

**Home Health Care Worker Safety:
An Overview and Call for Increased Worker Protections**

Jane Nakazato, R.N., M.B.A., M.P.H., M.J.

Loyola University-Chicago Law School

I. Introduction

An un-vaccinated home health aide develops Hepatitis B after she sticks herself with a patient's used insulin syringe. A Florida caseworker is stabbed to death by her patient after previously noting that he made her "very uncomfortable" and recommending that home care workers should visit him only in pairs.¹ A home health aide severely injures her back when she attempts to prevent a patient from falling as he gets off of the toilet. A home health nurse in Arizona is threatened by a demented patient who points a gun at her and then turns the gun on herself.² Nurses on the South Side of Chicago are accompanied to their patients' homes by armed guards.³ Dedicated home health workers care for our nation's frail and elderly, sometimes at great personal risk, but who is protecting the safety of these caregivers?

In 2014, U.S. home health agencies provided care to roughly 4.7 million patients.⁴ Many factors point to a greatly increasing need in the United States for the provision of home health care over the next several decades. These factors include the "graying" of America, the chronic health conditions which accompany aging, the preference of the vast majority of Americans to "age in place," and the fact that home health care is often a lower cost alternative to inpatient care for patients with chronic conditions.

The U.S. population is rapidly aging. By 2030, 20% of the population will be 65+ (nearly doubling from 13% in 2010).⁵ The 85+ population will double by 2036.⁶ In fact, by 2050, those 85+ will be 4% of population, a ten-fold increase from 1950.⁷ Medicare enrollment is predicted to increase by 50% over the next fifteen years, from a current 54 million to 80 million people.⁸

Seniors often experience physical and cognitive deficits. Almost 26% of adults 65+ have type 2 diabetes.⁹ The rate of clinical obesity in adults 65+ rose to 27.4% in

¹ Fla. Caseworker stabbed to death during home visit (13 December 2012) tampa.cbslocal.com/2012/12/13/fla-caseworker-stabbed-to-death-during-home-visit.

² Interview with Karen Rizzo, R.N., Division Director of Bayada Home Health Care, Tucson, Arizona (October 9, 2017).

³ Stephanie Smith, *Nurses dodge bullets to provide care* (2 March 2013) www.cnn.com/2013/03/02/health/nurses-gunfire-chicago/index.html.

⁴ *Selected Long-Term Care Statistics, Family Caregiver Alliance* (31 January 2015) <https://www.caregiver.org/selected-long-term-care-statistics>.

⁵ Steven Landers et al. *The future of home health care: a strategic framework for optimizing value*, Home Health Care Management & Practice 2016, Vol 28(4), 263.

⁶ *Id.*

⁷ *Rising demand for long-term services and supports for elderly people* (26 June 2013) <https://www.cbo.gov/publication/44363>, 1.

⁸ Landers et al., *supra* at 263.

⁹ *Type 2 Diabetes Statistics and Facts Healthline*, <https://www.healthline.com/health/type-2-diabetes/statistics>.

2014.¹⁰ Many seniors have functional limitations (due to such conditions as heart disease, arthritis and mobility issues) or cognitive deficits which necessitate help with activities of daily living (ADLs): eating, bathing, paying bills, dressing, toileting, and preparing meals.¹¹ One third of those 65+ and two thirds of those 85+ have cognitive deficits.¹² More than two thirds of people over 65 will need assistance to deal with some loss of function at some point before their deaths.¹³

This article will cover home health care background information in Part II, before moving on to examine three broad categories of workplace hazards which home health care workers face: Part III—Infectious Disease; Part IV—Safe Patient Handling; and Part V—Workplace Violence. Each section which covers a workplace hazard will explore what is currently being done at state and federal levels to mitigate these risks and will make recommendations about what should be implemented. Part VI will address how risks are compounded for low wage home health care workers and the means that are available to advocate for the safety of these workers. Finally, Part VII will conclude the article by repeating the call to action for increased regulation and enforcement to protect the health and safety of all home health care workers, who will be increasingly vital for U.S. society as the population continues to rapidly age and need their services.

II. Home Health Care Background **Aging in Place and *Olmstead***

Eight in ten elderly (including many with functional limitations) live in their homes rather than institutions.¹⁴ Most (90%) would prefer to “age in place” in their own homes.¹⁵ Federal law also supports individuals’ rights to choose to remain in the community setting rather than be institutionalized. The Americans with Disabilities Act (ADA) of 1990 (104 Stat. 327) prevents discrimination against the disabled in areas such as housing, institutionalization, and health services.¹⁶ *Olmstead v. L.C.* (527 U.S. 581) is a 1999 Supreme Court decision involving two women with mental disabilities who filed a lawsuit against the state of Georgia alleging that the state’s failure to provide community rather than institutional care services was illegal.¹⁷ In *Olmstead*, the Supreme Court held

¹⁰ Rachael Rettner, *U.S. Obesity Rates Have Risen Most in Older Adults* (27 January 2015) <https://www.livescience.com/49587-obesity-rates-older-adults.html>.

¹¹ *Rising demand for long-term services and supports for elderly people*, *supra* at 1.

¹² *Id.*

¹³ *Id.*

¹⁴ *Selected Long-term care statistics, Family caregiver alliance*, *supra*.

¹⁵ Kimberly Leonard, *Is home health a solution to rising health costs?*, U.S. NEWS & WORLD RPT., (30 September 2014) <https://www.usnews.com/news/.../09/.../is-home-health-a-solution-to-rising-health-costs>.

¹⁶ [AMERICANS WITH DISABILITIES ACT OF 1990, 1990 Enacted S. 933, 101 Enacted S. 933, 104 Stat. 327, 101 P.L. 336, 1990 Enacted S. 933, 101 Enacted S. 933.](#)

¹⁷ *Aging in place—what older adults and their families want*, www.bazon.org/wp-content/uploads/2017/01/Aging-in-Place-Final-4.11.17-1.pdf, 6.

that “unjustified isolation” of the disabled is discrimination under Title II of the ADA.¹⁸ People who need help with ADLs often qualify as disabled.¹⁹

Statistics also point to the fact that chronic conditions can be cared for less expensively in the home rather than in inpatient settings. Those patients receiving the highest level of acuity in home-based care were 19% less expensive to care for than inpatients with similar diagnoses.²⁰ An Avalere study on joint replacement post-op care found that the care of those who were discharged to skilled nursing facilities (SNFs) cost almost twice that of those who were discharged with home health follow up.²¹

Types of Home Care Agencies

Medicare-certified home health agencies provide “home health care,” which includes skilled nursing services.²² There were 12,400 home health agencies in the U.S. in 2014.²³ That same year, the CDC reported that roughly 150,000 nursing FTEs (RNs, LPNs, and LVNs) were employed by regulated home health care agencies.²⁴

The other broad category of home care involves caregiving and personal care services (such as assistance with ADLs).²⁵ “Non-medical” home care agencies provide this type of care.²⁶ Some states require only a business license to open such an agency, with no state regulatory body overseeing the care provided to clients.²⁷ Personal care aides, the caregivers who help patients with ADLs in their homes, have seen their ranks double over the past decade.²⁸ In 2015, the Bureau of Labor Statistics estimated that there were roughly 3.5 million personal care givers working in the home care field.²⁹ The majority of personal care aides are women, often minorities, who have at most a high school education.³⁰ More than 50% of them rely on some form of public assistance.³¹

¹⁸ Jane Tilly, *Promoting Community Living for Older Adults Who Need Long-Term Services and Support*, Center for Policy and Evaluation Administration for Community Living (August 2016) www.nasuaad.org/hcbs/article/promoting-community-living-..., 2.

¹⁹ *Id.*

²⁰ Landers et al., *supra* at 266.

²¹ *Id.* at 272.

²² *Id.* at 262.

²³ *Fast Stats-Home Health Care-CDC* (6 July 2016) [www.cdc.gov>NCHS](http://www.cdc.gov/NCHS) Home.

²⁴ *Id.*

²⁵ Landers et al., *supra* at 262.

²⁶ Interview with Karen Rizzo, R.N., Division Director of Bayada Home Health Care, Tucson, Arizona (October 9, 2017).

²⁷ *The Arizona In Home Care Association*, www.aznha.org/home/about-aznha.

²⁸ *U.S. home care workers: key facts*, phi.homecare_fact...sheet_2017_0.pdf, 2.

²⁹ Alana Semuels, *Who will care for America’s seniors?* THE ATLANTIC, (27 April 2015) <https://finance.yahoo.com/news/care-americas-seniors-113000149.html>.

³⁰ *U.S. home care workers: key facts*, *supra* at 3.

³¹ *Id.* at 6.

“Home-based care” is the broad term used to describe both home health skilled services as well as non-medical personal care services.³² For the purposes of this article, all of those working in home-based care will be referred to as home health care workers (HHCWs).

