Summary of AB 1136

Date of Hearing: May 4, 2011

ASSEMBLY COMMITTEE ON LABOR AND EMPLOYMENT
Sandre Swanson, Chair
AB 1136 (Swanson) - As Amended: April 26, 2011

SUBJECT : Employment safety: health facilities.

SUMMARY : Establishes the Hospital Patient and Health Care Worker Injury Protection Act (Act) to require hospitals to adopt a safe patient handling policy. Specifically, this bill :

1)Establishes the Act to require all general acute care hospitals (hospitals) to do the following:

a) Maintain a safe patient handling policy at all times for all patient care unites;

b) Provide trained life teams or other support staff trained in safe lifting techniques; and,

c) Provide training to health care workers on the appropriate use of lifting devices and equipment to handle patients safely and the five areas of body exposure: vertical, lateral, bariatric, repositioning, and ambulation.

2)Requires all hospitals to develop a written safe patient handling policy by January 1, 2013.

3)Requires all hospitals to purchase enough safe patient handling equipment to eliminate the need to conduct manual patient handling and transfers.

4)Requires all hospitals, after January 1, 2013, to document each use of a manual lift.

5)Requires a registered nurse, as the coordinator of care, to be responsible for the observation and direction of patient lifts and mobilization and participate as needed in patient handling in accordance with the nurses job description

6)Defines "lift team" as hospital employees specifically trained

to handle patient lifts, repositioning, and transfers using patient transfer, repositioning or lifting devices as appropriate for the specific patient.

7)Defines "safe patient handling policy" as a policy that requires replacement of manual lifting and transferring of patients with powered patient transfer devices, lifting devices, or lift teams, consistent with the employer's safety policies and the professional judgment and clinical assessment of a registered nurse.

8)Requires employers to adopt a patient protection and health care worker back and musculoskeletal injury prevention plan as part of their injury and illness prevention program.

a) Requires the plan to include a safe patient handling policy component as reflected in the professional occupational safety guidelines for the protection of patients and health care workers in health care facilities.

9)Prohibits a hospital from taking disciplinary action against a health care worker who refuses to lift, reposition, or transfer a patient due to the worker's concerns about his or her patient's safety and his or her own personal safety and the lack of available trained lift team personnel or appropriate lifting equipment.

EXISTING LAW

1)Creates the Division of Occupational Safety and Health (DOSH), better known as Cal/OSHA, within the Department of Industrial Relations (DIR) to, among other duties, protect workers and the public from safety hazards through its Occupational Safety and Health inspection program.

2)Requires all employers to establish, implement, and maintain an effective injury prevention program.

3)Requires all employers to train their employees in the proper use of the injury prevention program and keep appropriate records of the program's implementation and maintenance.

4)Prohibits employers from failing to or neglecting to do any of the following:

a) To provide and use safety devices and safeguards

reasonably adequate to render the employment and place of employment safe;

b) To adopt and use methods and processes reasonably adequate to render the employment and place of employment safe; and,

c) To do every other thing reasonably necessary to protect the life, safety, and health of employees.

FISCAL EFFECT : Unknown

COMMENTS : According to the author, registered nurses (RNs) manually lift an estimated 1.8 tons, or 3,600 pounds, per shift. Each time an RN lifts a patient, the RN has a 75 percent chance of injuring his or her back. The author notes that nursing surveys reveal that 83 percent of RNs work in spite of back pain, while 52 percent report chronic back pain and 12 percent leave the profession citing back injuries as the main or significant reason. The author states that, when RNs leave, their employers spend $40,000 to $60,000 to train and orient their replacements.

A report from the Centers for Disease Control and Prevention (CDC), titled "Safe Lifting and Movement of Nursing Home Residents," (CDC Report) asserts that, even in ideal lifting conditions, the weight of any adult far exceeds the lifting capacity of most caregivers, 90 percent of whom are female. The CDC Report notes that safe lifting programs have reduced worker's compensation injury rates by 61 percent, lost workday injury rates by 66 percent, restricted workdays by 38 percent and the number of workers suffering repeat injuries.

According to 2009 data from the federal Bureau of Labor Statistics (BLS), the overall rate of nonfatal occupational injury and illness cases that required days away from work to recuperate decreased by 9 percent to 1,238,490 cases for private industry, state government and local government. Despite this decrease, however, BLS notes that several occupations - including delivery service truck drivers, landscapers, restaurant cooks and registered nurses - had an increase in their rates of injuries and illness.

