CRC Group
Wholesale & Specialty

Navigating the Minefield of Insuring Healthcare Staffing Agencies

As skilled labor shortages continue to strain the U.S. healthcare sector, worker shortages are an ongoing concern. Many point to the pandemic as the primary cause, but it seems to have only hastened the inevitable. In reality, multiple organizations had already been sounding the alarm regarding a lack of qualified healthcare workers as far back as 2018.[2] There are several contributing factors to the shortage including burnout, retirements, and a lack of interest in entering the field. Unfortunately, a long-term solution has yet to materialize.[1]

In the meantime, healthcare providers including hospitals, nursing homes, and even correctional facilities, have turned to healthcare staffing agencies to help ease their acute staffing shortages. Some use of third-party agencies is expected regardless of market conditions. Certain workers will always prefer the added flexibility of an assignment-based work schedule, and hospitals appreciate the option of bringing on a specialist for individual cases without making a full time hire or paying full benefits.[3] However, an over reliance on these agencies can come with several negative side effects that can make placing coverage an uphill battle.

In 2023, the largest healthcare staffing firms generated $61.7 billion in healthcare staffing revenue.[8]

Some of the difficulty is related to the business dynamic that comes into play for this line of business. In the healthcare industry, a claim can involve multiple co-defendants, including physicians, nurses, anesthesiologists, and staffing agency employees, among others. If the healthcare personnel named in a claim is part of a staffing agency, the healthcare facility is likely to attempt placing the blame on the staffing company. Unfortunately, it is not unusual for the staffing company to assume a disproportionate piece of the liability as the cost of doing business. In addition, external staff in a healthcare setting creates a situation where multiple providers (often covered under separate policies) are treating the same patient, which leads to several providers being named in a lawsuit regardless of actual liability. Furthermore, some agencies hire smaller staffing agencies to help them fulfill larger contracts, which makes assessing liability increasingly difficult.

ACHIEVING ADEQUATE PROTECTION

Insuring healthcare staffing agencies is complex due to the wide array of applicable coverages, including general liability, medical professional liability, and hired/non-owned auto. It's also worth noting that separate abuse coverages may be appropriate due to a continuing trend of documented abuse cases. Excess and umbrella coverage may also come into play because larger providers often seek to shift as much liability as possible to the healthcare staffing agency. Many hospitals will also require a staffing agency to maintain certain limits as a condition of the agreement. Contracts requiring higher limits were less of a burden in years past due to standard markets and programs offering capacity, but roll backs in recent years have made these towers much more expensive to fill. In addition, few carriers are willing to fill the need for Primary and Noncontributory, Waiver of Subrogation, or Separation of Insured language on the professional liability and general liability, as required by many contracts.

According to the American Hospital Association, there are 6,120 hospitals in the United States.[5]

While determining the appropriate coverage can be challenging, choosing the optimal carrier can also be difficult. Covering healthcare staffing agencies hasn't proven profitable for many carriers, so there are few left in the space. When a new carrier enters the space, they're often less knowledgeable about the many risks in this marketplace. The coverage offered may be more affordable and include fewer exclusions, but that leaves room for more exposure, which often makes the market disruption only temporary. As such, prices are rising, and underwriters are seeking more information on submissions while deploying a litany of exclusions, especially for correctional facilities, trach vents, or labor and delivery.

Additionally, many carriers will decline to cover staffing agencies that operate primarily in the senior care space. Temporary staff members are more likely to make a mistake that leads to a lawsuit because they aren't as familiar with or invested in adhering to facility-specific protocols. In addition, staffing agencies that work primarily with physicians also need higher limits because physicians are held to a higher standard of care. Unfortunately, many retailers have unknowingly exposed their clients to significant risk because they were unaware of these nuances.

HOSTILE COURTS

Adding even more difficulty to this marketplace is the legal system itself. If you were to pick up a staffing agency in South Dakota and drop it in New York City, the premium could double simply because of the New York legal landscape.

Some regions have been labeled judicial hellholes by the American Tort Reform Foundation (ATRF), including New York City, California, and Georgia. These areas see more nuclear verdicts in excess of $10M and litigation tourism that enables a plaintiff-friendly court to allow a lawsuit against an out-of-state defendant.[4]

A long-term study of nuclear verdicts from 2010 - 2019 revealed that the median nuclear verdict increased by 27.5% over the ten-year period. Interestingly, six states – Florida, California, Texas, New York, Illinois, and Pennsylvania are responsible for 63% of nuclear verdicts, in disproportion to their percentage of the total U.S. population.[7] There were dozens of nuclear verdicts across the country in 2023, many in excess of $100M. In addition, courts are becoming more draconian in their treatment of corporate defendants, making it virtually impossible for facilities to defend themselves. Evolving societal attitudes toward corporate responsibility is a key factor. In the past, companies were often given the benefit of the doubt in litigation. However, an increase in anti-corporate sentiment and unequal wealth distribution due (in part) to the success of corporations and their executives, have led modern juries to side with plaintiffs and award larger damages in an attempt to level the playing field.[7]

It's clear that the halo effect on the healthcare industry established during the pandemic has faded. Lawsuits are mounting once again. Because healthcare lawsuits tend to generate some of the largest awards, the trend of massive verdicts is expected to continue.

BOTTOM LINE

The healthcare industry continues to face staffing shortages that can make operating a challenge. Relying on third party staffing agencies helps alleviate the shortfall, but covering those agencies can be tough. Doing so has largely proven unprofitable in recent years. In addition, society continues its trend toward increased litigation, and healthcare providers tend to be large targets.

As a retailer, attempting to navigate this market alone is far too risky. Hostile courts, unusual contract terms, difficult renewal processes, and a host of other issues opens up numerous pitfalls. Falling into one of these could have devastating consequences, including bankruptcy. Partnering with a dedicated healthcare broker equipped to walk you through every step of the process is critical to landing the right placement for your client. CRC Group is one of the only wholesale brokerages in the market with

By 2030, the U.S. needs more than:

275,000
NEW NURSES

17,600
ADDITIONAL PRIMARY CARE PRACTITIONERS

13,000
DENTAL HEALTH PROVIDERS

8,400
MENTAL HEALTH PRACTITIONERS

a dedicated healthcare team that handles this business every day. Leveraging that experience is one of the smartest things a retailer can do when seeking to place coverage for healthcare staffing agency. Reach out to your local CRC Group producer today to learn how we can help.

CONTRIBUTORS

- **Brad Greenwood** is an Assistant Vice President and Broker with CRC Group's Denver, CO office.
- **Kathryn Jercich** is an Inside Broker with CRC Group's Chicago, IL Healthcare Team.
- **Alex Gould** is a Healthcare Broker with CRC Group's Birmingham, AL office.

END NOTES

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