



AMERICAN INDUSTRIAL HYGIENE ASSOCIATION
GOVERNMENT AFFAIRS DEPARTMENT
STATE UPDATE

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NEW YORK

Here is the latest legislative/regulatory report for your State. AIHA government affairs will send the reports every week, detailing any legislative and/or regulatory pertinent to the profession in your state. The reports will also include the text of many bills (if available) and update activity on bills already reported. However, reports will only be sent if there has been new activity on the legislation and/or regulations already reported, or new legislation and/or regulations are found. Reports are sent to local section officers and may be forwarded to others if you wish. Questions contact Aaron Trippler at atrippler@aiha.org.

New Legislation

None to Report

Legislation Reported Earlier

Note Section Added on Safe Patient Handling

Section 20. Article 29-D of the public health law is amended by adding a new title 1-A to read as follows:

TITLE 1-A

SAFE PATIENT HANDLING

Section 2997-g. Legislative intent.

2997-h. Definitions.

2997-i. Safe patient handling workgroup.

2997-j. Dissemination of best practices, examples of sample safe patient handling policies and other resources and tools.

2997-k. Safe patient handling committees; programs.

2997-l. Activities.

Section 2997-g. Legislative intent. The legislature hereby finds and declares that it is in the public interest for health care facilities to implement safe patient handling policies. There are many benefits that can be derived from safe patient handling programs. Patients benefit through improved quality of care and quality of life by reducing the risk of injury. Caregivers also benefit from the reduced risk of career ending and debilitating injuries leading to increased morale, improved job satisfaction, and longevity in the profession. Health care facilities may realize a return on their investment through reduced workers' compensation medical and indemnity costs, reduced lost workdays, and improved recruitment and retention of caregivers. All of this could lead to fiscal improvement in health care in New York State.

Section 2997-h. Definitions. For the purposes of this title:

1. "Health care facility" shall mean general hospitals, residential health care facilities, diagnostic and treatment centers, and clinics licensed pursuant to article twenty-eight of this chapter, facilities which provide health care services and are licensed or operated pursuant to article eight of the education law, article nineteen-G of the executive law or the correction law, and hospitals and schools defined in section 1.03 of the mental hygiene law.

2. "Nurse" shall mean a registered professional nurse or a licensed practical nurse as defined by article one hundred thirty-nine of the education law.

3. "Direct care worker" shall mean any employee of a health care facility who is responsible for patient handling or patient assessment as a regular or incidental part of his or her employment, including any licensed or unlicensed health care worker.

4. "Employee representative" shall mean the recognized or certified collective bargaining agent for nurses or direct care workers of a health care facility.

5. "Safe patient handling" shall mean the use of engineering controls, lifting and transfer aids, or assistive devices by staff to perform the acts of lifting, transferring and repositioning health care patients and residents.

6. "Musculoskeletal disorders" shall mean conditions that involve the nerves, tendons, muscles and supporting structures of the body.

Section 2997-i. Safe patient handling workgroup. 1. The commissioner shall establish a safe patient handling workgroup (referred to in this section as the "workgroup") within the department. The workgroup shall consist of, at the minimum, the commissioner or his or her designee; the commissioner of labor or his or her designee; representatives of health care provider organizations; representatives from employee organizations representing nurses and representatives from employee organizations representing direct care workers; representatives of nurse executives; representatives who are certified ergonomist evaluation specialists; and representatives who have expertise in fields of discipline related to health care or occupational safety.

2. Workgroup members shall receive no compensation for their services as members of the workgroup, but shall be reimbursed for actual and necessary expenses incurred in the performance of their duties.

3. The workgroup shall be established no later than January first, two thousand fifteen.

4. The workgroup shall:

(a) Review existing safe patient handling programs or policies, including demonstration programs previously authorized by chapter seven hundred thirty-eight of the laws of two thousand five and national data and results;

(b) Consult with any organization, educational institution, other government entity or agency or person that the workgroup determines may be able to provide information and expertise on the development and implementation of safe patient handling programs;

(c) Identify or develop training materials for consideration by health care facilities; and

(d) Submit a report to the commissioner by July first, two thousand fifteen identifying safe patient handling program best practices, providing examples of sample policies, and identifying resources and tools useful for providers to meet the goals of safe patient handling policies.

