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## OSHA Focuses Enforcement Resources on Nursing and Residential Care Facilities

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The Occupational Safety and Health Administration (OSHA) has announced a National Emphasis Program (NEP) to encourage compliance with safety and health standards at nursing and residential care facilities through programmed inspections. The NEP<sup>1</sup>, which directs OSHA compliance officers to focus their inspections on ergonomic stressors associated with lifting patients; slips, trips, and falls; bloodborne pathogens; exposure to tuberculosis; and workplace violence, took effect on April 5, 2012 and is scheduled to remain in place for three years. This Special Report summarizes key aspects of the NEP and provides guidance to employers to help ensure they are in compliance with the OSHA standards identified as target areas in the NEP.

### Background

According to OSHA, surveys indicate that nursing and residential care facilities “continue to have one of the highest rates of injury and illness.” Citing data from the Bureau of Labor Statistics, the NEP reports that these facilities experienced over two times the average DART rate (days away, restricted work activity, and job transfer) for private industry in calendar year 2010. In light of the safety and health challenges facing nursing and residential care facilities, OSHA issued its NEP to drive compliance with the relevant standards – a common tactic used by the agency to promote industry-wide compliance.

All nursing and residential care facilities in NAICS codes 623110, 623210, and 623311 (formerly SIC codes 8051-Residential Care Facilities, 8052-Intermediate Care Facilities, and 8059-Nursing and Residential Care Facilities, Not Elsewhere Classified) with a DART rate of over 10.0 may be targeted under the NEP. The enforcement program will not focus on residential mental health and substance abuse facilities or assisted living facilities without on-site nursing care operations. All State-plan States are required to adopt the NEP or an equivalent program.

### Conduct of Inspections

The NEP provides detailed guidance to compliance officers on how to conduct OSHA inspections under the program. In general, compliance officers are directed to focus on the following areas: ergonomics; slips, trips, and falls; bloodborne pathogens; tuberculosis; and workplace violence. Other issues, such as methicillin-resistant *staphylococcus aureus* (MRSA) and Hazard Communication may also be examined.

<sup>1</sup> CPL 03-00-016.

### *A. Ergonomics*

The NEP instructs compliance officers to focus on risk factors for musculoskeletal disorders (MSDs) associated with lifting, transferring, or repositioning patients. The initial assessment of MSD risk factors, according to the NEP, should involve “an assessment of establishment incidence and severity rates, whether such rates are increasing or decreasing over a three-year period, and whether the establishment has implemented a process to address these hazards in a manner which can be expected to have a useful effect.”

With respect to whether an employer is adequately addressing MSD risk factors, compliance officers are given a list of subjects to examine:

#### Program Management

- Is there a system for hazard identification and analysis?
- Who has the responsibility and authority for compliance with this system? Have employees provided input 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?
- Have changes in policies/procedures had an effect on resident handling injuries and illnesses?

#### Program Implementation

- How is resident mobility determined?
- What is the decision logic for using lifting, transferring, or repositioning devices, and how often – and under what circumstances – does manual lifting, transferring, or repositioning occur?
- Who decides how to lift, transfer, or reposition residents?
- Is there an adequate quantity and variety of assistive devices for appropriate lifting, transferring, or repositioning that are available and operational?
- Are there an adequate number of slings for lifting devices?
- Are the policies and procedures appropriate to eliminate or reduce exposure to the manual lifting, transferring, or repositioning hazards at the establishment?

#### Employee Training

- Have employees (nursing and therapy) been trained on how to recognize the hazards associated with manual resident lifting, transferring, or repositioning; the early reporting of injuries; and the establishment’s process for abating these hazards?
- Can the employees demonstrate competency in performing lifting, transferring, or repositioning using assistive devices?

#### Occupational Health Management

- Is there a process to ensure that work-related disorders are identified and treated early to prevent the occurrence of more serious problems and does this process include restricted or accommodated work assignments?

In many ways, the areas identified in the NEP for compliance officers to examine track the programmatic approach to ergonomics taken by OSHA in its short-lived Ergonomics Program Final Rule, as well as its Ergonomics Program Management *Guidelines for Nursing Homes*. The terminology is different, but the core concepts that OSHA wants employers to embrace (*i.e.*, implementing an ergonomics program in the workplace to reduce the manual movement of patients, with management commitment and employee participation) are the same.

### *B. Slips, Trips, and Falls*

Under the NEP, compliance officers also are instructed to identify hazards associated with slips, trips, and falls – a common source of injuries in nursing and residential care facilities. During the “walkaround,” compliance officers are instructed to examine such things as slippery or wet floors, cluttered or obstructed work areas and passageways, inadequate lighting, damaged or inadequate stairs or stairways, and elevated work surfaces that do not have standard guardrails. Employers should have policies and procedures in place, in particular, to deal with wet surfaces. Examples given in the NEP include posting signs/barriers alerting employees to wet floors, keeping passageways/aisles clear of clutter, and using appropriate footwear.

