



March 14, 2012

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Subject: Comments Regarding California AB1136/Cal/OSHA Standard

Bob:

Enclosed you will find some suggested language for the rules and regulations relative to the subject act. The overall format and language are similar in many ways (with some distinct differences) to N.J.A.C. 8:43E-12, *Safe Patient Handling Rules and Regulations* that were published in the New Jersey Register on Tuesday, September 6, 2011. These rules were proposed on January 3, 2011, adopted on July 16, 2011, and became effective on September 6, 2011. The adopted rules and amendments were mandated by the *Safe Patient Handling Act*, N.J.S.A. 26:2H-14.8 that was effective January 3, 2008.

The ASPHP was developed for the sole purpose of furthering the science and practice of safe patient handling. Those anxious to join this grass roots effort and bring it to life, as evidenced by our Board of Directors and Advisors, were the pioneers and experts in the field; those impassioned about the subject of reducing injury to our healthcare workers and preventing harm to those for whom they provide care. Importantly, these experts not only rose to prominence in the field because of their educational background, they are experienced, practiced professionals who quite frankly, "get it"! *This ASPHP team represents all perspectives of the subject at hand: research, education, consulting, assistive device manufacturers, and clinicians. Some work outside of the practice environment, some work within that environment on an administrative level and many others work as caregivers in acute care facilities.* Our membership is active with us, including those who have already achieved the status of Certified Safe Patient Handling Professionals (CSPHP). Our quest includes setting standards for program development, implementation, sustainability and overall practice.

Succinctly, *the Association represents a ready wealth of information* to provide assistance in your endeavor to provide regulation and guidance to your department and to the healthcare systems poised to comply with the new law.

Please feel free to contact us at any time.

Regards,

A handwritten signature in blue ink, appearing to read "Colin J. Brigham".

Colin J. Brigham, CIH, CSP, CPE, CPEA, CSPHP  
President (Incoming) – ASPHP

## Rules and Regulations

### **AUTHORITY, SCOPE, AND PURPOSE**

The Hospital Patient and Health Care Worker Injury Protection Act had its origin in AB1136 which became effective on January 1, 2012. The Act applies to acute care hospitals in the state of California. The provisions apply to health care workers whose job duties involve patient handling and movement and to all others within those facilities necessary to assure full implementation of the requirements of the Act. The purpose of this Act is to minimize unassisted patient handling and movement thereby: reducing the number of work-related musculoskeletal disorders (WMSD) suffered by health care workers; minimizing health care workers' days away from work and workers' compensation costs; reducing the loss of availability of health care workers who sustain WMSD; reducing harm to patients; and improving the comfort, dignity, satisfaction, and quality of care for patients.

### **I. DEFINITIONS**

The following definitions help to provide clarity regarding terms used in these rules and regulations:

Acute care hospitals means general acute care hospitals in California except those hospitals that are managed by the California Department of Corrections and Rehabilitation or the California Department of Developmental Services.

Assessment of patient's need for assisted patient handling (also termed "patient assessment," "clinical assessment" or "mobility assessment") means the assessment made to determine a patient's required level of assisted patient handling, considering the patient's physical and cognitive abilities and ensuring consistency with patient safety, well-being, and preference.

Assisted patient handling means the use of mechanical equipment or aids that help to reduce the physical demands associated with patient handling to levels where they would not normally be expected to cause work-related musculoskeletal disorders.

Clinical assessment See *assessment of patient need for assisted patient handling*.

Five areas of body exposure means vertical movement (lifting/lowering), lateral movement (pushing/pulling), bariatric, repositioning (moving a patient up/down or side to side in bed), and ambulation (walking).

Health care worker in the context of this act, means an employee at a health care facility responsible for providing care to patients or residents.

Lift team means hospital workers specifically trained to handle patient lifts, repositioning, and transfers using mechanical devices and aids. These individuals are sometimes also called “super users” or “transfer mobility coaches.”

Manual handling (also termed “unassisted patient handling”) in the context of this Act means the lifting/lowering, transferring, repositioning, supporting, transporting, or moving of a patient using a healthcare worker’s body strength without the use of mechanical patient handling equipment or patient handling aids.

