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Employee Notaries in Healthcare

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It is not uncommon for patients, medical staff, and employees in healthcare facilities to urgently need specific healthcare documents to be notarized. However, not all employees can sign or witness legal documents for patients; they must be a notary public. A notary public is an official appointed by the state to perform certain legal formalities, or as an impartial witness in various official fraud deterrent acts related to the signing of important documents.

Employees who are commissioned as a notary public on behalf of a healthcare organization typically notarize documents for patients that relate to healthcare issues, such as:

- Advanced directives or healthcare directives
 - » Witness ombudsman - Depending on state law, a special witness may be needed when notarizing advanced directives in nursing homes. An ombudsman ensures that the patient is alert, understands what they are signing, and agrees with the healthcare decisions detailed in the document.
- Durable power of attorney forms
- Paternity affidavit
- Signature of trustees

Some healthcare facilities may also utilize their employee notaries for documents related to business operations, such as real estate documents, legal contracts, etc. Although notaries can assist with certifying important documents, they can also be held liable if the laws and guidelines that govern their position are not followed. According to USA Today, there are seven common reasons notaries get sued:

1. Notarizing for someone who isn't present at the time
2. Notarizing documents that are not complete
3. Offering advice, solicited or otherwise

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4. Notarizing documents when a commission has lapsed or expired
5. Using or borrowing someone else's seal
6. Returning documents after a deadline
7. Forgetting to issue an oath or follow directions

Consequences for notary misconduct can range from notary commission suspension or revocation, criminal or civil penalties, and litigation. If the notary is providing services on behalf of the healthcare organization, the organization could also be held vicariously liable for the notary's actions. Therefore, healthcare facilities should strongly discourage their employed notaries from providing non-corporate notarial services, such as favors for colleagues, friends, etc.

The following is an actual claim from Travelers:

"A local notary was called urgently to a hospital to notarize a power of attorney (POA) for an elderly woman. The notary spoke with the woman executing the POA and the relative that was receiving the powers that were being granted by the woman. As reported by the notary, both individuals 'seemed nice' and nothing appeared out of the ordinary, so she notarized the POA. The notary was later sued by family members of the woman that executed the POA as it was alleged that the man that received the powers ended up abusing his powers and stealing from the elderly woman. The plaintiffs claimed the individual signing the POA was not competent and the notary was negligent for notarizing the document."

To reduce liability and control the risks surrounding employee notaries, healthcare facilities should consider working with their risk and legal departments to develop an organizational policy that sets guidelines for employees

performing notarial services during their employment. The policy should encompass the following directives:

Requirements

Outline what requirements must be met for the notary to be authorized by the organization.

1. The notary public must be currently commissioned and in good standing.
2. They must be registered with the healthcare organization as a notary public.
3. They must obtain a notary bond, per state statute. The required amount varies in each state; however, every notary must maintain a surety bond in their name. The bond protects the public in the event that an improper notarization causes financial damage. It is important to note that this is not insurance for the notary, and bonds do not provide complete protection from lawsuits. For additional protection from financial losses that can arise from a notary's mistakes, errors and omissions insurance (E&O) can provide some safeguard.
4. Many healthcare facilities assume their medical professional liability policy will cover any notary exposures. Yet, in most cases, the medical professional liability policy provides no coverage for the exposures of an employed notary. If the employee is providing notarial services on behalf of the healthcare facility, then the organization may want to consider covering the notary under a group E&O policy. E&O can protect the organization and notary against honest mistakes, but not fraudulent actions.
5. The organization should decide whether they will cover the costs and fees of the notary's bond, training, application, seal, journal, and any other

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related expenses. If the organization is covering the costs and the notary will be acting on behalf of the organization, then these individuals should be discouraged from using their notary commission outside of the workplace.

Duties

The policy should clearly state that notaries must practice within the organization's duties, individual scope of services, and applicable state laws.

Permitted/Prohibited Actions

The policy should outline which notarial acts are permitted and forbidden.

1. Employee notaries should only notarize documents within the scope of work as authorized. They should not provide legal advice, draft legal records, or otherwise practice law. Additionally, notaries should not provide services for patients or other employees for acts associated with property transfers, wills, or titles transfers. It is also not advised that employee notaries provide services to medical staff or employees that are unrelated to the course and scope of their relationship with the employer.
2. Notaries should be allowed to refuse services if they are uncomfortable or if it will interfere with their job or work assignment.
3. The notary should be responsible for maintaining their journals and regulations when performing services for patients. At the end of employment, employers may wish to retain the journal for a specific amount of time or within organizational retention guidelines. Consider having the notary employee sign a notarial journal agreement and maintain it in their employee file.

4. State statutes may vary, though generally a notary public should not perform a notarial act for a spouse, family member, or extended family members. Doing so may be interpreted as having a conflict of interest in the transaction, which could call the notarial act into question.
5. The organizational policy should state that the employer has the right to revoke a notary's privileges on behalf of the organization if fraudulent behavior or abuse of notarial commission is observed.



Process

1. Provide employed notaries with a main point of contact to approve notarial requests and exceptions when appropriate. If an employed notary is not available, alternative options should be made available, such as a traveling notary.
2. Patients within your healthcare organization may not have access to their own identification

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documents. Notaries will need to understand the state rules and guidelines regarding acceptable forms of ID.

3. Notaries will also be responsible for evaluating the patient's behavior and awareness before notarizing any documents. If the patient's decisional capacity is questioned, a provider should be requested to assess their capacity before moving forward.
4. Maintain a list of all currently commissioned employed notaries. If E&O coverage is purchased, there must be a standard process for when the notary begins or terminates employment, so they can be added and removed from the policy accordingly.

For more information on protecting your employed notaries and your healthcare organization, please reach out to the team at Parker, Smith & Feek.



Danielle Donovan is Parker, Smith & Feek's Clinical Risk Manager, dedicated to helping improve our healthcare clients' operations and mitigate risks. She publishes regular articles to support this effort and provide unbiased advice on issues facing all types of healthcare organizations. Stay tuned for her next installment, and contact Parker, Smith & Feek's [Healthcare Practice Group](#) if you would like to learn more.

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