

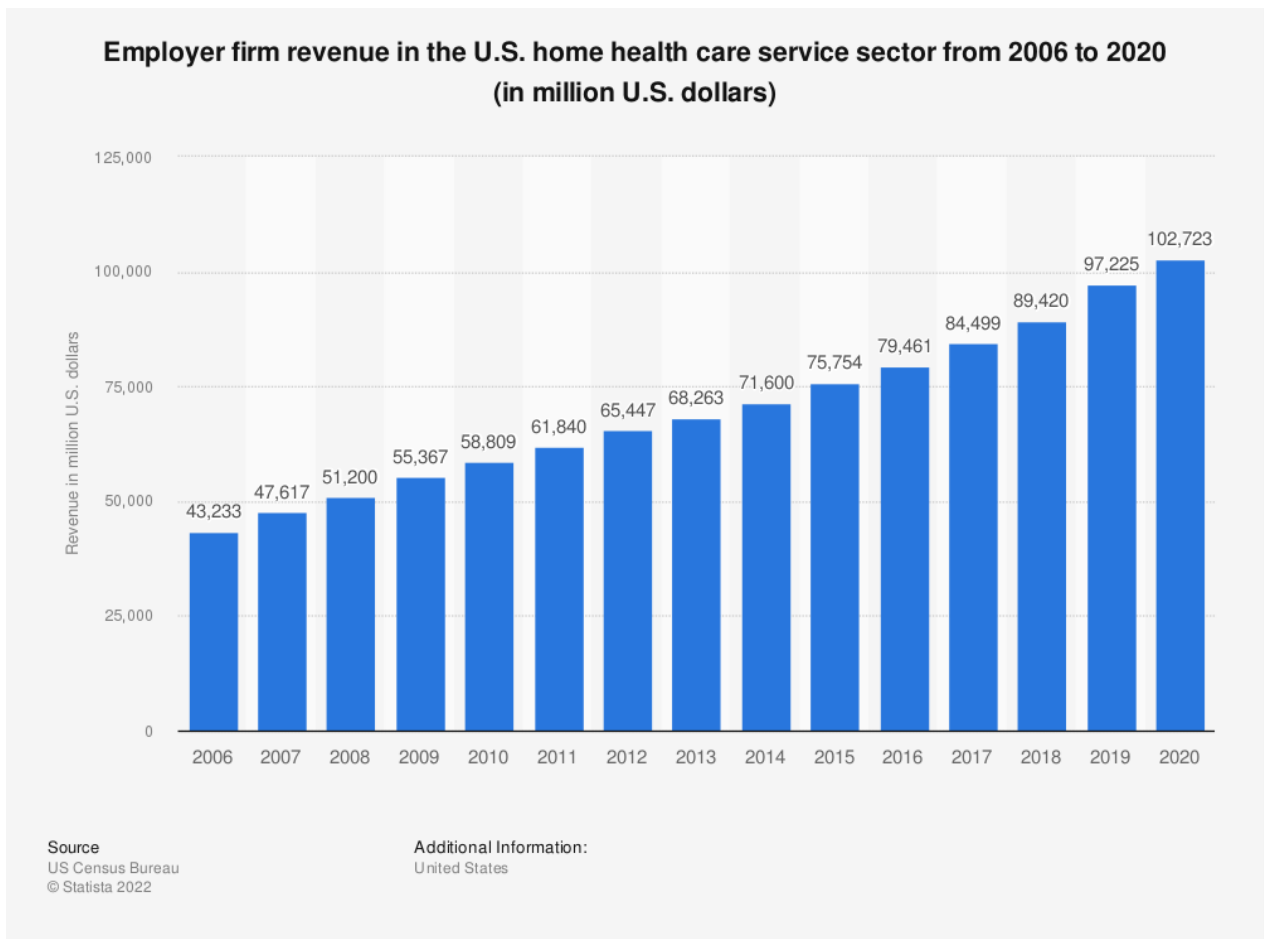


2022 CLM Focus: June Conference  
Nashville, TN  
June 15-16, 2022

**Medical Malpractice: Unique Issues in the Defense of Non-MD Healthcare Providers in the Homecare Setting**

**The business of home health care**

We will discuss how this is a growing field and how claims are likely to increase in the future.



- Why is it a growing field?  
We will briefly discuss the demographic trends and healthcare market both as a result of managed care, Covid-19, and public attitudes.