Mobility assessment – See *assessment of patient need for assisted patient handling*.

Patient means a patient or resident of a covered health care facility.

Patient care unit means a unit in which patients reside.

Patient handling equipment means the use of device such as: ceiling mounted lifts (CML); floor lifts including sit-to-stand, total lift, and specialty lifts; horizontal transfer devices such as air-powered lateral transfer mattresses and powered lateral transfer devices; devices that convert from bed to chair and other related devices. Patient handling equipment also includes friction reducing sheets and static body part supports.

Work-Related Musculoskeletal Disorder (WMSD) means conditions that may develop in muscles, tendons, ligaments, joints, nerves or blood vessels because of specific work-related ergonomic risk factors.

## II. ESTABLISHMENT OF THE SAFE PATIENT HANDLING PROGRAM

1. A covered facility shall establish a safe patient handling program to reduce the risk of injury to both patients and health care workers in the facility.
2. The covered facility shall designate a representative of the administration who shall be responsible for overseeing all aspects of the safe patient handling program and serve as its champion.
3. The representative shall ensure that the covered facility supports the program by providing assistance that includes:
  - a. Recognizing problems related to patient handling;
  - b. Developing clear goals;
  - c. Assigning responsibilities to designated staff members;
  - d. Allocating fiscal resources for planning and training;

- e. Allocating fiscal resources for the purchase, implementation, and maintenance of the required equipment in the time allotted; and
  - f. Ensuring follow-up and revisions to the plan as warranted.
4. A covered facility shall allow employee input regarding the program through means developed by the safe patient handling committee.

### III. WRITTEN DESCRIPTION OF THE PROGRAM

1. A covered facility shall maintain a detailed description of the program and its components.
2. A covered facility shall make the written description available within 2 business days after a request by a health care worker or collective bargaining agent who represents health care workers at the facility.

### IV. DEVELOP, IMPLEMENT AND MAINTAIN A SAFE PATIENT HANDLING POLICY

1. The covered facility, under the direction of the representative and through the efforts of the safe patient handling committee, shall establish a written safe patient handling policy for all patient care units and all shifts.
2. The content of the policy should include, at a minimum, the following:
  - a. A requirement that an assessment of a patient's need for assisted patient handling shall be performed for each patient;
  - b. A requirement that assisted patient handling shall be used for all patient handling tasks, except when not required based on an assessment of a patient's need for assisted handling or in the case of a medical emergency, during which a patient's life would be threatened if the required safe patient handling equipment were not immediately available;
  - c. A statement that the patient has the right to refuse the use of the safe patient handling equipment,; and
  - d. A commitment that all of the elements of the policy shall be consistent with patient and health care worker safety and well-being.
3. The safe patient handling policy shall:
  - a. Be compliant with all requirements of this Act; and
  - b. Be signed by the chief executive officer of the facility.
4. A statement summarizing the policy shall be posted in a location easily visible to staff, patients, residents, and visitors.

## V. SAFE PATIENT HANDLING COMMITTEE

1. Each covered facility shall establish a safe patient handling committee.
2. The committee shall meet as often as needed, but no less than quarterly, monitoring the performance of the program.
3. In the case of a health care system that owns or operates more than one covered health care facility, the system may operate the safe patient handling committee at the system level, provided that committee membership includes at least one health care worker from each facility and that the system develops a safe patient handling program for each facility, taking into account the characteristics of the patients at the facility.
4. At least 50% of the members of the committee shall be health care workers who are representative of the different disciplines at the facility or facilities.
  - a. The committee members shall include supervisors, health care workers and other facility staff as appropriate who have experience, expertise and/or responsibility relevant to the operation of a safe patient handling program. Expertise from outside the facility (such as insurance company or brokers representatives, consultants, or other certified safe patient handling professionals or associates) may also be drawn upon to support the committee.
  - b. The safe patient handling committee shall select a chairperson from among its members.
5. The committee shall be responsible for all aspects of the development, implementation, and periodic evaluation and revision of the facility's safe patient handling program, including the evaluation and selection of patient handling equipment.

