



July 8, 2015

[www.citizen.org](http://www.citizen.org)

# Little Support From Above

Health Care Industry Leaders Neither Endorse Nor Suggest  
Proposals to Address the Epidemic of Patient Handling Injuries

## **Acknowledgments**

This report was written by Taylor Lincoln, Research Director of Public Citizen's Congress Watch division. Congress Watch Researcher Justin Mendoza assisted in the collection of information. Congress Watch Director Lisa Gilbert edited the report.

## **About Public Citizen**

Public Citizen is a national non-profit organization with more than 400,000 members and supporters. We represent consumer interests through lobbying, litigation, administrative advocacy, research, and public education on a broad range of issues including consumer rights in the marketplace, product safety, financial regulation, worker safety, safe and affordable health care, campaign finance reform and government ethics, fair trade, climate change, and corporate and government accountability.



Public Citizen's Congress Watch  
215 Pennsylvania Ave. S.E  
Washington, D.C. 20003  
P: 202-546-4996  
F: 202-547-7392  
<http://www.citizen.org>

© 2015 Public Citizen.

## Introduction

**H**ealth care workers suffer more injuries requiring days away from work than those in any other industry.<sup>1</sup>

This report is the final in our series, “Nursing: A Profession in Peril,” on the topic of caregivers suffering injuries from lifting, transferring and positioning patients.<sup>2</sup> It reviews the views of prominent government agencies, organizations that represent health care workers and organizations that represent health care providers on how to address the quiet epidemic of injuries related to the handling of patients.

In brief, government agencies, including the Occupational Safety and Health Administration (OSHA) and the National Institute for Occupational Safety and Health (NIOSH), recommend much more stringent safeguards than currently exist.

Organizations representing health care workers, including associations and labor unions, appear to support legislation to institute greater safeguards across the board.

National organizations representing health care providers do not appear to support any regulatory proposals intended to reduce injuries associated with patient handling, nor do they appear to publicly advocate non-regulatory solutions. Not only do industry representatives reject regulatory proposals to reduce injuries to health care workers, they also oppose proposals aimed at improving reporting of workplace injuries.

## Regulatory Organizations

The Occupational Safety and Health Act of 1970 declared it a U.S. policy “to assure so far as possible every working man and woman in the Nation safe and healthful working conditions.”<sup>3</sup> OSHA is tasked with enforcing that law.

But OSHA’s work has been severely constricted by Congress. For example, in November 2000, OSHA issued a regulation that required employers to implement programs to combat work-related musculoskeletal disorders (MSDs), which health care workers often suffer from handling patients.<sup>4</sup> But that rule never took effect. In 2001, the U.S. House and Senate passed a joint resolution repealing it.<sup>5</sup> Because Congress repealed the regulation via the

---

<sup>1</sup> Press release, U.S. Bureau of Labor Statistics, *Table 2: Number, Median Days Away From Work, and Incidence Rate for Nonfatal Occupational Injuries and Illnesses Involving Days Away From Work by Ownership, Industry, And Nature Of Injury*, 2013 (Dec. 16, 2014), <http://1.usa.gov/1GxDhx2>.

<sup>2</sup> The series of reports is available at <http://www.citizen.org/Page.aspx?pid=6563>.

<sup>3</sup> The Occupational Safety and Health Act, 29 U.S.C. § 651(2)(b) (1970).

<sup>4</sup> 29 CFR Part 1910, *Ergonomics Program; Final Rule*, 65 FEDERAL REGISTER 68261 (Nov. 14, 2000), <http://1.usa.gov/1ITrvRA>.

<sup>5</sup> *President Bush Signs Law to Repeal Workplace Ergonomic Regulations*, THE WALL STREET JOURNAL (March 20, 2001), <http://on.wsj.com/1HLxwTn>.

Congressional Review Act, its action forbade OSHA from creating a new regulation “substantially similar” to the one that was repealed.<sup>6</sup>

Assistant Secretary of Labor David Michaels, who is in charge of OSHA, has suggested that his agency is practically prohibited from enacting a standard to protect health care workers from MSDs in the absence of action by Congress. He has called for passage of a law to fix this problem.