Health and Safety Risks Faced by Home Health Care Workers

Home-based care involves a unique blurring of boundaries: one person’s home is another’s workplace. The environment is uncontrolled; hazards (such as workplace violence, infectious disease exposures and patient handling injuries) abound; and there is often little back up or supervision for HHCWs.³³ In fact, HHCWs have a higher rate of injury than other health care workers.³⁴ Currently, federal regulations are lacking in key areas pertinent to the safety of HHCWs. For example, Occupational Safety and Health Administration (OSHA) has issued no mandatory standards for the implementation of workplace violence prevention programs.³⁵ Although Congress introduced the Nurse and Health Care Worker Protection Act of 2015 with its intention to promulgate an OSHA standard for safe patient handling and injury prevention, the legislation has not yet been passed.³⁶ Much can still be done to make influenza and hepatitis B vaccinations available at no cost to HHCWs.³⁷

This lack of regulation exists in the landscape of President Trump’s announcing his intentions to slash workplace safety regulations.³⁸ Trump’s 2018 budget proposes eliminating the Susan Harwood grant program (which provides hands-on training for vulnerable workers in dangerous jobs), cutting 40% from the budget of the National Institute for Occupational Safety and Health (NIOSH) (which conducts research into work-related injuries), and delaying a deadline which would require employers to send workplace illness and injury logs to OSHA.³⁹

³² Landers et al., *supra* at 262.

³³ Gershon RRM, Pogorzelska M, Qureshi KA, et al. Home Health Care Patients and Safety Hazards in the Home: Preliminary Findings. In: Henriksen K, Battles JB, Keyes MA, et al., editors. *Advances in Patient Safety: New Directions and Alternative Approaches* (Vol. 1: Assessment). Rockville (MD): Agency for Healthcare Research and Quality; 2008 Aug. Available from: <https://www.ncbi.nlm.nih.gov/books/NBK43619/>, 2.

³⁴ *Id* at 3.

³⁵ *GAO Workplace Safety and Health: Additional Efforts Needed to Protect Health Care Workers from Workplace Violence* (17 March 2016) <https://www.gao.gov/products/GAO-16-11>, 7.

³⁶ Richard Weinmeyer, *Safe patient handling laws and programs for health care workers*, *AMA Journal of Ethics*, April 2016, Volume 18, Number 4, 419.

³⁷ Interview with Karen Kochhar, Owner of Right at Home, Tucson, Arizona (November 1, 2017).

³⁸ Stephen Lee & Marissa Horn, *Trump’s OSHA slashes many worker safety rulemaking plans* (20 July 2017) <https://www.bna.com/trumps-osha-slashes-n73014462036/>.

³⁹ Jordan Barab, *2018 Trump budget preview: OSHA gets cut, NIOSH gets disemboweled* (19 May 2017) jordanbarab.com/confinedspace/2017/05/19/osha-budget-preview/.

A Call for Increased Home Health Care Worker Protections

More state and federal regulations must be promulgated and enforced to help protect the health and safety of all HHCWs. These actions should include free Hepatitis B and influenza vaccinations for all HHCWs, mandatory safety education and training programs for all levels of workers, implementation of a federal workplace violence prevention program, passing the Nurse and Health Care Worker Protection Act of 2015, basic employment protections for low wage workers, and required state licensing for non-medical home care agencies.

III. Infectious Disease Risks in the Home Care Setting **Two Main Risks: Bloodborne Pathogens and Respiratory Infections**

HHCWs face the same two main infectious disease risks as inpatient healthcare providers: bloodborne pathogens (such as Hepatitis B, Hepatitis C, and HIV) and respiratory illnesses (such as influenza and tuberculosis). However, many risks are compounded in the home setting due to its inherently uncontrolled nature.⁴⁰ Patients often ask HHCWs to dispose of uncapped insulin needles and lancets; in fact 66% of home care aides say that they have recapped needles.⁴¹ Many homebound patients do not have medical grade sharps containers, instead relying on household items such as milk jugs or coffee cans.⁴² Homes often lack proper ventilation.⁴³ HHCWs can experience the presence of cross-contaminants on kitchen and bathroom surfaces, lack of bleach, and lack of facilities for proper handwashing.⁴⁴ HHCWs also often carry inadequate supplies of protective gear (such as gloves, masks, and protective aprons).⁴⁵ No specific CDC guidelines have been established for home care infection control practices, and no national surveillance systems exist for health-care associated infections in the home care setting.⁴⁶

Bloodborne Pathogens and Needlesticks

There are approximately 385,000-800,000 needlesticks per year in U.S. health care settings.⁴⁷ Up to half of these needlesticks may go unreported.⁴⁸ Columbia University's Mailman School of Public Health estimates that about 10,000 home health

⁴⁰ Gershon et al., *supra* at 1.

⁴¹ *Id.* at 6.

⁴² NIOSH Hazard Review: *Occupational Hazards in Home Healthcare, DHHS (NIOSH) Publication No. 2010-125* (January 2010) <https://www.cdc.gov/niosh/docs/2010-125/pdfs/2010-125.pdf>, 22.

⁴³ *Id.* at 39.

⁴⁴ Gershon et al., *supra* at 5.

⁴⁵ *Id.* at 9.

⁴⁶ *Id.* at 6.

⁴⁷ NIOSH Hazard Review, *supra* at 21.

⁴⁸ *Id.*

nurses suffer a needlestick each year.⁴⁹ Another study reported that roughly 13% of home health nurses experienced a needlestick over a 12 month period.⁵⁰ Over one billion used syringes are disposed of annually from homes.⁵¹ HHCWs are at increased risk for needlesticks because they handle syringes longer, recap insulin syringes, and often use inadequate sharps containers.⁵²

Needlesticks can transmit HIV, Hepatitis C (HCV), and Hepatitis B (HBV).⁵³ HBV is by far the most infectious: 6-30% of HBV needlesticks will result in active infection.⁵⁴ The estimated infection rates per needlestick are .4-1.8% for HCV and .3% for HIV.⁵⁵ The CDC reports that there were roughly 400 occupationally-acquired cases of HBV in the U.S. in 2001.⁵⁶ From 1981-2006, there were 57 documented cases and 140 possible cases of HIV acquired by workers in health care settings.⁵⁷ The CDC also estimates that 2-4% of all HCV infections are due to health care workplace exposures.⁵⁸

OSHA Bloodborne Pathogens (BBP) Standard

The OSHA Bloodborne Pathogens Standard (29 CFR 1910.1030), promulgated in 1991, is a landmark regulation which requires employers to protect workers against occupational exposures to bloodborne disease.⁵⁹ This Standard addresses three main ways that bloodborne diseases can be prevented in health care settings: 1) prevention of exposures (through strict adherence to Universal Precautions and use of personal protective equipment), 2) prevention of transmission (through prophylactic HBV vaccinations), and 3) testing for and prompt treatment of potential or newly acquired infections (through post-exposure prophylaxis or PEP).⁶⁰ The BBP Standard also identifies such specific actions as establishing and continually updating an exposure control plan, clearly identifying sharps disposal containers, providing employee training on BBP risks, and maintaining a detailed sharps injury log.⁶¹

⁴⁹ J. Lucy Boyd, *Problems with working as a home health care nurse*, www.work.chron.com/problems-working-home-health-care-nurse-10880.html.

⁵⁰ Gershon, *supra* at 5.

⁵¹ [ARTICLE: THE PROBLEMS OF MEDICAL AND INFECTIOUS WASTE.. 23 Env'tl. L. 785, 820.](#)

⁵² Boyd, *supra*.

⁵³ Alison Trinkoff et. al., *Patient Safety and Quality: An Evidence-Based Handbook for Nurses, Chapter 39 Personal Safety for Nurses* <https://www.ncbi.nlm.nih.gov/books/NBK2661/>, 2-481.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *CDC-Bloodborne Infectious Diseases-Stop Sticks* (28 September 2010) <https://www.cdc.gov/niosh/stopsticks/bloodborne.html>.

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Needlestick Safety and Prevention Act/Bloodborne Pathogens Standard*, nursingworld.org/MainMenuCategories/WorkplaceSafety/Healthy-Work-Environment.

⁶⁰ *Id.*

⁶¹ *Id.*

The Needlestick Safety and Prevention Act (Pub.L. 106-430) was passed in 2000, resulting in an amendment to the BBP Standard.⁶² This amendment calls for employers to seek “engineering and work practice controls” and “needleless technologies” to lessen BBP exposure.⁶³ Unfortunately, this amendment is of limited use in the home health setting because OSHA has ruled that “The BBP standard does not apply to the protection of home healthcare service employees from syringes purchased by patients and used in the home.”⁶⁴

Hepatitis B Vaccination

HBV is a highly infective virus which can retain its properties for over seven days at room temperature.⁶⁵ This virus can cause fulminant hepatic failure, cirrhosis, and liver cancer.⁶⁶ Fortunately, a very effective recombinant HBV vaccine has been available since 1986; more than 90% of adults who are given the full regimen of three intramuscular doses over six months will develop a protective antibody response.⁶⁷

The BBP Standard mandates that all employers should provide the HBV vaccine for employees with occupational exposures to blood.⁶⁸ Employers may mistakenly think that this includes only caregivers who are responsible for giving injections or caring for wounds.⁶⁹ Statistics show that insulin needles and medical waste are often left for disposal by care aides, putting them at risk as well.⁷⁰ Citing the need to better educate HHCWs about risks, health care employee unions have recommended that OSHA promulgate a standard that makes workers aware of the benefits of HBV vaccination.⁷¹ One study showed that only 57% of aides had received all three doses of HBV vaccine, and 10% had been incompletely vaccinated with only 1-2 doses.⁷² Despite the HBV vaccine’s proven effectiveness and safety, there are even those health care workers who refuse to be vaccinated.⁷³

⁶² *Safety and Health Topics/Bloodborne Pathogens and Needlestick Prevention*, www.osha.gov/SLTC/bloodborne pathogens/standards.html.

