

March 2, 2012

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Via E-mail: bnakamura@dir.ca.gov.

Dear Mr. Nakamura:

On behalf of more than 400 member hospitals and health systems, the California Hospital Association (CHA) respectfully offers the following comments for consideration as Cal/OSHA begins the process of drafting regulations to implement California's Safe Patient Handling Law, California Labor Code § 6403.5. CHA was actively involved in the legislative process and looks forward to participating as an active stakeholder during the regulatory process. We appreciate the work Cal/OSHA has undertaken to date in an effort to meet the statutory requirements while recognizing the lack of clarity the law poses for hospitals in their efforts to comply. Both the FAQs and the Interim Implementation Policy are extremely helpful tools.

Because this is the pre-notice period and there are a number of potential issues to address in a very short timeframe, CHA focused on what we believe are the major issues/definitions that need to be addressed through regulation. Attached please find draft regulatory language on the following issues:

- Clarification of Labor Code § 6403.5(c) with regard to the nurse's role as coordinator of care.
- Definitions of "patient care unit" and "general acute care hospital" as used in Labor Code § 6403.5(b).
- Required components of a "Safe Patient Handling Policy" and "Patient Protection and Healthcare Worker Back and Musculoskeletal Injury Prevention Plan."
- Required elements of training as required by Labor Code § 6403.5(b).

We also agree that various other terms and phrases need further clarification, as discussed at the January 24, 2012, Advisory Meeting. One phrase that was not identified during that meeting, but needs a clear definition, is "musculoskeletal injury." We are currently developing proposed regulatory language on many of those terms and phrases. If possible, we will submit the language to you prior to the next Advisory Meeting but also will be prepared to discuss it at the March 29 meeting.

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Finally, as we stated during the January 24, 2012, Advisory Meeting, CHA agrees with Cal/OSHA's position, as reflected in the FAQs, that Labor Code § 6403.5 does not require hospitals to utilize "lift teams," but rather the law gives hospitals discretion as to who is responsible for lifting, repositioning, mobilizing and transferring. Therefore, we have not addressed that issue in our proposed regulatory language.

CHA's recommendations should not be considered an exhaustive list, but an initial submission during this pre-notice period. Moving forward, CHA is ready to assist Cal/OSHA as it develops regulations and enforcement policies in an effort to provide employees with a safe work environment. Thank you for the opportunity to comment. We look forward to working with you.

Sincerely,

Gail M. Blanchard-Saiger
Vice President, Labor & Employment

Attachment

Cc: Deborah Gold, Deputy Director for Health, Cal/OSHA
C. Duane Dauner, President, California Hospital Association

Labor Code 6403.5(c):

As the coordinator of care, the registered nurse shall be responsible for the observation and direction of patient lifts and mobilization, and shall participate as needed in patient handling in accordance with the nurse's job description and professional judgment.

Proposed Regulatory Language:

As the coordinator of care, the registered nurse shall be responsible for the observation and direction of patient lifts and mobilization, and shall participate as needed in patient handling in accordance with the nurse's job description and professional judgment.

Compliance with this section may be achieved either by:

- 1) Personal observation of lifts and mobilizations by a registered nurse; or
- 2) Where lifts and mobilization are conducted outside the presence of a registered nurse, the lift or mobilization is conducted in accordance with the nurses' assessment as reflected in the nursing care plan, unless otherwise indicated by a trained health care provider, such as a physical therapist, occupational therapist or licensed vocational nurse, or an emergency situation exists. In the absence of a nursing care plan, the lift or mobilization shall be conducted in accordance with the hospital's safe patient handling policy.

Labor Code 6403.5(b):

An employer shall maintain a safe patient handling policy at all times for all patient care units, and shall provide trained lift teams or other support staff trained in safe lifting techniques in each general acute care hospital.

Proposed Regulatory Language:

"Patient care unit" is defined as a unit or department that falls under the general acute care hospital license and that provides direct patient care to the hospital's in-patient population or Emergency Department according to the hospital's policies including but not limited to nursing units, diagnostic imaging, acute rehabilitation and behavioral health. "Patient care unit" shall not include distinct part skilled nursing units as defined by 22 C.C.R. 70027, 70627 and 72103 (2012).