## VI. ASSESSMENT OF PATIENT'S NEED FOR ASSISTED PATIENT HANDLING

1. The covered facility shall:
  - a. Establish a uniform system of protocols and procedures to be used consistently throughout the facility for conducting patient assessments, which shall include, at a minimum, the following:

- i. Identification of who shall be responsible for conducting patient assessments, assuring that it is performed by RNs or other individuals with the training and demonstrated competencies required;
  - ii. Methods to be used to determine patient strength, mobility, and cognitive ability; preferences; and any special circumstances likely to affect transfer or repositioning tasks; and
  - iii. Determination of when to perform patient assessments including, at a minimum, at the time of admission and whenever there is a change in any of the factors that determine a patient's dependency level;
- b. Ensure that patient assessments are communicated to everyone who may be responsible for patient handling; and
  - c. Ensure that decisions about the selection and appropriate use of equipment shall be based on the patient assessments.

## **VII. FACILITY RISK AND NEEDS ASSESSMENT**

- 1) The covered facility shall conduct a needs assessment for each unit or department within the facility every three years, or sooner if needed, to determine the type and quantity of safe patient handling equipment required and, if necessary, to prioritize the need for equipment among the units or areas within the facility based on the needs assessment. In addition, the facility should be actively integrating the need for safe patient handling equipment and practices into new and renovated facility design, using the prevention through design (PTD) approach.
- 2) The needs assessment for each unit or department shall focus on, at a minimum, the following:
  - a) Typical patient type and care needs on each unit;
  - b) The categories of staff and types of patients to whom injuries (WMSD) are occurring;
  - c) When and where injuries (WMSD) are occurring (department, unit, date, time, and shift);
  - d) The number and types of WMSD among health care workers;
  - e) Types of tasks that cause WMSD (or are difficult or painful to perform);
  - f) Specific equipment and/or practices associated with worker or patient injuries;
  - g) Available patient handling equipment and any problems associated with its use;
  - h) Potential problems with new equipment and assurance of prompt access, proper storage and maintenance;
  - i) Indirect impact of injuries, including staff turnover and replacement.
- 3) The covered facility shall use the following resources in completing the needs assessment:
  - a) OSHA Form 301 or equivalent;
  - b) OSHA Log of Work-Related Injuries and Illnesses or equivalent;

- c) Reports of workers' compensation claims;
- d) Accident and incident reports and investigations;
- e) Facility incident reports for employees and patients;
- f) Insurance company/broker reports;
- g) Safety and health consultants reports;
- h) Employee interviews and surveys;
- i) Review and observations of workplace conditions.

#### **VIII. IMPLEMENTATION PLAN**

- 1) The safe patient handling committee shall draft an implementation plan for approval by the covered facility's governing body.
- 2) The implementation plan shall address topics including, at a minimum, the following:
  - a) How to phase in the safe patient handling program;
  - b) Communication and enforcement of the mandate that no person shall use patient handling equipment prior to receiving the required training;
  - c) Availability of an adequate number and variety of assisted patient handling equipment on each patient care unit.

#### **IX. FINANCIAL PLAN**

- 1) The safe patient handling committee shall recommend a financial plan for the program which shall include, at a minimum, the following:
  - a) A recommended annual budget for the safe patient handling program; and
  - b) A recommendation for a 3-year plan, which takes into account the financial constraints of the facility to purchase the safe patient handling equipment necessary to carry out the safe patient handling program.

#### **X. EQUIPMENT SELECTION, USE AND MAINTENANCE**

- 1) The safe patient handling committee shall:
  - a) Recommend equipment selection;
  - b) Promote and monitor the use of the selected equipment;
  - c) Ensure that health care workers and other employees who may handle safe patient handling equipment shall have the opportunity to participate in the selection of the equipment by trying out equipment from vendors that allow evaluation prior to purchase.
    - i) The evaluations by health care workers and other employees shall be factored into purchasing decisions before the facility determines which equipment to use.

- d) Establish an evaluation process to determine whether selected assisted patient handling equipment is appropriate for the task, comfortable for the patient and safe for both the patient and caregiver;
- e) Develop a plan to ensure that equipment users have prompt access to and availability of patient handling equipment; and
- f) Develop and implement procedures to ensure that all patient handling equipment shall be used, cleaned, maintained, and stored in a safe manner that complies with manufacturer recommendations.