⁶³ Mark Tatelbaum, *Needlestick Safety and Prevention Act*, 2001 Apr; 4(2) PAIN PHYSICIAN, 194.

⁶⁴ *Osha_letters.html-Medical Center Public Site*, https://www.medicalcenter.virginia.edu/epinet/new/osha_letters.html>05/04/2000-the BBP standard applicability to home health care service workers.

⁶⁵ *Hepatitis B*, <https://cdc.gov/vaccines/pubs/pinkbook/downloads/hepb.pdf>, 149.

⁶⁶ *Id.*

⁶⁷ *Id.* at 159.

⁶⁸ *Needlestick Safety and Prevention Act/Bloodborne Pathogens Standard*, *supra*.

⁶⁹ Gershon et al., *supra* at 9.

⁷⁰ *Id.*

⁷¹ 47 SMU L. Rev. 537. *Environmental Regulation of Healthcare Facilities: A Prescription for Compliance* (1994), 565.

⁷² Gershon, *supra* at 10.

⁷³ *Health Care Professionals Hepatitis B Declination Statement*, <https://www.osha.gov/SLTC/etools/hospital/hazards/bbp/declination.html>.

Post-Exposure Prophylaxis (PEP)

Despite precautions, BBP exposures still do occur. Luckily, effective post-exposure prophylaxis (PEP) options currently exist for HIV and HBV.⁷⁴ For HBV exposures in the previously unvaccinated, the CDC recommends commencing treatment with Hepatitis B Immune Globulin (HBIG) and the HBV vaccine, preferably within 24 hours.⁷⁵ HIV PEP should begin within 72 hours of exposure, and consists of a 28-day regimen of Truvada and either raltegravir or dolutegravir.⁷⁶ Although there is no immediate PEP available for HCV, workers can obtain a baseline HCV titer and follow up titers at 6 weeks.⁷⁷ Many with HCV can now be cured with 8-12 weeks of treatment.⁷⁸

Research done by NIOSH shows that about one in every two needlesticks goes unreported.⁷⁹ HHCWs give some of the following reasons for not reporting: anxiety, time-consuming post injury procedures, fear of employer retribution, and not knowing that the patient is a source of infection.⁸⁰ If a patient's HBV and HIV status are not known, the employer is required by the federal BBP Standard {29 CFR 1910.1030 (f)(3)(A)} "to obtain a blood sample as soon as feasible for testing from the source patient, pending consent applicable state laws."⁸¹ Legal counsel may be needed on a case by case basis because each state has its own unique set of consent laws.⁸²

Providing timely PEP for HHCWs remains a challenge. Many HHCWs may not be educated about their risks; a study of care aides in New York City showed that only 8% of them perceived that they were at risk for contagious diseases.⁸³ Source testing is obviously more cumbersome in the home care setting than in an inpatient setting. While inpatient settings have employee health departments, home care employers should identify an urgent care facility which specializes in work-related injuries and is well-versed in OSHA regulations.⁸⁴ Employers can educate HHCWs using the *NIOSH Hazard Review*⁸⁵ and OSHA infectious disease resources.⁸⁶ Lastly, all HHCWs should be

⁷⁴ *Exposure-Centers for Disease Control & Prevention*, https://cdc.gov/hai/pdfs/bbp/exp_to_blood.pdf, 4.

⁷⁵ *Id.*

⁷⁶ *PEP Quick Guide for Occupational Exposures* (1/1/2018), [nccc.ucsf.edu>Clinical Resources>Pep Resources](http://nccc.ucsf.edu/ClinicalResources/PepResources).

⁷⁷ *Id.*

⁷⁸ www.harvoni.com.

⁷⁹ *NIOSH Hazard Review: Occupational Hazards in Home Healthcare*, *supra* at 21.

⁸⁰ *Id.*

⁸¹ John Palmer, *Ask the expert: source testing after a needlestick is the law for employers, not an option* (12 March 2010), blogs.hcpro.com/osha/2010/03/ask-the-expert-source-patient-testing-after-a-needlestick.

⁸² *Id.*

⁸³ Gershon et al., *supra* at 10.

⁸⁴ <https://www.concentra.com/resource-center/articles/the-difference-between-workers-compensation-and-occupational-medicine>.

⁸⁵ *NIOSH Hazard Review*, *supra*.

⁸⁶ www.osha.gov.

supplied with the number to the PEP line (The National Clinicians' Post Exposure Prophylaxis Hotline): 1-888-448-4911.⁸⁷ This number is available seven days a week from 11 am-8pm EST.⁸⁸

Respiratory Infections/Tuberculosis

Many common illnesses are transmitted through the respiratory route: the common cold, influenza, tuberculosis (TB), measles, mumps, rubella, pertussis, and chickenpox.⁸⁹ HHCWs may be at increased risk for respiratory diseases because patients' homes can be poorly ventilated with no opportunity for isolation.⁹⁰ Roughly two thirds of HHCWs report that face masks are not provided for them.⁹¹

Tuberculosis was once the leading cause of death in the U.S.⁹² TB rates have been falling since 1993; by 2015, there were 9,557 cases of TB reported in the U.S.⁹³ Hispanics/Latinos have a disproportionately high rate of TB infection (28% of all U.S. cases).⁹⁴ Immigrants also have higher rates of TB.⁹⁵

TB testing of HHCWs is vital for patient and worker safety, especially because over 25% of HHCWs are immigrants.⁹⁶ However, rates of TB testing remain sub-optimal.⁹⁷ Only 67% of HHCWs reported annual PPD testing, and 2% said that they had never been tested for TB.⁹⁸

Influenza Vaccination

The CDC recommends that everyone over the age of 6 months get an annual flu vaccination.⁹⁹ However, statistics show that roughly 47% of the U.S. population got a flu

⁸⁷ *Post-exposure prophylaxis hotline*, nccc.ucsf.edu>Clinical Consultation.

⁸⁸ *Id.*

⁸⁹ *A quick guide to common childhood diseases-BC Centre for Disease Control* (May 2009), www.bccdc.ca/resource-gallery/_layouts/15/DocidRedir.aspx?ID=BCCDC.

⁹⁰ *NIOSH Hazard Review*, *supra* at 39.

⁹¹ Gershon et al., *supra* at 9.

⁹² *CDC-Tuberculosis in Hispanics and Latinos*, [https://www.cdc.gov/tb/publications/factsheets/specpop/...](https://www.cdc.gov/tb/publications/factsheets/specpop/)

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ Lillebaek, T., Andersen, Å. B., Dirksen, A., Smith, E., Skovgaard, L. T., & Kok-Jensen, A. (2002). *Persistent High Incidence of Tuberculosis in Immigrants in a Low-Incidence Country*. *Emerging Infectious Diseases*, 8(7), <https://dx.doi.org/10.3201/eid0807.010482>, 679.

⁹⁶ *U.S. home care workers: key facts*, *supra* at 3.

⁹⁷ Gershon et al., *supra* at 9.

⁹⁸ *Id.*

⁹⁹ www.flu.gov.

shot in 2017.¹⁰⁰ More surprisingly, only 79% of all health workers (and 64% of health care aides) got the flu vaccine in 2015-2016.¹⁰¹ The rate drops to 45% in health care settings where vaccination is not required by the employer.¹⁰²

To date, about 300 health care facilities across the U.S. have implemented mandatory flu vaccine policies for their workers.¹⁰³ During the pandemic of 2009, New York became the first state to attempt to mandate flu vaccinations for health care workers.¹⁰⁴ After several nurses and a public employees' union filed a law suit to bring a temporary restraining order, the regulation was ultimately not enforced.¹⁰⁵ Although many public health organizations endorse the idea, mandating vaccinations for health care workers may be a hard sell, based on the idea of civil liberty and autonomy over one's body established in the 1905 Supreme Court case of *Jacobson v. Massachusetts*.¹⁰⁶

Because HHCWs are considered to be an integral part of the public health infrastructure, they should be given high priority for flu vaccination.¹⁰⁷ Employers should encourage HHCWs to get vaccinated, utilizing communication and outreach programs.¹⁰⁸ In order to urge HHCWs to get vaccinated for the flu, the CDC recommends education and promotion campaigns as well as free vaccination clinics.¹⁰⁹

Home Health Care and Potential Flu Pandemic

There have been four flu pandemics in the past century; the worst, in 1918-1919, killed 675,000 Americans.¹¹⁰ Because the world remains at risk from another pandemic, researchers at the National Institutes of Health (NIH) are working on a universal flu vaccine.¹¹¹ HHCWs would be on the front lines during a flu pandemic.¹¹² Home-bound

¹⁰⁰ Mike Stobbe, *Flu remains widespread in US for 3rd week in row* (27 January 2018) The Associated Press (Arizona Daily Star).

¹⁰¹ Steven Reinberg, *More healthcare workers need flu shots: CDC* (30 September 2016) www.medicinenet.com/script/main/art.asp?articlekey=198469.

¹⁰² *Id.*

¹⁰³ Alexandra Stewart, JD, *Using state laws to vaccinate the health-care workforce*, Public Health Reports, 2012 March-April, 127(2), 224.

¹⁰⁴ Daniel Goodman and Christopher Webster, *The Mandatory Vaccination of Health Care Workers* (April 2011), [https://www.americanbar.org/publications/law_practice_today_home/...](https://www.americanbar.org/publications/law_practice_today_home/)

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ Sherry Baron et al., *Protecting home health care workers: a challenge to pandemic influenza preparedness planning*, Am J. Public Health, 2009 October 99 (Suppl 2), S301.

