

December 10, 2018

The Honorable Alexander Acosta
Secretary
U.S. Department of Labor
200 Constitution Ave NW
Washington, D.C. 20210

Re: RIN 1235-AA22; Federal Register, Vol. 83, No. 188 (Sept. 27, 2018).
Submitted electronically at <https://www.regulations.gov/comment?D=WHD-2018-0002-0001>

Dear Secretary Acosta:

The National Consumer Voice for Quality Long-Term Care (Consumer Voice) is writing to oppose the proposed rule to allow 16 and 17-year-olds to operate power patient lifts in health care settings, including long-term care settings.¹ The proposed rule would reverse the current policy of only allowing trained teenagers to provide assistance to a qualified adult caregiver in certain instances.² While the proposed rule emphasizes the impact the rule would have on teenagers, Consumer Voice is highlighting the impact it would have on long-term care residents, specifically nursing home residents. Consumer Voice believes 16 and 17-year-olds should not be allowed to operate the lifts without adult supervision. Research shows that many teens lack the ability to assess the risks and physical strength to safely operate power patient lifts and transfer residents by themselves, thus putting the residents, and themselves at risk of harm. We urge the Department to withdraw the proposed rule.

The Consumer Voice is a national organization, founded in 1975, that advocates for quality of care and quality of life with and on behalf of nursing home residents and other long-term care consumers. Our membership is composed of residents of long-term care facilities, home care consumers, family members, long-term care ombudsmen, citizen advocacy groups, and individual advocates.

16- and 17-Year-Olds are Generally Ill-Equipped to Independently Manage the Challenges Associated with Patient Lifts

In 2011, in response to a request from the Wage & Hour Division to assess the risks to 16 and 17-year-olds operating patient lifting devices, the National Institute for Occupational Safety and Health (NIOSH)

¹ Expanding Employment, Training, and Apprenticeship Opportunities for 16- and 17-Year-Olds in Health Care Occupations under the Fair Labor Standards Act, 83 Fed. Reg. 48,737 (Sept. 27, 2018), available at <https://www.federalregister.gov/documents/2018/09/27/2018-20996/expanding-employment-training-and-apprenticeship-opportunities-for-16--and-17-year-olds-in-health>.

² *Id.* at 48, 739; see also 29 C.F.R. § 570.78.

reported that many teenager workers lack the physical strength needed to safely manage the lifts with residents in them; and that young workers greatly underestimate the dangers associated with tasks that could be hazardous.³

The individuals being moved by these mechanical lifts often have complex needs, and are dependent on the strength and skill of the person operating the lift. In its report, NIOSH notes that the size and weight of the resident and their frail medical condition, along with the following factors contribute to the complexity of lifting, moving, or repositioning residents:

- recent surgery
- special equipment such as feeding tubes, oxygen, intravenous lines, or a prosthesis
- fragile skin or bones
- limited ability to assist with the transfer
- limited range of limb motion
- inability to understand verbal instructions
- inability to see or hear
- open wounds, bandaged areas, casts or splints,
- confusion or disorientation
- combativeness
- propensity to fall or lose balance, and
- unexpected changes in behavior, weight-bearing ability, or balance.⁴

These factors indicate the need for the person operating the mechanical lift to have the strength and skill to move and manipulate a person into, out of, and while in the lift; but also to have the capacity to problem-solve when unexpected problems arise.

Penelope Ann Shaw, Ph.D., a nursing home resident for over 16 years, points out that lift transfers are complex, requiring many steps. She notes in her statement to the Office of Management on Budget (OMB) on August 28, 2018,⁵ that “serious emergencies are quite common” during a lift transfer. Such emergencies include power failure mid-transfer. When a lift loses power mid-transfer, it may be necessary to pull the emergency valve which releases the lift completely so that residents are dropped the rest of the way down to their beds. This process must be done very carefully to avoid accidents; and the person(s) operating the lift must be prepared to move or support a resident as necessary to ensure they are let down safely. Dr. Shaw notes, “Lift emergencies are diverse, and so are the resolutions. Experienced staff matter.”

The NIOSH report concluded that most 16 and 17-year-olds lack the ability to recognize the risk associated with performing hazardous tasks, with only 1.6% of adolescents who were surveyed recognized operating power equipment as hazardous.⁶

³ NIOSH Assessment of Risks for 16- and 17-year old Workers Using Power-Driven Patient Lift Devices, Thomas R. Waters, Ph.D., James Collins, Ph.D. and Dawn Castillo, MPH. Available at https://www.dol.gov/whd/CL/NIOSH_PatientLifts.pdf

⁴ NIOSH

⁵ Shaw, Penny. Statement to Office of Management and Budget (August 28, 2018).

⁶ Thomas R. Waters et. al, *NIOSH Assessment of Risks for 16- and 17-Year Old Workers Using Power-Driven Patient Lift Devices*, Centers for Disease Control and Prevention, available at https://www.dol.gov/whd/CL/NIOSH_PatientLifts.pdf.

Training for nursing home staff is largely inadequate; and 16 and 17-year-olds are even less likely to be adequately trained to operate mechanical lifts.

The federal minimum of 75 hours of initial training for CNA's is unchanged since the 1987 Nursing Home Reform Law required it. Only 16 of the 75 hours must be provided in a clinical setting. About half the states exceed the 75-hour minimum, but only 13 of those require at least the 120 hours recommended in 2008 by the Institute of Medicine.

Teenagers need to be prepared not only with regards to lift operation, but also on responding to challenges as they arise. We have concerns that many of the certified staff are not provided the requisite training for responding when a lift malfunctions, or a when resident becomes fearful when put in the lift. These concerns are heightened for unsupervised teenagers, many of whom underestimate the risks involved with transferring residents using power lifts.

Ms. Shaw also concurs in her statement and often is required to coach her CNAs through emergencies due to the lack of sufficient training on how to execute safe resident transfers:

I know that general CNA safety training on the use of patient lift devices is insufficient, as I have had to explain to many nursing assistants the solutions for different types of emergencies. Theory from academic safety training requirements on safe patient handling and transferring, and an exam requirement, differ completely from job tenure, experience and real skills.⁷

Conclusion

16 and 17-year-olds must not be allowed to independently use power-driven hoisting or lifting devices on long-term care residents. Lift transfers are complicated and require a significant amount of muscular strength and the ability to appropriately assess risks while executing the transfer. Lift malfunctions are commonplace, and NIOSH's report indicates that many 16 and 17-year-olds lack both the physical strength and the ability to appropriately assess the risks to safely execute these transfers. Both residents and teenagers are at an increased risk of injury if 16 and 17-year-olds are allowed to execute these power lift transfers independently.

The Consumer Voice strongly urges the Department of Labor to withdraw the proposed rule to help protect our most vulnerable population and assure resident safety in long-term care settings.

Sincerely,



Lori Smetanka
Executive Director

⁷ Shaw, Penny. Statement to Office of Management and Budget (August 28, 2018).