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From: Shari Busse, Director
Office of Caregiver Quality

Via: Otis Woods, Administrator
Division of Quality Assurance

U.S. Department of Labor – Employment of Youth in the Health Care Industry

The purpose of this memo is to share a recent U.S. Department of Labor interpretation of The Fair Labor Standards Act (FLSA) which impacts youth under the age of 18 working in the health care industry. The Division of Quality Assurance (DQA) does not have regulatory authority to enforce these child labor standards but wants to ensure that healthcare settings regulated by DQA are aware of them.

This memo contains important information and guidance on the following topics:

- U.S. Department of Labor Interpretation,
- Impact on Nurse Aide Training Programs,
- Follow-up.

U.S. Department of Labor Interpretation

On July 19, 2010, the U.S. Department of Labor, Wage and Hour Division (DOL WHD) issued a restriction on the use of hoists and hoisting apparatus. Hazardous Order No. 7 prohibits minors under the age of 18 from operating or assisting in the operation of most power-driven hoists, including those designed to lift and move patients.

Per U.S. DOL directive, employees under the age of 18 are prohibited from operating or assisting with the operation of patient lifts, even with the supervision of an employee who is 18 or older. See the attached U.S. DOL “Fact Sheet #52 – The Employment of Youth in the Health Care Industry” for more information.

Impact on Nurse Aide Training Programs

DQA has confirmed with the U.S. DOL that this restriction applies only to employees; in order for the FLSA to apply, there must be an employment relationship. Therefore, the restriction on the use of patient lifts does not apply to students enrolled in a nurse aide training program (unless the students are employed during training as nurse aides by the facility providing the training).

Nurse aide training programs are required to train students to transfer clients safely and according to the principles of patient care ergonomics and with proficiency in the use of available equipment that is used to transfer clients. Equipment used to transfer clients includes, but is not limited to, mechanical lifts, friction reducing devices, wheelchairs and gait belts.

Per DQA directive, nurse aide training programs must continue to train all students, regardless of age, on the use of mechanical lifts. It is important to note that a clinical site may refuse to allow a student under the age of 18 in a nurse aide training program to transfer a resident using a lift since employees under 18 are prohibited from doing so. But, the clinical site should allow a student to practice the skill on another student or instructor using the facility equipment.

Follow-Up

Secretary Roberta Gassman of the Wisconsin Department of Workforce Development (DWD) sent a letter to the U.S. DOL regarding the restriction to explain how it impacts the youth apprenticeship program and conflicts with the Safe Lift Initiative. The American Association of Homes and Services for the Aging (AAHSA) and the American Health Care Association (AHCA) met with DOL to discuss the prohibition. AAHSA and AHCA provided data to show that there is no evidence of mechanical lifts causing injuries to young workers, and emphasized the negative effect that the rule has had on facility hiring practices, as well as career ladder and youth apprenticeship programs nationwide.

DOL has asked AAHSA and AHCA for additional data on safety practices in long term care settings, adequacy of CNA training, and regulatory oversight of quality of care. If you have feedback that you would like to share with DOL on this issue, please send it to Jennifer Hilliard at jhilliard@aahsa.org.

Attachment: [U.S. DOL Fact Sheet #52 – The Employment of Youth in the Health Care Industry](#)