

Reduce your exposure arising from the use of third-party service providers.

By using proper risk transfer, you can also save money on your insurance premiums.



This brochure was created as a resource for Senior Living and Human Services providers. Once you review the fundamental principles highlighted on these pages, we invite you to use our *Risk Transfer Setup Guide for Senior Living and Human Services* to walk you through the process of establishing proper risk transfer for your operations.



What every service provider should know.

During the course of your operations you are often called upon to contract for necessary services, which could include a wide variety of third party entities ranging from medical and professional services to maintenance and housekeeping contractors. The work performed by those third parties may result in property or bodily injury claims arising from an action (or failure to take action) by third parties and their employees. The likelihood of a service provider suffering unintended liability for losses also increases substantially with the hiring of uninsured third parties.

Common third party services include:

- Medical and Professional Service providers
- Be aware of snow and ice removal exclusions
- Janitorial and building maintenance or alteration
- Sidewalk and parking lot repair
- Elevator and chair lift repair
- Security and fire protection
- Pool and fitness center supervision and/or maintenance
- Catering
- Third party passenger transport companies, medical professionals, counselors and related fields.

Any time a service provider is named in a claim, it can result in higher premiums. But the exercise of competent risk transfer procedures through the use of legally reviewed contracts is a risk management best practice that can help to reduce disputed injury claims and litigation in cases where you hire third parties to do work for you.

‘But I’m a service provider—not a lawyer or insurance professional.’

Executing contracts and risk transfer agreements are common practices to protect service providers. Written contracts can be short and simple. Choose a competent and qualified attorney to review your contracts, risk transfer agreements and procedures. You may also want to consider using standard contracts from the following sources:

aicontracts.org | consensusdocs.org

Your insurance agent can provide additional assistance such as identifying insurance companies that limit or exclude contractual liability coverages—which could increase your liability because a responsible party’s insurer may not pay a claim owed by that party. In matters involving legal liability, it’s especially important to seek professional advice.

Why transfer risk?

Below are three scenarios that illustrate how incidents involving third party service providers can lead to lawsuits against the Senior Living and Human Services providers that hire them. Keep in mind that lawsuits and claims can't always be avoided, but risk transfer can help reduce any amounts paid under your policy, and that helps keep your premiums lower.

EXAMPLE #1: PHYSICIAN'S SERVICES PROVIDED AT SENIOR LIVING COMMUNITY NOT COVERED UNDER PHYSICIAN'S MEDICAL MALPRACTICE INSURANCE.

The medical director of a senior living community provided proof of liability insurance, which the community kept on file but did not review. The medical director's actions in the care of one of the communities' residents resulted in a fatal medication error. This large claim should've been covered by the medical director's medical malpractice coverage which was extended to him through the hospital at which he worked. Upon further review, however, the community discovered that his work at the senior living community was specifically excluded from his policy. The senior living community was therefore held responsible to pay for the fatal error, which they did not themselves commit.

EXAMPLE #2: VENDOR'S INSURANCE LIMITS INADEQUATE, LEAVING ORGANIZATION TO PAY CLAIM INVOLVING SERIOUS INJURY.

A non-profit provider of services to disabled adults has a large community fundraiser each year, the proceeds of which comprise a significant amount of their annual operating budget. A popular feature of the event is a bounce house for children. Tragically, a child became paralyzed as a result of a bounce house accident. The third-party provider of the bounce house submitted certificates of insurance in advance of the event as required, but only maintained \$100,000 in coverage- far less than the cost of the claim. Consequently, the non-profit was forced to assume significant additional costs resulting from the claim. Upon reviewing certificates of insurance submitted by other third-party providers- including a pony ride attraction, a hay ride and a small carnival outfit- the non-profit realized that all of the these third-parties carried inadequate limits for the risks involved.

EXAMPLE #3: ORGANIZATION HELD FINANCIALLY RESPONSIBLE FOR FAILURE OF CONTRACTOR BECAUSE OF INFORMAL RELATIONSHIP.

A non-profit charity supports its ability to provide a wide range of services by operating a popular retail outlet. The outlet has a relationship with a snow removal company, which has agreed to plow and salt the large parking lot before the store opens for the day. The owner of the snow removal company has provided services at a discounted rate to the charity for more than ten years and is also a major donor.



