



Managing risks in healthcare staffing companies

Key considerations amid an industry shortage



Nearly 1 in 5 healthcare workers have been leaving the field since the COVID-19 pandemic began.

Healthcare staffing: then and now

In the 1970s, healthcare staffing agencies were minimally used to meet care needs in home health, hospitals, and other health-related entities. Their use in hospitals was often frowned upon, but they were sometimes used for private duty nursing functions, ear piercing, blood pressure clinics, etc.

In 2018, more than 30 percent of hospitals reported problems with the ability to recruit healthcare staff¹. That problem became more pronounced when COVID-19 introduced itself in the U.S. in early 2020. Given the continuing adverse impact of the COVID-19 pandemic, the staffing shortage has continued to get worse. The following factors have contributed:

- A sense of normalcy has yet to materialize and has caused variable and confusing requirements related to mask mandates and additional COVID-19 variants, resulting in frustration and exhaustion
- Most hospitalized COVID-19 patients are unvaccinated, and some have become difficult to care for and others have assaulted staff while demanding or resisting various treatments
- Anger has often been directed at employers who may have demanded staff vaccinations and/or required that staff work significant overtime for a long period of time



About one in five healthcare workers have been leaving the field since the COVID-19 pandemic began, with almost a half million workers lost in the United States since February 2020, according to estimates from the Bureau of Labor Statistics. “Eighteen percent of healthcare staff have quit since the pandemic began, while 12 percent have been laid off, according to survey research company Morning Consult. Of the remaining workers, 31 percent have thought about leaving their employer, according to Morning Consult.”²

Since 2021, one of the biggest trends in healthcare employment is the growth in healthcare staffing agencies. Several reasons exist for this increased use of staffing agencies such as:

- More registered nurses are retiring earlier as they are being asked to work long hours and/or assume additional tasks that previously have been done by physicians
- An aging and increasingly complex patient population requiring intense care
- Advancing technologies including:



Telemedicine



Patient portals



Videoconferencing³

Establishing policies, procedures, and clinical protocols

Depending upon the nature and details of the staffing agency work that needs to be done, policies, procedures, and clinical protocols need to be developed to guide practitioners specifically in what is expected in their duties and how to conduct themselves. Input should be sought from those who may be affected by these guidelines, and feedback provided by the client organizations regarding the agency’s performance.

During the orientation to the agency, policies, procedures, and clinical protocols need to be reviewed and critical processes thoroughly discussed. At the end of orientation, the employee/contractor should sign off to indicate they are knowledgeable regarding what is expected. Periodically, educational activities need to be conducted, especially to cover elements related to infection control, employee health, patient safety, medications, privacy, confidentiality, and other important agency items. Continuing education is needed throughout the year whenever new processes, regulations, or equipment are introduced and as questions arise. A proactive approach in these situations will serve the agency well in maintaining competency of all healthcare workers and providers.

² Masson, Gabrielle, “About 1 in 5 healthcare workers have left medicine since the pandemic began- Here’s why”, Becker’s Hospital Review, Chicago, IL, November 17th, 2021, p.1. <https://www.beckershospitalreview.com/workforce/about-1-in-5-healthcare-workers-have-left-medicine-since-the-pandemic-began-here-s-why.html>

³ Masson, Gabrielle, “About 1 in 5 healthcare workers have left medicine since the pandemic began- Here’s why”, Becker’s Hospital Review, Chicago, IL, November 17th, 2021, p.1. <https://www.beckershospitalreview.com/workforce/about-1-in-5-healthcare-workers-have-left-medicine-since-the-pandemic-began-here-s-why.html>

Making risk mitigation an initial priority

Healthcare staffing agencies hiring or contracting non-physician workers should focus on:

As new medical developments continuously arise, enacting a policy of continuing education is essential to maintain a high level of healthcare worker competency.

The importance of consistent screening processes in the employee/contractor selection process to minimize risks, including:

- A private interview with applicants by a staffing specialist
- Verifying identity (social security number)
- Appropriate types and levels of education
- Current licensure (primary source of verification preferred)
- Competency assessment, including any current specialty certifications that may be required in the job description
- Comprehensive background checks, including national criminal and sex offender registry
- Several positive references related to the duties of the position and ability to work with others
- Drug screening and meeting any health status requirements
- Other topics, as required by the agency

Ongoing performance review elements, including:

- Acceptable history of attendance and timeliness
- Active on-site supervision via methodologies as agreed upon by client organizations and in keeping with the agency's protocols
- Evaluation of compliments and/or complaints and other feedback received from client organizations, including occurrence reports and other performance improvement data
- Periodic formal performance reviews, as specified by the agency's policies
- Assurance that contract requirements are consistently being met
- Continuing education, timely relicensure and recertifications, and other elements as defined by the agency



Physician input in the hiring process

Staffing agencies, which hire or contract with physicians (including nurse practitioners and physician assistants, as appropriate), should pay particular attention to the following:

Clearly defined relationships between the agency and the client organization (i.e., "co-employers") and responsibilities of each regarding supervision, liability, insurance, etc., is critical from a risk management standpoint

The importance of consistent screening elements in the employee/independent contractor selection process to minimize risks, including:

