

[Safe at home: Feds, states take steps to prevent home-care crime](#)

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They are rare events. But serious crimes against homebound patients by their caretakers do happen.

In Brunswick County, N.C., police charged former home health provider Lisa Veronica McGee McClain, 43, with stealing a 74-year-old patient's personal information. McClain, employed by a local home-care agency, allegedly removed \$260,000 from the patient's bank account between 2009 and 2011. She was arrested last year in Washington on a warrant for the thefts, but was erroneously released, leaving her still at large today, according to Brunswick County Sheriff's Office Detective Edward Carter.

As healthcare companies look toward aggressive growth in the most intimate of settings—patients' own homes—more Americans are asking how much they really know about the new home-care aide who walks through the front door.

They soon might learn more about these providers. Nationwide, many people who deliver home care will fall under a new program in the Patient Protection and Affordable Care Act that will pay for background checks for any nurse, therapist or aide who comes into contact with a long-term-care patient.

CMS officials say the program is voluntary for now, but that it might be prudent for state leaders to plan for a congressional mandate in the near future. The CMS recently made such background checks mandatory for hospice workers and is considering doing so for other providers.

A section of the ACA now offers states up to \$3 million in matching grants to carry out screening programs, though a lengthy 2008 report on a similar pilot program in seven states noted that employers of home-care workers also bear at least some of the costs through state processing fees for the background checks.

The HHS' inspector general's office is studying the issue and will report later this year on how many home-health agencies employ workers with criminal backgrounds. An October report on nursing homes found 92% employed at least one staffer with a criminal conviction.

Mark Kimsey, co-founder and administrator of home health at Mission Healthcare, San Diego, says getting a deep understanding of caregivers' backgrounds is important because of the vulnerabilities of the patients.

“When you are in their home, you have access to their most intimate environment,” he says. “These clients may sleep while the caregiver is in a home ... so a charge where someone is accused of theft, assault and battery, possession of narcotics of any sort or any controlled substance” is cause for concern.

The greater scrutiny of home-care worker backgrounds comes as the go-go home healthcare industry gears up for substantial growth in the coming decade. Home-care aide employment is expected to balloon by 70% between 2010 and 2020. The industry currently employs about 1.2 million people providing services to an estimated 8.6 million Americans per year, according to data from the Joint Commission and the Labor Department.

But the number of people cycling through those jobs will be far higher than the number of new positions since the industry is marred by high turnover. Wages for entry level home-care aides are among the lowest in healthcare. Moreover, “though they themselves are providing healthcare, they do not have health coverage,” says Hollis Turnham, the Midwest director of PHI, a home-health workforce development organization based in New York. “It’s not just wages, it’s the whole compensation package that makes these jobs unattractive and difficult to do.”

Low morale and inadequate worker training drive much of the concern about patient safety. “There are people who come to this work with bad intentions and bad motives,” Turnham says. “There are also people who have not had the training and skills development to deal with stressful situations, and they do bad things. But the overwhelming majority ... want to do the right thing, and want the skills to do the right thing.”

No national system exists to track crimes against home-health patients. As a result, researchers are unable to study the extent of the problem or whether wages, benefits, worker morale, rising employment or other factors are leading to an increase in crimes in home care.

A CMS spokesman says the agency doesn’t keep national statistics, even though the Conditions of Participation in Medicare require each state to maintain a toll-free hotline for agencies to receive home-health complaints.

Anyone armed with an Internet connection, however, can find reasons to be cautious about home care. Crime columns in local newspapers often carry reports of small thefts and financial crimes by home-care workers. Paul Greenwood, an assistant district attorney in San Diego and a nationally known expert on elder-abuse issues, says those tend to be the most common crimes against home-care patients.

“If the suspect is a caregiver ... the last thing that suspect wants to do is smack around the client, because that will raise suspicions,” Greenwood says. “What they will try to do is fleece the victims. The first item that always goes is the jewelry. That is the No. 1 thing to go, every time. That will end up in a pawn shop.”

Sometimes the crimes do involve some form of physical assault. In the Cincinnati area, former registered nurse Cisse Kane, 53, was convicted in September 2011 of gross sexual imposition against a home-based patient who only has use of her fingers and toes. An appeals court last September upheld the verdict despite Kane’s claims that the victim’s testimony could not be believed because she was under the influence of prescription drugs and alcohol during the incident, according to the court’s ruling.

State lawmakers are inching toward greater regulation of the industry. In California, a long battle over background checks of home-care workers began in 2010 after the Los Angeles Times reported more than 200 people convicted of violent crimes had been approved to care for elderly home-care patients. It turned out many of those caretakers were family relatives of the patients receiving care through California’s In Home Supportive Services program.

The effort to prevent convicts from being paid to provide care in the home ran into legal barriers. California privacy laws prevented authorities from informing patients about the criminal backgrounds, and a state judge ruled that counties could not discriminate against applicants for home-care jobs based

on convictions for violent crimes or some “lascivious” acts since those restrictions hadn't been specifically listed in state law as grounds for disqualification.

