



# Home Care

## Association of America

**Consumer and Worker Risks from the Use of Nurse Registries  
and Independent Contractor Companies**

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## **Background**

The Home Care Association of America (HCAOA) is a national voice for organizations that provide private duty home care services, and an advocate for services which benefit the consumers for whom they care: seniors, children, persons with disabilities, those with chronic health conditions and anyone whose quality of life can be improved by having a care worker help in their home.

Companies represented by the HCAOA vary in the level of services they provide. Some help with every day chores like housekeeping and errands. Others provide needed supervision or friendly companionship to those who are lonely or afraid. Some HCAOA member agencies provide personal care (bathing, dressing and help with mobility) or skilled medical or nursing services. All of the companies in the Home Care Association of America share a guiding philosophy and values. These values encompass the following: integrity in providing safe, qualified and affordable care; excellence in services; and effectively communicating these values to consumers.

Over the past several years, the provision of in-home care has increasingly been provided by nurse registries and employment agencies that act as “matchmaker” services, assigning independent contractors to clients and patients in need of services. Many consumers who use services offered by these companies never realize that there are potential legal and tax consequences that go along with the use of an independent contractor. These consequences can be significant, and could have a serious impact on the consumer. This paper outlines the dimensions of the problem, and the Home Care Association of America’s position.

## **The Problem**

The number of consumers purchasing private duty home care services continues to grow in the United States. Greater numbers of consumers who are dealing with chronic or debilitating health conditions are turning to home care, rather than institutional care, for their long-term care needs. Many cite the desire for a higher quality of life and independence as the reasons for the choice of care at home.

Most of these consumers pay for this care out-of-pocket, using available disposable income to hire the care they need in their home. Faced with a growing and sometimes bewildering number of choices, consumers more and more are turning to companies that offer them the cheapest price for care without understanding the implications of their choice. Similar to the day labor companies that place temporary, low skilled workers with manufacturers, many consumers are hiring workers from registries and companies that do not employ or supervise their workers, but merely “place” them in home care settings. This has resulted in unfortunate situations for seniors, families and home care. Below is an examination of the risks to which seniors, families and home care workers could be exposed.

## **Risks Associated with Use of Registries and Independent Contractor Companies**

There are many unexpected or hidden issues that consumers and workers face when dealing with companies that place workers who they (the company) do not employ. One major issue is that there IS an employer-employee relationship that is created in most of the care situations—it is between the worker and the consumer. Unfortunately consumers in most cases are not aware of this. Referring registries and independent contractor agencies often don't communicate to the worker and consumer that this arrangement could result in the creation of an employee-employer relationship. Because of this, both the worker and consumer can suffer significant financial liabilities.

### **Liabilities and abuses**

#### **Payroll taxes**

Consumers and the families of those receiving care are confronted by a confusing array of federal and state laws. The simplest and most direct requirement is that anyone who gets a paycheck must pay the government any taxes due. This includes social security, Medicare, federal and state unemployment, and state and federal payroll taxes. When the consumer is the employer and responsible for compliance, and none of these taxes are being paid, the government may sue the consumer or their estate for back taxes, interest and penalties. In a situation where many days of care or many hours each week of care over a long period of time have been delivered, this tax responsibility can be a substantial amount. Other remedies that authorities may seek can include civil fines and criminal penalties. There are also many problems for workers. No payment into social security leaves them vulnerable in their old age, and no protection is afforded for their periods of unemployment. Also, workers may not be receiving the minimum wage and overtime protection to which they may be entitled.

#### **Worker Related Injuries**

This is the most potentially financially devastating result for consumers and workers who are unaware of the employer-employee relationship. If no workers' compensation protection is provided (as mandated by law for employees for nearly every state), and the worker sustains an on-the-job accident, the liabilities can be substantial. Medical costs and disability payments for workers could cause financial hardship for even a very wealthy client. For clients who could not afford to pay, the worker could be left with no help for a devastating injury. Many consumers incorrectly assume that homeowner's insurance will cover this type of loss, when, in fact, homeowner's insurance usually specifically excludes employees in the home.

#### **Abuse and Exploitation**

Most workers who enter the home care industry are caring, giving people. Unfortunately, there are also those who know that it is very easy to take advantage of frail, functionally limited, often cognitively impaired clients. Registries or independent contractor agencies, because they have little ongoing liability and want to avoid being considered as the employer of the worker, may provide inadequate or no background investigations on their caregivers. This could subject clients to physical, psychological or financial abuse.

Families of the consumer can help, but time constraints and geographical distances often don't allow for this.

### **Supervision of the Worker**

Because of Internal Revenue Service regulations, registries and independent contractor agencies **cannot** provide any substantive work supervision, scheduling, or training to workers in home care without becoming employers. If they do, the company, by law, becomes the employer of the worker. Supervision, scheduling and worker training are important benefits to consumers and workers and are provided only by agencies that hire their workers.

For consumers and their families, hiring a HCAOA member home care agency provides assurance that someone with experience and responsibility is reviewing the changing care needs of the client. The HCAOA member home care agency provides ongoing assessments of the limits of care that individual workers are allowed to provide. Member agencies also provide appropriate supervision that can potentially head off, or at least deal with, the sometimes difficult relationship issues that can occur between clients and their care workers.

### **Conclusions**

- Consumers who receive home care, and caregivers who work in the industry, face increasing risk because of the growing use of companies who refer, but do not hire, workers.
- There is inadequate information about this issue for consumers and for the professionals in the industry who refer clients for care. They need to be aware of the risks and liabilities faced when families become employers.
- Consumer choice is important and should be preserved. Clients and their families should be able to hire the workers or companies that best meet their care needs, with full disclosure from companies that are providing care workers for the home.
- Action needs to be taken now to protect consumers and workers.
- The Association is developing and promoting the following actions:
  - Education programs for home care consumers;
  - Education programs for home care professionals;
  - Introduction of home care consumer protection legislation; and
  - Local “grass roots” level support kits for HCAOA members.