“There’s no question, a national law requiring protection in hospitals would protect workers and would result in the reduction in musculoskeletal injuries in hospitals,” Michaels told National Public Radio. “Not just for protecting the health and safety of the workers, but in fact they will protect the health and safety of their patients if they do the right thing.”<sup>7</sup>

In the meantime, Michaels and the agency have taken incremental steps to better protect health care workers. In July 2014, Michaels sent a letter to 5,000 hospital executives announcing a new government web site that provided advice on safe patient handling.

“Did you know that a hospital is one of the most hazardous places to work in America?” Michaels’ letter began.<sup>8</sup>

“Give the enclosed self-assessment to your safety manager and have him/her report back to you with results and how your facility compares with the benchmarks from high-performing hospitals,” Michaels wrote. “Once you review your results, I’m confident that you’ll begin the process of protecting workers, enhancing patient safety, and saving money.”<sup>9</sup>

Because it lacks a specific standard outlining proper patient handling procedures, OSHA cannot prescribe specific requirements, such as the purchase of equipment to facilitate safe handling of patients. But materials OSHA has produced, such as the self-assessment to which Michaels’ letter referred, essentially call for such an approach.

For instance, the OSHA self-assessment instructs readers to “use the questions below to identify good programs and practices in place in your own hospital.”<sup>10</sup>

Those questions include: “Do we have a written safe patient handling policy or program?” ... “Does our program minimize the use of manual lifting, repositioning, or transfers (e.g.,

---

<sup>6</sup> See, e.g., Stuart Shapiro, *The Congressional Review Act, Rarely Used and (Almost Always) Unsuccessful*, THE HILL (April 17, 2015), <http://bit.ly/1JlkuX0>.

<sup>7</sup> Daniel Zwerdling, *Hospitals Fail to Protect Nursing Staff From Becoming Patients*, NATIONAL PUBLIC RADIO (Feb. 4, 2015), <http://n.pr/113xF4o>.

<sup>8</sup> Letter from Assistant Secretary of Labor David Michaels to hospital executives (July 2014). (Furnished to Public Citizen by the Occupational Safety and Health Administration.)

<sup>9</sup> *Id.*

<sup>10</sup> *Safe Patient Handling, A Self-Assessment*, OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (undated) <http://1.usa.gov/1CUE7n4>.

through a “minimal lift” policy)?” and “Do we provide our caregivers with easy access to equipment (e.g., slide sheets, portable or ceiling-mounted lifts) to assist with patient handling tasks?”

Although OSHA cannot mandate specific approaches in the absence of a regulation, it does have authority to sanction employers for violating the catch-all “general duty” clause that requires workplaces to be safe. This clause requires employers to provide conditions that are “free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employee.”<sup>11</sup>

In late June of this year, underscoring its recognition of the hazards posed by handling patients, OSHA issued a memo announcing that all inspections of inpatient health care settings would cover five potential hazards, including “musculoskeletal disorders (MSDs) relating to patient or resident handling.”<sup>12</sup>

The literal significance of the memorandum is unclear, as inspectors should already have been regularly assessing the areas outlined. However, OSHA’s decision to issue a communication on the topic may signal a greater effort to enhance awareness of unaddressed hazards and to seek corrections of them.<sup>13</sup>

OSHA has tried similar approaches in the past. It conducted a “national emphasis program” on ergonomic stressors and other hazards at nursing homes from April 2012 to April 2015.<sup>14</sup>

According to figures published by OSHA, ergonomic hazards were evaluated in 596 inspections stemming from that national emphasis program. Citations for hazardous ergonomic conditions were issued pursuant to the general duty clause in just 11 instances. But “ergonomic hazard alert letters” were issued to employers 192 times.<sup>15</sup> The letters likely were issued in cases where inspectors found hazards in need of remediation did not believe the evidence was sufficiently flagrant to meet the burden of proof under the general duty clause.

---

<sup>11</sup> The Occupational Safety and Health Act, 29 U.S.C. § 654, 5(a)1 (1970).

