

# LONG TERM CARE

## **Hiring Private Duty Home Care Workers: Why Work through an Agency?**

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One of the greatest long-term needs of older adults and those with chronic illnesses is for in-home, custodial care services. These workers are often referred to as home health aides, certified nursing assistants and custodial care workers. These in-home workers make it possible for people with functional limitations to remain at home in a comfortable, familiar environment. Home health aides (as we will refer to this class of workers) provide a wide range of assistance with activities of daily living (ADLs), such as bathing, dressing, grooming, assisting with ambulation or transferring, toileting, feeding and providing medication reminders. In addition, home health aides help with what professionals call, instrumental activities of daily living (IADLs), such as shopping, meal preparation, making medical appointments, transportation, laundry and companionship.

While it is true that most people would prefer to remain in their own homes, there are circumstances in which care in a residential or nursing facility is more appropriate and more cost-effective. For example, the individual who needs round the clock care because of treatments or behavioral issues will find a nursing facility or residential setting likely to be more affordable. The biggest proportion of people who utilize home health aide services are those who need several hours per day of assistance, as opposed to those who need full-time care.

Due to the cost and the increasing shortage of home health aides, many families seeking to hire in-home staff turn to private individuals rather than working through an agency. While at first glance this seems reasonable, it can also cause numerous problems and create unexpected liabilities for the family, who becomes the employer.

### **Tax Issues**

As a private employer, the individual or family is required to pay Social Security, unemployment and payroll taxes. Many home health aides will represent themselves as independent contractors, ostensibly relieving the hiring individual of these tax obligations. However, it is the responsibility of the hiring individual to be sure that the aide truly is an independent contractor and is therefore paying their own taxes. In many instances, the aide will not meet the legal criteria as an independent contractor. If the aide has not met his or her tax obligations, this responsibility falls to the employer. This can be a serious obligation because it may involve interest on back taxes, civil fines and the possibility of criminal penalties. Potential private employers should seek the advice of a labor lawyer to assure appropriate hiring practices with respect to federal tax laws.

Case Example: Mr. L hired a home health aide for his mother on the basis of a recommendation from a neighbor who also employed this individual. Mrs. L needed help because of a minor stroke that left her unsteady on her feet. Initially, Mrs. L only needed four hours of help per day to assure that she had a bath, that two meals were prepared and that the weekly shopping was completed. Occasionally, the aide also accompanied Mrs. L to some of her many medical appointments.

As time went on, Mrs. L continued to have minor strokes that left her increasingly debilitated. After 18 months, Mrs. L was quite incapacitated and had lost her ability to speak. At that point, the family decided to ask the aide to live in full-time and provide total care to Mrs. L. This relationship was very loving and lasted until Mrs. L passed away.

Because the aide had given up all of her other clients to care for Mrs. L full-time, she had no other immediate employment when Mrs. L died. Since she needed income to support her family, the aide filed for unemployment benefits. It was at that point, that the IRS became aware of the employer and filed a lawsuit for back unemployment taxes, penalties and a fine. The family of Mrs. L did not understand their responsibility as an employer and found themselves in a legal action that took over two years and many thousands of dollars to resolve.

#### Workers' Compensation and Liability Issues

As the employer, the individual or family paying for the private home health aide would be held liable for any work-related injury that occurs on the job. This can include the cost of all medical expenses and any disability payments that might become applicable.

Since the home-care industry is noted for work-related injuries, this can be a huge risk, especially if the caregiving tasks include lifting, transferring or bathing. There are also risks related to communicable diseases if the aide does not abide by universal precautions that are required by all licensed agency personnel.

Furthermore, the employer retains any liability that arises out of an injury to the person being cared for or any other person on the premises. If the home health aide were to cause an accident, for example, in which other family members suffered any harm or losses, the employer would bear the full responsibility for all costs and compensation.

Case Example: Home health aide, Myra Jones had a history of back injuries after many years of work in rehabilitation facilities. Her injuries always responded well to treatment, and were kept at bay with back supports provided by her employer. When Mrs. Jones had the opportunity to follow one of her clients home from rehab as a private aide, she took advantage of the offer and worked privately for Mr. S.

Mr. S didn't need a lot of physical care when he first left the rehab facility. He was there because he had had surgery that left him weak and a little confused. Unfortunately, the confusion did not clear up as the anesthesia left his body. It seemed that he had begun to develop a dementing illness, and would need increasing supervision for safety.

