Misclassification of Workers

Talking Points

✓ Are you familiar with issues relating to worker misclassification?

✓ Many in-home, non-medical companion care workers should be classified as employees, because how, where and when they perform their duties is controlled by the person or entity who sets up the assignment.

✓ Too often they are misclassified as independent contractors, however, and this puts private-pay home care companies at a disadvantage in the market place.

✓ This is a problem for the worker who is misclassified because they lose out on important employee protections and benefits, including worker compensation, unemployment insurance, employer-paid share of payroll (Social Security/Medicare) taxes, and health insurance coverage.

✓ This is a problem for seniors and individuals with disabilities and their families because they may find themselves liable for back taxes and penalties when their situation is discovered and remedied.

✓ This is a problem for federal and state governments that are losing out on much needed tax revenue.

✓ We ask that you support legislative and regulatory efforts to enhance appropriate worker classification.
Misclassification of Workers

Position
The Home Care Association of America (HCAOA) supports efforts to clarify and fully enforce existing worker classification laws. Many in-home, non-medical companion care workers should be classified as employees, because how, where and when they perform their duties is controlled by the person or entity who sets up the assignment.

HCAOA asks that you support legislative and regulatory efforts to enhance appropriate worker classification.

Background
Current law requires that workers be treated as employees when the nature, time and place, and method of performing the work are under the control of the entity or person for whom the work is done. This is the 20-point common law control test.

However, agencies that refer workers, seniors and their families who employ them, and the workers themselves all too frequently either do not know or misinterpret these rules. This results in a misclassification of these workers as independent contractors.

A misclassified private-pay home care worker loses important employee protections when this misclassification occurs. These include:

- Worker compensation
- Unemployment insurance
- The employer-paid share of payroll (Social Security/Medicare) taxes
- As of 2014, when health reform rules take effect, employer-provided (and paid) health insurance

Seniors, individuals with disabilities and their families are also harmed by this worker misclassification because they may find themselves liable for back taxes and penalties when their situation is discovered and remedied.

Federal and state governments lose much needed tax revenue when misclassified workers – usually through ignorance rather than conscious decisions to ignore the law—fail to pay their appropriate level of income and payroll taxes.
Compliant employee-based private-pay home care companies face a severe competitive imbalance because their competitors—who are often not complying with current law and thus incurring the employee protection expenses associated with current law—can and do offer lower-cost private-pay home care services.

If you would like more information on this matter or have questions please contact Patrick Cooney at Patrick@federalgrp.com or by calling (202) 347-0034 x101. You may also contact Michael Eastman at meastman@ntl.com or by calling (202) 629-5625.

The Home Care Association of America (HCAOA) is the nation’s first association for providers of private-pay home care. HCAOA was founded on the principle that quality private duty home care has one model of care and that model is to employ, train, monitor and supervise caregivers, create a plan of care for the client and work toward a safe and secure environment for the person at home.