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Washington, D.C. 20210

To Whom It May Concern:

The American Health Care Association (AHCA) and the National Center for Assisted Living (NCAL) welcome the opportunity to comment on the proposed rule to restore a musculoskeletal disorder (MSD) column to the OSHA 300 Log. AHCA and NCAL represent more than 11,000 non-profit and for-profit providers dedicated to continuous improvement in the delivery of professional and compassionate care for our nation's frail, elderly and disabled citizens who live in long term care (LTC) facilities, including nursing facilities, assisted living residences, sub-acute centers and homes for individuals with developmental disabilities. Our member facilities employ nearly one million workers, the majority of whom are front-line caregivers.

AHCA/NCAL has, for many years, supported the prevention of MSDs of our employees. Specifically, AHCA/NCAL was one of the first organizations to work with OSHA on together drafting voluntary ergonomic guidance, OSHA's 2003 *Guidelines for Nursing Homes: Ergonomics for the Prevention of Musculoskeletal Disorders*, which was well-received throughout the LTC profession and continues to be utilized. In addition, in 1995, AHCA incorporated a section on ergonomics, specific to patient handling, into its "How to Be a Nurse Assistant" training program, which is used widely by the LTC profession to certify nurses aides. More recently, AHCA/NCAL is an active member of the Loss Prevention Forum, a group of LTC provider companies that work together to promote education on injury prevention, use of lifts, and patient and employee safety. OSHA leaders will be meeting with the Forum at our May 2010 meeting, and we look forward to continued collaborations between OSHA and the LTC profession.

AHCA/NCAL's weekly publications, annual and state educational events, and published resources provide LTC facilities with information on how to prevent MSDs and promote

patient and staff safety. As a result of these resources, many LTC facilities have in place training for safe patient lifting, state-of-the-art lifting equipment, and quality assurance and improvement committees that promote staff and patient safety. According to the Bureau of Labor Statistics, MSDs in nursing facilities have declined for the last three years, suggesting that current LTC facility safety protocols and initiatives are effective.

Nearly 67 percent of nursing home patients/residents, virtually all persons with developmental disabilities, and about 10 percent of assisted living residents rely on Medicaid for the long term care and services they need. This rate is intended to cover all aspects of care and services, but unfortunately, it does not cover the actual cost of care. As LTC providers deal with cost increases stemming from higher skilled labor costs, increased use of medical technologies, and other operating costs, it is increasingly difficult to absorb the costs related to Medicaid underfunding of LTC. The extent of this problem is astounding: the LTC profession faces a projected Medicaid reimbursement loss of \$4.6 billion. In the absence of a federal statute requiring state Medicaid programs to reimburse the actual cost of providing care, LTC providers will continue to struggle to care for some of our nation's most vulnerable citizens. It is imperative that LTC facilities use their very limited resources in the most effective manner. As we previously noted, as LTC facilities' safety programs have resulted in decreased employee injuries, focusing LTC staff and limited financial resources toward such voluntary programs is prudent.

On behalf of our more than 11,000 LTC employers, their nearly one million employees and the patients that they serve, we submit the following comments on this proposed rule:

- OSHA asserts in the preliminary economic analysis of the rule that “in the large majority of cases, it will be obvious whether a case is an MSD. It will take employers approximately one minute per case to record it in the MSD column.” We disagree. Reviewing medical records and reports to determine whether the MSD is new, work-related, or otherwise recordable, as is required by the proposed rule, will be very time consuming. It is likely that evaluating each case would take up to an hour of research, thereby resulting in significantly increased employee costs.

To exemplify LTC facilities' estimated costs for employee safety programs, a single mechanical lift costs approximately \$5,000; and the average size nursing facility, which has 100 beds, incurs significant costs, estimated at \$50,000, to purchase multiple lifts and associated equipment. There are additional costs to regularly maintain and replace the lifts, and since nursing facilities have a high turnover rate, staff training costs are very significant. As LTC facilities are already severely under funded, targeting funds towards our effective facility safety programs is more prudent than utilizing those funds to complete the time consuming administrative procedures of a new MSD column.

- The rule's broad, proposed definition of an MSD would require employers to record a wide array of conditions on their OSHA logs, including “subjective

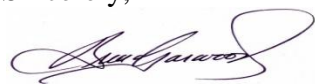
symptoms” as MSDs if they are deemed work-related. However, these conditions and symptoms can result from sports injuries, craft making requiring detailed handiwork, or other non-occupational activities. As a result, employers would find themselves investigating employees’ personal activities to ascertain if the MSD is actually work-related or the result of non-occupational activity. Such investigations could lead to a hostile work environment as employees may feel that their privacy is invaded.

Furthermore, the broad definition of MSDs will likely result in over reporting of MSDs on the new column of the OSHA 300 Log, which will result in skewed data and unnecessary, increased OSHA inspections. In addition, inaccurate data will not promote OSHA’s intent of the proposed rule to “better measure whether [employer safety] programs have been effective in reducing MSDs.” OSHA’s limited resources would be better used by working with employers on voluntary programs to promote employee health and safety.

- LTC facilities use their quality assurance teams and accident/incident reports to record employee injuries, which would include MSDs, regardless of whether the cases result in days away from work. Employers can effectively track and analyze MSDs with those reports. Therefore, adding an MSD column to the OSHA 300 log is unnecessary for the LTC profession, and would increase operational costs.
- LTC facilities use temporary light or transitional duty for injured employees, and facilities may even arrange transportation for affected employees to and from work. These employer interventions are an attempt to protect employees from further injury and to help in the healing process, not so that employers will not be required to record the injuries. LTC employers continue to be accurate in documenting their accident/incident reports, conducting investigations and providing appropriate treatment of employees regardless of whether light duty is assigned. Therefore, an MSD column on the OSHA 300 log would not improve upon operational efficiency.

Thank you for providing AHCA/NCAL with the opportunity to comment on the MSD column proposed rule. AHCA/NCAL and the LTC profession remain steadfast and dedicated in preventing MSDs and promoting employee safety and health. We welcome collaboration with OSHA to promote safe workplaces, but, as we have enumerated above, we do not believe that adding an MSD column to the OSHA 300 log is a prudent and effective use of resources to prevent MSDs. If you have any questions, please contact us.

Sincerely,



Bruce Yarwood  
President & CEO