5. All state departments, commissions, agencies, and public authorities shall provide the workgroup with any reasonably requested assistance or advice in a timely manner.

Section 2997-j. Dissemination of best practices, examples of sample safe patient handling policies and other resources and tools. The commissioner shall disseminate best practices, examples of sample safe patient handling policies, and other resources and tools to health care facilities, taking into consideration the recommendations of the safe patient handling workgroup. Such best practices, examples of sample safe patient handling policies, and other resources and tools shall be made available to all facilities covered by this title on or before January first, two thousand sixteen.

Section 2997-k. Safe patient handling committees; programs. 1. On or before January first, two thousand sixteen, each health care facility shall establish a safe patient handling committee (referred to in this section as a "committee" except where the context clearly requires otherwise) either by creating a new committee or assigning the functions of a safe patient handling committee to an existing committee, including but not limited to a safety committee or quality assurance committee, or subcommittee thereof. The purpose of a committee is to design and recommend the process for implementing a safe patient handling program for the health care facility. The committee shall include individuals with expertise or experience that is relevant to safe patient handling, including risk management, nursing, purchasing, or occupational safety and health, and in facilities where there are employee representatives, at least one shall be appointed on behalf of nurses and at least one shall be appointed on behalf of direct care workers. One half of the members of the committee shall be frontline non-managerial employees who provide direct care to patients. At least one non-managerial nurse and one non-managerial direct care worker shall be on the safe patient handling committee. In health care facilities where a resident council is established, and where feasible, at least one member of the safe patient handling committee shall be a representative from the resident council. The committee shall have two co-chairs with one from management and one frontline non-managerial nurse or direct care worker.

2. On or before January first, two thousand seventeen, each health care facility, in consultation with the committee, shall establish a safe patient handling program. As part of this program, a health care facility shall:

(a) implement a safe patient handling policy, considering the elements of the sample safe patient handling policies and best practices disseminated by the commissioner, as well as the type of facility and its services, patient populations and care plans, types of caregivers, and physical environment, for all shifts and units of the health care facility. Implementation of the safe patient handling policy may be phased-in;

(b) conduct a patient handling hazard assessment. This assessment should consider such variables as patient-handling tasks, types of nursing units, patient populations and the physical environment of patient care areas;

(c) develop a process to identify the appropriate use of the safe patient handling policy based on the patient's physical and medical condition and the availability of safe patient handling equipment. The policy shall include a means to address circumstances under which it would be contraindicated based on a patient's physical, medical, weight-bearing, cognitive and/or rehabilitative status to use lifting or transfer aids or assistive devices for particular patients;

(d) provide initial and on-going yearly training and education on safe patient handling for current employees and new hires, and establish procedures to ensure that retraining for those found to be deficient is provided as needed;

(e) set up and utilize a process for incident investigation and post-investigation review which may include a plan of correction and implementation of controls;

(f) conduct an annual performance evaluation of the program to determine its effectiveness, with the results of the evaluation reported to the committee. The evaluation shall determine the extent to which implementation of the program has resulted in a reduction in the risk of injury to patients, musculoskeletal disorder claims and days of lost work attributable to musculoskeletal disorders by employees caused by patient handling, and include recommendations to increase the program's effectiveness;

(g) when developing architectural plans for constructing or remodeling a health care facility or a unit of a health care facility in which patient handling and movement occurs, consider the feasibility of incorporating patient handling equipment or the physical space and construction design needed to incorporate that equipment at a later date; and

(h) develop a process by which employees may refuse to perform or be involved in patient handling or movement that the employee reasonably believes in good faith will expose a patient or health care facility employee to an unacceptable risk of injury. Such process shall require that the nurse or direct care worker make a good faith effort to ensure patient safety and bring the matter to the attention of the facility in a timely manner. A health care facility employee who reasonably and in good faith follows the process developed by the health care facility in accordance with this subdivision shall not be the subject of disciplinary action by the health care facility for the refusal to perform or be involved in the patient handling or movement.

Section 2997-l. Activities. The activities enumerated in section twenty-nine hundred ninety-seven-k of this title shall be undertaken consistent with section twenty-eight hundred five-j of this chapter by a covered health care provider and shall be deemed activities of such program as described in such section and any and all information attributable to such activities shall be subject to provisions of section twenty-eight hundred five-m of this chapter and section sixty-five hundred twenty-seven of the education law.

