

MANAGING CONTRACTS

It is important for healthcare organizations to have written contracts in place whenever doing business with a third party. It is also imperative that organizations have a program in place for managing these contracts. Establishment of a contract management program begins with the development of written policies and procedures that address the review and maintenance of third-party contracts. A formal contract review process can ensure a thorough analysis and understanding of each contract, helping organizations to limit their contractual exposures, and protect their assets. A contract maintenance plan will further help to preserve and organize these important documents.

THE IMPORTANCE OF CONTRACTS

When a healthcare organization enters into an agreement with a third party, they may be assuming liabilities that would not otherwise be their responsibility. Without effective risk transfer measures in place, the organization may be held financially liable for a claim caused by the contracted party. Consider the following scenario in which a healthcare organization did not have a contract in place with a third-party vendor.

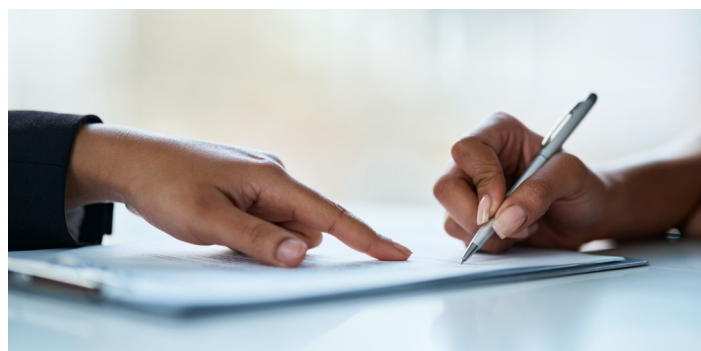
Scenario: A senior living facility contracted a beautician to provide hair styling services to residents at the facility. The stylist had applied a color treatment, which burned the resident's scalp. The organization had not obtained proof of coverage from the stylist, who was uninsured. Furthermore, there was no contract in place between the healthcare organization and the stylist. The healthcare organization was held liable for the injury.

Failing to transfer liability back to the responsible party in a contract may result in significant, unintended financial loss. Obtaining risk shifting contractual provisions and proof of insurance can greatly reduce liability to your organization in the event of a loss caused by third parties.

TIPS FOR MANAGING CONTRACTS

A contract management program can help organize the contract process. Two essential elements of a successful contract management program are contract review and contract maintenance.

When reviewing contracts, it is important to read beyond the scope of service and pricing and evaluate all of the terms and conditions. Contract review will help organizations to make informed decisions whether to avoid, transfer, or



accept the risks that accompany each contract. Additionally, contract review will help organizations to ensure compliance with defined responsibilities.

In addition to contract review, it is important to develop a policy for maintaining contracts. When developing your contract management program include a written policy that outlines this process, including a system to schedule, and review contracts on an annual basis.

CONSIDER THE FOLLOWING RECOMMENDATIONS FOR YOUR CONTRACT MANAGEMENT PROGRAM

- Use written contracts with all third parties, including entities you intend to do work for, those doing work for you, and any individuals or groups renting or using the facilities of the organization.
- Perform reference and/or background checks prior to doing business with anyone.
- Avoid standard form contracts. Contracts should be customized to meet specific business needs and jurisdictional requirements.
- Require that any changes in the contract be put in writing.
- Arrange for legal counsel to review all contracts before

they are signed to ensure enforceability in consideration of jurisdictional requirements, and to confirm the appropriate loss protection and risk transfer provisions exist.

- Identify persons authorized to sign contracts on behalf of the organization.
- Require that contractors maintain insurance to protect against potential exposures posed by provision of services or failure to provide a service.
- Require that contractors maintain insurance to protect their employees with workers compensation or disability coverage, and specify that neither the contractor nor their employees are employees of the organization.
- Require contractors to name the organization as an additional named insured on the contractor's policy, when appropriate.
- Identify minimum acceptable limits of liability on the contractor's insurance.
- Require that a properly completed certificate of insurance (COI) be provided.
- Implement a systematic process for centralizing the storage of original contract documents in a secure (locked and fire resistant) file cabinet or safe.
- Implement a system to schedule and review all contracts on a periodic basis, to ensure all terms and conditions are being met, while the contract is in force.
- Confirm the renewal and termination provisions are appropriate.
- Maintain a process to obtain and store documents that must be updated periodically, such as certificates of insurance, per the terms, and conditions of some contracts.
- Maintain copies of expired or terminated contracts and certificates of insurance for a defined period, in accordance with your organization's document retention policy.

Organizations should be proactive when managing contracts. Ongoing review and maintenance will help ensure contracts are not just filed away but that they are utilized to hold third parties accountable for the terms of the contract as agreed.

Review of third-party contracts will also help organizations measure the performance of third-party contractors and determine possible renewal of contracts and/or alterations in their terms and conditions.

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. Consider the following areas 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 all individuals providing patient care services
- Responsibility and provisions for the orientation and/or certification 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

SUMMARY

Healthcare organizations can protect themselves from third-party liabilities with written contracts; however, it is important that they understand the provisions of these agreements and continue to review and evaluate the contracts as well as the performance of the contracted parties. A contract management program provides a structure for reviewing and maintaining contracts, helping organizations to limit their liability when working with third parties.