Cancer Data Management Department, Roper St. Francis Cancer Center

To Employ or to Contract?

What model is the best fit for your cancer registry?

BY ELLEN R. KOLENDER

Finding qualified personnel for the Cancer Registry Department has become more and more difficult in recent years as experienced abstractors retire and cancer diagnoses increase. Faced with hiring challenges, many managers have turned to telecommuters to fill positions in their cancer registry departments. However, creating telecommuting positions requires approval from the legal department and human resources. Even after you have a system in place, circumstances can change rapidly. For example, when a hospital hires new legal staff, all worker telecommuting agreements are reviewed, and the question may again arise—what's the better option: employing or contracting cancer registry staff?

Telecommuter Registry Staff: The Roper St. Francis Healthcare Experience

In 2009, unable to find certified abstracting personnel locally, I extended my search beyond our city and state. Today's technology allows for easy telecommuting options, and with the extended search I was able to hire qualified abstractors from across the U.S. In fact, these telecommuting employees were my Cancer Data Management Department's answer to open positions. By using out-of-state employees to fill abstracting positions, our hiring turnaround time was reduced from one year to one month. The ability to hire quickly also helped us reduce gaps in production.

Within three years of hiring certified registry staff from outside our city and state, our department increased production from abstracting eight months after the date of first contact to three months. Hiring abstractors as telecommuting employees had advantages for our Cancer Management Department as well as for the employee. I was able to control work hours and work distribution. Employees were guaranteed a bi-weekly paycheck and employee benefits, such as health insurance, life insurance, worker's compensation, and leave with pay.

Our Cancer Data Management Department employs an experienced cancer tumor registrar (CTR) to work onsite training employees, checking quality, and keeping all registry staff (including telecommuting staff) on the same page. Changes in procedures and updates to software are easily communicated by conference calls and email. A second onsite employee:

- Coordinates conferences
- Enters pathology reports
- Ensures quality data completion to meet Commission on Cancer quality metrics
- Obtains needed information from physician offices to complete abstracts.

Our department budgets for an annual retreat in our city, which all employees attend. The retreat allows cancer registry staff the opportunity to get to know one another face to face. Since every staff member is employed by the hospital, all travel related to training, the retreat, and continuing education was covered by our Cancer Data Management Department's budget.

This staffing model seemed to work well for everyone. Then in 2011, Human Resources instructed me to terminate my out-of-state employees and instead negotiate independent contracts with them. Not only did this decision disrupt our current staffing and employment process, it was not well understood by the Cancer Data Management Department or cancer registry staff.

Why the Change?

Our hospital had recently hired a new attorney who reviewed all telecommuting employee agreements. He ultimately concluded that the hospital had been paying employee tax to our state and not the state for which each employee was a resident. Legally this methodology was wrong. The state in which the employee lives may consider the hospital as doing business in that state, which may subject our hospital to business filings, taxes, insurances, and more in that state. At a minimum, this subjects our hospital to income tax withholdings in the telecommuter's state (and not our state) for the wages we pay staff.

For a better understanding of the definition of an employee vs. an independent contractor, I refer readers to an article from the *South Carolina Lawyer,* "Independent Contractor or Employee? Getting It Wrong Can Be Costly."[1] This article is one interpretation, defining the difference between the contractor and the employee and how an employer can determine in what category their workers fall. There are "tests used to determine whether workers are employees or independent contractors, IRS enforcement policies regarding worker misclassification, and the current state of the law in South Carolina pertaining to worker classification issues."[1] Three main tests are used by federal courts and agencies:

1. The common law test
2. The economics reality test
3. The hybrid test.

Defining Employee vs. Contractor

State courts and administrative agencies use the three federal tests in various ways. States may also develop their own, and possibly more stringent, tests.[1] The variability of tests can mean that a worker may be classified as "an independent contractor under one law or in one state and as an employee under another law or in another state."[1]

The IRS developed the common law test, which consists of numerous factors. The main focus of this test is the amount of control the employer has over the employee. Some factors used include:

- Is training provided?
- What is the degree of integration between the employer's business and the contractor's services?
- Are services rendered personally?
- Does the contractor hire, supervise, and pay assistants?
- Is the relationship continuing?
- Are there set hours of work?
- Is the contractor required to work full-time?
- Does the contractor work on the employer's premises?
- Is there an order or sequence of work?
- Are oral or written reports required?
- What are the payment methods?
- Who furnishes the tools and materials?
- Does the contractor make a significant investment?
- Does the employer pay business and/or travel expenses?
- Does the contractor realize a profit or loss?
- Can the contractor work for more than one firm at a time?
- Does the contractor make services available to the general public?
- Does the employer have the right to discharge the contractor?
- Does the contractor have the right to terminate the relationship?

The economics reality test considers workers to be employees if they are economically dependent on the employer for continual employment. This test also reviews the relationship between the employer and worker. The independent contractor typically provides services and is paid by many different employers.

The hybrid test considers economic factors of the work relationship although it emphasizes the employer's right to control the work process to distinguish employees from contractors.

