

## OSHA Announces Initiative to Cite Hospitals and Nursing Homes for Ergonomics Violations

On June 25, 2015, the Occupational Safety and Health Administration (OSHA) announced, by press release (<https://www.osha.gov/newsrelease/nat-20150625.html>) and via exclusive interview on National Public Radio (<http://www.npr.org/sections/thetwo-way/2015/06/24/417186384/osha-launches-program-to-protect-nursing-employees>) that effective immediately, for any inspection of a nursing home or hospital, OSHA would inspect for musculoskeletal disorders (MSDs) related to patient or resident handling.

As background, OSHA issued a final ergonomics rule on January 16, 2001, four days before the end of the Clinton administration. Later that year, before the rule could go into effect, the new Congress rejected the rule under the Congressional Review Act, precluding OSHA from issuing any similar rule without Congress' explicit authorization.

Since that time, OSHA has occasionally issued citations for ergonomics violations, regardless of the fact that there is no ergonomic standard. That is because OSHA may cite employers under the "General Duty Clause" of the Occupational Safety and Health Act, which states that an employer "shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees." It is the "recognized hazard" language that is key—OSHA contends that ergonomics is a recognized hazard, and thus that it may cite employers that do not comply with ergonomic best practices.

Thus, OSHA has previously issued guidance directed to the health care industry, for safe patient handling procedures ([https://www.osha.gov/dsg/hospitals/patient\\_handling.html](https://www.osha.gov/dsg/hospitals/patient_handling.html)). OSHA now intends to enforce this guidance as if it were an ergonomic regulation. With its June 25 announcement, OSHA is indicating that regardless of how OSHA may come to inspect a hospital or nursing home—whether a scheduled inspection, an employee complaint about another issue, a report of a serious injury, a referral by another law-enforcement agency, or even from seeing a news story about the employer—OSHA will now inspect the facility's patient and/or resident handling techniques. OSHA's guidance to compliance officers regarding what to look for is as follows:

### 1. Program Management.

- Is there a system for hazard identification and analysis?
- Is there a system for development of strategies to address identified hazards?
- Who has the responsibility and authority for administering this system?
- What are the credentials or experience the individual responsible for administering the program?
- What input have employees provided in the development of the establishment's lifting, transferring, or repositioning procedures?
- Is there a system for monitoring compliance with the establishment's policies and procedures and following up on deficiencies?
- Are there records of recent changes in policies/procedures and an evaluation of the effect they have had (positive or negative) on resident handling injuries and illnesses?

## 2. Program Implementation.

- How is patient/resident mobility determined and how is the mobility determination communicated to staff?
- What is the decision logic for selection and use of lift, transfer, or repositioning devices?
- When and under what circumstances may manual lift, transfer, or repositioning occur?
- Who decides how to lift, transfer, or reposition patients/residents.
- Is there is an adequate quantity and variety of appropriate lift, transfer, or reposition assistive devices available and operational. Note that no single lift assist device is appropriate in all circumstances. Manual pump or crank devices may create additional hazards.
- Are there adequate numbers supplies such as: slings, batteries, and charging stations for lifting devices? (Note: There should be a minimum of 1 sling per resident that needs the device and some extras to account for laundering and repair. There should be adequate numbers of batteries to accomplish all necessary lifts during a shift). There should be appropriate types and sizes of slings specific for all patients/residents.
- Are there appropriate quantities and types of the assistive devices (such as, but not limited to slip sheets, mechanical lifts, sit-to-stand assists, walk assists, or air-hover transfer pads) available within close proximity and maintained in a usable and sanitary condition?
- Are their policies and procedures appropriate to eliminate or reduce exposure to the manual lifting, transferring, or repositioning hazards at the establishment.

## 3. Employee Training.

- Have employees (nursing and therapy) been trained in the recognition of ergonomic hazards associated with manual patient/resident lifting, transferring, or repositioning, the early reporting of injuries, and the establishment's process for abating those hazards.
- Have the employees (nursing and therapy) been trained in proper techniques and procedures to avoid exposure to ergonomic risk factors and can they demonstrate competency in performing the lift, transfer, or repositioning task using the assistive device.

Employers are well advised to prepare for such inspections, with the help of counsel as necessary. Indeed, while the focus of OSHA's memorandum is ergonomics, it has also indicated that any inspection of a health care facility, regardless of how it was initiated, will also inspect in the areas of workplace violence, bloodborne pathogens, tuberculosis, and slips, trips, and falls. OSHA's full memorandum to the regions can be found at [https://www.osha.gov/dep/enforcement/inpatient\\_insp\\_06252015.html](https://www.osha.gov/dep/enforcement/inpatient_insp_06252015.html).

To learn more, contact [Michael D. Billok](mailto:mbillok@bsk.com) (518.533.3236; mbillok@bsk.com) or [Patrick V. Melfi](mailto:pmelfi@bsk.com) (315.218.8632; pmelfi@bsk.com).



Bond, Schoeneck & King PLLC (Bond, we, or us), has prepared this communication to present only general information. This is not intended as legal advice, nor should you consider it as such. You should not act, or decline to act, based upon the contents. While we try to make sure that the information is complete and accurate, laws can change quickly. You should always formally engage a lawyer of your choosing before taking actions which have legal consequences.

For information about our firm, practice areas and attorneys, visit our website, [www.bsk.com](http://www.bsk.com). • Attorney Advertising • © 2015 Bond, Schoeneck & King, PLLC

CONNECT WITH US ON LINKEDIN: SEARCH FOR BOND, SCHOENECK & KING, PLLC

FOLLOW US ON TWITTER: SEARCH FOR BONDLAWFIRM