¹⁰⁸ *Id.*

¹⁰⁹ Reinberg, *supra*.

¹¹⁰ Lauran Neergaard, *Scientists seek super-shot for flu 100 years after pandemic* (January 18, 2018), The Associated Press (Arizona Daily Star).

¹¹¹ *Id.*

¹¹² Sherry Baron et al., *supra* at S301.

patients rely on HHCWs for care; 30% of home care patients live alone and 20% have no other primary caregivers.¹¹³

The CDC has provided a Home Health Care Services Pandemic Influenza Checklist at www.flu.gov.¹¹⁴ The ability of HHCWs to provide care to the community during a pandemic is such a public health concern that, in July 2008, the Agency for Healthcare Research & Quality (AHRQ) and Office of Assistant Secretary for Preparedness and Response created a report on home health issues during a flu pandemic.¹¹⁵

Recommendations to Reduce Infectious Disease Transmission

Federal and state governments, employers, and HHCWs can work together to reduce infectious disease risks. First, the federal government can devote more funding to NIOSH for research into infectious disease in the home health setting; understanding of home health hazards is limited and relies mainly on anecdotal accounts.¹¹⁶ Second, because home health settings are not subject to the same oversight as health care facilities, OSHA could conduct more unannounced home health site visits to employers and patients' homes to ensure compliance with BBP standard.¹¹⁷ State governments should pass legislation promoting health care worker vaccination.¹¹⁸

Home health employers should first recognize that all types of HHCWs are at risk for infectious disease per the BBP standard.¹¹⁹ Employers should therefore commit adequate financial resources to providing protective supplies (red bags, bleach, gloves, masks, sharps containers, hand sanitizer, gowns) and mandatory education and training programs (on disease transmission, the benefits/effectiveness of vaccines, and PEP).¹²⁰

HHCWs can also do their part by pursuing vaccination and advocating for peer-to-peer education programs.¹²¹ These programs, where HHCWs help to write curricula and train their peers, have been successful at increasing knowledge of and compliance with infectious disease prevention procedures, especially for low-income, non-English speakers.¹²²

Implementing these improvements would ultimately improve safety for patients and workers, increase employee satisfaction and retention, and result in fewer patient hospitalizations and better patient outcomes.¹²³

¹¹³ *Id.* at S303.

¹¹⁴ *NIOSH Hazard Review, supra* at 40.

¹¹⁵ Sherry Baron, *supra* at S301.

¹¹⁶ Gershon et al., *supra* at 2.

¹¹⁷ Linda Forst et al., *Occupational Safety of Home Health Workers*, *JAMA* 2003; 290(23), 3069.

¹¹⁸ Stewart, *supra* at 225.

¹¹⁹ Gershon et al., *supra* at 6.

¹²⁰ *Needlestick Safety and Prevention Act/Bloodborne Pathogens Standards, supra*.

¹²¹ Sherry Baron et al., *supra* at S304.

¹²² *Id.*

¹²³ Olga Jarrin et al., *Home health agency work environments and hospitalizations*, *Med Care* 2014 (Oct), 52(10), www.academia.edu/8334313/Home_Health_Agency...,881.

IV. Safe Patient Handling (SPH) in the Home Care Setting **HHCW Patient Handling Injuries**

One of the main components of a HHCW's job is "patient handling:" moving, ambulating, lifting, and positioning patients.¹²⁴ Rates of patient handling injuries for health care workers in general are increasing due to decreased staffing, increasing patient obesity rates, and the inability of many patients to move well on their own.¹²⁵ HHCWs suffer injuries at a much higher rate than other health workers.¹²⁶ Many patients being cared for in their homes are clinically obese and exceed NIOSH safe lifting limits.¹²⁷ Research shows that a single limb of an obese patient can weigh as much as 60-70 pounds.¹²⁸ Additionally, 40% of home health patients have some level of functional incapacity, meaning that they can have difficulty bearing their own weight.¹²⁹ HHCWs are also faced with handling patients in awkwardly arranged or small spaces, often without personal assistance or any lifting equipment.¹³⁰

Care aides have among the highest rates of illness and injury of all U.S. occupations.¹³¹ In 2007, 55,400 total HHCW injuries were reported, over 21,000 of which involved back strains and injuries.¹³² Injury prevalence is higher for HHCWs than other health workers: 52 per 1,000 HHCWs are injured annually.¹³³ HHCWs lose 44 days on average from a work related injury, as opposed to nursing home workers (18 days) and hospital workers (14 days).¹³⁴

The Bureau of Labor Statistics has reported an injury rate of 474 lost-work days for every 10,000 HHCWs.¹³⁵ This rate is 70% higher than for the overall workforce, and

¹²⁴ Richard Weinmeyer, *supra* at 416.

¹²⁵ *Id.*

¹²⁶ Gershon, *supra* at 3.

¹²⁷ NIOSH Hazard Review, *supra* at 4.

¹²⁸ Richard Weinmeyer, *supra* at 417.

¹²⁹ NIOSH Hazard Review, *supra* at 4.

¹³⁰ Linda Forst et al., *supra* at 3069.

¹³¹ Bureau of Labor Statistics, U.S. Department of Labor, *Occupational Outlook Handbook*, Home Health Aides and Personal Care Aides, <https://www.bls.gov/ooh/healthcare/home-health-aides-and-personal-care-aides.htm>.

¹³² Chris Woolston, [The rewards are great, but how many nurses have to keep an eye out for vicious dogs while taking someone's temperature?](https://consumer.healthday.com/.../work.../home-health-care-workers-646475.html), <https://consumer.healthday.com/.../work.../home-health-care-workers-646475.html>.

¹³³ JD Meyer and Carles Muntaner, *Injuries in home health care workers: an analysis*, *American Journal of Industrial Medicine* 35 (1999), 295, available at <https://www.ncbi.nlm.nih.gov/pubmed/9987563>.

¹³⁴ *Id.*

¹³⁵ Linda Forst et al., *supra* at 3069.

50% higher than for the hospital workforce.¹³⁶ Health care aides have a rate of back and musculoskeletal injury which is three times as high as that of construction workers.¹³⁷

Lack of SPH Protections in Home Care Settings

HHCWs are at increased risk for patient handling injuries because home health patients tend to be less mobile and live in uncontrolled spaces and environments.¹³⁸ HHCWs also usually have fewer lift assist devices and no physical back up in the form of coworkers.¹³⁹ Although NIOSH recommends such assist devices as slide boards, bed rolls, slings, grab bars, raised toilet seats, and Hoyer lifts, many home bound patients do not have these assists available.¹⁴⁰

In addition, many home health aides are low wage “domestic” workers who are from marginalized demographic groups.¹⁴¹ Their safety needs are often discounted by home health care employers.¹⁴² Because HHCWs work in patients’ homes rather than organizational settings, they tend to become “invisible,” forgotten by legislators and occupational researchers.¹⁴³

History of Safe Patient Handling Guidelines and Standards

An important step in the formidable task of protecting health care workers from musculoskeletal injuries is establishing guidelines for safe patient handling and lifting. These guidelines are developed by studying ergonomics, the designing of work tasks to include mechanical equipment and safe lifting techniques to avoid manual exertions which can result in patient and worker injuries.¹⁴⁴ In November 1999, the Clinton administration succeeded in promulgating an OSHA ergonomic standard called Ergonomics Program-Final Rule.¹⁴⁵ This standard called for educating over 100 million U.S. workers about ergonomics by October 2011, with the goal of preventing 4.6 million injuries by 2021.¹⁴⁶ Unfortunately, Congress repealed this standard in March 2001 under the Congressional Review Act, saying that the standard “would cost employers billions with uncertain new benefit.”¹⁴⁷

¹³⁶ *Id.*

¹³⁷ Weinmeyer, *supra* at 417.

¹³⁸ NIOSH Hazard Review, *supra* at 4.

¹³⁹ Linda Forst et al., *supra* at 3069.

¹⁴⁰ NIOSH Hazard Review, *supra* at 6.

¹⁴¹ [2012 James McCormick Mitchell Lecture: When Caring Is Work: Home, Health, and the Invisible Workforce: Introduction, 61 Buffalo L. Rev. 253, 253.](#)

¹⁴² Weinmeyer, *supra* at 419.

¹⁴³ Linda Forst et al., *supra* at 3069.

¹⁴⁴ CDC-Safe Patient Handling and Mobility (SPHM), <https://www.cdc.gov/niosh/topics/safepatient/default.html>.

¹⁴⁵ Nancy Syverson, *Ergonomics: Still an Issue* (July 9, 2001), <https://www.impo.mag.com/article/2001/07/ergonomics-still-issue>.