"General acute care hospital" is defined as a hospital, licensed as a "general acute care hospital" by the California Department of Public Health.

Labor Code 6403.5(f):

For purposes of this section, a “safe patient handling policy” means a policy that requires replacement of manual lifting and transferring of patients with powered patient transfer devices, lifting devices and lift teams appropriate for the specific patient and consistent with the employer’s safety policies and the professional judgment and clinical assessment of the registered nurse.

Proposed Regulatory Language:

Required components of a safe patient handling policy include:

- 1) A method for assessing patients on an individual basis to determine mobility status, which may include assessment tools or algorithms. The method used may vary by patient care unit depending on the unit’s function and patient population.
- 2) A process for communicating the assessment to healthcare workers responsible for patient lifts, mobilization, transfer and repositioning.
- 3) Identification of health care worker roles and responsibilities for patient lifts, mobilization, transfer and repositioning specific to the patient care unit and as appropriate for the specific patient and use of assistive devices.
- 4) Identification of procedures to determine the type of patient handling equipment or patient assist devices needed to conduct lifting, mobilization, transferring and repositioning to safely move patients.
- 5) Safe work practices for various patient movement activities such as transfer from bed to gurney and chair to bed.
- 6) Training for health care workers on the use of safe patient handling equipment and patient assistive devices.

Labor Code 6403.5(a):

Employers shall adopt a patient protection and healthcare worker back and musculoskeletal injury prevention plan. The plan shall include a safe patient handling policy component reflected in professional occupational safety guidelines for the protection of patients and health care workers in healthcare facilities.

Proposed Regulatory Language:

Required components of a patient protection and healthcare worker back and musculoskeletal injury prevention plan (“the Plan”) include:

- 1) Written strategy for implementing safe patient handling including but not limiting defining roles in safe patient handling process, evaluating safe patient handling options and technologies, and evaluating facility back and musculoskeletal injury data and trends.

- 2) Review of trends and data on at least an annual basis and update to the Plan, if appropriate.
- 3) Identification of staff training needs and training implementation plan.
- 4) Development of competencies for health care workers trained in safe patient handling and identification of the frequency of competency validation.
- 5) Assessment of appropriate equipment needs (mechanical, friction reducing, and other devices) to implement the safe patient handling policy.
- 6) Annual review of and, if appropriate, update to the Plan, including the safe patient handling policy component.

Labor Code 6403.5(b):

An employer shall maintain a safe patient handling policy at all times for all patient care units, and shall provide trained lift teams or other support staff trained in safe lifting techniques in each general acute care hospital. The employer shall provide training to health care workers that includes, but is not limited to, the following:

- (1) The appropriate use of lifting devices and equipment.
- (2) The five areas of body exposure: vertical, lateral, bariatric, repositioning, and ambulation.
- (3) The use of lifting devices to handle patients safely.

Proposed Regulatory Language:

- (a) General acute care hospitals shall provide instruction to all workers regularly assigned to work in a “patient care unit” on the content of the Safe Patient Handling Policy:
 - (1) When the Safe Patient Handling Policy is first established; provided however, hospitals that implemented a Safe Patient Handling Policy prior January 1, 2012 are exempt from this requirement; and
 - (2) for new employees, no later than the first shift worked on a patient care unit.
- (b) For lift team members or other support staff responsible for participating in Safe Patient Handling activities as set forth in the Safe Patient Handling Policy,
 - (1) Training shall:
 - (A) Include:
 1. The appropriate use of lifting devices and equipment based on manufacturers specifications;
 2. The five areas of body exposure: vertical, lateral, bariatric, repositioning, and ambulation; and

3. The use of lifting devices to handle patients safely as appropriate for specific patients.

(B) Be provided according to a frequency established in the Patient Protection and Health Care Worker Back and Musculoskeletal Injury Prevention Plan; provided that training on new lifting devices and equipment is conducted prior to the time health care workers are expected to use it.

(C) Be documented and retained during the period of employment

(2) Training provided in accordance with a Safe Patient Handling Policy that was implemented prior to January 1, 2012 shall satisfy the requirements of this section.

(3) Competencies shall be validated as established in the Patient Protection and Health Care Worker Back and Musculoskeletal Injury Prevention Plan.