<sup>12</sup> Memo from Dorothy Dougherty, deputy assistant secretary, U.S. Department of Labor, to Regional Administrators/State Designees (Occupational Safety and Health Administration) (June 25, 2015), <http://1.usa.gov/1dGln3Y>.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

## National Institute for Occupational Safety and Health

The National Institute for Occupational Safety and Health (NIOSH) is part of the Centers for Disease Control and Prevention. Its role is to conduct research and make recommendations for the prevention of work-related injury and illness.<sup>16</sup>

Guidelines published by NIOSH in 1994 said that no worker should lift more than 51 pounds, but added that 51 pounds was too much for health care workers because the loads they lift are often unstable or pose other challenges.<sup>17</sup> A subsequent paper by a co-author of those NIOSH guidelines concluded that the lifting limit in health care settings should be 35 pounds – and less for work conducted in restricted spaces.<sup>18</sup>

NIOSH has not officially adopted the 35 pound standard, but has incorporated that recommendation into some of its publications. For instance, a guide it published on how nursing schools should train their students to safely handle patients said, “During any patient-transferring task, if any caregiver is required to lift more than 35 lbs. of a patient’s weight, then the patient should be considered to be fully dependent and assistive devices should be used for the transfer.”<sup>19</sup>

Experts agree that many nurses regularly lift more than 35 pounds.<sup>20</sup> The American Nurses Association (ANA) claims that a nurse cumulatively lifts 3,600 pounds per day, on average.<sup>21</sup>

In a 2006 document, NIOSH issued the following advice to managers of nursing homes: “Do not permit manual lifting except in life-threatening circumstances.”<sup>22</sup>

## The Joint Commission

The Joint Commission is a nongovernmental regulatory organization that is authorized by the Centers for Medicare and Medicaid Services to accredit providers to be eligible to receive payments for caring for Medicare beneficiaries.<sup>23</sup> Although the Joint Commission is

---

<sup>16</sup> About NIOSH, *The Centers for Disease Control and Prevention* (undated; viewed on July 5, 2015), <http://1.usa.gov/1dGyDFI>.

<sup>17</sup> Thomas R. Waters, Vern Putz-Anderson and Arun Garg, APPLICATIONS MANUAL FOR THE REVISED NIOSH LIFTING EQUATION (1994).

<sup>18</sup> Thomas R. Waters, *When Is It Safe to Manually Lift a Patient? The Revised NIOSH Lifting Equation Provides Support for Recommended Weight Limits*, 107 AMERICAN JOURNAL OF NURSING 53 (August 2007).

<sup>19</sup> Thomas R. Waters, *et al.*, *Safe Patient Handling Training for Schools of Nursing*, NATIONAL INSTITUTE FOR OCCUPATIONAL SAFETY AND HEALTH (November 2009), <http://1.usa.gov/1HKKCA>.

<sup>20</sup> See, e.g., Daniel Zwerdling, *Hospitals Fail to Protect Nursing Staff From Becoming Patients*, NATIONAL PUBLIC RADIO (Feb. 4, 2015), <http://n.pr/1I3xF4o>.

<sup>21</sup> *Safe Patient Handling Movement*, AMERICAN NURSES ASSOCIATION (undated; viewed on July 5, 2014), <http://bit.ly/1M534Bu>.

<sup>22</sup> James W. Collins, *et al.*, *Safe Lifting and Movement of Nursing Home Residents*, NATIONAL INSTITUTE FOR OCCUPATIONAL SAFETY AND HEALTH (February 2006), <http://1.usa.gov/1H27y7o>.

<sup>23</sup> *CMS Renews Joint Commission Home Health Accreditation Deeming Authority*, JOINT COMMISSION ONLINE (May 7, 2014), <http://bit.ly/1ReGs83>.

not the only entity authorized to accredit hospitals, about 89 percent of accredited hospitals obtain their status from the Joint Commission.<sup>24</sup>

Within the United States' decentralized health care system, the Joint Commission may have the greatest overarching mandate to regulate the safety of health care providers.

