

California Regulates Private Duty Home Care



With Governor Brown's October 13 signature of the Home Care

Services Consumer Protection Act of 2013 (formerly known as AB 1217), California has tightened the oversight of private home care agencies and care providers. AB 1217 establishes a new licensing program for home-care organizations and requires background checks, basic training, and tuberculosis screening for the aides that they employ. In addition, the new law establishes a registry run by the Department of Social Services (DSS) that enables consumers to verify that the caregiver working in their home has passed a background check.

The law is not directed at [home health agencies \(HHAs\)](#), which are already licensed under existing law by the California Department of Public Health (CDPH). HHAs typically provide residential skilled care – ordered by a physician and overseen by a director of nursing – that is reimbursed by [Medicare](#), [Medi-Cal](#), and private payors, and are often accredited.

Instead, the new law is focused on non-skilled home care services, often referred to as “private duty” or “companion” caregivers because they are paid privately by patients or their families without the need for physician orders or nurse oversight. Until now, these non-medical home care organizations (HCOs) have been unregulated. Private duty services commonly provide in-home care services to aid seniors with basic living tasks, including grooming, dressing, bathing, meal preparation, and other acts of daily living.

Entity licensing is distinct from individual health professional licensing and certification: individual registered nurses are licensed by the Board of Registered Nursing (or, in the case of licensed vocational nurses, by the Board of Vocational Nursing and Psychiatric Technicians), and unlicensed home health aides working for HHA's are required to be certified and to undergo Livescan background checks.) In the private duty/HCO context, aides have been providing services without any oversight or regulation, drawing criticism from senior advocates. This issue has been a focus of attention nationally, with only 24 states (now 25) requiring licensure of HCOs.

The new law will not affect HHAs or other licensed entities that provide care reimbursed by federal health program or private payors, like hospices. Instead, it establishes new requirements for the private duty services, including licensure of HCOs by DSS and compliance with operational requirements, including ensuring that all employed home care aides (HCAs) are registered with DSS and reporting any incidents of suspected elder abuse.

The new law takes effect January 1, 2015, giving DSS and the industry alike over a year to get ready for this significant new regulatory oversight.

Nelson Hardiman advises licensed home health agencies, as well as entities that are unlicensed (until 2015) and providing private duty, companion home care services. For more information on compliance with the new requirements, email [Harry Nelson](mailto:hnelson@nelsonhardiman.com) (hnelson@nelsonhardiman.com).

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