Section 21. Section 2304  of the insurance law is amended by adding a new subsection (j) to read as follows:

(j)(1) On or before July first, two thousand sixteen, the department shall make rules establishing requirements for health care facilities to obtain a reduced worker's compensation rate for safe patient handling programs implemented pursuant to title one-A of article twenty-nine-A of the public health law.

(2) The department shall complete an evaluation of the results of the reduced rate, including changes in claim frequency and costs, and shall report to the appropriate committees of the legislature on or before December first, two thousand eighteen and again on or before December first, two thousand twenty.

Section 22. Subdivision 6 of section 2899 [§](#) of the public health law, as amended by chapter 331 of the laws of 2006, is amended to read as follows:

6. "Provider" shall mean any residential health care facility licensed under article twenty-eight of this chapter; or any certified home health agency, licensed home care services agency or long term home health care program certified under article thirty-six of this chapter; or any adult care facility licensed under article seven of the social services law.

Section 23. Paragraph (a) of subdivision 9 of section 2899-a [§](#) of the public health law, as amended by chapter 331 of the laws of 2006, is amended to read as follows:

(a) In the event that funds are appropriated in any given fiscal year for the reimbursement for the costs of providing such criminal history information, reimbursement shall be made available in an equitable and direct manner for the projected cost of the fee established pursuant to law by the division of criminal justice services for processing a criminal history information check, the fee imposed by the federal bureau of investigation for a national criminal history check, and costs associated with obtaining the fingerprints to all providers licensed, but not certified under article thirty-six of this chapter, and all adult care facilities licensed under article seven of the social services law, including those that are subject to this article and are unable to access direct reimbursement from state and/or federal funded health programs.

Section 24. The social services law is amended by adding a new section 461-t to read as follows:

Section 461-t. Review of criminal history information concerning prospective direct care employees. Every adult care facility shall conduct a criminal history record check of prospective direct care employees utilizing the procedures and standards set forth in article twenty-eight-E of the public health law.

Section 25. The public health law is amended by adding a new section 2997-e to read as follows:

Section 2997-e. Provision of contact information relating to long term care. Whenever a health care provider or practitioner makes a recommendation regarding the necessity of long term care services or a referral for the receipt of long term care services to a patient, the patient or patient's designated representative shall be provided by the health care provider or practitioner the contact information for NY Connects: Choices for Long Term Care, established pursuant to subdivision eight of section two hundred three of the elder law, that corresponds to the patient's county of residence or prospective county of residence based on the preference of the patient.

Section 26. Intentionally omitted.

Section 27. Section 4310 [§](#) of the public health law, as amended by chapter 639 of the laws of 2006, the section heading as separately amended by chapter 640 of the laws of 2006, subdivisions 1 and 3 as amended by chapter 158 of the laws of 2012, subdivision 2 as separately amended by chapters 158 and 465 of the laws of 2012, is amended to read as follows:

Section 4310. New York state donate life registry for organ, eye and tissue donations. 1. The department shall establish an organ, eye, and tissue donor registry, which shall be called and be referred to as the "donate life registry", which shall provide a means to make and register a gift of organs, eyes and tissues to take place after death pursuant to this article. ~~Such~~ The donate life registry shall contain a listing of all donors who have declared their consent to make an anatomical gift.

2. The commissioner may enter into a multi-year contract for the operation and promotion of the donate life registry subject to such terms and conditions as may be contained within such contract

with a not-for-profit organization that has experience working with organ, eye and tissue procurement organizations, has expertise in conducting organ, eye and tissue donor promotional campaigns, and is affiliated with the organ, eye and tissue donation community throughout the state. The contractor may subcontract as needed for the effective performance of the contract. All such subcontractors and the terms of such subcontracts shall be subject to approval by the commissioner. Any applicable state agency, including, but not limited to, the department, the department of motor vehicles and the board of elections, shall cooperate in the collection and transfer of registrant data to the donate life registry.

