December 6, 2018

The Honorable Alexander Acosta
Secretary
U.S. Department of Labor
Division of Regulations, Legislation and Interpretation
Wage and Hour Division
200 Constitution Ave., NW
Washington, DC 20210

Re: Comments on: RIN 1235-AA22

Dear Secretary Acosta:

On behalf of the American Public Health Association, a diverse community of public health professionals that champions the health of all people and communities, I write to provide comments on the proposal by the U.S. Department of Labor’s Wage and Hour Division to change the existing child labor regulation under Hazardous Order No. 7 (Occupations involved in the operation of power-driven hoisting apparatus) (HO 7) (29 CFR § 570.58).

APHA opposes the proposed rule to roll back child labor protections in health care occupations (83 Federal Register 48737, “Expanding Employment, Training, and Apprenticeship Opportunities for 16- and 17-Year-Olds in Health Care Occupations Under the Fair Labor Standards Act”). The stated intent of the proposal is to expand job opportunities for young workers, however DOL is proposing a rule that has the potential to increase injuries to young workers and also endanger patients and residents in health care facilities. Further, there is no data or peer-reviewed studies that show that the proposal will lead to increased employment opportunities for young workers.¹

The use of a power-driven lift to move a person (as opposed to an inanimate object) introduces multiple factors that increase the complexity and hazard of the task. This is particularly true in health care settings, where employees are assisting patients with debilitated mental and/or physical conditions.

¹ DOL refers to a survey from 2012 of vocational job coordinators in Massachusetts to suggest that safety protections for young workers hinder their job prospects. The survey instrument and analysis of the data is not part of this rulemaking record. Moreover, we understand that the survey had only 22 respondents and its purpose was to assess the coordinators’ understanding of safety requirements concerning power-driven lift devices.
In 2011, at the request of the Wage and Hour Division, the experts at the National Institute for Occupational Safety and Health conducted a robust review of all the existing data on the use by young workers of power-driven lifts. NIOSH concluded that 16- and 17-year-old teens cannot safely operate power-driven hoists to lift and transfer patients by themselves. NIOSH’s biomechanical analyses indicated that 16- and 17-year-old workers do not have the physical strength required to 1) independently manipulate patients/residents when placing slings under them, and 2) safely push, pull, or rotate a portable hoist on wheels when loaded with a patient/resident. In addition, NIOSH indicated that 16- and 17-year old workers do not have the ability to properly assess the risks associated with using power-driven lifts. NIOSH concluded that “training alone is not sufficient to protect young workers from patient lifting related injuries.” The data and conclusions are described in the report, *NIOSH Assessment of Risks for 16- and 17-Year Old Workers Using Power-Driven Patient Lift Devices.*\(^2\) As noted in the report, and relevant to this rulemaking, NIOSH recommends that when using patient lifting devices, two caregivers should be involved, with at least one being an adult worker (i.e., age 18 years or older).

Below are key summary excerpts from the NIOSH report (page 10) of March 2011. The report was included in a letter to the Wage and Hour Division from Dr John Howard, Director of NIOSH:

1. Adolescent workers (age 14–18) have been shown to greatly underestimate the dangers associated with tasks known be hazardous.
2. The physical demands associated with operating a floor-based vertical lift device are likely to exceed the maximum recommended strength requirements for many 16- and 17-year old workers. This conclusion is based on excessive force requirements to place the sling under the patient, as well as excessive forces to push, pull, or rotate a floor-based lift loaded with a patient, especially if the floor is carpeted.
3. The physical demands associated with operation of a sit-to-stand lift assist device loaded with a patient is likely to exceed the maximum recommended strength requirements for many 16- and 17-year old individuals. This is based on excessive force requirements to push, pull, or rotate a sit-to-stand lift loaded with a patient across the floor, especially if the floor is carpeted.
4. While use of ceiling-mounted patient lifting devices generally requires less physical strength during the pushing, pulling, and rotating phase of the transfer, they still may present a potential risk of injury for 16- and 17-year old workers because of the excessive force requirements to place a sling under a patient. Although the forces required to push, pull, and rotate a ceiling-mounted lift are sufficiently low to avoid risk of musculoskeletal disorders, the forces required to place the sling under the patient are the same as for floor-based devices.
5. Operation of powered tuggers and equipment movers should be acceptable for 16- and 17-year old workers, assuming all safety precautions are followed. To be considered safe, the strength demands must be acceptable to 75 percent of 16- and 17-year old females.

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6. Two caregivers (one of whom should be an experienced caregiver at least 18 years of age) are recommended when using a power-driven patient lift to lift or transfer non-weight bearing residents.

7. Specific training alone is not sufficient to protect young workers from patient-lifting related injuries.

To protect young workers, NIOSH recommended that a 16-or 17-year-old employee, who completed training specific to the use of lifting devices, can work as part of a team to assist an experienced adult caregiver to transfer or move a patient/resident. This recommendation formed the basis of the current Wage and Hour Division enforcement policy, Field Assistance Bulletin No. 2011-3 which was implemented in 2011. The policy directive provides an option for those youth involved in a nurse’s aide training program to assist an adult worker in the use of a patient lifting device. DOL’s proposal, however, uses the phrase “independently operate” power-driven patient lifting devices. In plain language, this means that 16- or 17-year-old employees would be able to use these devices by themselves, a change that contradicts NIOSH’s data, conclusion and recommendations.