The IRS has revised its test into a three-category exam, factoring in: 1) behavioral control, 2) financial control, and 3) relationship between worker and business.[2]

The Lawyers' Decision: The Roper St. Francis Experience

Based on the above criteria, the hospital determined that our telecommuters were actually independent contractors and needed to be paid as such. At that time, the Cancer Data Management Department had six out-of-state telecommuters, the two onsite employees, and three contractors. The biggest change for the contractors was how they would be paid. A new contract was created specifying multiple details—many of which are covered in the common law test. When determining if a worker is an employee vs. an independent contractor, I recommend reading the IRS guidelines, which cover many state labor laws.[3]

Our legal department needed to understand how the "employed" telecommuters paid their state income taxes while employed by our hospital. To determine this, we first had to ask our telecommuters a number of tax questions:

- For each year that you have been an out-of-state telecommuter, did you file an income tax return in your home state for the applicable year? If so, what form number?
- For each year that you have been an out-of-state telecommuter, were the wages paid to you by Roper St. Francis Healthcare (RSFH) reported on the home state income tax return?
- For each year that you have been an out-of-state telecommuter, did you pay income taxes on RSFH wages to your home state?
- For each year that you have been an out-of-state telecommuter, did you file for a refund with the South Carolina Department of Revenue for the income taxes withheld by RSFH and paid to the South Carolina Department of Revenue? If so, how much was the requested refund? Did you receive the refund?
- For each year that you have been an out-of-state telecommuter, have you filed any other tax returns with the South Carolina Department of Revenue for the applicable year? If so, what form numbers?
- Please provide the name and contact information of a

tax professional in your community that you would like to work with. If you need our assistance in locating one, please let us know.

Our hospital offered to pay a tax professional of the telecommuter's choice a reasonable amount (up to a maximum of $300 for each year that he or she had been an out-of-state employee) to help answer these questions and to assist with any amendments these employees may need to make to their tax returns.

The Transition: The Roper St. Francis Experience

Roper St. Francis Healthcare sent a letter to each out-of-state telecommuting employee stating that the hospital could not maintain a remote workforce in other states because it may subject the hospital to other states' business filings and laws. Therefore, the hospital had made a business decision to no longer employ out-of-state telecommuters and their current employment would end on December 18, 2011.

As hard as it was to read the above statement and know I had no control in this situation, the news was even more difficult to tell my employees. The Human Resource Director and I called each employee to discuss their future employment status. Needless to say, the out-of-state employees were devastated. Being presented with such news just before the holidays and the year's end was a shock. Telecommuting staff had 30 days to digest this information. We repeatedly communicated to each worker their value to the hospital and Cancer Data Management Department. We could only hope the telecommuting staff would strongly consider continuing to work with Roper St. Francis Healthcare in another capacity.

Successes & Challenges

A positive consequence of this difficult decision was that the hospital was able to offer our telecommuters an alternative: the opportunity to join our contract labor workforce. According to our Human Resources Department, "The proposal would change [the telecommuting employee's] role from an employee to a business professional with which we contract for services." The change would also give our former telecommuting employees the flexibility to decide how much they want to work, when to work, and the potential to make more money than they were currently making.

On the downside, the change in employment status meant that I would no longer control the hours or methods of their work—as I do for our hospital employees. The independent contractor is contracted to get the work done and paid per performance—not by the hour. Contractors would be paid one amount for abstracting a case and another amount for follow-up and other tasks. Determining the amount to pay for each task was quite challenging.

Determining Pay per Performance

My intent was to pay the contractors at minimum what they had been paid as employees—more if they produced more work. I require all employees to complete and submit weekly productivity reports. I used these reports to determine the average productivity for abstracting, follow-up, and other tasks. Knowing the average number of abstracts completed per week helped me determine the rate of pay for each abstract equating it to their previous hourly rate. I determined a lower rate for follow-up and other tasks by breaking out each task performed. Follow-up work was defined as "any task for any work which had the potential to update a case." Other abstracting tasks included case finding, adding treatment data, deleting cases, case reviews only, etc.

The contractor would not receive payment for time spent in educational activities, phone calls, or preparing weekly productivity reports and invoices. In addition, telephone and cable services would now be paid for by the contractor.

In the end, five of the six former telecommuters signed the new contract. We began applying the new payment method on January 1, 2012, and have agreed to closely monitor the rate of pay. In six months we will review the success or challenges arising from this new staffing method with the workers. As of today, September 24, 2012, we employ four onsite workers; two off-site (in our state) workers; and four CTR independent contractors. The telecommuter who did not sign the contract in 2011 was replaced by an onsite CTR. We were also fortunate to add a position to coordinate cancer conferences. This position was filled with an individual having a medical background, though no experience in cancer registry.

The contractors have worked out well. They are making more money than they did as employees; however, considering lost benefits, the salary ends up being close to what they were making as employees. The contractors are all very happy with the arrangement as they have control of how much money they make. My department is able to control costs by increasing or decreasing the maximum abstracts to complete. I have found it necessary to keep a careful watch on our contract spending versus budget allowance, taking into account compliance with the CoC requirement of abstracting cases within six months of first contact (first date the patient had treatment or diagnoses at the hospital).

Already some contractors have expressed concern about running out of work. Although I do not anticipate a lack of work, if this happens I will know we made the right decision, and that I have too many abstractors.

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3. Department of the Treasury, Internal Revenue Service. Employer's Supplemental Tax Guide. Available online at: *www.irs.gov/pub/irs-pdf/p15a.pdf.* Last accessed Sept. 19, 2012.