The Joint Commission worked on the issue of patient handling. In 2012, in conjunction with NIOSH and the Healthcare and Social Assistance Sector Council, it published a monograph on the effects of patient handling practices on worker and patient safety.<sup>25</sup>

Because of its potential significance as a regulator of hazards posing risks of causing MSDs, Public Citizen asked the Joint Commission a series of questions for this report.

The organization's responses indicated that its leaders view risks to health care workers to fall within their purview. But, in the absence of a federal regulation relating to patient handling, the organization appears to view itself as largely unable to take meaningful action against providers for patient handling practices that may pose a risk to employees. [Public Citizen's questions and the Joint Commission's responses are printed in this report's Appendix.]

In its response to Public Citizen, the Joint Commission said that "elements of the accreditation requirements that are related to health care worker safety" include requirements that the "hospital identifies safety and security risks associated with the environment of care that could affect patients, staff and other people." Further accreditation criteria require that "the hospital takes action to minimize or eliminate identified safety and security risks in the physical environment."<sup>26</sup>

But, the Joint Commission wrote to Public Citizen, "setting standards for health care worker safety is under the purview of OSHA. All Joint Commission-accredited organizations are expected to be fully compliant with applicable federal laws and regulations, therefore we would expect compliance with OSHA requirements as part of our accreditation process."<sup>27</sup>

The Joint Commission said that it "does not define what should be included in a safe patient handling program." Further, "because we do not have a standard specific to patient handling, we do not directly evaluate this during surveys."<sup>28</sup>

Public Citizen submitted up a follow up question essentially asking how the Joint Commission could require the hospital to identify safety risks to employees and take action to eliminate them but not include the well-chronicled risks relating to patient handling in its

---

<sup>24</sup> *Facts About Hospital Accreditation*, THE JOINT COMMISSION (Jan. 15, 2015), <http://bit.ly/1CUM5fT>.

<sup>25</sup> *Improving Patient and Worker Safety, Opportunities for Synergy for Collaboration and Innovation*, THE JOINT COMMISSION (2012), <http://bit.ly/1TeNAyS>.

<sup>26</sup> E-mail from Joint Commission to author (July 1, 2015).

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

surveys of hospitals. [Full text in Appendix] In response to the follow up question, the Joint Commission wrote:

“Although we do not have specific standards about patient handling procedures, we do consider related practices as part of the accreditation review. For example, areas that might be evaluated include core worker competencies such as lifting or transferring patients. If employees are not properly trained, then the organization may be cited for noncompliance with a Human Resources standard. Maintenance of equipment such as a patient lift would be evaluated under the Environment of Care standards.”<sup>29</sup>

The publication schedule for this report did not allow Public Citizen inquire as to the number of organizations that may have been cited under the “related practices” listed in the Joint Commission’s follow-up response.

## Representatives of Health Care Workers

Organizations that represent caregivers appear to endorse legislation to better regulate patient handling across the board.

The ANA, which represents registered nurses, has issued a blanket policy statement of supporting “actions and policies that result in the elimination of manual patient handling.”<sup>30</sup>

Federal legislation to protect health care workers has been introduced in Congress several times in the past decade but has not been approved. The Nurse and Health Care Worker Protection Act of 2013, introduced by Rep. John Conyers (D-Mich.), would have required “the use of engineering and safety controls to perform handling of patients and the elimination of injuries from manual handling of patients by direct-care registered nurses and all other health care workers.”<sup>31</sup>

The ANA and the American Association of periOperative Registered Nurses (AORN) supported the legislation.<sup>32</sup>

Insight into other organizations’ views on regulatory approaches to reducing health care workers’ injuries can be gleaned by examining statements submitted during the legislative

---

<sup>29</sup> E-mail from Joint Commission to author (July 6, 2015).

<sup>30</sup> *Safe Patient Handling Movement*, AMERICAN NURSES ASSOCIATION (undated; viewed on July 5, 2014), <http://bit.ly/1M534Bu>.

<sup>31</sup> Nurse and Health Care Worker Protection Act of 2013, H.R. 2480, 113th Cong. (2013-2014), <http://1.usa.gov/1H8EFtj>.

