

# Miscellaneous Healthcare Spotlight

## Sounding the Alarm on Home Healthcare Risks

by Evan Smith



*Aging baby boomers prefer to be cared for at home, and a broad and diverse home healthcare sector rises up to meet their needs. Fueled by advances in technology and medical science, healthcare administered at home is increasingly sophisticated. But the risks can be as complicated as the services provided.*

### Startling diversity

The home healthcare provider sector runs the gamut from smaller in-home care services to large national healthcare agencies. It includes group homes, visiting nurse associations (VNA), occupational and physical therapists, and hospice care providers. Indicative of the rapid growth of the sector, the federal government has built PACE (Programs of All-inclusive Care for the Elderly), a Medicare and Medicaid program that provides community-based care to people in need of home nursing care nationwide. These risks can, and should, be viewed through several different prisms. The caregiver, the care given and the patient all shape the exposure.

The most benign risks in this class are served by a custodial aide caregiver. This individual typically has minimal healthcare expertise and serves in a sitter capacity, usually for patients who are elderly or infirm. This class of caregivers assists with the whole range of activities of daily living. They might manage medicines and assist with mobility, lifting a patient in and out of their wheel chair or turning up carpets to ensure safe passage for a patient using a walker. They may run errands, cook meals, and accompany their charge to doctors' appointments. Custodial caregivers are also frequently hired to sit with patients in hospitals or long term care settings to provide additional one-on-one support. (Caregivers acting in this capacity are still considered home healthcare risks.)

Medical malpractice claims frequently arise in these scenarios from errors in dispensing a patient's medicines or from a slip or fall. There is the risk of drug diversions and theft of other items from the patient's home. The nature of the work means that a caregiver is often alone with a patient, so there is also the risk that allegations of sexual, physical or verbal abuse of patients may be leveled against the caregiver.

There is also a non-owned auto liability exposure to contemplate. Does the caregiver drive their own car to and from the patient home? Do they use their own car to drive the patient to appointments or on errands? If the patient falls getting out of the caregiver's car or the caregiver has an accident when driving a patient, liability could fall back onto the healthcare agency in medical malpractice claims. Losses exceeding \$100,000 are all too common in these scenarios.

The next level of home healthcare services brings with it additional exposures. This in-home care is provided by individuals who have limited healthcare training, usually Certified Nursing Assistants or the equivalent. They typically go into the home to help people who are ill or injured with fundamental medical tasks, such as basic wound dressing, blood pressure measurement, and medication handling. They might conduct central line management and run pumps for cancer patients undergoing chemotherapy. With this more intricate medical care comes more medical professional liability risks, such as claims arising from wound infections or central line infections.

The highest level of home healthcare risk attaches to the most highly qualified deliverers of home healthcare, Registered Nurses, Licensed Vocational Nurses, Licensed Practical Nurses, and even Nurse Practitioners, who provide complex in-home care. These services span areas from critical wound management, intubations and intravenous feedings, to chemotherapy. Patients in these instances have serious medical conditions, and the potential for catastrophic outcomes is greater. A mis-dose of medication or an air embolism in intravenous tubing can be deadly. The tracheostomy tubes of a ventilated patient can become clogged with mucous, causing brain damage. A slip or fall can leave a patient permanently incapacitated.

A full understanding of these exposures requires a clear understanding of the patients being cared for at home. Older patients are especially susceptible to slips and falls and cutaneous ulcers. There may be dementia or Alzheimer's issues at play; liabilities can arise if the patient wanders or harms himself on the caregiver's watch.

When a middle-aged patient is cared for at home, it is typically because they are suffering from a serious illness, such as cancer or another chronic disease. Or they may be developmentally disabled.

If a child, teen or young adult requires home care, it is more likely due to a birth injury or brain damage. If something goes wrong with a young patient, damages can be far higher. Caring for children in a home setting can be especially challenging since youngsters are not as adept at expressing their needs and symptoms as adults. They are also more dependent on adults for activities of daily living.

### Undaunted underwriting

Some underwriters are happy to tiptoe around this market and write what they perceive as "plain vanilla" home healthcare risks. Vanilla is not as simple as it may seem in this marketplace – which is why it is wise to align with underwriters who are well aware of the spectrum of exposures in this sector – from hospice workers and custodial sitters, to caregivers of seriously ill children.

Rather than run from more complex risks, underwriters skilled in this sector will have the experience to understand the full extent of the exposure and help clients obtain the coverage they need. This requires a clear understanding of all angles of these exposures: the patient's age and circumstances, location where care is being given, frequency of care, acuity of care, and the qualifications of the caregiver.

It means analyzing how the caregiver's experience level matches the acuity of care and being cognizant of the role played by practical and psychological issues, such as mundane distractions or panic of the caregiver.

In some cases around-the-clock care is required. Caregivers may become bored during the long hours and fall victim to everyday distractions, such as texting or web surfing, leaving their patient vulnerable.

Unlike a hospital or healthcare clinic setting where medical resources abound, home health caregivers are on their own, with no doctor or even long term care infrastructure at the ready. They must rely solely on their own instincts when something goes wrong. Their reactions may be tested under tremendous pressure, when a patient is discovered submerged in a bath tub or a tracheostomy tube becomes clogged, for example. The worker may freeze up, panicking. Time and time again when home healthcare operations face claims in court, the prosecution seeks to use a frantic 911 call from a seemingly unhinged home healthcare worker to its advantage.

Ancillary exposures should also be considered. Does the client rent equipment, such a wheel chairs, for patients? Do they have pharmacy operations? Some home healthcare providers provide dentistry services and meals-on-wheels, which coverage must contemplate. HIPAA and HITECH Act compliance has also become a major issue for home healthcare providers: What if a sitter loses an unencrypted tablet with patient medical records - or leaves patient files on top of the car they are driving away? What is the potential liability, and how can it be covered?

In the home healthcare sector, the plain vanilla risk is increasingly rare. Things can turn complicated quickly. An experienced underwriter and claims team that understands the exposures of this sector won't be shocked when claims occur -- and can mount the best possible claims defense for the client.

To learn more about Beazley's solutions for Miscellaneous Healthcare Professional Liability Risks, contact Evan Smith at [evan.smith@beazley.com](mailto:evan.smith@beazley.com)

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