

RISK COMMUNIQUÉ

Limiting Your Contractual Liability

Contract review allows you to evaluate potential risk exposures and ensure that you limit your liability when working with third parties. Establishment of a contract review program begins with the development of written policies and procedures. The policy should specify that all contracts and agreements with third parties who will be working for your organization, must be put into writing and submitted to some type of formal review process. It is also recommended that you obtain, and check, at least three references to verify the quality of services.

Contracts with significant financial exposure should be reviewed by counsel and signed off by an officer or Administrator. Contractors should be requested to provide appropriate coverage limits of at least \$1,000,000 combined single limits.

Contracts should also be reviewed throughout their term, for compliance with specific defined responsibilities.

Contract Maintenance

Written policy should also outline the process for maintenance of contracts. Original contracts should be kept in a central location (often in the Finance Office), locked and in a fireproof cabinet. Written policy should indicate who has access to the file. A system should be in place to review all contracts on an annual basis. Current certificates of insurance should be maintained for all contractors. Expired or terminated contracts should be maintained for a defined period of time, as indicated in policy.

Self-Assessment for Contractual Liability:

- Do all contracts include standard language that has been reviewed and approved by legal counsel?
- Is there a periodic review of the standard contract, as changes in state/ local or federal legislation occur?
- Are all contracts reviewed and assessed based on defined criteria?
- Is there a policy designating signatory authority?
- Is there a requirement that any changes to a contract be put in writing?
- Is there a requirement that the contracting party carry insurance to protect against workers compensation or disability claims, general liability claims, professional liability claims arising from the provision of services, or failure to provide a service?
- Is there a requirement that organization be an additional named insured on the contractor's policy?
- Is there a requirement that the contractor carry minimum acceptable limits of liability?
- Is there a requirement that a certificate of insurance (COI) be provided (and current COIs maintained)?
- Is there an internal system to ensure that appropriate certificates of insurance are obtained before work under the contract begins?
- Is there a requirement that all contracts include hold harmless/indemnification clauses? (A hold harmless clause is meant to hold your organization NOT liable for causes of action or judgments arising out of services performed by independent contractors/providers.)
- Is there a systematic process for centralizing all contracts and ensuring periodic review?

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Issues Specific to Organizations That Provide Patient Care Services

Contracts with third parties that will provide patient care services on behalf of your organization have additional exposures. The following areas should be thoroughly assessed before approving a contract for patient care services:

- Referral of third party contracts to Legal Counsel for identification of each parties' responsibilities, expectations and acceptability before they are signed/accepted.
- The third party's agreement to comply with all federal, state, and local laws, regulations, and guidelines governing healthcare professionals and organizations.
- The third party's responsibility for background screening of personnel, as well as maintaining information on their education, training, and professional licensure, and providing the organization with a profile of each individual providing patient care services.
- Responsibility and provisions for the orientation and continuing education of contracted staff.
- A process for performing evaluations on contracted workers.
- Categories of personnel to be provided by the service.
- Adherence to the organization's policies, procedures and practices.
- The organization's right to remove any contracted individual from service with cause.
- Coverage of contracted workers for health, workers compensation, and liability insurance.