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

In 2003, the American Nurses Association (ANA) established its *Handle with Care* campaign.¹⁴⁸ This campaign called on a variety of stakeholders (healthcare systems, academic researchers, and nursing professional organizations) to “inform federal and state policy” by demonstrating how safe patient handling can benefit both patients and nurses.¹⁴⁹ *Handle with Care* acknowledged that the principles of proper body mechanics, with their emphasis on “static” loads and what men can safely lift, do not translate well to nursing tasks.¹⁵⁰ This campaign focused on the rights of nurses, but did acknowledge that while nurses have the 6th highest occupational risk for injury, nurses’ aides have the highest occupational risk.¹⁵¹

Prior to *Handle with Care*, the Revised NIOSH Lifting Equation (RNLE) was the only measure typically used calculating safe lifting limits.¹⁵² However, this equation was of limited use in the health care setting because it looked at the lifting of inanimate objects rather than human bodies.¹⁵³ The RNLE calculated that the maximum recommended weight to lift under ideal conditions (for average people, including men) is 51 lbs.¹⁵⁴ Dr. Thomas Waters, a safe patient handling researcher, determined that the maximum recommended weight to lift without an assist device is 35 lbs., under “ideal conditions.”¹⁵⁵ He was careful to caution that this maximum weight may decrease based on such factors as patient cooperativeness and worker lift positions.¹⁵⁶ One can readily see the danger when realizing that the average patient who requires lifting weighs 169 lbs.¹⁵⁷

There are several other voluntary guidelines which may be helpful in preventing patient handling injuries in HHCWs. First, in 2003, OSHA issued voluntary *Guidelines for Nursing Homes—Ergonomics for the Prevention of Musculoskeletal Disorders*, which recommended that manual patient lifting be limited or eliminated whenever possible.¹⁵⁸ Second, *NIOSH Pub. No. 2006-117*, although focused on nursing homes, is a good resource for dealing with geriatric patients.¹⁵⁹ Third, *NIOSH Pub. No. 2012-120* calls for

¹⁴⁸ [Handle with Care Fact Sheet-American Nurses Association, www.nursingworld.org/Member Benefits>Factsheets and resources.](http://www.nursingworld.org/MemberBenefits/Factsheetsandresources)

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² *CDC-Safe Patient Handling and Mobility (SPHM), supra.*

¹⁵³ *Id.*

¹⁵⁴ *A step-by-step guide to using the NIOSH lifting equation, ergo-plus.com/niosh-lifting-equation-single-task.*

¹⁵⁵ Thomas Waters, *When is it safe to manually lift a patient?*, *Am Journal of Nursing*, 107 (8), August 2007, 53.

¹⁵⁶ *Id.* at 55.

¹⁵⁷ *Handle with Care Fact Sheet-American Nurses Association, supra.*

¹⁵⁸ *Id.*

¹⁵⁹ *NIOSH Pub. No. 2006-117, Safe lifting and movement of nursing home residents, https://www.cdc.gov/niosh/docs/2006-117/pdfs/2006-117.pdf.*

home health employers to develop policies regarding lift assist devices, to purchase and utilize lift assists, to provide training on the devices, and to evaluate that training.¹⁶⁰

State Safe Patient Handling Laws

Recognizing that voluntary guidelines do not provide enough protection, the following states have passed legislation regarding safe patient handling: Texas, Ohio, Washington, Rhode Island, New Jersey, Maryland, Minnesota, New York, Illinois, California, and Missouri.¹⁶¹ Many of these state laws apply only to hospital workers.¹⁶²

Some states have come up with innovative solutions. For example, Washington provides tax credits to hospitals for purchasing safe lifting devices.¹⁶³ Ohio provides interest-free, long-term loans through its Workers' Compensation Program for the purchase of nursing home lift equipment.¹⁶⁴ New Jersey's law includes a non-retaliation policy for health workers who refuse assignments which they feel will jeopardize their safety.¹⁶⁵ Finally, Hawaii is the only state which has specifically taken state action on behalf of home health workers.¹⁶⁶ In 2006, Hawaii passed Concurrent Resolution (HCR) no. 16, which covers "hospitals, nursing homes, and licensed home health agencies" and supports the policies set forth in the ANA's *Handle with Care* campaign.¹⁶⁷

H.R. 4266-Nurse and Health Care Worker Protection Act of 2015

The need continues for comprehensive federal safe patient handling legislation. In 2013, Congress introduced H.R. 2480, a bill to "direct the Secretary of Labor to issue an occupational safety and health standard to reduce injuries to patients, nurses, and all other health care workers by establishing a safe patient handling, mobility, and injury prevention standard."¹⁶⁸ This bill was not signed into law. Two years later, the bill was re-introduced as Nurse and Health Care Worker Act of 2015 (H.R. 4266), again making the call for the promulgation of an OSHA standard dealing with "safe patient handling, mobility and injury prevention."¹⁶⁹

¹⁶⁰ NIOSH Pub. No 2012-120, *NIOSH fast facts: home healthcare workers –how to prevent musculoskeletal disorders*, <https://www.cdc.gov/niosh/docs/2012-120/pdfs/2012-120/pdf>.

¹⁶¹ Weinmeyer, *supra* at 418.

¹⁶² *Legislation-Safe patient handling, mobility, and injury prevention standard*, www.hovermatt.com/Legislation.html.

¹⁶³ Weinmeyer, *supra* at 418.

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ *CDC-Safe Patient Handling and Mobility (SPHM)*, *supra*.

¹⁶⁷ *Id.*

¹⁶⁸ *H.R. 2480*, <https://www.congress.gov/bill/113/house-bill/2480/text/ih>.

¹⁶⁹ Weinmeyer, *supra* at 419.

H. R. 4266 details the fact that nursing assistants reported roughly 20,000 musculoskeletal injuries in 2014, second highest of all occupations.¹⁷⁰ The bill states that physical demands are leading workers to quit the health care profession, and that safe patient handling can help address the nursing shortage while protecting both workers and patients.¹⁷¹ H.R. 4266 lays out the following steps for employers to implement to improve safety in patient handling: development of an SPH program, acquisition of assistive technology, tracking of injury data, and performance of annual evaluations.¹⁷²

H.R. 4266 includes a provision allowing HHCWs to refuse assignments based on safety concerns and calls for OSHA to perform unannounced inspections to ensure compliance.¹⁷³ This national law includes home health care agencies as covered employers; all HHCWs who handle patients (including independent contractors) are covered as employees.¹⁷⁴ Though H.R. 4266 has not yet been passed by Congress, the push for this legislation should continue. The ANA has released “Safe Patient Handling and Mobility Interprofessional National Standards,” which calls for the passage of the Nurse and Health Care Worker Protection Act.¹⁷⁵

Recommendations to Reduce Patient Handling Injuries

Because the Nurse and Health Care Worker Act is comprehensive in its approach to HHCWs, its passage is crucial. The federal government should also consider better Medicare coverage of home lift devices and tax credits for individuals who purchase safe lift technology.

Employers can commit to team assignments for larger or difficult to lift patients and required in-home inspections by the home care agency’s safety coordinator (initially and when there are concerns voiced by HHCWs).¹⁷⁶ Studies show that 17% of care aides have not received safe lift training, and 27% of them have not been trained to properly use Hoyer lifts.¹⁷⁷ There are many good resources for safe lift training including OSHA’s ergonomic guidelines and the VISN 8 Patient Safety Center of Inquiry 2007 guidelines, which were tested within the Veterans’ Administration system.¹⁷⁸

Some politicians and health organization lobbying groups say that SPH regulations are “burdensome” and costly.¹⁷⁹ Ergonomic training is expensive.¹⁸⁰ Enforcement is difficult; OSHA inspections are rare and very expensive to conduct.¹⁸¹

¹⁷⁰ *H.R. 4266*, <https://www.congress.gov/bill/114th-Congress/house-bill/4266/text>.

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ *Safe Patient Handling and Mobility*, www.anasphm.org.

¹⁷⁶ Interview with Karen Kochhar, Owner of Right at Home, Tucson, Arizona (November 1, 2017).

¹⁷⁷ Gershon et al., *supra* at 11.

¹⁷⁸ *NIOSH Hazard Review*, *supra* at 6.

¹⁷⁹ Weinmeyer, *supra* at 419.

¹⁸⁰ *NIOSH Hazard Review*, *supra* at 6.

¹⁸¹ Weinmeyer, *supra* at 419.

However, prevention beats treatment. Worker injuries take a large financial and emotional toll. There were 3.62 workers' compensation claims per \$1 million in payroll for long-term care workers between 2005-2007.¹⁸² This resulted in \$4.24 of every \$100 in payroll being spent on workers' comp premiums.¹⁸³ Injuries affect staff retention, turnover, and morale.¹⁸⁴ Besides money spent on medical treatment, injuries can result in depression, anxiety, and lost wages across time.¹⁸⁵ Patient handling injuries "can be life altering and career ending."¹⁸⁶

V. Workplace Violence (WPV) in the Home Care Setting **Statistics about Home Health Workplace Violence**

All health care workers are at high risk for WPV. Nearly 70% of all non-fatal work place assaults which cause lost work days are on health care workers.¹⁸⁷ These assaults result in an average of five days lost from work.¹⁸⁸ In 2013, 13% of all days missed from work in the health care and social service sectors were due to WPV.¹⁸⁹ Health care workers are 4x more likely to be injured by WPV than the average American worker.¹⁹⁰ 38% of public health home visit workers reported that they had been exposed to WPV.¹⁹¹ Finally, an Oregon study of nurses aides showed that they had the highest rates of workers comp claims due to WPV: 46.4 claims/10,000 workers.¹⁹²

WPV includes physical assaults with and without weapons, homicide, verbal threats, psychological violence, bullying, and racial or sexual harassment by coworkers, patients, visitors and families.¹⁹³ To date, few studies have been done on WPV.¹⁹⁴ Employees only report 7-42% of WPV incidents because of inconvenience or fear of

¹⁸² *Document: 1-2 Occupational Injuries and Illnesses §2.01*, Matthew Bender & Company, Inc., Lexis Nexis Group (2017), 2.

¹⁸³ *Id.*

¹⁸⁴ *Id.* at 3.

