Safe Patient Handling & OSHA

Is it on Your Radar?

It is no mystery that nurses and healthcare workers in hospitals and nursing homes work in physically demanding arenas. Healthcare workers, for example, have the highest rates of lost workdays with a rate over 2 times higher than any other job classification. As of April 2012, the Occupational Safety and Health Administration (OSHA) focused their National Emphasis Program (NEP) for Programmed Inspections on Nursing and Residential Care Facilities. The OSHA Instruction Directive indicates that the specific hazards being addressed as part of this focus will include ergonomic stressors in patient lifting, bloodborne pathogens, tuberculosis, workplace violence, and slips, trips and falls.

Under this National Emphasis initiative, OSHA issued a citation that appears to be precedent setting in safe patient handling equipment and practice. The case involved the Broomfield Nursing and Rehabilitation Center (BNRC) in Broomfield Colorado. OSHA inspection visits were done over a few days in February 2013, with the actual citation letter issued and received in August 2013. It is reported that the Center had one of the highest injury rates in the state and had no safety staff at the time of the visit. There were several other issues cited, such as Blood Borne Pathogens and Recordkeeping, resulting in monetary fines of varying amounts. Of particular note was a citation specifically involving Safe Patient Handling and Mobility (SPHM) that came with a fine of $6,300. The citation reads as follows:

“On and preceding 2/26/13, employees were exposed to musculoskeletal injury hazards which were causing back, shoulder, neck and other upper and lower extremity sprains and strains. Employees, including but not limited to Certified Nursing Assistants (CNAs), were required to transfer non-weight bearing and partial weight bearing residents manually, using one or two person gait belt lifts rather than using mechanical assistive devices. Employees were also exposed to other hazards such as repeated lifting/lowering, pushing, pulling, bending, reaching, twisting, ambulating and other tasks associated with resident transfers and repositioning which resulted in recordable injuries, including lost work time and restricted work activity.”
The Broomfield Center had 10 safe patient handling lifts in the building and their physical therapists (PTs) provided education for proper body mechanics. While there was apparently some controversy in how the OSHA inspectors interpreted their observations and answers to questions obtained in closed, video recorded interviews, the end result was that the citations came down largely for having the equipment but not using it, and for the employer allowing for manual lifting and handling of patients. According to a source close to the situation, one specific example of this is in the OSHA inspector’s interpretation of the PT staff reporting that they try to keep the equipment away from the residents. This is a common practice among therapy professionals. It is a clinical philosophy that essentially hinges on two ideas. The first is that they feel that using equipment hinders the patient from doing the work that they need to get stronger. (I.e., The machine does the work that the patient should be doing.) The second idea is that the PTs report wanting to have their “hands on” the patient to feel certain muscle groups working, joint movements, etc., and that the machines can get in the way of doing this. While it is not entirely clear, it is reported that the OSHA compliance officers interpreted this “keeping the equipment away from the residents” as a refusal to use safety equipment, while the BNRC staff intended it to reflect a clinical philosophy in practice. Regardless of this, as stated previously, the end result was that the citations came down, largely for having the equipment but not using it, and for the employer allowing the manual lifting and patient handling.

Since the OSHA visits and citations, BNRC has implemented some good corrective actions using the new American Nurses Association Standard for Safe Patient Handling and Mobility as their blueprint. They have reportedly made some very good investments in personnel and equipment with significant policy changes since the OSHA inspection and follow up.

This case is worth highlighting because it appears to be precedent setting

The fact that this citation was issued under the General Duty Clause as Serious is significant for two reasons. One is that the scenarios and practices at BNRC are very common in their industry. The second is that while Serious level citations can, as a rule, usually be
negotiated for severity, such violations issued under the General Duty Clause can not be. Given that there is no specific OSHA standard governing ergonomics or SPHM issues, all citations for SPHM issues will be written under the General Duty Clause. As a result, a very common scenario, that is generally considered acceptable within the industry, has now, essentially been labeled (at least once) as a Serious infringement, that is automatically non-negotiable for severity.

It is the first Serious level citation issued and finalized for SPHM issues under the General Duty Clause. There are other such SPHM citations pending, but, to the knowledge of the reviewer, this is the first to be consummated with the fines paid. It is important to note that the final citation letter was issued 6 months after the actual visits as it was processed through OSHA attorneys and finally signed off by the Assistant Secretary of Labor, Dr. David Michaels. According to sources involved in the process, it went to OSHA Headquarters in Washington, DC because of the precedent setting General Duty Clause claim with video, interviews and documentation of this multi day inspection. The OSHA attorneys had to view and approve the Serious level SPHM citation. It had never been done before. It is reasonable to assume that this case received such careful attention because of its precedent setting nature.

