



# THE GROWING ROLE AND COMPLEXITY OF THE CONTINGENT LABOR FORCE IN HEALTHCARE



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## INTRODUCTION

The composition of today's healthcare workforce, like the healthcare system itself, is evolving – growing both in size and complexity.

In year recent years, healthcare has become a jobs creating dynamo, surpassing retail in 2016 as the number one employment sector. According to the U.S. Bureau of Labor Statistics, more than 16 million people now are employed in healthcare, accounting for 11 percent of all jobs.

Contingent workers represent a significant part of the healthcare workforce. The American Staffing Association reported in 2018 that there were 16 million temporary and contract employees in the U.S. Of these, ten percent, or about 1.6 million, work in healthcare.

## BEYOND NURSES AND PHYSICIANS

As may be expected, the most visible temporary workers in healthcare are those providing direct patient care, including physicians, nurses and allied professionals. When healthcare professionals refer to “contingent workers” they often are alluding to nurses. Most hospital nursing staffs today are comprised of a diverse mix of full-time equivalents (FTEs), including permanent nurses, traveling nurses, per diem nurses, hourly and contract staffers.

Added to these are the thousands of allied healthcare professionals such as therapists, technologists, and others working on a temporary or contingent basis, as well as contingent physicians, known as “locum tenens.”

Though contingent nurses, allied professionals and physicians are common throughout hospitals and other settings, relatively few contingent workers in healthcare are filling clinical roles. There are approximately 3.8 million registered nurses in the U.S., according to the American Association of Colleges of Nurses, with approximately 85 percent providing patient care. The great majority of these are in permanent positions, as there are only approximately 25,000 open positions for travel nurses at any one time.

Similarly, the great majority of physicians are in permanent positions. According to Staff Care's 2020 *Survey of Temporary Physician Staffing Trends*, approximately 48,000 physicians, or six percent of the total, worked on a locum tenens basis in 2019. This includes those who may have worked only one locum tenens assignment lasting two or three days. (Note: Staff Care is a company of AMN Healthcare).

Contingent nurses, physicians, and allied professionals are usually sourced and placed by staffing companies. Combined, all of these clinical professionals fall far short of the 1.6 million contingent healthcare workers.

Contingent labor in healthcare therefore embraces a wide range of other roles occupied by hundreds of thousands of non-clinical personnel. Sourcing, engaging, and managing this vast labor pool in a complex environment requires a continually increasing level of management focus and operational resources, topics that are addressed in this white paper.

## WHAT IS CONTINGENT LABOR?

In today's workforce, the definition of contingent labor has become more elastic and now applies to a very broad set of work relationships. The term no longer is confined to workers placed by temporary staffing agencies. Generally, it applies to virtually any relationship between a worker and employer that has an expected and usually defined end in the short-term.

Contingent workers may include freelancers, independent contractors, on-call workers, consultants, translators, trainees, students, volunteers or other non-permanent personnel hired on a per-project or time-limited basis. They may work either remotely or on-site. Often, they are hired to complete specific tasks or work for a defined period of time under a statement of work (SOW) provision. Once the project or assignment is over, they leave, with no responsibility on the employer's part to provide continued, permanent work.

Contingent workers could include a single administrative assistant needed to cover for an employee on maternity leave or dozens of seasonal workers needed when utilization increases.

Contingent workers generally are not salaried and typically do not receive benefits. Often, they are self-employed and are responsible for their own taxes, and employers are not responsible for deducting federal or state taxes from their checks. In some cases, a third-party staffing agency will hire the worker as an employee or W-2 independent contractor and then place the worker onsite at one of its client's locations.

Virtually any position today can be assigned to contingent labor, from computer consultants, to attorneys, accountants, executive assistants and manual laborers. For workers, contingent positions may be a stop gap until they find a permanent job, a way to transition from a temporary to a permanent job, or a work style they choose for the long-term.

## BENEFITS OF CONTINGENT LABOR

Contingent workers offer several benefits for the businesses, hospitals, medical groups and other organizations that use them. Some of these are financial. Businesses do not have to collect and pay taxes from the workers' checks, nor do they have to provide health benefits, sick leave, or vacation days. They also save on the costs associated with recruiting, hiring and onboarding permanent personnel, as well as the costs associated with payroll and human resources.