¹⁸⁵ *Id.*

¹⁸⁶ *Safe patient handling and mobility*, www.anasphm.org, *supra*.

¹⁸⁷ Roni Jacobson, *Epidemic of Violence against health care workers plagues hospitals* (31 December 2014) <https://www.scientificamerican.com/.../epidemic-of-violence-against-health-care-workers-plagues-hospitals>.

¹⁸⁸ K. McPhaul and J. Lipscomb (30 September 2004) *Workplace violence in health care: Recognized but not regulated*, Online Journal of Issues in Nursing, Vol. 9 No.3, Manuscript 6. Available at www.nursingworld.org/MainMenuCategories/ANAMarketplace/ANAPeriodicals/OJIN/TableofContents/Volume92004/No3Sept04/ViolenceinHealthCare.aspx.

¹⁸⁹ *Workplace Violence* (January 2017) www.nursingworld.org/workplaceviolence.

¹⁹⁰ Sharon Wey, *Health Care and Social Service Settings in OSHA's Crosshairs* (1 May 2016) [90 Fla. Bar J. 42, 1](https://www.flcourts.org/90-Fla-Bar-J-42-1).

¹⁹¹ McPhaul and Lipscomb, *supra*.

¹⁹² *Id.*

¹⁹³ *Workplace Violence*, *supra*.

¹⁹⁴ *GAO Workplace Safety and Health: Additional Efforts Needed to Help Protect Health Care Workers from Workplace Violence*, <https://www.gao.gov/products/GAO-16-11>, 35.

being blamed by their employer.¹⁹⁵ Underreporting in the health care sector may also be due to the pervasive attitude that “violence is just part of the job.”¹⁹⁶

Although hard to track, WPV risks increase for HHCWs due to the inherently personal nature of the work and the fact that HHCWs often work alone. HHCWs often experience neighborhood violence/crime, angry or demented patients and their family members, guns in the home, and drug and alcohol use in the home.¹⁹⁷ Risk factors for HHCWs include having a “mobile” workplace in community based settings.¹⁹⁸ A NIOSH study on WPV risk factors associated with workplace homicide included working alone, working overnight, and working in high crime areas.¹⁹⁹ The Bureau of Labor Statistics (BLS) reported that there were nine on-the-job homicides of HHCWs from 1996-2000.²⁰⁰ In 2006, five HHCWs died due to assaults.²⁰¹

CalOSHA and Voluntary Federal OSHA Guidelines

In 1993, the California OSHA program (CalOSHA) responded to the workplace homicide of a state employee by developing the first guidelines which outlined a WPV prevention program.²⁰² A multi-union taskforce which focused on WPV successfully pressured the federal government to follow suit.²⁰³ Federal OSHA released voluntary WPV guidelines in 1996: *Guidelines for Preventing Workplace Violence for Health Care and Social Service Workers*.²⁰⁴ The federal OSHA guidelines outline five basic elements: 1) management commitment, including formal written WPV prevention policy and employee involvement in planning, 2) worksite analysis, including periodic walk throughs, 3) hazard prevention and control, 4) safety and health training, and 5) record keeping and program evaluation.²⁰⁵

Unfortunately, these voluntary OSHA guidelines have “no teeth.” OSHA can cite employers for unsafe work environments under the OSHA “general duty clause,” which states that “the employer shall furnish...a workplace free from recognized hazards likely to cause death or serious harm.”²⁰⁶ There can be a civil penalty of up to \$70,000 for each violation of the general duty clause.²⁰⁷ However, general duty clause citations are very

¹⁹⁵ *Id.* at 16-17.

¹⁹⁶ McPhaul and Lipscomb, *supra*.

¹⁹⁷ *Id.*

¹⁹⁸ [CONCURRENT SESSIONS: Preventing Injuries & Abuse: Perspectives on Legal Strategies to Prevent Workplace Violence](#), 30 J.L. Med. & Ethics, 167.

¹⁹⁹ Lexis Advance Research [8-215 Labor and Employment Law § 215.02 \(2017\)](#) NIOSH Studies on Workplace Violence, 1.

²⁰⁰ McPhaul and Lipscomb, *supra*.

²⁰¹ *NIOSH Hazard Review*, *supra* at 34.

²⁰² McPhaul and Lipscomb, *supra*.

²⁰³ [CONCURRENT SESSIONS: Preventing Injuries & Abuse](#), *supra* at 167.

²⁰⁴ *OSHA 3148-06R 2016*, <https://www.osha.gov/Publications/osha3148.pdf>.

²⁰⁵ [Note: Eat the Carrot and Use the Stick: The Prevalence of Workplace Violence Demands Proactive Federal Regulation of Employers](#), 43 Val. U.L. Rev., 737.

²⁰⁶ McPhaul and Lipscomb, *supra*.

²⁰⁷ Sharon Wey, *supra* at 7.

difficult to enforce.²⁰⁸ In 1995, an administrative law judge held that employers are not strictly liable for hazards “not recognized within their industry”; since then, OSHA has rarely exercised its authority under the general duty clause.²⁰⁹

An administrative law judge did affirm OSHA action taken against a Florida health care employer after a social worker was stabbed to death by her client during a home visit.²¹⁰ The judge held the employer responsible for not having a written WPV program and for not assisting the employee after she expressed concerns for her safety.²¹¹ In June 2015, OSHA also announced that it was planning more WPV inspections.²¹² This would be a welcome increase from the 86 OSHA site inspections done in 2014 (up from only 11 in 2010).²¹³

States Workplace Violence Prevention Measures

There are currently no mandatory federal workplace violence prevention guidelines.²¹⁴ However, several states have implemented mandatory WPV prevention regulations: California, Oregon, Washington, New York, Illinois, Connecticut, New Jersey, Maine, and Maryland.²¹⁵ California, Washington and New York stand out as prototypes.²¹⁶

Cal OSHA’s new rule (California Code of Regulations, Title 8, Section 3342), effective April 2017, is the strongest WPV regulation in the country.²¹⁷ This regulation was advocated for by California Nurses Association and Service Employees International Union.²¹⁸ The Cal OSHA rule applies to private health facilities, including home health settings.²¹⁹ This rule requires health care employers to develop WPV prevention protocols which involve workers in the process, to perform site assessments which identify violence risks and address worker concerns, and to provide WPV prevention training for workers.²²⁰

²⁰⁸ Elizabeth Whitman, *Quelling a storm of violence in healthcare settings*, www.modernhealthcare.com/article/20170311/MAGAZINE/303119990.

²⁰⁹ Note: *Eat the Carrot and Use the Stick*, *supra* at 736.

²¹⁰ Sharon Wey, *supra* at 34.

²¹¹ *Id.*

²¹² *Id.* at 20.

²¹³ *GAO Workplace Safety and Health*, *supra* at 20.

²¹⁴ *Id.* at introductory page.

²¹⁵ *Workplace Violence Prevention and Related Goals*, <https://www.osha.gov/Publications/OSHA3828.pdf>, 3.

²¹⁶ *Id.*

²¹⁷ Jennifer Mora et al., *Cal/OSHA Adopts First in Nation Standard on Workplace Violence Prevention for Healthcare Employers* (12 December 2016), <https://www.littler.com/publication-press/publication/calosha>.

²¹⁸ Pauline Bartolone, *California Rules About Violence Against Health Workers Could Become a Model*, *NPR* (26 October 2016) www.npr.org/.../health.../california-rules-about-violence-against-health-workers-could-become-a-model.

²¹⁹ Jennifer Mora et al., *supra*.

²²⁰ *Id.*

In 1994, California also passed the Workplace Violence Safety Act (codified as Code of Civil Procedure, Section 527.8), which allows employers to seek temporary restraining orders (TROs) on behalf of employees who feel threatened in the workplace.²²¹ Other states which allow employers to seek TROs on behalf of employees include Colorado, Arkansas, Nevada, Indiana, Georgia, Rhode Island and Tennessee.²²²

The state of Washington has an OSHA standard which binds employers to OSHA voluntary guidelines.²²³ This statute requires health care employers to implement WPV prevention plans including safety/security hazard assessments; employee training in WPV prevention must begin within 90 days of hire.²²⁴ This 2009 rule, which covers HHCWs, has decreased workers compensation claims in Washington by 28%.²²⁵

New York's Violence Against Nurses Law (A1034-A), passed in 2010, made it a felony to assault an on-duty RN.²²⁶ This law was strongly supported by the New York State Nurses Association and the Home Care Association of New York State.²²⁷ After outcry that this law did not cover ancillary health workers, New York S3621-A was passed in 2015, amending the original law to include other direct patient caregivers.²²⁸

Recommendations to Reduce Workplace Violence

HHCWs should continue to advocate for state and federal OSHA standards which mandate WPV prevention.²²⁹ The ANA, AAN (American Academy of Nurses), ICN (International Council of Nurses), and nursing unions all call for these mandatory protections.²³⁰ This action is especially important because health employers in general, and home health employers specifically, are not voluntarily doing enough to protect their workers against WPV.²³¹ Few employers track the true costs of WPV, which include decreased productivity, increased absenteeism and turnover, and increased workers comp claims.²³² 70% of health employers do not even have WPV programs.²³³ A recent study

²²¹ David King, *The Workplace Violence Safety Act: Protecting Your Agency's Most Valuable Resource*, *The Public Law Journal*, Vol. 36, No. 2 (Spring 2013) www.calbar.ca.gov/publiclaw, 20.