Nationally, the voluntary background check program described in the reform law doesn't define which crimes would disqualify someone to work in a patient's home or any other long-term-care facility. It merely says that a history of healthcare fraud and “patient abuse” carries automatic rejection from the occupation. Moreover, the law says states must set up a process in which convicts may appeal employment denials, including “consideration of the passage of time, extenuating circumstances, demonstration of rehabilitation, and relevancy of the particular disqualifying information with respect to the current employment of the individual.”

An industry poised for growth

The growing concern about safety for home-bound patients comes at a time when payers, providers and patients all agree substantial growth in the industry would be a good thing. All three stakeholder groups have reasons to prefer care delivered in the home.

And that's fueling growth.

For insurers and providers, home care is much cheaper than time spent in the hospital. It also has the potential to improve continuity of care and avoid Medicare financial penalties for preventable readmissions.

“It's exploding,” says Michael Elsas, CEO of Cooperative Home Care Associates, a medium-sized home-care agency in New York with \$60 million in annual revenue. “From a demographic vantage point, the demand will continue to increase as baby boomers hit the system. The boomers represent a whole new type of population. They are going to want to stay in their homes.”

Given the exploding opportunities, most new entrants into the home-based care business are for-profit businesses, not hospitals. The Medicare Payment Advisory Commission reported to Congress last March that home healthcare providers averaged 18% profit margins on Medicare business during the 2000s. Payment changes in the reform law are expected to hit average Medicare margins for home care, but they are still expected to remain at 14% in 2012, according to MedPAC.

The industry employs a wide variety of technical workers, many of whom already require licenses. Home-visiting clinicians include nurse practitioners, registered nurses and licensed practical nurses providing medical services for chronic conditions requiring post-acute or primary care services such as heart disease and diabetes. The home is a common site for physical, occupational and speech therapy, as well as hospice and palliative care.

However, scores of nonmedical direct-care staffers work in the field as personal-care aides and home health aides, cleaning homes, providing bathing and cooking services, and transporting patients. They are not just employed by hospitals or for-profit agencies reimbursed by Medicare, Medicaid and private insurers, but are often employed by families as “private duty” caregivers without insurance reimbursement.

Phyllis Stadtlander, CEO of Iowa Health Home Care, disputed a popular notion that nonmedical personnel are more prone to commit crimes against patients. "Is one more troublesome than the other? Not in my experience. Not if I've invested in them appropriately," she says.

The various jobs are subject to a dizzying array professional standards, with the less-medical roles generally requiring less licensing and certification. In some states, nonmedical home-care workers are not regulated at all.

The strictest regulation comes from the CMS, but it only applies to agencies that receive Medicare payments. Such agencies are bound by Medicare conditions of participation that require home-care workers to treat patients' property with respect and notify home-health recipients that each state has a toll-free hotline for complaints and questions. However, Medicare covers only medical needs, not home-health aides' services. And the requirements do not apply to state-based Medicaid programs.

Professionally, some healthcare-related disciplines are regulated by particular license-granting boards, such as those for nurses and therapists. Likewise, organizations such as the Joint Commission, the Accreditation Commission for Health Care and the Community Health Accreditation Program provide voluntary certifications, which home-care companies can use as they promote themselves in competitive markets.

But much of the work of regulating the expanding home-visiting healthcare workforce falls to state governments. While the Social Security Act requires home-health agencies to follow state laws, state standards vary greatly. A national examination of those standards was last conducted in 2008, when the National Conference of State Legislatures received funding from the AARP Public Policy Institute to study the variation among states' home healthcare laws. At that time, several states had no requirements, while others had manifold rules governing which workers were exempt from background-check requirements and which crimes bar entry into the field.

A federal pilot program, which conducted background checks on direct patient-care workers in seven states in 2006 and 2007, found that nearly 7,500 people were excluded for past crimes among the more than 204,000 total applicants. Another 38,400 people withdrew their background check applications before they could be completed, according to an August 2008 report on the program.

But not everyone sees such measures as a panacea. "Obviously a criminal background check is important, and drug screening is important," Elsas says. "But I would suggest that the interviewing and training process that we do does more to affect patient safety."

Cisse Kane, the home-care worker convicted of a sex crime against a patient in Ohio, was prohibited from mentioning during his trial that his employer performed a criminal background check on him before he was hired, according to court records. Nevertheless, proponents of background checks such as AARP applaud their wider use. The organization lobbied for their inclusion in the reform law.

"Criminal background checks are one step that can be used to screen home-care workers and other workers and help prevent possible abuse and neglect of individuals who need long-term care services and support," says Rhonda Richards, senior legislative representative for AARP. "I think every so often you hear problems, in the media or anecdotally. Certainly abuse or neglect of older adults is an issue, and this is one step that can be taken."

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