<sup>32</sup> *Federal Bill Would Eliminate Manual Patient Handling*, AMERICAN ASSOCIATION OF PERIOPERATIVE REGISTERED NURSES (July 31, 2013), <http://bit.ly/1feXzFX>.

debate that resulted in the New York Patient Handling Act.<sup>33</sup> Approved in 2014, it is the most recent of 11 state laws that address patient handling issues.<sup>34</sup>

The New York State AFL-CIO, the American Federation of County, State and Municipal Employees, the New York State Public Employees Federation, the New York State Nurses Association and the Service Employees International Union, among other labor groups, submitted letters of support for the legislation.<sup>35</sup>

## Representatives of Health Care Providers

Some health care providers indisputably have taken the initiative to better protect their workers, as an earlier report in this series showed.<sup>36</sup> But these initiatives appear to be the exception. Even the chief hospital trade association, the American Hospital Association, acknowledges that “just a minority of hospitals” are “really moving forward with this.”<sup>37</sup>

For this report, Public Citizen attempted to obtain the positions of organizations representing health providers by submitting to them an open-ended question on patient handling injuries. We promised to publish their responses verbatim in this report’s Appendix.

Associations representing providers were sent the following context and question:

*More health care workers are forced to miss work due to injury than workers in any other profession. The rate of injuries as well as the gross numbers are higher for health care workers than for nearly all other professions. Eight of 10 respondents to a survey by the American Nurses Association said they frequently suffer from musculoskeletal pain.*

*Question: What policies or positions does your organization have to address the issue?*

Public Citizen sent this query to the American Hospital Association (AHA) (representing “nearly 5,000 hospitals, health care systems, networks”<sup>38</sup>), the Federation of American Hospitals (representing “more than 1,000 investor-owned or managed community hospitals and health systems”<sup>39</sup>), the American Health Care Association (“representing more than 11,000 non-profit and for-profit nursing facility, assisted living, developmentally-

<sup>33</sup> Public Health Law § 2997(g)-(l) (2014), <http://bit.ly/1H1qrbu>.

<sup>34</sup> KEITH WRIGHTSON AND TAYLOR LINCOLN, PUBLIC CITIZEN, UPLIFTING AN INDUSTRY (June 24, 2015), <http://bit.ly/1QQ3p1l>.

<sup>35</sup> *Safe Patient Handling in New York Short Term Costs Yield Long Term Results* (report by Chair of the New York State Assembly on Workplace Safety, the Chair of the New York State Assembly Committee on Labor and the Chair of the New York State Assembly Committee on Health) (May 2011), <http://bit.ly/1TeJlTU>.

<sup>36</sup> TAYLOR LINCOLN, PUBLIC CITIZEN, PAY IT FORWARD (July 1, 2015), <http://bit.ly/1IZBsdl>.

<sup>37</sup> Daniel Zwerdling, *Hospitals Fail to Protect Nursing Staff From Becoming Patients*, NATIONAL PUBLIC RADIO (Feb. 4, 2015), <http://n.pr/113xF4o>.

<sup>38</sup> *About the AHA*, AMERICAN HOSPITAL ASSOCIATION, <http://bit.ly/1KEMjzC>.

<sup>39</sup> *About FAH*, FEDERATION OF AMERICAN HOSPITALS, <http://bit.ly/1IirWkV>.

disabled, and subacute care providers”<sup>40</sup>) and the National Association of Home Care and Hospice (which represents “the nation's 33,000 home care and hospice organizations”<sup>41</sup>).

The AHA and National Association of Home Care and Hospice replied that they declined to respond to the question. Public Citizen did not receive responses from the Federation of American Hospitals or the American Health Care Association. Follow up calls and e-mails were submitted to those organizations, but that outreach also failed to elicit responses.

Public Citizen also searched news accounts, testimony to legislative panels and organizations’ web sites in an attempt to gain insight into these organizations’ positions on this issue.

### **American Hospital Association**

In anticipation of federal patient handling legislation it expected to be introduced in 2010, the American Hospital Association preemptively issued a statement of opposition.