An additional key resource is flexibility, an important benefit for hospitals and medical groups in particular, allowing them to "right size" as needed, staffing up during high usage periods and adjusting as utilization fluctuates. Health care organizations are no longer confined to an employment model based on a set number



of FTEs that must be maintained regardless of how many workers may actually be required at a given time. This, in turn, reduces the periodic need to lay off permanent workers, which can be demoralizing for the entire staff.

Contingent workers also allow healthcare facilities to tap into specific expertise they do not have internally but may only need for a limited time. For example, hospitals or physician groups may use contingent IT professionals to implement the latest electronic health record (EHR) systems. They also may use contingent clinical professionals, such as nurses or physicians, to maintain patient care while the permanent staff trains on how to use new EHR.

An example of non-clinical contingent workers at hospitals or other healthcare facilities is workers provided by a janitorial service who clean the facility at night.

The use of contingent labor can also focus management on planning ahead and adhering to deadlines, as workers are only onsite temporarily and projects must be completed before they leave.

## LEGAL IMPLICATIONS

All businesses that employ workers, whether permanent or contingent, face labor-related challenges and risks.

One of these risks is legal. If a business designates a worker as being independent or contingent, when he or she should be classified as an employee, the business can be subject to fines and penalties, in addition to paying the taxes accruing to the employee. Sometimes the difference between a contingent worker and a traditional worker is not clear, and this confusion can result in employers violating the law without deliberately intending to do so.

For example, it can be unclear whether an intern is considered a contingent worker. Because intern contracts end at a predetermined time, they typically are considered part of the contingent workforce. However, depending on the terms of the hiring agreement, some interns may cross the line from contract worker to employee.

All necessary steps should therefore be taken to ensure hiring compliance. This includes using contracts that provide a clear, accurate job description, outline a pay rate, note the job is project or time-specific and is exempt from the various tax requirements pertaining to permanent employees. There should not be any blurred lines between temporary workers and permanent workers.

The Fair Labor Standards Act outlines laws defining who is an employee and who is not. The Act stipulates that temporary contractors must work independently. If the hospital or other worksite controls the worker's schedule, how they accomplish their work, or where they work, they may be considered employees. The Act also allows independent contractors to choose

how many people or businesses they work for. They can enter into contracts with other employers or work with multiple staffing firms, even if they compete against each other.

Another legal risk arises over malpractice liability, particularly when locum tenens physicians are used. This risk can be mitigated by selecting a locum tenens staffing company that covers physicians with a highly rated malpractice policy.

If any legal questions arise regarding the use of contingent workers it is prudent to consult with an attorney familiar with employment law.

## CREDENTIALING AND COMPLIANCE

There also is a risk that contingent workers may not be qualified or certified to perform required tasks. Whether using third party staffing firms or hiring contingent labor directly, it is important to maintain a thorough and effective screening, credentialing and compliance process.

In the case of healthcare professionals such as physicians, neither the staffing agency nor its client can dictate the clinical decisions and methods of the professional. If the professional believes the necessary standards of care are not being maintained, they are free to say so and to discontinue the assignment or project as they see fit.

In addition, it may take contingent workers some time to understand and adjust to the processes, methods, technology and culture of their worksites. However, health professionals such as nurses and physicians who have temporary work experience, generally can adapt quickly, as they understand what is required to treat patients regardless of setting.

## MANAGEMENT PRACTICES

Like permanent workers, contingent workers must be managed for compliance, performance and other factors. Management considerations for contingent workers include:

**Follow guidelines to ensure long-term support.** As long as the contingent worker is not full-time, has the ability to contract with other employers, controls their work schedule and follows related criteria, they can continue to provide services to the a given hospital or other worksite indefinitely.

**Use staffing firms appropriately.** When appropriate, delegate all recruiting, screening and selecting of contingent labor to the staffing firm and do not become directly involved in the hiring process. Using staffing firms can increase efficiency and maintain a distinction between permanent and temporary labor.

**Treat them with the same respect and consideration as permanent employees.** Do not delegate them demeaning tasks. Refer to them by their proper names, rather than “the temp.”

