

HIRING INDEPENDENT CONTRACTORS OR LESSEES

Many senior living facilities are unaware that potential liability exposures exist every time an outside contractor or lessee is on their property. These individuals may vary among healthcare professionals, service providers (e.g., hair stylists, massage therapists, etc.), maintenance or construction workers, and others whenever the facility leases its premises to others for large group functions or for extended periods of time.

To protect your facility against retaining legal responsibility for outside agents, you need to take the following risk management precautions:

- ❑ When hiring a contractor or lessee, make sure to check credentials, experience, education, and training. Also, review answers on applications (investigate any “red-flag” responses), and perform a background and reference check.
- ❑ Consult with your legal representative to develop or review all contracts prior to consent. Make sure the work that is to be done or the leasing terms are clearly stated and the contractors or lessees will maintain “exclusive control” over the manner in which they perform their tasks.
- ❑ Incorporate “Hold-Harmless Agreements” that are favorable to your facility into the contract. Some suggested wording is “[contractor or lessee] shall indemnify and hold [facility] harmless from and against any claims, brought by any person, arising out of or related to the services provided according to this agreement.”
- ❑ Make sure the contract contains language that clearly states both parties are responsible for complying with applicable laws. For instance, “Both parties shall be responsible for compliance with any federal, state or local law or ordinance, which may apply to their respective duties pursuant to this agreement.”
- ❑ Make sure your facility enforces safe operating procedures that are in compliance with applicable safety codes. For maintenance or construction workers, require that they read and sign a pre-work safety agreement stating they will operate accordingly with your procedures, and that they will immediately notify the facility of any unsafe conditions or accidents. Provide routine safety inspections to monitor work and ensure safety compliance.

- ❑ Require that the contractor or lessee provide a Certificate of Insurance from a recognized insurance carrier with an AM Best Rating of A- or above. Review the Certificate to make sure it is on a standard form, such as “Acord Form 25” (Certificate of Insurance), and ensure that it has limits equal to those expressed in your facility’s own insurance program. You might want to ask your insurance agent to review the Certificate, which he or she should be glad to do. Maintain a current copy of this Certificate in your facility’s files. **Note:** *New York facilities should also require that an additional insured endorsement be attached to the contractor’s or lessee’s policy.*

- ❑ A special risk exposure exists when a facility uses agency staff (or a similar independent contractor) that “appears” to a third party as being an employee of the facility. To minimize this liability risk, facilities should take the following precautions:
 - Avoid directly or indirectly portraying these individuals as employees or allowing them to suggest such a relationship to others. Provide staff in-service training on such and require the individual to wear an identification badge.
 - Never place these individuals in positions where they are given incentives to act like or represent that they are employees. As an example, be cautious about placing an agency nurse in an acting Director of Nursing position.
 - Incorporate into the contract an agreement stating that the individual will not present himself or herself as an employee or having authority to speak for or bind the facility legally.

By following these risk management precautions, you can protect your facility now and into the future.

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You are encouraged to consult with your own attorney or other expert consultants for a professional opinion specific to your situation.