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Risk Transfer for Senior Living and Human Services



Because of their long-standing relationship, the organization and the snow removal company have an informal verbal agreement- a system which had worked without incident previously. After several days of storm activity and significant accumulations, the snow removal company could not keep up with the demand for timely services and failed to plow and salt the lot before customers arrived. Staff did what they could to clear sidewalks, but several customers reported slipping and falling on ice in the parking lot, resulting in several minor injuries and one instance of a customer sustaining a serious fracture which required surgical repair. The snow removal company did not have insurance for these types of claims and there was no written contract between the two entities. The charity was held financially responsible for the injuries. .

In all cases, properly transferring the risk via contract to the third party may have avoided:

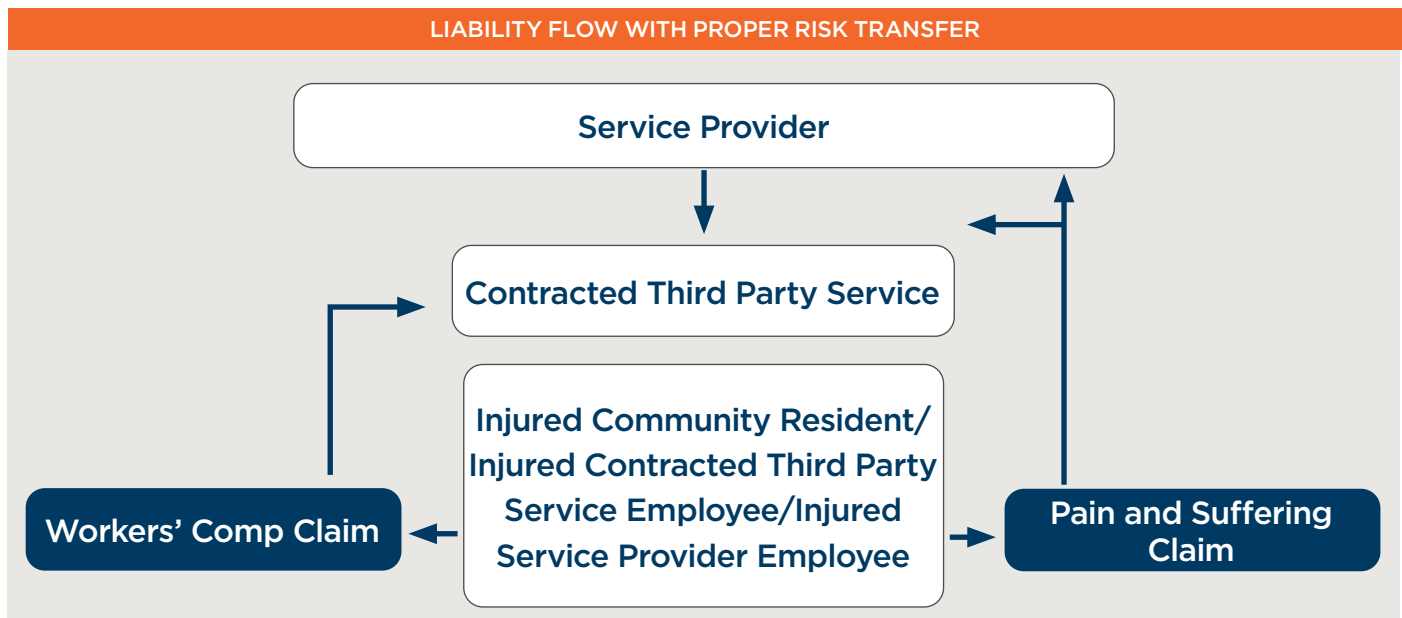
- Liability for the loss
- Significant legal expenses
- The potential for increased insurance premiums

Risk transfer is your best defense.

In risk transfer written agreements, one party assumes the liability for another. With good risk transfer language in place, service providers are much more likely to be defended, indemnified financially and held harmless should there be an insurance claim or lawsuit. Without good risk transfer procedures in place, you or your insurance carrier may be responsible for monetary awards.

LIABILITY FLOW WITH RISK TRANSFER MECHANISMS

In this example, the service provider can, by way of the risk transfer mechanisms discussed in this brochure, transfer the ultimate responsibility to pay a pain and suffering award down to the third party contractor.



Using written contracts to execute risk transfer.

Below are examples that illustrate how written contracts can be used to execute risk transfer, and Nationwide® suggests that you view these as the eight essential minimum requirements of any agreement you sign with a third party. Keep in mind, however, that this information is provided solely to help you gain an understanding of risk transfer methods. You should enter into a contract only after seeking the counsel of a qualified attorney, and these examples should not be viewed as a substitute for legal advice. Also, state law may vary on the enforcement of these provisions.