“Nurses and other caregivers are the foundation of patient care in the hospital. Which is why protecting *their* health is of the utmost importance,” the statement said.<sup>42</sup>

But, referring to a bill that had been introduced in the previous session of Congress, the AHA wrote, “though well-intentioned, the measure contained unreasonably strict guidelines that could jeopardize – and even prevent – proper patient care. The AHA and [American Society for Healthcare Human Resources Administration] oppose this and other proposals that would mandate specific methods of handling patients.”<sup>43</sup>

Separately, in 2010, an official of the American Society for Healthcare Engineering (an affiliate of the AHA) indicated opposition to federal safe patient handling legislation.

“The safe-patient handling and lift standards as presented will not allow enough time to alter the built environment and install mechanical lifting devices before the no-lift policy is mandated,” said American Society for Healthcare Engineering deputy executive director Douglas S. Erickson. “This will create havoc in the health care industry as organizations will panic and do something – anything – to avoid impending OSHA fines, ultimately wasting a tremendous amount of health care resources.”<sup>44</sup>

If Erickson expected that hospitals would voluntarily implement such lifting devices in the absence of legislation, he would have been disappointed. In February 2015, National Public

---

<sup>40</sup> *About AHCA*, AMERICAN HEALTH CARE ASSOCIATION, <http://bit.ly/1LREQh4>.

<sup>41</sup> *About NAHC*, NATIONAL ASSOCIATION FOR HOME CARE AND HOSPICE, <http://www.nahc.org/>.

<sup>42</sup> *Protecting Caregivers’ Health and Preventing Injuries Safe Patient Lifting*, AMERICAN HOSPITAL ASSOCIATION AND AMERICAN SOCIETY FOR HEALTHCARE HUMAN RESOURCES ADMINISTRATION (2009), <http://bit.ly/1H2YnUf>. See also, *Health Care Tops in Injuries on the Job*, AHC MEDIA (Dec. 1, 2009), <http://bit.ly/1dKRYiN>.

<sup>43</sup> *Id.*

<sup>44</sup> *Federal Patient-handling Legislation Gains Momentum*, AHC MEDIA (July 1, 2010), <http://bit.ly/1HGtOKC>.

Radio broadcast a series of reports, “Injured Nurses,” on the epidemic of health care workers’ injuries from lifting patients.<sup>45</sup>

In one of those reports, a lobbyist for the AHA indicated that few hospitals have instituted comprehensive safe patient handling programs. “There are, you know, just a minority of hospitals that are ... really moving forward with this,” Carla Luggiero, the senior associate director of federal relations and lobbyist for the American Hospital Association, told NPR. “Most of them are very slow to get on the train.”<sup>46</sup>

Similar to the AHA’s objection to the federal legislation, representatives of health care providers objected across the board to the proposed New York patient handling legislation. The Greater New York Hospital Association, the Healthcare Association of New York State, the New York Association of Home and Services for the Aging, and the Home Care Association of New York State each submitted letters of opposition.<sup>47</sup>

### **Coalition for Workplace Safety / U.S. Chamber of Commerce**

In research for this report, Public Citizen learned of the existence of the Coalition for Workplace Safety, which identifies itself as “a group of associations and employers who believe in improving workplace safety through cooperation, assistance, transparency, clarity, and accountability.” Among its leaders is Marc Freedman, executive director of labor law policy at the U.S. Chamber of Commerce.<sup>48</sup>

The web site of the Coalition for Workplace Safety includes several submissions to public agencies indicating opposition to proposed rules by OSHA to more closely track musculoskeletal injuries and to increase public access to employers’ reports of worksite injuries.<sup>49</sup>

The American Health Care Association and its affiliated National Center for Assisted Living (which are members of the Coalition for Workplace Safety) submitted separate comments

---

<sup>45</sup> Daniel Zwerdling, *Hospitals Fail to Protect Nursing Staff From Becoming Patients*, NATIONAL PUBLIC RADIO (Feb. 4, 2015), <http://n.pr/113xF4o>.