²²² Note: Eat the Carrot and Use the Stick, *supra* at 739.

²²³ *Id.* at 759.

²²⁴ *Id.* at 741.

²²⁵ *Workplace Violence Prevention and Related Goals*, *supra* at 3.

²²⁶ *New York Law Makes Assaulting a Nurse a Felony* (22 November 2010)

<https://www.nurse.com/blog/2010/.../new-york-law-makes-assaulting-a-nurse-a-felony>.

²²⁷ *Id.*

²²⁸ Liza Frenette, *New law expands protections to more health care workers* (4 December 2015) <https://www.nysut.org/news/2015/december/new-law-expands-protections...>

²²⁹ Note: Eat the Carrot and Use the Stick, *supra* at 754.

²³⁰ McPhaul and Lipscomb, *supra*.

²³¹ Note: Eat the Carrot and Use the Stick, *supra* at 728.

²³² *Id.* at 732.

²³³ *Id.* at 753.

in California showed that, despite WPV mandates, only 55% of home health agencies had formal WPV programs; only 15% provided WPV training for all employees.²³⁴

In addition, home health employers should follow NIOSH's recommended "zero tolerance policy" for WPV, through required reporting and investigation of all WPV incidents.²³⁵ NIOSH also recommends the following for preventing violence in the home health setting: identifying illegal drug use, employing de-escalation techniques, requiring in-home safety inspections by a safety coordinator at the beginning of the assignment and as needed, keeping track of HHCW schedules (where did they go and when are they expected back), and notifying the employer if an unsecured weapon is seen.²³⁶

After the rape of a visiting nurse in New Orleans, the Home Care Association of Louisiana (HCLA) developed a list of HHCW safety tips.²³⁷ Their recommendations for HHCWs include taking a self-defense course, wearing a personal alarm (such as whistle), keeping a cell phone in pocket at all times, not lingering in cars, increasing the buddy system, and arranging for early morning visits and police escorts as needed.²³⁸

Unfortunately, neighborhood crime and the presence of guns in the home are every day concerns for HHCWs. Home health agencies should partner with police to identify dangerous neighborhoods and arrange for necessary police escorts and patrols.²³⁹ A "no weapons" policy should be established for clients' homes.²⁴⁰ If removing all weapons from the home is untenable, guns should be secured with ammunition stored separately.²⁴¹

Finally, communication is vital. Agencies should allow for employee debriefing after WPV incidents and should support those employees who choose to press charges.²⁴² All levels of HHCWs should be included on safety committees for their unique insights into WPV prevention.²⁴³

²³⁴ Nathan Gross et. al., *Workplace Violence Prevention Policies in Home Health and Hospice Care Agencies*, OJIN Vol. 18, No.1 (2013)

www.nursingworld.org/...>OJIN>Table of Contents>Vol18 2013>No 1 Jan 2013.

²³⁵ Lexis Advance Research [8-215 Labor and Employment Law § 215.02](#), *supra* at 2.

²³⁶ *NIOSH Hazard Review*, *supra* at 36.

²³⁷ Karen Brooks, *Violence in the field: 37 safety tips for home health care providers* (11 April 2012) <https://kinnser.com/home-health-blog/P135>.

²³⁸ *Id.*

²³⁹ *NIOSH Hazard Review*, *supra* at 36.

²⁴⁰ *Id.* at 35.

²⁴¹ Interview with Karen Kochhar, Owner of Right at Home, Tucson, Arizona (November 1, 2017).

²⁴² [CONCURRENT SESSIONS: Preventing Injuries & Abuse: Perspectives on Legal Strategies to Prevent Workplace Violence](#), 30 J.L. Med. & Ethics, 170.

²⁴³ Nathan Gross et al., *supra*.

VI. Advocating for the Safety of Low Wage HHCWs

Low wage non-professionals make up the bulk of HHCWs.²⁴⁴ Home health work is one of the fastest growing U.S. occupations.²⁴⁵ But if the safety of these HHCWs is not ensured and the alarming turnover trends are not reversed, there will not be enough HHCWs in the field to help older Americans realize their dreams of “aging in place.”²⁴⁶

Low wage HHCWs come from “invisible” marginalized groups.²⁴⁷ Many are immigrants; over half are non-white.²⁴⁸ One in five HHCWs is non-English speaking.²⁴⁹ Almost all (95%) are female.²⁵⁰ The average HHCW is middle aged and a single mother.²⁵¹ HHCWs earn among the lowest wages in the US: roughly \$15,000/year for fulltime work.²⁵² Half live below the poverty line and suffer material hardships.²⁵³

The process of promulgating and enforcing HHCW safety standards is arduous. Professional home health workers can rely on state licensing boards, professional organizations and unions to fight for their workplace rights. However, low wage HHCWs have traditionally been devalued and discriminated against in labor situations.²⁵⁴ Three possible methods of combatting this discrimination are unionization, enforcement of minimum wage protections, and mandatory state licensing of non-medical home care agencies.

Unionization

Rather than fighting individually for their labor rights, low wage workers are more effective when they organize as collective bargaining units.²⁵⁵ Unions have been especially successful at holding employers and federal/state OSHA accountable for worker safety.²⁵⁶ Unions can play a role in enforcing OSHA standards by educating

²⁴⁴ *U.S. home care workers: key facts*, phi.homecare_fact...sheet, *supra* at 2.

²⁴⁵ [ARTICLE: Aging and Caring in the Home: Regulating Paid Domesticity in the Twenty-First Century](#), 92 *Iowa L. Rev.* 1835, 1837.

²⁴⁶ *Id.* at 1847.

²⁴⁷ [2012 James McCormick Mitchell Lecture: When Caring Is Work: Home, Health, and the Invisible Workforce: Introduction](#), 61 *Buffalo L. Rev.* 253, 253.

²⁴⁸ [Article: Notes from the Field: The Role of the Lawyer in Grassroots Policy Advocacy](#), 21 *Clinical L. Rev.* 393, 396.

²⁴⁹ [ARTICLE: Aging and Caring in the Home](#), *supra* at 1848.

²⁵⁰ [2012 James McCormick Mitchell Lecture: When Caring Is Work](#), *supra* at 253.

²⁵¹ [STUDENT COMMENT: Real Work: Domestic Workers' Exclusion from the Protections of Labor Laws](#), 19 *Buff. J. Gender L. & Soc. Pol'y* 107, 125.

²⁵² [Article: Notes from the Field](#), *supra* at 397.

²⁵³ *Id.* at 398.

²⁵⁴ [Article: Notes from the Field](#), *supra* at 399.

²⁵⁵ McPhaul and Lipscomb, *supra*.

²⁵⁶ [ARTICLE: 'TO ASSURE SAFE AND HEALTHFUL WORKING CONDITIONS': TAKING LESSONS FROM LABOR UNIONS TO FULFILL OSHA'S PROMISES](#), 12 *Loy. J. Pub. Int. L.* 1, 2.

HHCWs about workplace dangers, facilitating OSHA inspections, and protecting those HHCWs who report safety concerns from employer retaliation.²⁵⁷

When OSHA was passed in 1970, 30% of U.S. workers were unionized.²⁵⁸ That number has declined to 10%.²⁵⁹ As union membership has declined, sadly so has active enforcement of worker health and safety laws.²⁶⁰ However, states with strong nursing unions, such as California and New York, continue to be at the forefront of health worker safety legislation and regulation.²⁶¹

Unionization of publicly-funded HHCWs has occurred in California, New York, and Illinois.²⁶² Home health aides who receive any reimbursement through government programs have the right to join state employee unions in Oregon, California, Vermont, Mississippi, and Washington.²⁶³ Founded in 2000, Domestic Workers United (DWU) is a union in New York City which fights for fair labor standards for Caribbean, African, and Latina nannies, housekeepers, and caregivers for the elderly.²⁶⁴

Several states have established Domestic Workers Bill of Rights: New York in 2011,²⁶⁵ Hawaii in 2013,²⁶⁶ and California in 2014.²⁶⁷ This legislation is particularly important, as domestic workers have been explicitly excluded from federal OSHA protections in the past.²⁶⁸ The California Domestic Workers Coalition (CDWC) has also been very active in fighting for low wage workers' rights.²⁶⁹ California unions have promoted such programs as Southern California's "Justice for Janitors" and Northern California's "Caring Hands," a training program for Latina home health care aides.²⁷⁰

The task of unionizing HHCWs is daunting. Home health agencies have traditionally opposed home care worker unions.²⁷¹ The U.S. Supreme Court is also expected to move soon to limit the funding of public unions.²⁷² However, unionizing HHCWs would aid in providing basic safety protections for this vulnerable group.

²⁵⁷ *Id.* at 31.

²⁵⁸ *Id.* at 2.

²⁵⁹ Article: Labor's Wage War, 35 *Fordham Urb. L.J.* 373, 384.

²⁶⁰ ARTICLE: TO ASSURE SAFE AND HEALTHFUL WORKING CONDITIONS, *supra* at 1.

²⁶¹ Jennifer Olin, *Nursing Unions: A Still Undecided Controversy* (6 January 2012) www.rncentral.com/.../nursing-unions-a-still-undecided-controversy.

²⁶² 2012 James McCormick Mitchell Lecture: When Caring Is Work, *supra* at 256.

²⁶³ NOTE: Home Care Workers, More Than Just Companions: The Final Rule and the Fight for Home Care Stabilization, 24 *Elder L.J.* 457, 483.