3. The duties of the contractor shall include, but not be limited to, the following:

(a) the development, implementation and maintenance of the donate life registry that includes online, mailed and other forms of organ, eye and tissue donor registration, verification, amendment and revocation;

(b) preparation and submission of a plan to encourage organ, eye and tissue donation through education and marketing efforts and other recommendations that would streamline and enhance the cost-effective operation of the donate life registry;

(c) provision of written or electronic notification of registration in the donate life registry to an individual enrolling in the donate life registry; and

(d) preparation and submission of an annual written report to the department. Such report shall include:

(i) a performance matrix including the number of registrants on the donate life registry and an analysis of the registration rates, including but not limited to, location, method of registration, demographic, and state comparisons;

(ii) the characteristics of registrants as determined from the donate life registry information;

(iii) the annual dollar amount of voluntary contributions received by the contractor for the purposes of maintaining the donate life registry and/or educational and promotional campaigns and initiatives;

(iv) a description of the promotional campaigns and initiatives implemented during the year;
and

(v) accounting statements of expenditures for the purposes of maintaining the donate life registry and promotional campaigns and initiatives.

4. (a) For the period April first, two thousand fourteen through March thirty-first, two thousand fifteen, payments to the contractor shall be paid by the department.

(b) For the period beginning April first, two thousand fifteen and thereafter, payments to the contractor shall be paid by the department from funds available for these purposes, including, but not limited to, the funds deposited into the life pass it on trust fund pursuant to section ninety-five-d of the state finance law.

(c) In addition, the contractor may receive and use voluntary contributions.

5. (a) Such organ, eye and tissue registration of consent to make an anatomical gift can be made through ~~(a)~~ : (i) indication made on the application or renewal form of a driver's license, ~~(b)~~ (ii) indication made on a non-driver identification card application or renewal form, ~~(c) enrolling in the~~

~~registry website maintained by the department, which may include using an electronic signature subject to article three of the state technology law, (d) (iii) indication made on a voter registration form pursuant to subdivision five of section 5-210 of the election law, (iv) enrollment through the donate life registry website, (v) paper enrollment submitted to the donate life registry, or (e) (vi) through any other method identified by the commissioner.~~

~~(b)(i) Where required by law for consent registration forms described in paragraphs (a) and (b) subparagraphs (i) and (ii) of paragraph (a) of this subdivision, the commissioner shall ensure that space is provided on any consent registration form so that the applicant shall register or decline registration in the donate life registry for organ, eye and tissue donations under this section and that the following is stated on the form in clear and conspicuous type:~~

~~"You must fill out the following section: Would you like to be added to the Donate Life Registry? Check box for 'yes' or 'skip this question'."~~

~~(ii) The commissioner shall not maintain records of any person who checks "skip this question". Failure to check a box shall not impair the validity of an application, and failure to check "yes" or checking "skip this question" shall not be construed to imply a wish not to donate. In the case of an applicant under eighteen years of age, checking "yes" shall not constitute consent to make an anatomical gift or registration in the donate life registry. Where an applicant has previously consented to make an anatomical gift or registered in the donate life registry, checking "skip this question" or failing to check a box shall not impair that consent or registration.~~

~~(c) Enrollment or amendment or revocation through the donate life registry website through any of the means listed in this subdivision may be signed by electronic signature, in accordance with the provisions of article three of the state technology law, supported by the use of suitable mechanisms including unique identifiers to provide confidence in the identity of the person providing the electronic signature. The registration shall take effect upon the provision of written or electronic notice of the registration to the person individual enrolling in the donate life registry.~~

~~3. (a) Information contained in the registry shall be accessible to (i) federally designated organ procurement organizations, (ii) eye and tissue banks licensed by the department pursuant to article forty three B of this chapter, and (iii) any other entity formally approved by the commissioner.~~

~~(b) The information contained in the registry shall not be released to any person except as expressly authorized by this section solely for the purpose of identifying potential organ and tissue donors at or near the time of death.~~

~~4. If the department had an established registry prior to the effective date of this section, it shall be deemed to meet the requirements of this section.~~

~~5. The registry shall provide persons enrolled the opportunity to specify which organs and tissues they want to donate and if the donation can be used for transplantation, research, or both.~~

~~(d) Amendments or revocations from the donate life registry shall be made by the following, subject to the requirements of the commissioner:~~

~~(i) registrants submitting an amendment or revocation in writing to the donate life registry;~~
~~or~~

~~(ii) registrants submitting an amendment or revocation electronically through the donate life registry website.~~

(e) Removal from the donate life registry shall not be deemed a refusal of any other or future anatomical gift.