<sup>46</sup> *Id.*

<sup>47</sup> *Safe Patient Handling in New York Short Term Costs Yield Long Term Results* (report by Chair of the New York State Assembly on Workplace Safety, the Chair of the New York State Assembly Committee on Labor and the Chair of the New York State Assembly Committee on Health) (May 2011), <http://bit.ly/1TeJlTU>.

<sup>48</sup> *Working for Safe Workplaces*, WORKING FOR SAFETY (undated; viewed on July 5, 2015), <http://bit.ly/1LN3ZbK>.

<sup>49</sup> See, e.g., Coalition for Workplace Safety Statement OSHA Public Meeting on Proposed Rule to Improve Tracking of Workplace Injuries and Illnesses (Jan. 9, 2014), <http://bit.ly/1Tf8H40>; and Comments on OSHA Docket No. OSHA-2013-0023; Improve Tracking of Workplace Injuries and Illnesses, Supplemental Notice of Proposed Rulemaking (79 Fed. Reg. 47605, August 14, 2014). Posted on Coalition for Workplace Safety web site at <http://bit.ly/1CfsDiP>.

in opposition to a proposed OSHA rule calling for public disclosure of employer injury data.<sup>50</sup>

Public Citizen sent an e-mail to three leaders of the Coalition for Workplace Safety, including the U.S. Chamber's Freedman. The leaders were asked the same question that we posed to representatives of health care providers: "What policies or positions does your organization have to address the issue" of injuries suffered by health care workers due to the handling of patients?

"The Coalition for Workplace Safety operates to represent the views of the various member associations on some, but not all OSHA matters." Freedman responded. "The CWS does not have a position on the question(s) you pose."<sup>51</sup>

## Conclusion

Few informed people would dispute that the frequency and severity of musculoskeletal injuries among employees is an unacceptable problem that must be addressed.

These are the most frequent type of workplace injuries in the United States and they often result from activities such as lifting more than 35 pounds, which experts say are fundamentally unsafe. These injuries often end careers and leave their victims permanently disabled.<sup>52</sup>

The leading regulatory agencies and representatives of caregivers appear to be in virtual (if not complete) agreement that regulatory action is needed.

It is doubtful that health care executives believe that the nurses and other health care employees who furnish the lion's share of bedside care should labor in danger of life-altering injuries, as many currently do. But this review did not find any meaningful systemic initiatives or proposals by health care industry representatives to address the problem. Such efforts or proposals may exist. If so, however, the industry appears to have kept them shielded from public view and its representatives (including the AHA) did not choose to share any for this report.

Employers are legally required to provide their employees with safe and healthful working conditions.<sup>53</sup> This series of reports, the series of broadcasts by National Public Radio earlier this year, and a wealth of statistics on health care worker injuries demonstrate beyond doubt this this requirement is not being consistently fulfilled.

---

<sup>50</sup> Comments on OSHA Docket No. OSHA-2013-0023; Improve Tracking of Workplace Injuries and Illnesses (78 Fed. Reg 67254, Nov. 8, 2013). Posted on American Health Care Association web site at <http://bit.ly/1G2jKUV>.

<sup>51</sup> E-mail from Marc Freedman, executive director of labor law policy, U.S. Chamber of Commerce, to author (July 6, 2015).

<sup>52</sup> See, e.g., TAYLOR LINCOLN, PUBLIC CITIZEN, THE HEALTH CARE INDUSTRY'S CASTOFFS (June 9, 2015), <http://bit.ly/1B8sfTh>.

<sup>53</sup> The Occupational Safety and Health Act, 29 U.S.C. § 651(2)(b) (1970).

Well intentioned people may disagree on the correct course to ensure that health care workers are better protected. Ultimately, however, the health care industry bears responsibility for this problem. Its opposition to legislation in the absence of forwarding promising alternatives is untenable.

A change of approach on the industry's part is long overdue. In the meantime, legislators and regulators should exercise their public protection responsibilities to help health care executives see the light.

## Appendix

Responses of the Joint Commission to questions submitted by Public Citizen.<sup>54</sup>

\*\*\*

**Public Citizen:** More health care workers are forced to miss work due to injury than workers in any other profession. The rate of injuries as well as the gross numbers are higher for health care workers than for nearly all other professions.

