

## Business Implications of California Home Care Regulation



**Starting or managing a home care business in**

**California requires a thorough understanding of its regulatory environment.**

In October 2013, with the passage of Assembly Bill 1217, California became (at the time) the 25th state to license the provision of “private duty” non-medical home care (as distinguished from home health agencies). The number has now jumped to at least 35 states which license non-medical home care. The California license requirements take effect January 1, 2016, requiring licenses for both companies (“home care organizations” or HCOs) and registration in a state registry for affiliated and independent home care aides (HCAs). Nelson Hardiman has been addressing many inquiries from existing California home care providers and new home care businesses about the implementation of AB 1217. Below, we have provided some basic information. For additional inquiries, please contact us at [info@nelsonhardiman.com](mailto:info@nelsonhardiman.com).

### Who needs to register under the Home Care Law?

Under the [Home Care Services Consumer Protection Act](#) (HCSCPA) enacted in October 2013, both unlicensed aides who provide in-home care (often called “private duty” to distinguish it from licensed home health agency care) and the registries or companies these aides work for will need to register with the California Department of Social Services (DSS), Community Care Licensing Division’s (CCLD) new Home Care Services Bureau (HCSB) and Caregiver Background Check Bureau (CBCB). The HCSB will oversee licensing of the companies (now known as Home Care Organizations (HCOs), while the CBCB will oversee background checks for individuals (both affiliated and independent Home Care Aides (HCAs) who will be listed on the Home Care Services (HCS) Registry, which is the official online resource that DSS will make available to the public to verify an aide’s name, registration status, registration expiration date, and any affiliated HCO.

### What services are covered and require a HCA to register and HCO to be licensed in California?

HCA registration is necessary for a person who provides a broad range of services defined by California Health and Safety Code Section 1796.12, including any of the following residence-based personal or companion care or assistance to an elderly or infirm person: ambulating (walking), assisting with self-administered medications, bathing, companionship, dressing, feeding, exercising, grooming and hygiene, housekeeping/laundry, meal planning/preparation, positioning/transferring, shopping (personal care items/groceries), telephone calls/emailing, toileting, and transportation. HCO licensure is necessary for any organization that provides HCAs performing the above services.

### What are the entity structure requirements for a HCO?

A HCO may be a sole proprietorship, partnership, corporation or LLC. Out-of-state entities may operate HCOs, as long as they file the appropriate qualification documents to do business with the Secretary of State. In addition to the document required for licensure, HCOs must meet certain insurance requirements, including workers compensation coverage, an employee dishonesty bond, including third-party coverage, with a minimum of ten thousand dollars (\$10,000), and general and professional liability insurance policy in the amount of at least one million dollars (\$1,000,000) per occurrence and three million dollars (\$3,000,000) in the aggregate.

## **Can we operate if we submit our applications but haven't had the license issued by January 1, 2016?**

Yes, as long as applications are submitted by January 1, 2016, HCOs and HCAs can continue to operate as long as they comply with all legal requirements (including licensure/registration) by July 1, 2016.

## **What are the personal requirements for a HCA?**

To qualify as a HCA, a person must be at least 18 years old, undergo criminal background clearance, testing for tuberculosis (TB) and complete minimum training requirements (at least 5 hours of initial training prior to client contact, including 2 hours of orientation regarding the caregiver role and terms of employment and 3 hours on infection control, emergency procedures, and First Aid certification, as well as 5 hours of annual training on client rights, client safety and needs, reporting, detecting, preventing abuse and neglect, and assisting with personal hygiene and other home care services. HCOs must maintain training verification logs, TB and criminal record clearances, and signed statements from criminal record history.

## **Will a criminal record prevent me from becoming a home health aide (HCA)?**

HCAs requires background checks and criminal record clearance as a prerequisite to HCA registration. Minor traffic violations will not prevent clearance, but other crimes will be flagged and may prevent a person from qualifying for registration based on existing laws that prevent people with criminal records from working or even just being present in a facility licensed by the DSS Community Care Licensing Division. DSS has a process for exemption from the criminal record clearance process for non-serious crimes.

## **If our business is already licensed as a home health agency, do we need to be licensed under the new law?**

No, irrespective of whether they also provide private duty care, California Health and Safety Code Section 1796.17 exempts home health agencies from licensure under the new law. Certain other organizations that are already regulated are also exempt, such as organizations that contract with CCLD Regional Centers to provide services for individuals with developmental disabilities and receive funding from the Department of Developmental Services for more than 50% of their clients.

## **What's the difference between an affiliated and an independent home care aide (HCA)?**

If an HCA works for a HCO, then he or she is "affiliated" and contracted by clients through the HCO. If an HCA is independent, he or she can contract directly with clients.

## **When can we submit applications?**



HCSB will not be accepting HCO applications until October 2015. CBCB will be accepting HCA applications beginning in November 2015. In addition, the Department of Social Services will be publishing online guidance for home care.

## **Is there anything home care providers should do now to get ready?**

Prospective HCOs can download and begin completing the seven documents that the Department of Social Services has made available on its website at <http://www.cclد.ca.gov/PG3654.htm>. In addition, HCOs should be assembling some of the additional policies and procedures that the Department has indicated will be required, including program descriptions, personnel job descriptions and policies, training plans, and other essential compliance documents. Please contact us at [info@nelsonhardiman.com](mailto:info@nelsonhardiman.com) if you would like assistance in completing the necessary documentation.

For more information/questions regarding any legal matters, please email [info@nelsonhardiman.com](mailto:info@nelsonhardiman.com) or call 310.203.2800.