### *c. Bloodborne Pathogens*

The most frequently cited standard for nursing and residential care facilities is bloodborne pathogens (29 CFR 1910.1030). It is, therefore, not surprising that OSHA would include bloodborne pathogens as an area of focus in the NEP. The NEP refers compliance officers to OSHA’s compliance directive on bloodborne pathogens – CPL 02-02-069, “Enforcement Procedures for the Occupational Exposure to Bloodborne Pathogens” – for detailed guidance on examining relevant bloodborne hazards. However, it also instructs compliance officers specifically to:

- Evaluate the employer’s written exposure control plan.
- Assess the implementation of appropriate engineering and work practice controls.
- Ensure that proper work practices and personal protective equipment are in place.
- Assess whether containment of regulated waste is performed properly.
- Evaluate and document the availability of hand washing facilities.
- Assess the use of appropriate personal protective equipment.
- Ensure that a program is in place for immediate and proper clean-up of spills, and disposal of contaminated materials, specifically for spills of blood or other body fluids.
- Ensure that the employer has chosen an appropriate EPA-approved disinfectant to clean contaminated work surfaces.
- Determine that the employer has made available to all applicable employees the hepatitis B virus (HBV) vaccine.
- Ensure that healthcare workers who have contact with residents or blood and are at ongoing risk for percutaneous injuries are offered a test for antibody to the HBV surface antigen.
- Investigate procedures implemented for post-exposure evaluation and follow-up.
- Observe whether appropriate warning labels and signs are present.
- Determine whether employees receive required training.
- Evaluate the employer’s sharps injury log for deficiencies.

Nursing and residential care employers should expect compliance officers to examine their bloodborne pathogens programs closely. At a minimum, affected employers should review their written exposure control plans to ensure that they are complete, site-specific, and fully-implemented.

*d. Tuberculosis*

Citing the higher rates of tuberculosis among the populations comprising residents in nursing and residential care facilities, the NEP focuses compliance officers on employer policies and practices to protect exposed employees. Compliance officers are advised specifically to determine if the establishment has procedures in place to promptly isolate and manage the care of a resident with suspected or confirmed TB, including an isolation room and other abatement procedures. Facilities that have not had a suspected or confirmed tuberculosis case among residents within the previous six months prior to the date of the opening conference should not be subjected to this part of the inspection.

*e. Workplace Violence*

The final area of emphasis specifically identified in the NEP is workplace violence. OSHA cross-references its recently issued *Enforcement Procedures for Investigating or Inspecting Workplace Violence Incidents* and notes that “citations should focus on the specific hazard employees are exposed to, not the events that caused the incident or the lack of a particular abatement method.” From OSHA’s perspective, workplace violence can include violence perpetrated by residents against employees and by outside persons against employees.

*f. Additional Areas*

In addition to the areas discussed above, compliance officers are instructed under the NEP to expand their investigation “when additional hazards come to the attention of the compliance officer.” Two areas highlighted for possible expansion include hazards from MRSA and compliance with OSHA’s Hazard Communication standard.

## **Resident Privacy**

A significant concern for nursing and residential care employers is the extent to which an OSHA inspection will invade the privacy of residents in the facility. The NEP states that “[r]espect for residents’ privacy must be a priority during any inspection.” It also provides the following specific guidance to compliance officers regarding resident privacy:

1. In evaluating resident handling or other hazards, compliance officers must not review any resident records that include personally identifiable health information, including diagnoses, laboratory test results, etc., provided by the employer.
2. Compliance officers must get consent from residents before documenting resident handling activities by videotape or photography. “Family members or guardians may give consent for those residents who are incapable of giving informed consent.”
3. If employee medical records are needed that are not specifically required by an OSHA standard, compliance officers must follow the medical records access provisions of the *Rules of Agency Practice and Procedure Concerning OSHA Access to Employee Medical Records*.

## Steps to Prepare

Nursing and residential care employers should take steps now to ensure they are in compliance with applicable OSHA standards *and* that their facilities are prepared for an OSHA inspection. The NEP provides employers a detailed roadmap of what OSHA will be inspecting. To prepare, nursing and residential care employers should:

- Review the NEP thoroughly to understand all of the areas that OSHA will examine in the course of an NEP inspection.
- Calculate their DART rates (days away, restricted work activity, and job transfer) to determine if they may be placed on the NEP targeted inspection list.
- Review company policies and procedures with respect to the areas identified in the NEP, with a particular focus on ergonomics and bloodborne pathogens.
- Communicate to facilities about the NEP and areas that OSHA will be examining. Ensure that each facility reviews its written bloodborne pathogens exposure control plan and written hazard communication program, as well as compliance with these programs.
- Ensure that each facility has documented the steps it has taken to address MSDs in the workplace and has identified a person who understands these measures and can explain them to an OSHA compliance officer.
- Develop a protocol for facilities to follow if OSHA does come on site for an NEP inspection and train managers and supervisors on that protocol.

Jackson Lewis attorneys are available to answer questions regarding the NEP or assist nursing and residential care employers with any OSHA compliance or enforcement issues.