(f) The donate life registry shall provide individuals enrolled the opportunity to specify which organs, eyes and tissues they want to donate and if the donation may be used for transplantation, research, or both.

6. ~~A person~~ An individual registered in the ~~organ and tissue donate life~~ registry before ~~the effective date of this subdivision July twenty-third, two thousand eight~~ shall be deemed to have expressed intent to donate, until and unless he or she files an amendment to his or her registration or a new registration expressing consent to donate.

~~7. The commissioner shall contact each person registered before the effective date of this subdivision in the organ and tissue registry in writing to inform him or her that at the time he or she registered, the registry was that of intent and that the registry is now one of consent, to explain in clear and understandable terms the difference between intent and consent, and to provide opportunity for the person to change his or her registration to provide consent by amending his or her current registration or executing a new registration.~~ (a) The donate life registry shall be maintained in a manner that allows immediate access to organ, eye and tissue donation records twenty-four hours a day, seven days a week to the contractor, the department, federally designated organ procurement organizations, licensed eye and tissue banks, and such other entities which may be approved by the department for access. Access shall be available to registrants to confirm the accuracy and validity of their registration and to amend or revoke their registration, subject to reasonable procedures to verify identity.

(b) Access to the donate life registry shall have security measures set forth in the contract to protect the integrity of the identifiable data in the donate life registry, which may only be accessed by the parties described in paragraph (a) of this subdivision and only for the purposes of determining donor status at or near the time of death of an individual, by the department for any purpose, by the contractor only for purposes of quality assessment and improvement, technical support and donor services, or by individual registrants for the purposes of confirming the accuracy and validity of their registration or making, amending or revoking their registration.

(c) De-identified information may be accessed by the entities listed in paragraph (a) of this subdivision or their designees for purposes of analysis, promotion, education, quality improvement and technical support for the donate life registry. The information contained in the registry shall not be released to any person except as expressly authorized by this section, solely for the purposes so authorized.

8. The commissioner is authorized to promulgate rules and regulations necessary to implement the provisions of this section.

9. An interagency work group, composed of the commissioner, the commissioner of the department of motor vehicles, a chair of the board of elections, or their designees, and such other individuals as may be designated by the commissioner, shall be established to meet with the contractor annually and as needed to review the status of the donate life registry, to examine the steps that might be taken by state agencies to enhance its performance and to make recommendations to the contractor.

Section 28. Intentionally omitted.

Section 29. Subdivision 3 of section 95-d  of the state finance law, as added by chapter 415 of the laws of 2003, is amended to read as follows:

3. Monies of the fund shall be expended only for organ transplant research and education projects approved by the commissioner of health, or to provide grants to not-for-profit corporations in this state which are incorporated for the purpose of increasing and promoting organ and tissue donation

awareness provided, however, beginning April first, two thousand fifteen, any revenues received or any monies appropriated, credited or transferred to the fund on and after May first, two thousand fourteen may also be expended to support the maintenance and operation of the donate life registry in accordance with the provisions of section forty-three hundred ten of the public health law.

Section 30. Section 461-b  of the social services law is amended by adding two new subdivisions 9 and 10 to read as follows:

9. (a) The prior written approval of the department is required for: (i) any transfer, assignment or other disposition of ten percent or more of an interest or voting rights in a partnership, business corporation or limited liability company which is the operator of an adult care facility to a new partner, shareholder or member; or (ii) any transfer, assignment or other disposition of interest or voting rights in a partnership, business corporation or limited liability company which is the operator of an adult care facility which results in the ownership or control of more than ten percent of the interest or voting rights thereunder by any person who has not been previously approved by the department for that operator.

