarks for the type of matter so that we can measure law firm performance.

All of us, both on the corporate side and the law firm side, dread third-party audits. Additionally, this issue has been raised by at least fourteen state bar associations as jeopardizing the attorney/client privilege created between the panel counsel we have chosen and our insured, the law firm's client. This has become a major concern both of panel counsel and our company. We are now combining Professional Fee Manager review with selected company audits accomplished by me and by staff.

In spite of the benefits to companies, corporate adoption of UTBMS was slow through 1997. In 1996, E.I. du Pont de Nemours & Company became one of the earliest users. As part of the "primary law firm" component of its Legal Partnership Program, DuPont created a customized proprietary system based on UTBMS for its thirty-five U.S. primary law firms and four outside firms. According to Jim Shomper, Manager of Law Firm Partnering, DuPont has phased in the program over a two to three year period, with some firms just completing implementation in 1998. Mr. Shomper comments, "Our UTBMS billing system allows us to measure the success of our firms, identify efficiencies, and adjust accordingly."

The DuPont UTBMS system is based on Lotus Notes and uses e-mail as a means of transmittal. The billing system runs on DuPont's secure WAN that connects all the firms in the partnership to one another. DuPont used "Bill Wiz" software for the data crunching analytical work. The Manager of Legal IS runs the UTBMS system in-house.

A cornerstone of the DuPont Partnership program is the belief that legal representation is best when the company and firm work together for each other's mutual benefit. This is the same philosophy that supports the Horace Mann UTBMS billing program. A tenant of this philosophy when applied to task-based billing is that law firms will also experience benefits from the system. UTBMS is a "win-win" for corporations and law firms alike. I talked with some of the DuPont firms using UTBMS for over one year to see if the theory holds up.

The law firms in DuPont's Legal Partnership have perhaps the most experience with UTBMS, and can speak to the actual benefits they have experienced. Archer & Greiner, Haddonfield NJ, has been using the DuPont UTBMS system for three years. Steven W. Suflas, a partner at Archer & Greiner, comments that his firm uses the system, "as a way to capture cost data that we use for budgeting and internal controls." Archer & Greiner has liked UTBMS so well that they began using the system on non-DuPont matters. Mr. Suflas says, "One year ago, another client called asking us to use the ABA task codes. They were somewhat apologetic, hoping that it would not cause us a problem. It was great that I was able to tell them that we were already doing it on our own on their files." He adds, "We can expand the idea to measure our charges in specific tasks, like the cost to draft a summary judgment motion or costs associated with certain types of litigation. We can then use that data for budgeting and tracking."

Peter J. Kalis is a partner with Kirkpatrick & Lockhart in Pittsburgh. His firm has been using the UTBMS system for several years, and he calls it, "a way of life." Not all Kirkpatrick clients use UTBMS, but several important ones do. Mr.

Kalis thinks, "the client should have virtually complete control over their billing." Kirkpatrick & Lockhart customizes UTBMS for each client.

Mr. Kalis likes the UTBMS system because it "eliminates spinning wheels needlessly and the unnecessary angst that drains whole relationships." The Kirkpatrick & Lockhart billing clerk sends UTBMS invoices to the IS department which e-mails them to the clients. The firm also mails the invoice in hard copy. Using the codes, the corporate client understands what Kirkpatrick & Lockhart is doing which results in a shortened accounts receivable cycle for the firm. It has shortened the DuPont payment cycle to 10-14 days. In commenting on DuPont's bill turn-around philosophy, Jim Shomper says, "We believe that an essential part of partnering is to give them quick turn-around. With UTBMS, we can pay electronically, before review, and make adjustments later."

The greatest benefit to law firms in using task-based billing is marketing - anticipating the needs of their clients, building on their long-term relationships with established clients and attracting new ones. In this regard, some astute firms are preempting the companies and adopting UTBMS billing systems directly that they can introduce to their clients. Bracewell & Patterson, Houston, and Lord, Bissell & Brook, Chicago, are examples of this visionary thinking.

Corporate adoption of the UTBMS billing codes from 1995 through 1997. In 1998 it began to pick up critical mass. In addition to Horace Mann Insurance, Toyota, AT&T, and MetLife also installed UTBMS billing and cost analysis systems in 1998. In 1999, a major US auto manufacturer is installing a UTBMS system. This corporation alone retains over 640 law firms.