²⁶⁴ *Domestic Workers United*, domesticworkersunited.org.

²⁶⁵ STUDENT COMMENT: Real Work: Domestic Workers' Exclusion from the Protections of Labor Laws, *supra* at 139.

²⁶⁶ *Hawaii Bill of Rights*, <https://www.domesticworkers.org/bill-of-rights/hawaii>.

²⁶⁷ Article: Notes from the Field, *supra* at 405.

²⁶⁸ *Id.* at 401.

²⁶⁹ *Victory! Domestic Workers Achieve Permanent Overtime* (12 September 2016) www.cadomesticworkers.org.

²⁷⁰ Article: Notes from the Field, *supra* at 403.

²⁷¹ *Id.* at 404.

²⁷² Mark Sherman, *Gorsuch expected to vote against labor unions in funding case* (20 February 2018) *The Associated Press* (Arizona Daily Star).

Minimum Wage Protections

Labor unions have been very instrumental in securing minimum wage protections for HHCWs. Besides being excluded from OSHA regulations, “domestic service” workers have long been excluded from the National Labor Relations Act (NLRA) of 1935 and the Fair Labor Standards Act of (FLSA) of 1938.²⁷³ The FLSA excluded “companions for the elderly” as domestic service employees, making them ineligible for minimum wage and overtime protections.²⁷⁴ This companionship exemption extended to those who were employed by third party payers.²⁷⁵

In 2007, lawyers for the Service Employees International Union (SEIU) represented Evelyn Coke, a HHCW who was suing her employer for unpaid overtime wages.²⁷⁶ The Supreme Court held that Coke was not covered by FLSA due to the “companionship exemption.”²⁷⁷ In response, President Obama proposed a new regulation in 2011 which extended FLSA to home care workers such as Ms. Coke.²⁷⁸

In 2013, The Department of Labor (DOL) implemented President Obama’s regulation by issuing a Final Rule which changed the scope of the companionship definition and disallowed any third party extensions.²⁷⁹ At this time, 90% of HHCWs became eligible for minimum wage and overtime protections under the FLSA.²⁸⁰ The legality of the Final Rule was challenged in *Home Care Association of America v. Weil*.²⁸¹ In this case, the U.S. District Court rejected the revised companionship definition and stated that the DOL had done through regulation what “must be done through legislation.”²⁸² However, in August 2015, the U.S. Court of Appeals unanimously affirmed that the Final Rule was valid, and a writ of certiorari was denied.²⁸³

Although these changes mainly affect publicly paid HHCWs, it is hoped that these protections will filter down to private HHCWs as well. Massachusetts and Minnesota have already increased hourly wages for private duty home health aides.²⁸⁴

Experts predict that higher wages will increase worker supply and decrease turnover, resulting in safer conditions for workers and patients.²⁸⁵ Quality home care

²⁷³ [ARTICLE: Aging and Caring in the Home, *supra* at 1853.](#)

²⁷⁴ *Id.* at 1860.

²⁷⁵ [NOTE: Home Care Workers, More Than Just Companions, *supra* at 464.](#)

²⁷⁶ [ARTICLE: Aging and Caring in the Home, *supra* at 1865.](#)

²⁷⁷ [Long Island Care at Home, Ltd. v. Coke, 551 U.S. 158, 127 S. Ct. 2339, 168 L. Ed. 2d 54, 2007 U.S. LEXIS 7717, 75 U.S.L.W. 4416, 12 Wage & Hour Cas. 2d \(BNA\) 1089, 154 Lab. L. Rep. \(CCH\) 35298, 20 Fla. L. Weekly Fed. S 329.](#)

²⁷⁸ Bryce Covert, *Six years after being denied labor protections, home care workers are waiting for minimum wage and overtime* (11 June 2013) <https://thinkprogress.org/six-years-after-being-denied...>

²⁷⁹ [NOTE: Home Care Workers, More Than Just Companions, *supra* at 465.](#)

²⁸⁰ *Id.*

²⁸¹ 76 F. Supp. 3d 138, U.S. Dist LEXIS176307.

²⁸² [NOTE: Home Care Workers, More Than Just Companions, *supra* at 466.](#)

²⁸³ *Id.* at 467.

²⁸⁴ *Id.* at 483.

²⁸⁵ [ARTICLE: Aging and Caring in the Home, *supra* at 1847.](#)

depends on the economic status of workers.²⁸⁶ When a worker is made safer, the patient is generally safer as well.²⁸⁷

Mandatory State Licensing of Non-Medical Home Care Agencies

Non-medical home care agencies provide “companion care” for the homebound and assistance with their activities of daily living (ADLs).²⁸⁸ There are thousands of these types of agencies in the U.S.²⁸⁹ Although HHCWs working in the non-medical home care setting are “non-skilled” and not rendering medical care per se, they still face infectious disease exposures, patient handling issues, and workplace violence.

State licensing of non-medical home care agencies provides government oversight for employee minimum wage protections, HHCW/patient safety standards, mandatory safety training, and required background checks.²⁹⁰ Surprisingly, fifteen states still do not require licensing for non-medical home care agencies, other than a business license.²⁹¹

Without state licensing, many non-medical care agencies treat HHCWs as independent contractors, rather than employees.²⁹² By classifying workers as independent contractors, and paying them with 1099s, employers evade their responsibility under FLSA.²⁹³ Independent contractors are not entitled to minimum wage/overtime protections, workers compensation, or OSHA safety protections.²⁹⁴ Independent contractors also cannot unionize.²⁹⁵ Obviously, employment benefits such as occupational medicine and workers comp are vital for HHCW health and safety.²⁹⁶

Arizona is a state which does not require state licensing of non-medical home care.²⁹⁷ In response, the Arizona In-Home Care Association encourages agencies to seek

²⁸⁶ *Id.* at 1871.

²⁸⁷ *Id.* at 1891.

²⁸⁸ *Types of home care agencies* www.inhomecare.com/information/in-home-care-topics/types-of-home-care-agencies/.

²⁸⁹ *Home healthcare industry experiencing rapid growth* (12 May 2014) www.thegazette.com/industry-experiencing-rapid-growth-20140511.

²⁹⁰ *The Arizona Non-Medical Home Care Association* www.ethicalaz.com/thearizonanon_medicalhomecareassociation.

²⁹¹ Harry Nelson, *Business Implications of California Home Care Regulation* (28 September 2015) <https://www.nelsonhardiman.com/california-home-care/>.

²⁹² Personal Letter from Linda Thompson, Board Administrator of Arizona In-Home Care Association, via email (November 13, 2017).

²⁹³ [ARTICLE: OCCUPY OUR OCCUPATIONS: WHY "WE ARE THE 99%" RESONATES WITH WORKING PEOPLE AND WHAT WE CAN DO TO FIX THE AMERICAN WORKPLACE](#), 39 *Fordham Urb. L.J.* 1073, 1087.

²⁹⁴ *Id.* at 1088.

²⁹⁵ [ARTICLE: WHEN THE SHOP FLOOR IS IN THE LIVING ROOM: TOWARD A DOMESTIC EMPLOYMENT RELATIONSHIP THEORY](#), 67 *N.Y.U. Ann. Surv. Am. L.* 643, 678.

²⁹⁶ Personal Letter from Linda Thompson, *supra*.

²⁹⁷ Bill McKusick, *Arizona Home Care State Licensing?* (27 February 2012) <https://homecaregenerations.com/arizona-home-care-state-licensing/>.

voluntary credentialing by requiring the following: professional liability insurance, bonding, mandatory workers comp, criminal and multi-state background checks for all workers, and classification of all workers as W-2 “employees.”²⁹⁸

In contrast, California became a model for non-medical home care licensure with its 2013 passage of AB 1217, the Home Care Services Consumer Protection Act (HCSCPA).²⁹⁹ This Act mandates registration and licensing of all home health care providers through the Home Care Services Bureau; additionally, a license is required to operate or promote a home care business.³⁰⁰ Licensing requirements include proof of general liability insurance, a valid workers compensation policy, and current TB tests on all employees.³⁰¹ All home care organizations (HCOs) must require that HHCWs undergo background checks and receive a minimum of 5 hours of safety training upon hire and 5 hours annually thereafter.³⁰²

VII. Conclusion

More state and federal regulations must be promulgated and enforced to protect the health and safety of all home health care workers. These measures should include strict adherence to OSHA’s BBP Standard for all workers, promotion of state vaccination programs, promulgation of mandatory federal OSHA standards for safe patient handling and workplace violence prevention, increased OSHA inspections and enforcement actions, and mandatory state licensing of non-medical home health agencies.

The need for home health care is projected to increase exponentially over the coming decades. Almost everyone will require home health care for themselves or a loved one at some point in their lives. Many who run home care businesses would prefer few regulations regarding worker safety, citing the need to minimize costs and administrative “red tape.” However, improved worker safety will result in less physical and psychological worker injuries, fewer workers comp claims and lawsuits, increased worker satisfaction, and decreased turnover. There must be a societal compact; while doing the valuable work of caring for our society’s most vulnerable and frail, home health care workers should always be respected and protected.

²⁹⁸ Personal Letter from Linda Thompson, *supra*.

²⁹⁹ Helena Kobrin, *Caregiver agencies must comply with home care services consumer protection act or cease operation* (19 January 2016) <https://tbowleslaw.com/2016/01/19/new-california-laws-2016-2/>.

³⁰⁰ *Id.*

³⁰¹ *Id.*

³⁰² *Id.*