- Appropriate clinical education and experience based upon the types of patient population(s) they may serve
NOTE: This is particularly important in settings where the practitioner may not be directly supervised by senior level physicians at all times.
- Current and unencumbered licensure (primary source verification required)
NOTE: It is suggested that the agency require all licensed practitioners to notify the agency immediately if their license to practice becomes encumbered or revoked.
- Competency assessment, including for any current Board and other specialty certifications that may be required based upon the provider's responsibilities (i.e., Advanced Cardiac Life Support [ACLS], Pediatric Advanced Life Support [PALS], etc.)
- Processes for initial appointment, credentialing, and privileging that are mutually agreed upon by the client organization and staffing agency (i.e., which entity is responsible for what), in writing, for each provider
- Written processes for reappointment, re-credentialing, renewing privileges, and renewing Board certification (the timing of which varies based upon specialty)
NOTE: The agency should request a copy of each client organization's medical staff by-laws/rules and regulations, which will be useful in the event of a related dispute.
- National criminal background and sex offender registry checks
- Several positive references related to clinical care to be provided, including the ability to work satisfactorily with others
- Drug screening and meeting any health status requirements as defined by the agency's policies and the client organization's by-laws/rules and regulations
- Medical malpractice/prior claims history
- Insurance requirements or provisions, including tail coverage (for prior acts), if relevant
- Other items as required by the agency and client organizations



Ongoing performance review processes, including:

- Acceptable history of attendance and timeliness
- Active on-site supervision via a methodology as agreed upon by the client organization and in keeping with the agency's protocols
- Evaluation of compliments and/or complaints and other feedback received from client organizations, including occurrence reports and other performance improvement data
- Feedback from peer review activities
- Periodic formal performance reviews, as specified by the agency's policies
- Assurance that all contract requirements are consistently being met
- Ongoing continuing education, timely relicensure and recertifications, and other required elements as defined by the agency

To manage risk, staffing companies and client organizations should work under a contract that clearly delineates areas of potential liability.



Managing and insuring risks among entities

Whenever more than one entity is involved in an adverse occurrence, managing the risk can be complicated. For this reason, staffing companies should clearly specify in client organizations' contracts which entity is responsible for what elements and delineate areas of potential liability.

In some instances, "joint employer" status can come into play, unless the agency's and client organization's responsibilities are clearly defined. Examples of this include:

- Employment practices liability ("joint employer" wage and hour issues, unless otherwise specified in contracts)
- Workers' compensation (including "joint employer" status with clients while agency personnel are on-site doing their work, unless other provisions are specifically addressed in the agency's workers' compensation policy and/ or contract)

Some risks that may be self-insured or insured by a commercial insurance carrier include:

- General liability issues (i.e., slips, falls, etc.)
- Medical leave provisions
- Professional liability (i.e., negligence or malpractice allegations), including errors and omissions
- Civil rights matters
- Excess liability (i.e., purchasing additional insurance limits over and above the basic coverage limits of liability policies)⁴

Summing up: roles and responsibilities

It is very important that a staffing agency and healthcare worker/practitioner are clear about their own responsibilities as well as other's responsibilities. These should be spelled out in the employee handbooks or contracts, depending on what the relationship is between the two. In addition, the relationship between the staffing agency and each client organization should be clearly defined in a contract (or memo of understanding) as to which elements they are responsible for legally. It is important that these be working documents, so as to avoid misunderstandings and mitigate any accompanying risks. In the event of a legal dispute or claim, these documents will be central in deciding which entity is primarily responsible.

Client organizations' contract wording should be reviewed very carefully to assure that the agency will not be assuming unnecessary liability risks. In addition, insurance certificates should be obtained for (at a minimum).

- Directors and Officers (D&O) coverage
- General liability (GL)
- Professional liability (PL)
- Property insurance
- Workers' compensation

⁴ Medical Staffing Firms Face Unique Risks in their Role as Co-Employers, Manchester Specialty Programs Insurance, Manchester, NH, 2022, pp.1-2.

<https://www.manchesterspecialty.com/medical-staffing-firms-coemployers-risk/>

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INSURANCE

Adequate insurance coverage will help protect the agency in the event both the client organization and agency are named in litigation. In some very large agencies or healthcare organizations, they may choose to self-insure for part or all of their liability financial risks. Careful consideration should be given in these cases, as the staffing agency may be viewed as the "deep pocket" (i.e., having a large amount of primary liability coverage and perhaps an excess insurance policy) to be able to pay for significant damages.

Since the agency ultimately lacks control of the actual workplace, it would be well-served by making a site visit and checking accreditation status and ratings as well as inquiring about their past claims history and litigation. Loss runs for the past three years should provide an adequate assessment of the client organization's recent risk environment, even though one cannot totally rely on historical data to predict future performance. Not all client organizations may be deemed to be a satisfactory partner for the agency to provide with staffing services.

References

Masson, Gabrielle, "About 1 in 5 healthcare workers have left medicine since the pandemic began-Here's why", Becker's Hospital Review, Chicago, IL, November 17th, 2021, p.1. <https://www.beckershospitalreview.com/workforce/about-1-in-5-healthcare-workers-have-left-medicine-since-the-pandemic-began-here-s-why.html>

LaPointe, Jacqueline, "Healthcare Staffing, Recruiting a Major Problem for Hospitals," Revcycle Intelligence, Xtelligent Healthcare Media, LLC, Danvers, MA, March 15, 2018. <https://revcycleintelligence.com/news/healthcare-staffing-recruiting-a-major-problem-for-hospitals>

Medical Staffing Firms Face Unique Risks in their Role as Co-Employers, Manchester Specialty Programs Insurance, Manchester, NH, 2022, pp.1-2. <https://www.manchesterspecialty.com/medical-staffing-firms-coemployers-risk/>

Risk Management for Healthcare Staffing Agencies, Connected Risk Solutions, Atlanta, GA, 2022. <https://connectedrisksolutions.com/risk-management-for-healthcare-staffing-agencies/>

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