8 ESSENTIAL MINIMUM CONTRACT REQUIREMENTS

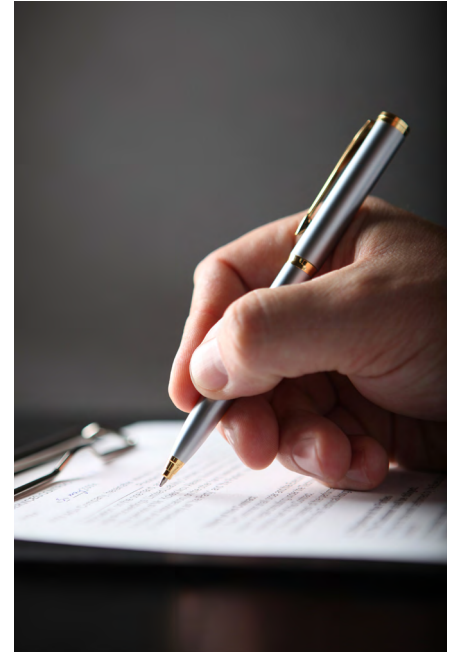
1. HOLD HARMLESS/INDEMNIFICATION AGREEMENTS, AND WAIVER OF WORKERS' COMPENSATION IMMUNITY

Hold harmless/indemnification agreements generally specify that the party performing the work (the third party contractor) will hold you harmless for any losses that may arise as a result of work they perform. In many states, such agreements are considered void if they require the third party to accept responsibility for the sole negligence of the hiring party. A contract might be upheld if it contains what is sometimes called "saving language." This is a phrase that usually refers to the phrase "to the fullest extent permitted by law," as in the following example.

Example of saving language: *"To the fullest extent permitted by law, the party performing the work under this agreement, hereby known as the contractor, shall defend, indemnify and hold harmless the property owner and property manager and their agents for whom the work is performed, for any liability, loss, or other claim for damages for death, bodily injury or property damage arising out of performance of the work by the contractor or any agent, servant, employee, third party or supplier of the contractor, except to the extent of any fault attributed to the property owner and property manager."*

Also, in some states your third party's obligation to their injured workers is limited to workers' compensation benefits. A waiver of the workers' compensation immunity requirement (see example below) bars the third party from using this defense when their employee is injured on your job.

Example of workers' compensation immunity requirement waiver: *"The indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the contractor or any such third party, supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts."*



Hold harmless and indemnification agreements are key to the successful transfer of risk to third parties.



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When a loss occurs, you want the third party's insurance to respond first, that is, on a primary and non-contributory basis.

2. GENERAL ACCEPTANCE PROVISION

Any work order, contract or similar document should contain or reference a hold harmless/indemnification provision (see 1 above) and an insurance requirements/additional insured status provision (see 3 below). These provisions should specify that the act of beginning the work will be considered acceptance of the terms of the contract, work order, or similar document. With regard to service work which may be done throughout the year, it should be expressly stated in writing that these requirements remain in effect until otherwise agreed in writing.

3. ADDITIONAL INSURED COVERAGE, AND MINIMUM INSURANCE REQUIREMENTS AND LIMITS FOR THIRD PARTIES

Insurance procurement requirements call for additional insured status for ongoing operations and completed operations on the third party's general liability (GL), auto and umbrella policies on a primary and non-contributory basis. Consult our *Service Provider's Checklist: Minimum Contract Insurance Requirements and Limits* to see what Nationwide recommends as minimum insurance limits for third parties.

Be cautious. In an attempt to save premium dollars, some third parties purchase insurance from non-standard insurance carriers. While some of these carriers provide reasonable levels of coverage, others exclude primary liability exposures, even if such liability was assumed by the third party in the contract with you (such as employee injuries). This hold harmless obligation coverage gap can result in the third party being virtually uninsured for certain types of losses. This increases your liability exposure and problems with your insurability. *Please consult with your agent to make sure third parties have adequate insurance coverages and limits.*

It's also essential that the third party carry workers' compensation coverage. If that's not the case, the third party's employees' wages may be added to your payroll as if they were your employees, and you may be responsible for their injuries. If the third party is an individual or partnership, then confirm that he/she has elected to be covered by the workers' compensation policy.