Eight of 10 respondents to a survey by the American Nurses Association said they frequently suffer from musculoskeletal pain.

**Public Citizen:** 1. Does the facet of safe patient handling procedures intended to avoid workers' injuries fall within the Joint Commission's domain?

**Joint Commission:** Yes, it does. The Joint Commission has worked closely on this issue with the relevant federal agencies. In 2012, we produced a monograph on patient and worker safety in collaboration with the National Institute for Occupational Safety and Health (NIOSH), National Occupational Research Agenda (NORA) and the Healthcare and Social Assistance Sector Council. However, setting standards for health care worker safety is under the purview of OSHA. All Joint Commission-accredited organizations are expected to be fully compliant with applicable federal laws and regulations, therefore we would expect compliance with OSHA requirements as part of our accreditation process.

**Public Citizen:** 2. What policies or positions does your organization have to address the issue of worker injuries?

**Joint Commission:** The Joint Commission does not have standards that directly address safe patient handling. However, there are elements of the accreditation requirements that are related to health care worker safety, including:

- The hospital identifies safety and security risks associated with the environment of care that could affect patients, staff and other people coming to the hospital's facilities.

---

<sup>54</sup> The Joint Commission's responses were sent by e-mail to author (July 1, 2015, and July 6, 2015).

- The hospital takes action to minimize or eliminate identified safety and security risks in the physical environment.
- The hospital investigates occupational illnesses and staff injuries.

However, setting standards for health care worker safety is under the purview of OSHA. All Joint Commission-accredited organizations are expected to be fully compliant with applicable federal laws and regulations, therefore we would expect compliance with OSHA requirements as part of our accreditation process.

**Public Citizen:** 3. Does the Joint Commission have a definition of a safe patient handling program? For instance, the American Nurses Association calls for numerous factors, including the existence of a safe patient handling policy, an oversight committee and an objective of requiring minimal manual lifting?

**Joint Commission:** The Joint Commission does not define what should be included in a safe patient handling program.

**Public Citizen:** 4. Does the Joint Commission evaluate providers' patient handling procedures and consider them when making accreditation decisions?

**Joint Commission:** Because we do not have a standard specific to patient handling, we do not directly evaluate this during surveys.

**Public Citizen:** 5. Does the Joint Commission maintain any data relating to the percentage of providers whose patient handling policies and practices meet the Joint Commission's expectations?

**Joint Commission:** No. We do not have data on this for the reasons described above.

\*\*\*

Public Citizen submitted a follow up question to the Joint Commission.

**Public Citizen:** Upon reading through this material, it seems fair to say, at least in a general sense, that the Joint Commission considers the provision of a safe working environment a requirement for accreditation. This seems implicit in the three bullets in response to question number 2. But, if I'm reading this right, the Joint Commission does not consider the safety of patient handling procedures (answer to question number 4).

This seems to me to contradict. How could a safe working environment be confirmed without evaluating the safety of patient handling procedures, which are such a well-recognized hazard?

I am curious as to whether I'm misreading this or, if not, why the Joint Commission would not consider safe patient handling practices part of its review criteria.

**Joint Commission:** The Joint Commission sets standards based on expert opinion and guidance from regulatory bodies. As Public Citizen also noted in its recent report, there is currently no clear guidance on when patient lifts should be used, so we have not incorporated this explicitly in our standards or our review process.

Although we do not have specific standards about patient handling procedures, we do consider related practices as part of the accreditation review. For example, areas that might be evaluated include core worker competencies such as lifting or transferring patients. If employees are not properly trained, then the organization may be cited for noncompliance with a Human Resources standard. Maintenance of equipment such as a patient lift would be evaluated under the Environment of Care standards.

It would be extremely difficult to train surveyors on how to recognize whether staff was lifting a patient in an unsafe manner because there are no clear regulations on safe lifting. The Occupational Safety and Health Administration (OSHA) is the regulatory authority and expert in these matters, and we defer to their agency to guide organizations on the best policies and procedures to safeguard their employees.