(b) With respect to a transfer, assignment or disposition involving less than ten percent of an interest or voting rights in such partnership, business corporation or limited liability company to a new partner, shareholder or member, no prior approval of the department shall be required except where required by paragraph (a) of this subdivision. However, no such transaction shall be effective unless at least ninety days prior to the intended effective date thereof, the partnership, business corporation or limited liability company fully completes and files with the department notice on a form, to be developed by the department, which shall disclose such information as may reasonably be necessary for the department to determine whether it should prohibit the transaction. Within ninety days from the date of receipt of such notice, the department may prohibit any such transaction under this subparagraph if it finds: (i) there are reasonable grounds to believe the proposed transaction does not satisfy the character and competence review, as may be appropriate; or (ii) if the transaction, together with all other such transactions during any five year period, would in the aggregate, involve twenty-five percent or more of the interest in the entity that constitutes the operator. The department shall state the specific reasons for prohibiting any transaction under this subparagraph and shall so notify each party to the proposed transaction.

(c) With respect to a transfer, assignment or disposition of an interest or voting rights in a partnership, business corporation or limited liability company to any existing partner, shareholder or member, no prior approval of the department shall be required. However, if the transaction involves the withdrawal of the transferor from the partnership, business corporation or limited liability company, no such transaction shall be effective unless at least ninety days prior to the intended effective date thereof, the partnership, business corporation or limited liability company fully completes and files with the department notice of such transaction. Within ninety days from the date of receipt of such notice, the department may prohibit any such transaction under this paragraph if the equity position of the partnership, business corporation or limited liability company, determined in accordance with generally accepted accounting principles, would be reduced as a result of the transfer, assignment or disposition. The department shall state the specific reason for prohibiting any transaction under this paragraph and shall so notify each party to the proposed transaction.

10. Notwithstanding any provision of law to the contrary, the department is authorized to approve a certificate of incorporation or articles of organization for establishment of an adult care facility on an expedited basis where: (a) the certificate of incorporation or articles of organization reflects solely a change in the form of the business organization of an existing entity which had been approved by the department to operate an adult care facility; (b) every incorporator, stockholder, member and director of the new entity shall have been an owner, partner, incorporator, stockholder, member or director of the existing entity; (c) the distribution of ownership interests and voting rights in the new entity shall be the same as in the existing entity; and (d) there shall be no change in the operator of the adult care facility other than the form of its business organization, as a result of the approval of such certificate of incorporation or articles of organization. Upon submission, if the department does not object to the proposal within ninety days of the receipt of a complete application, the proposal will be deemed acceptable to the department and an amended operating certificate shall be issued.

Section 31. Subdivisions 1 and 2 of section 461-k of the social services law, as added by chapter 779 of the laws of 1986, are amended to read as follows:

1. (a) "Services for non-residents in adult homes, residences for adults and enriched housing programs" shall mean an organized program of services which the facility is authorized to provide to residents of such facility but which are provided to non-residents for the purpose of restoring, maintaining or developing the capacity of aged or disabled persons to remain in or return to the community. Such services may include but shall not be limited to day programs and temporary residential care as defined herein. A person participating in a program of services for non-residents in an adult care facility shall be considered a resident of the facility and shall be afforded all the rights and protections afforded residents of the facility under this chapter except that the provisions of sections four hundred sixty-one-g and four hundred sixty-one-h of this title relating to termination of admission agreements shall not apply and that persons receiving services pursuant to this section shall not be considered to be receiving residential care as defined in section two hundred nine of this chapter for purposes of determining eligibility for and the amount of supplemental security income benefits and additional state payments.

(b) "Day programs" shall mean an organized program for non-residents which shall include personal care, supervision and other adult services which the facility is authorized to provide to residents of such facility which may include but are not limited to, activities, meals, information and referral, and transportation services, provided in an adult home, residence for adults or enriched housing program.

(c) "Temporary residential care" shall mean the provision of temporary residential care of frail or disabled adults on behalf of or in the absence of the caregiver for up to ~~six weeks~~ one hundred twenty days in any twelve month period, provided in an adult home, residence for adults or enriched housing program.

2. A program to provide services for non-residents in an adult care facility may be established and operated in an adult home, residence for adults or enriched housing program provided that such facility has a current operating certificate issued in accordance with section four hundred sixty-one-b of this title. No operator may establish and operate a day program to provide services for non-residents, as defined in subparagraph (b) of subdivision one of this section, unless the operator has received the prior written approval of the department. The department shall grant such approval to operate a day program only

Regulatory Activity

None to Report