Another example of this is shown in the actual citation letter which states, “Employees, including but not limited to Certified Nursing Assistants (CNA’s), were required to transfer non-weight bearing and partial weight bearing residents manually, using one or two person gait belt lifts rather than using mechanical assistive devices.” This is important because it is very common for professionals to use gait belts and other manually oriented equipment, or no equipment at all, to do virtually all of their patient handling and lifting tasks. While these devices help ease ergonomic stressors somewhat during manual patient handling, OSHA appears to make a clear statement that these lifts are still essentially manual. As a result, this seems to imply that gait belts do not qualify as “safe patient handling equipment” per se. This raises questions as to whether or not devices and practices such as certain uses of back boards, certain repositioning sheets, two-person lifts and lift teams will be considered appropriate controls. Again, while they lessen the risk factors present, they are still essentially manual methods. With this precedent case, it can at least be speculated that the use of these common manual methods could result in a Serious citation from OSHA. It is important to note here that this is not necessarily an OSHA interpretation, but rather, a discussion and consideration of the possible logical conclusions of this case.

OTHER RELATED DEVELOPMENTS THAT SHOULD BE NOTED

1. As per the OSHA Instruction Directive Number CPL 03-00-016, as of 2/21/13, The targeting under the National Emphasis Program will focus on Nursing and Residential Care Facilities with a DART rate at or above 5.3 for fiscal year 2013. Prior to this date, the DART threshold was 10.

   Essentially what this means is that OSHA uses an organization’s DART (Days Away, Restricted and Transfer) rates for determining visits and inspections and that this DART threshold has been reduced by almost 50%. This makes a visit more likely for organizations under these NAICS codes. It would stand to reason that the higher the DART rate, the higher the probability of a visit.

2. The expectations for the number of inspections per State or field office has been increased. As per the Directive, The NEP contemplates at least six (6) inspections per year, per State or field office. Previously, only 3 inspections were expected.

   To summarize, OSHA inspection is now more likely to occur for establishments that fall under these NAICS/SIC codes, and there is now a model in place for SPHM citation from OSHA under the General Duty Clause.
WHAT CAN I DO? THERE ARE A FEW STEPS WE SUGGEST

1 Know your NAICS/SIC code(s). The OSHA Directive cited above makes it clear that certain sectors of the healthcare industry are being targeted for inspection. This is not to say that other sectors are not up for inspection, or that they cannot be inspected. It is to say simply that these three arenas are a higher priority for OSHA. A given company’s NAICS/SIC code should be available via the company’s Risk Manager and/or Human Resources Department.

2 Know your DART rate. The DART rate, most simply, is the incidence rate for recordable cases involving days away from work, days of restricted work activity or job transfer. It is one tracking measure for workplace injuries severe enough to warrant Days Away from work, job Restrictions, and/or job Transfers. Most establishments are required to report these rates annually through the Bureau of Labor Statistics (BLS). The BLS then compiles the data and releases it to OSHA. The BLS has a calculator online to make this calculation relatively simple. (http://data.bls.gov/iirc) Establishments with rates above 5.3 should begin to expect a visit from OSHA. It would be reasonable to expect that the higher the DART rate, the greater the chance for inspection.

3 Develop a Safe Patient Handling program. OSHA is clearly expecting healthcare companies to have multifaceted, multidisciplinary, proactive programs in place to avoid ergonomic and SPHM injury. Just throwing a couple pieces of equipment out into the facility will not suffice. While such programs are not necessarily quick and easy to assemble, there are good resources available. The American Nursing Association has published their Safe Patient Handling and Mobility Interprofessional Standards (www.nursingworld.org). This standard is quickly establishing the standards of care across many sectors of the healthcare industry. It was the model used to rectify the issues at the Broomfield facility. Facilities in New Jersey should ensure that they are also in compliance with the New Jersey SPHM regulations as well.

OSHA visits and citations are very serious matters. In addition to the monetary fines, there are indirect costs associated with managing the inspection process and contesting the citations. An additional hidden cost could be the liability exposure particularly when an OSHA citation is written in the wake of an employee or patient injury. The good news is that a good SPHM program provides many benefits for healthcare workers, patients/clients and the business interests of any given facility, and as such really should be pursued regardless of any regulatory compliance or threat of citation.

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