Over time, Mr. S began to need increasing amounts of physical care, especially for transferring and dressing. Mrs. Jones found herself increasingly taxed by the care of Mr. S, but she had become so attached to him that she did not express her concerns to the family that had hired her.

One day, as Mrs. Jones was dressing Mr. S, she bent down to help him with his shoes and her back froze in place. She was unable to straighten up. She managed to creep to the phone to call a friend for help, but she had to insist that Mr. S not move out of her sight for fear that he would wander off.

Mrs. Jones had found herself being treated in the rehabilitation facility in which she used to work. The doctor told her that she would not be able to work as an aide again. As she got stronger, Mrs. Jones filed for worker's compensation and disability insurance.

Once again, the government became aware of the employment situation in which the injury occurred and they pursued the family for medical expenses and for disability coverage. This cost the family many times more than it would have if they had the appropriate insurances or if they had worked through a licensed home health agency.

### **Abuse and Exploitation**

Unfortunately, there is the potential for both physical abuse and financial exploitation when work is being done on behalf of a frail, functionally limited, and often cognitively impaired individual. While most individuals who become home health aides do so out of a desire to help others and to contribute to the community, there will always be those who see this type of work as an opportunity to take advantage of someone. This becomes especially easy when the aide and the recipient of care are isolated in a private home setting with little or no supervision.

Families don't fail to provide supervision out of malicious neglect. Supervision is often difficult because of geographic distance, lack of expertise, or the close emotional bonds that often get established between the aide and the person receiving the care. Furthermore, families often do not have the time or the resources to do criminal background checks, or to contact references, if they even think to ask for references. Sometimes families are so grateful for the care provided by an aide that they are also vulnerable to manipulation and exploitation.

### **Agency Supervision**

A licensed home care agency has a responsibility to provide ongoing supervision for their employees. This includes helping the aides to understand the changing needs of clients, assuring the proper limits of care according to the practice acts of the various levels of professionals, and mediating difficult relationship issues.

Providing supervision is often as important for the aide as it is for the family. Home health aides often work with very challenging situations in the isolation of the private home situation. There are often issues of different cultural and faith traditions, different expectations about personal schedules, eating preferences and expectations. An agency supervisor can help to clarify the roles of the home health aide, and the expectations of both worker and care recipient. Furthermore, the agency can support the aide in setting appropriate limits on the types of care that can be provided. For example, an older adult might expect an aide to help with dressing changes or high tech care that is legally the responsibility of a licensed nurse.

In situations in which there are personality issues because of cognitive changes or a history of challenging relationships, the agency supervisor is available to provide guidance and support to both staff and care recipient. This can be very fragile, especially if there is a lack of trust or behaviors that are strange to the home health aide. The support of a supervisor can help the aide understand that this is part of the disease process and cope with behaviors so that the aide and the client can have a successful relationship. Often, supportive supervision is the key to making a challenging situation work.

Case Example: Mr. B lost his wife who had cared for him for over 60 years. He needed help with shopping, meal preparation, transportation and an appropriate selection of clothing. His family had hired many aides on his behalf. It seemed that Mr. B would fire every aide after only a few days, always stating that they didn't know how to do anything right. When Mr. B came to us, the home health supervising nurse spent time talking with him about his needs and expectations.

She learned that Mr. B was unhappy because none of the aides did things the way his wife had done them and this made him feel uncomfortable in his own home. The nurse supervisor explained that everyone had different ways of keeping house. Mr. B was amazed because he thought that all women learned the same routines. Having realized this, the nurse spent more time with Mr. B to find out what was happening that was different from what his wife had done. Amazingly, small things like letting dishes air dry on the counter, versus drying them and putting them away, were distressing to him. By going through the daily routine and learning about Mr. B's expectations, the supervisor was able to provide clarification to the aide and the first one placed in the home was able to be successful and have a multi-year relationship with Mr. B.

The employer, whether it is a private individual or an agency, has a great deal of responsibility in hiring and managing a home health aide. This includes responsibilities that are financial, legal and involve governmental regulations. When a family is ready to hire home health aide services, they need to make a basic decision about the source of such assistance. This decision needs to take into consideration the type of help needed, the financial and tax implications, the need for supervision and the relative vulnerability of the person receiving the care.

If the family is unwilling or unable to assume the full range of responsibilities, they would be better off working through an agency. If the family chooses to hire privately, they need to consult a lawyer and an accountant to assure that they make proper arrangements for all of their obligations. In addition, they need to stay involved in the relationship to assure proper care and a mutually supportive relationship.