**Be cautious about discipline.** If there are concerns about the worker’s performance or conduct, convey these to the staffing agency, if relevant, rather than imposing discipline. Do not place them on a schedule of performance correction or improvement. This may demonstrate excessive control of the worker and imply that they are employees.

**Do not offer benefits.** Once contingent workers are offered benefits, they can claim employee status. The employer must then pay the employer portion of FICA and withhold taxes, and may face fines for misclassifying the worker.

**Do not invite them to company-only parties or events.** Contingent workers can attend some business or social events, but should not be invited to those specifically held for employees. Company Christmas parties often fit this category. If contingent workers are treated like permanent workers and are able to attend company events designated for employees they may claim to be employees.



## **CONTINGENT LABOR MANAGEMENT SYSTEMS**

Because contingent workers do not receive the same pay or benefits of other employees, they typically are not on the payroll and separate processes are needed to ensure they are paid on time and at the correct rates. This can create challenges which can be greatly exacerbated the more contingent workers are added, particularly when they are paid different rates and assigned to different schedules.

For this reason, many hospitals and other organizations use vendor management systems (VMS) to track compliance, scheduling, pay and other details associated with contingent labor. These automated software systems, many of which are cloud-based, may include labor forecasting features that allow hospitals to be more flexible in how they staff. They also can track costs versus deliverables to create budgets, ensure efficiencies and generate savings.

## **THE ROLE OF MANAGED SERVICE PROVIDERS**

Given the increasing size and complexity on the contingent workforce, a growing number of hospitals and health systems are partnering with managed service providers (MSPs). MSPs provide a single source of contingent labor management, centralizing scheduling, payroll, and compliance, as well as providing strategic workforce forecasting and predictive analytics. They also serve as a single source of contingent worker procurement and hiring, often managing multiple staffing vendors that work through the MSP to fill open positions. Clients benefit from the resources of as many as 100 or more staffing firms, but through the MSP have only one source of contact and billing. This approach rewards those staffing companies that perform the most efficiently, while significantly reducing the communication and invoice requirements of dealing with multiple staffing companies individually.

## **MITIGATING RISKS**

MSPs play a role in risk mitigation by ensuring all contingent workers are appropriately credentialed and screened, thereby protecting patient safety. Through vendor management technology, the MSP can monitor vendors to determine if they are following compliance procedures, a complex task difficult for a hospital or health system to complete on its own if they work with many staffing vendors. MSPs may further mitigate risk by ensuring that all contingent workers are properly classified.

Overall, an effective hospital/MSP partnership should accomplish the following:

- Provide comprehensive visibility into the hospital's workforce
- Ensure consistency and efficiency through standardization
- Enhance compliance and reduce risk
- Improve candidate and supplier quality
- Reduce labor costs and drive higher productivity
- Develop a customize sourcing approach for the facility

## **AN EMERGING, UNIFIED CONTINGENT LABOR MANAGEMENT MODEL**

On any given day a wide variety of contingent workers may be present on a hospital campus. They could include clinical professionals such as physicians and nurses, but also a wide range of others, such as IT consultants, trainees, students, volunteers and even translators.

Identifying who they are, how many there are, managing, scheduling and paying them, and ensuring the hospital is complying with all relevant contingent labor regulations and policies has become an increasingly complex task.

A new management model is emerging to address this task. The model applies the principles and resources delivered through an MSP to both clinical and non-clinical roles, bringing the entire diverse contingent workforce present at most hospitals under one system.

## **MANAGING THE FUTURE**

Due in part to COVID-19, it is clear that the healthcare workforce, and the healthcare system itself, will be subject to an increasing amount of volatility. Even under normal circumstances, labor needs continually shift as technology, demographics, health risks, economics and other factors change.

Utilizing contingent labor allows hospitals and health systems to remain flexible and responsive in a rapidly-evolving environment.

As the size and complexity of the contingent workforce grows, new, innovative systems will be needed to ensure contingent workers are sourced, credentialed, scheduled, paid and managed appropriately and cost effectively.

These systems already are being applied and will evolve as the health system evolves to meet new challenges and changes.

For further information on managed services programs for contingent labor, please visit [AMNHealthcare.com/MSP](https://www.AMNHealthcare.com/MSP), or contact us at [info@amnhealthcare.com](mailto:info@amnhealthcare.com).