

# California to Require Licensure of Home Care

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On October 13, 2013, Governor Brown signed A.B. 1217, the Home Care Services Consumer Protection Act, making California one of 29 states that require home care agencies to be licensed or certified. (California Health & Safety Code Sections 1710, et seq.) The Act as written is effective January 1, 2015, although the Governor has requested that implementation be delayed until 2016.

There are an estimated 120,000 paid caregivers and 1,400 home care agencies in California, and those numbers are on the rise. The Act's author estimates that the number of California residents aged 85 or older will double to more than 1.3 million by 2030. Payment incentives in the Affordable Care Act and state reimbursement models encourage seniors to receive services at home, rather than to transition to health care or assisted living facilities.

The Act was supported by labor unions and organizations representing the elderly such as the AARP and the California Commission on Aging. These groups pointed to recent studies from Northwestern University and the California Senate Office of Oversight and Outcomes highlighting the potential risk to consumers due to the lack of regulatory oversight of home care agencies. Trade groups such as the Home Care Association of California and providers such as Maxim Healthcare Services, Inc. opposed the Act. Although they supported licensure in the concept, they based their opposition on the potential costs that the Act as drafted might impose on the industry.

The Act broadly defines "home care services" to include nonmedical services and assistance provided by a registered home care aide to a client who cannot perform the services on his or her own behalf. These include bathing; dressing; feeding; exercising; personal hygiene and grooming; transferring; ambulating; positioning; toileting and incontinence care; assistance with medication that the client self-administers; housekeeping; meal planning and preparation; laundry; transportation; correspondence; making telephone calls; shopping for personal care items; and companionship. The Act specifically excludes home health services, which are regulated by the Department of Public Health.

A “home care organization” must obtain a license issued by the Department of Social Services (DSS) before arranging for the provision of home care services by a registered home care aide. Certain providers such as home health agencies, hospice agencies, health facilities, county service providers, employment agencies, continuing care retirement communities (CCRCs) and residential care facilities for the elderly (RCFEs) are excluded from the definition of a home care organization, and thus are not required to be licensed under the Act. To obtain a license, the home care organization must complete an application and submit proof of liability and worker’s compensation insurance, and the owner(s) must pass a background check. DSS is charged with creating and administering the licensure scheme. The Act gives DSS the authority to inspect home care organizations, issue notices of violations, and impose fines of up to \$900 a day, similar to the current licensure scheme for RCFEs.

Home care aides who are employed by a home care organization (termed “affiliated home care aides”) are required to be on a registry established for that purpose. “Independent home care aides” who are hired directly by a client may participate in the registry but are not required to do so. Participation in the registry requires continued background checks, proof of insurance, tuberculosis testing, and training for those aides who are employed by an organization. A home care aide who is on the registry is required to update his or her information every two years. Home care aides do not include individuals who provide home care services as part of their duties through organizations that are excluded from the definition of “home care organizations,” including home health agencies, hospices, health facilities, alcohol and drug treatment programs, and RCFEs.

Given the complexity of the proposed licensing scheme and the Governor’s request to delay implementation, the Act will likely go into effect in 2016. Home care organizations should be on the look-out for further guidance from DSS in the coming year.

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