## XI. TRAINING PROGRAM

- 1) A covered facility shall:
  - a) Ensure that the training required by this Act be based on researched and proven approaches for performing safe patient handling;
  - b) Ensure that the training is conducted prior to the use of any patient handling equipment and at least annually thereafter; and
  - c) Provide appropriate interim and refresher training.
- 2) A covered facility shall require all health care workers responsible for patient handling to participate in the annual safe patient handling training.
  - a) Training shall be mandated for supervisors, all equipment users, members of the safe patient handling committee and all departments and staff that are engaged in patient handling activities.
  - b) There may be a variety of levels of training provided. It is advisable to identify and train more highly skilled staff on each unit that may help to train and coach other staff. Common terms used for these staff are "lift teams", "super users," or "transfer mobility coaches." While training for all staff involved in patient handling may be 2 hours in length, training for these more highly skilled individuals is more commonly 8 hours in length.
  - c) The qualifications of those individuals performing the training should be reviewed to assure that they have the knowledge base and skill set to address the topics which they will be covering.
- 3) Training shall include, at a minimum, the following:
  - a) An explanation of the covered facility's safe patient handling program;
  - b) Causes and prevention of WMSD;
  - c) How to recognize and address early indications of WMSD development;
  - d) Identification, assessment, and control of patient handling risks, including use of assessments of patient need for assisted patient handling and appropriate communication with patients;

- e) An interactive demonstration of safe, appropriate, and effective use of patient handling equipment;
  - f) Trainee participation in operating unit-specific patient handling equipment and demonstration that they are proficient in using such equipment;
  - g) Explanation, demonstration, and practice of researched and proven methods and techniques that one or more health care workers may use for patient handling of a patient who refuses assisted patient handling.
- 4) The safe patient handling committee shall, at least once a year or more frequently as required, review the training content and methods and make necessary changes.

## **XII. EDUCATION MATERIALS**

- 1) The covered facility shall appoint a person or persons to:
- a) Develop educational materials to help patients and their families to the facility's assisted patient handling program; and
  - b) Include this information in the covered facility's admission package and in a discussion with the patient and family following an assessment of a patient's need for assisted patient handling.

## **XIII. INJURY REPORTING, INVESTIGATION, ANALYSIS, AND RECORDKEEPING**

- 1) The covered facility shall:
- a) Encourage employees to report injuries and near misses in a non-punitive environment;
  - b) Designate a person or persons to develop procedures for performing injury investigations, preparing investigation reports, and educating staff when an injury or near miss occurs;
  - c) Establish a mechanism for reporting all incidents, including near misses and injuries, resulting from patient handling;
  - d) Appoint an appropriate department to receive and analyze the reports mentioned above. Specific detail to be obtained and disseminated includes the instance of safe and proper use of assisted patient handling equipment, patient refusals of assisted patient handling equipment associated with injuries to staff and/or patients, and the overall efficacy of the safe patient handling program; and
  - e) Establish a system for monthly dissemination of the reports mentioned above in this section.

## **XIV. EVALUATION AND RECOMMENDATIONS**

- 1) The covered facility shall:
- a) Evaluate the de-identified, aggregated data regarding patient handling injuries in order to, at a minimum, identify units and shifts with ongoing injuries to staff and negative outcomes to patients related to patient handling;

- b) Determine measures to take to increase patient acceptance of safe patient handling, including changes to the education of health care workers, patients, and their families; and
- c) Provide evaluation results and recommended improvements regarding the safe patient handling program to the facility's governing body at least annually, or more frequently as needed.

#### **PROHIBITION OF CERTAIN RETALIATORY ACTIONS**

- 1) A covered health care facility shall not take any retaliatory action against a health care worker because the worker refuses to perform a patient handling task due to a reasonable concern about worker or patient safety, or the lack of appropriate and available patient handling equipment.
- 2) A health care worker who refuses to perform a patient handling task pursuant to this section shall promptly notify her or his supervisor of the refusal and the reason for refusing.