W. Marc Schwartz, President of PeerPoint Technologies comments, "As a CPA at Coopers & Lybrand, Throughout 1999, Horace Mann Insurance will put UTBMS to work with our law firms. We will experience the actual benefits, as well as problems, of using UTBMS billing. I will be back at *Metropolitan Corporate Counsel* with a follow-up article reporting on the results for Horace Mann and other companies.

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Molly L. George is a marketing consultant and free-lance journalist for legal publications. She is president of The George Group and consults with LegalVoice, Piscataway, NJ. Ms George has written for numerous legal publications, including *Metropolitan Corporate Counsel*, *the National Law Journal*, *The Lawyer (London)*, and *International Commercial Litigation*. She contributed a chapter to the ABA publication, Winning With Computers, Trial Practice in the Twenty-First Century. Ms. George has an MBA in marketing and is a member of the Legal Marketing Association and Phi Beta Kappa.

Insurance Risk Management

Comprehensive Litigation
Management

and

Uniform Task-Based Billing

Presenters

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Insurance Risk Management Goals

- Providing the most economical representation to keep premiums down.
- Ensuring the best possible legal representation for the insured.
- Forecasting litigation costs.

Case Law Affecting Risk Management

Third Party Audits

A Legal and Management Problem

Eliminating Third Party Audits as a Legal Requirement

An increasing number of state bar associations are rendering the opinion that third party audits are a violation of attorney/client privilege.

The Benefits of Eliminating Third Party Audits

- Reduces the stress in company/law firm relationships, which improves legal representation.
- Deals with invoicing problems quickly.

A Comprehensive Litigation Management Program

- Review law firm billing rules.
- Review invoices.
- Analyze data.

Reviewing Law Firm Billing Rules

- What lawyers are expected to bill
- Generally accepted billing practices
- Billing incentives

Reviewing Invoices

“Keeping a Tight Grip”

- Identifying Billing Abuses
 - Violations of the billing rules
 - Time spent on certain tasks
 - Inappropriate people billing
 - Too many people billing

War Stories

What We're Up Against

- Mass Torts
- Plaintiff-Radical Jurisdictions
- Healthcare

How To Accomplish an Effective Litigation Management Program

- Minimize the impact of litigation costs on premiums.
- Ensure the best legal representation for the insured.
- Forecast litigation costs for planning and budgeting.

How The Uniform Task Codes Work

- Invoice Task Standardization
- Flexibility
- Corporate Adoption
 - Getting law firm compliance.

The Comprehensive Cost-Control Program

- Using the Uniform Task Codes
 - You can “unbundle” billing.
 - The cost analysis software allows you to “see” what is actually being done.
 - You can scrutinize the “soft items” in legal services.

Cost Impact Narrative v. Task-Coded Billing

Invoice Samples

Cost Impact “Soft Items” in Billing

Invoice Samples

Building a Cost Data Model

- Build a database in your company's proprietary computer.
- Comparing Matters
 - Results v. costs
 - Regional factors
 - Law firm to law firm comparisons

Ensuring the Best Legal Representation for the Insured

- Matter/law firm comparisons based on historical database
- Collegial, non-confrontational relationship with law firms
 - Computer auditing is the objective.
 - Exceptions are dealt with immediately.

Ensuring the Best Legal Representation

- When the Insured is a Corporation
 - Improves the relationship between the corporate client and its outside counsel.

Forecasting Litigation Costs

- Effective budgeting and managing activities
The real reason for “unbundling” billing in the first place
- Analyzing the time element
What’s being done and when?
- Managing cash flow

Forecasting: The Ideal System

- Matter “Game Plan” includes detailed, “unbundled” budget
- Phase x phase approvals and cost tracking
- Exception reports reveal questionable activities
- Period “Budget to Actual” reports
 - Matter x matter
 - All matters

Forecasting Challenges for Fortune 1000 Companies

- Building a multi-million dollar model
 - The typical response, “We have very little control.”
 - The general corporate legal department movement toward gaining control

Helping Large Institutions Budget Litigation Costs

- Example: Health Care Institutions

Conclusion: Questions & Dialogue

Questions & Dialogue