4. REQUIREMENT THAT THE THIRD PARTY'S INSURANCE RESPOND FIRST

The third party has primary control over how safely their work is done. When a loss occurs, you want the third party to have primary responsibility for the loss. To ensure that the third party's insurance pays first (ahead of your coverage), it's essential to clearly state in your contract that the third party's coverage (GL, auto and umbrella) shall respond first, that is, on a primary and non-contributory basis.

5. REQUIREMENT THAT THE CONTRACT APPLY TO SUBS OF YOUR SUB

It's important to state in the contract that all obligations and requirements of the contract apply to any parties or third parties hired by the third party. Too often, losses are caused by parties/ persons hired by the third party. By stating these requirements must be passed on to any third parties hired by your third party, you create additional protection for your business.

6. CERTIFICATE OF INSURANCE REQUIREMENT

A certificate of insurance should be provided to you (the service provider) prior to the commencement of work as evidence the third party is maintaining its own GL and workers' compensation insurance with sufficient limits to cover a significant loss. The certificate should show you as additional insured for ongoing and completed operations on a primary and non-contributory basis. A requirement should exist that the third party's insurance policies be endorsed to guarantee you a right to notice of cancellation.

A certificate of insurance provides evidence that particular types of coverage are in force at a particular time. It also lists the limits of coverage in force at the time coverage was issued. It is most commonly used to provide the certificate holder (e.g., you or your customer) with evidence that certain insurance requirements have been met. However, a certificate of insurance alone does not guarantee the policy will be in effect at the time of the loss.

No third party should be permitted to enter your premises without first providing an up-to-date certificate of insurance. The ACORD Certificate of Insurance form has become the industry standard. It provides evidence of the types of coverage as well as endorsements to the commercial general liability (CGL) policy. The type of coverage, name of insurer, policy term and limits of coverage are the typical entries on the form. It provides a brief summary of the coverage in force when it was issued. Since it provides information only, it does not constitute a contract between the insurer and the certificate holder.

Also, a certificate is not a guarantee that the policy doesn't contain additional exclusions/coverages. Additional insured status serves as a backup to the indemnity agreement. In certain cases, the blanket additional insured endorsement is only effective if required by a written contract or agreement.

A closer look at certificates of insurance.

See our brochure for a convenient overview of certificates of insurance. You'll learn what to look for on your third party's certificate and find a brief description of each section of the form with a sample to review. Ask your insurance agent or Nationwide representative for this form.



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7. WAIVER OF SUBROGATION

The third party should agree to waive any and all rights of subrogation against you, the service provider. Waivers of subrogation for GL, auto, umbrella and workers' compensation policies must require the third party to waive their insurer's right to be reimbursed by you should a loss occur that was a result of your negligence.

8. SAFETY REQUIREMENT

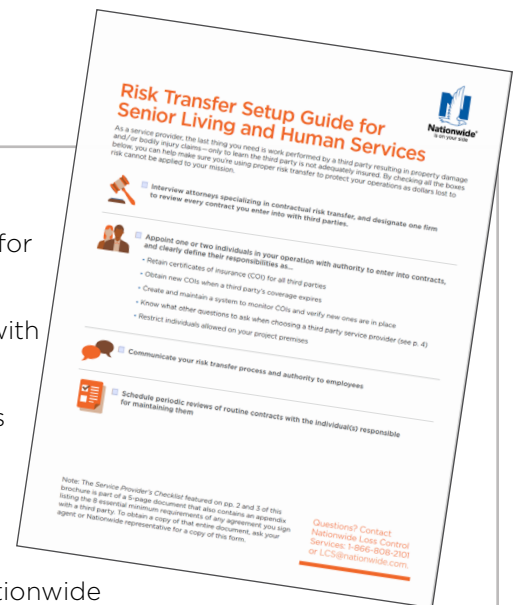
An important contract requirement is to ensure third parties follow the same safety requirements as your own employees. Including this requirement in your contract should alert the third party that safe work practices are expected. Accident-free activities are a reflection on your operations and impact your insurance premiums and reputation.

Risk Transfer Setup Guide for Senior Living and Human Services.

Use our guide as your roadmap to effective contractual risk transfer for your operations. In this document, you'll find:

- Step-by-step instructions for establishing your program, starting with appointing an attorney well-versed in the area of risk transfer
- A checklist for verifying minimum contract insurance requirements and limits with third parties
- A list of additional questions to ask when choosing a third party service provider

To obtain a copy of the *Setup Guide*, ask your insurance agent or Nationwide representative for this form, then contact them with any additional questions.



Providing solutions
to help our members
manage risk.®



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