**Who are the clients?**

	Personal Care Aide (PCA)	Home Health Aide (HHA)	Certified Nurse Aide/ Assistant (CNA)
<b>Training</b>	Vocational schools	Vocational schools and Community colleges. More specialized training than personal aides (PCA)	CNAs must complete a state-approved training at Vocational schools like New Age Training. This training is more specialized than Personal Care Aides (PCA) & Home Health Aide (HHA)
<b>License/Certification Requirements</b>	No License Required.  The Training Provider issues the Home Health Aide Certificate upon successful completion of the program	No License Required.  The Training Provider issues the Home Health Aide Certificate upon successful completion of the program.	NYS Certification/License is Required to work.  The person has to pass the NYS Certification Exam, organized by Prometric. <a href="https://www.prometric.com/">https://www.prometric.com/</a>
<b>Job Responsibilities</b>	Bathing, Skin Care Grooming, Toileting, Walking, Transferring, shopping, homemaking and running errands	Physical care: activities of daily living such as bathing, dressing, and toileting, Walking, Transferring, simple dressings.	Basic Nursing and personal care skills, Ambulation, Positioning, Transferring, measuring vital signs, making beds, serving meals, setting up medical equipment, observing changes in the condition of the patient, etc.
<b>Related Medical Tasks</b>	No	No. May assist with some medical procedures. All medical-related tasks have to be performed under the supervision of a Registered Nurse (RN) or Nurse Practitioner (NP)	Yes. Tasks include taking vital signs, changing dressings, cleaning catheters, controlling infections, and administering treatments. All medical-related tasks have to be performed under the supervision of a Registered Nurse (RN) or Nurse Practitioner (NP)
<b>Where They Work</b>	Private homes	Private homes, retirement communities, assisted living facilities, group homes, or other transitional housing works.	Homes, Hospitals, Rehabilitation Hospitals, Daycare Centers, and skilled Nursing Homes and Long-Term Care facilities.

We will discuss the various types of care providers who are sent to the home, both unskilled (PCA/HHA and CNA) and skilled (LPN, RN).

The defense of each client will revolve around the standard of care applicable to each type of home care provider, from basic assistance to skilled nursing, wound care and the management of the extremely frail or ventilator dependent patients.

**Claims against the company**

We will discuss the claims made against the home care company that are separate and apart from the claims against the employee (HHA or Nurse). These claims are based in hiring and retention of the aides or nurses as well as intake and oversight.

This discussion should also include the potential conflicts of interest that may exist between the company and the employee. Was there anything that was potentially outside the scope of the employment?

This part of the discussion will also include what to do when the defendant provider is no longer employed by the company.

### **The Importance of the Plan of Care**

We will discuss the Plan of Care, what it is, how it is generated and how the home care agency is to manage the dictates of the plan. This will involve a discussion on activities of daily living (ADL), feeding the patient, turning and positioning, medication administration, fall prevention, dealing with family and most, importantly, the family expectations.

Documentation – We will discuss the daily flow sheets, incident reports, Quality Assurance meetings and reviews. QA documentation, at least in NY is privileged in the same manner as if the HCA was a long-term care facility or hospital.

We will discuss the most common claims that arise. This includes falls and other accidents in the home, transportation cases, abuse, failure to provide complete care and the expectations and duties based on the level of care provided. It will range from household assistance to turning and positioning, tracheostomy care and monitoring and wound care.

We will discuss claims that include responding to adverse medical events and the difference of a nurse in the home versus a nursing home or hospital. This will include a discussion on the evaluation of these claims and the evidence that must be obtained and how to analyze it, including 911 calls, ambulance, EMS and ER records.

We will discuss strategies for discovery on the more complicated cases such as those involving ventilators and the records and data acquisition. This includes data from ventilator data cards and EKG strips from responding EMS personnel.

### **Important Evidence and Discovery**

We will discuss the evidence that should be obtained. This includes “nanny” cams, all records of the plaintiff’s care and treatment and ventilator data.

We can include a discussion on strategies for deposing the family members. This covers the intake process, confirmation of expectations, a family member as backup caregiver, the patient's rights and responsibilities and personal observations on issues of liability and damages.

### **Getting the proper experts to defend each case.**

#### Standard of care

We will discuss how defending a particular home care provider does not necessarily warrant retaining an expert with the same title or skill set. You're going to want to "level up" your expert at least to the level of R.N.

#### Causation

We will discuss the analysis of causation of the more complicated home care cases. Just because an adverse medical event occurred, it must be determined why. Was it a deficiency in care or the result of the patient's condition? The defense expert retention may depend on the condition of the plaintiff. Do you need a geriatrician, internist, pulmonologist, neurologist? What are the plaintiff's underlying conditions?

#### Damages

We will discuss the assessment of damages in various cases from trip and falls in the home to brain damage and death cases. The important difference in this aspect of case management is an assessment of the plaintiff's pre-accident condition and then a comparison to the claimed injuries or conditions. With accident injuries, we look at assistance required before and after the accident, pain medications required, changes in functionality and care. With allegations of brain injury, assessments of consciousness are required. With claims relating to bedsores, a review of the subsequent treatment records are required and the family always takes terrible photos.