The change proposed by DOL ignores the existing scientific evidence. DOL fails to provide a risk assessment to support the proposed revocation of this safety protection for young workers. This proposal does not provide any updated data or published studies to demonstrate that the risk of injury for young workers no longer exists, nor does it offer any data to demonstrate employment opportunities for 16 and 17-year-old youth will be improved by revoking the current rule. This proposal is arbitrary, capricious, and not in accordance with the youth-employment provisions of the Fair Labor Standards Act. That law is intended to ensure that when youth are employed, the work is safe and does not jeopardize their health, well-being or education.

Patient lifting devices are an essential component of any safe patient handling program. However, as stated in the NIOSH Assessment of Risks for 16- and 17-Year Old Workers Using Power-Driven Patient Lift Devices, these devices are complicated to operate properly and pose hazards to workers and patients alike.

The U.S. Food and Drug Administration is responsible for evaluating and approving medical devices, including patient lifts. FDA notes that these devices provide many benefits, but they also pose “significant public health risks.”

In order to minimize these risks, FDA provides a lengthy list of best practices that must be in place prior to using patient lifting devices in order to minimize these risks. The list demonstrates the need for well-trained and knowledgeable staff who are capable of making these assessments. FDA’s list includes:

- Receive training and understand how to operate the lift.
- Match the sling to the specific lift and the weight of the patient. A sling must be approved for use by the patient lift manufacturer. No sling is suitable for use with all patient lifts.

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• Inspect the sling fabric and straps to make sure they are not frayed or stressed at the seams or otherwise damaged. If there are signs of wear, do not use it.
• Keep all clips, latches, and hanger bars securely fastened during operation.
• Keep the base (legs) of the patient lift in the maximum open position and situate the lift to provide stability.
• Position the patient’s arms inside the sling straps.
• Make sure that the patient is not restless or agitated.
• Lock the wheels on any device that will receive the patient such as a wheelchair, stretcher, bed, or chair.
• Make sure that the weight limitations for the lift and sling are not exceeded.
• Follow the instructions for washing and maintaining the sling.
• Create and follow a maintenance safety inspection checklist to detect worn or damaged parts that need immediate replacement.
• In addition to following these best practices, users of patient lifts must read all instructions provided by the manufacturer in order to safely operate the device.  

FDA’s Patient Lift Safety Guide spells out in more detail the complex nature of the use of lifting devices. The guide explicitly states that most lifts require two or more caregivers to safely operate.  

APHA opposes the Wage and Hour Division’s proposal to abandon the current enforcement policy which was implemented in 2011. This proposal is ill-advised, capricious and arbitrary and it contradicts the long-standing provisions of the FLSA that protect working youth. The proposal also ignores the best practices for safe patient handling regardless of the age of the worker.

APHA opposes this proposed rule because it reverses existing protective requirements which ensure that young workers and patients are not injured. There is no published evidence that demonstrates that the Wage and Hour Division’s 2011 enforcement policy has hindered or jeopardized employment opportunities for youth.

The Field Assistance Bulletin No. 2011-3 provides detailed and specific guidance that protects young workers and patients alike. It reinforces the principles of vocational education which provide specific training requirements and graduated job responsibilities and enhances healthy opportunities for youth interested in working in a health care setting. Operating machinery puts them at risk of injury that may have adverse health impacts for the rest of their lives and may jeopardize their future employment options. Protecting 16- and 17-year olds while they are new

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to the workforce will ensure that we have a healthy, future adult workforce which is critical for the health care needs we face.

The risk of harm to young workers is too great to abandon the common sense requirement that they participate in a nurse’s aide educational program and work as a team member to assist adult workers. For the safety of our children and patients, DOL must abandon this proposed rule. We urge the agency to instead codify the sensible and safe policy set out in Field Assistance Bulletin No. 2011-3 which allows a 16-or 17-year-old employee to use patient lifting devices only when they have completed the necessary training elements (see bulletin for details) and “only if they are assisting in the use of lifting devices as a junior member of at least a two-person team that is headed by an employee who is at least 18 years of age. All members of the team must be trained in the safe operation of the lifting devices being used.”

The Wage and Hour Division cannot simply disregard factual information and determinations that the agency made in the past. Youth deserve training and employment opportunities that will allow them to grow and develop their interests and skills. Placing them and their patients in jeopardy of harm is unnecessary and contrary to the very underpinnings of vocational education and job training programs which are designed to promote supervised and graduated work assignments based on the hazards of the job and the capabilities of the young worker.

Thank you for your attention to our comments.

Sincerely,

Georges C. Benjamin, MD
Executive Director

Attachments:
- NIOSH Assessment of Risks for 16- and 17-Year Old Workers Using Power-Driven Patient Lift Devices
- NIOSH Cover Letter to WHD from Dr John Howard
- Wage and Hour Division Field Assistance Bulletin No. 2011-3
- FDA Medical Hospital Devices and Supplies: Patient Lifts
- FDA Patient Lift Safety Guide