BLS data also show that, in the private industry, 18 percent (172,820 cases) of all occupational injuries and illnesses occurred in health care and social assistance industries at a

higher incidence rate than all other private industry occupations. In addition, BLS data show that nurses have the second highest rate of missed work days due to workplace injuries. The most common injuries suffered by nurses include musculoskeletal disorders (MSDs) and overexertion. The BLS notes that, 59.2 percent of all MSDs suffered by nurses were back related injuries. In addition, BLS data show that hospitals and nursing and residential facilities have some of the highest rates of nonfatal occupational injuries in California.

A report on Kaiser's Labor Management Partnership Workplace Safety Initiative (Kaiser Report) revealed that Kaiser developed a worker comprehensive initiative to eliminate injuries within their organization. According to the Kaiser Report, the organization's California Division spent $75 million for workers' compensation claims in 1998. In 1999, the cost for the same division increased to $81.1 million. In addition, the Kaiser Report notes that the organization's internal an injury analysis of patient care services showed that there were 4,230 injuries to workers and patients that cost Kaiser $31.7 million in direct cost and additional $66.6 million in indirect costs. For Kaiser, indirect cost included replacement workers, sick leave, accident investigation, triage and record keeping. The Kaiser Report notes that of these 4,230 injuries, approximately 1,731were attributed to patient handling injuries for which Kaiser paid approximately $17 million in direct cost and $35.6 million in indirect costs.

In an effort to address the high rate and the high cost of workplace injuries, Kaiser Permanente implemented a lift team policy for the first in 2000 and began implementing additional lift teams in 2003. The organization created a "Standards of Care" policy to identify "high risk" criteria to assess the situations for which a "Lift Team" should be contacted. These situations included, but were not limited to, patients over 150 pounds, quadriplegic and paraplegic patients, patients hat require total assistance in movement or limited weight bearing and /or mobility status, and patients who have fallen. The Kaiser Report notes that, in addition to training lift teams, Kaiser implemented standards around lift equipment, including recommendations for a ratio of one piece of equipment for every 24-56 hospital beds. According to the Kaiser Report, within the first quarter of 2003, one service area that consisted of 3 Kaiser Medical Centers saw a 12 percent reduction in patient and worker injuries overall and a 23.6 percent decrease in their Adult Acute Care Nursing department.

Other States

Six states - Maryland, Minnesota, New Jersey, Rhode Island, Texas and Washington - have laws that mandate a form of safe patient handling or the use of lifting equipment. For example, in 2005, Texas became the first state to require both hospitals and nursing homes to establish a policy for safe patient handling and movement. In addition, the state's law requires hospitals and nursing homes to evaluate alternative methods from manual lifting, including equipment and patient care environment, and restrict, to the extent feasible with existing equipment, manual handling of all or most of a patient's weight to emergency, life-threatening, or exceptional circumstances. Texas law also allows a nurse to refuse to perform patient handling tasks if he or she believes, in good faith, that doing so would involve unacceptable risks of injury a patient or to the nurse.

In 2006, Washington became the first state to mandate the use of lift equipment by hospitals. The state also uses tax credits and reduced workers' compensation premiums to financial assist hospitals with the purchasing of lift equipment. In addition, hospitals in Washington may choose either one readily-available lift per acute care unit on the same floor, one lift for every ten acute care inpatient beds, or lift equipment for use by specially-trained lift teams. The state's law also allows employees to refuse to engage in patient handling activities if the employee believes in good faith that doing so would impose an unacceptable risk of injury to the employee or his or her patient. In contrast to Texas, Washington's law does not cover nursing homes.

ARGUMENTS IN SUPPORT :

In a letter expressing sponsorship of the bill, the California Nurses Association (CNA) asserts that over 12 percent of the nursing workforce leaves the occupation because of back injuries each year. CAN states that California's nursing workforce is aging at the same time that patient acuity and obesity is on the rise. They note that it is imperative that registered nurses and other health care workers be protected from injury and provide patients with safe and appropriate care. CNA writes that the lift team policy is not new; it has passed the legislature each legislative session between 2004 and 2008. They note that this bill is a triple win policy; it safely cares for patients,

saves the state's nursing workforce and saves hospitals money. The United Nurses Association of California/Union of Health Care Professionals (UNAC/UHCP) writes that this bill is a reasonable solution to a very critical work place and quality life issue. They note that injuries are costly to the employers and have a severe impact on a worker's quality of life, result in a loss of income for workers, and, in many cases, result in health care workers and registered nurses leaving the workforce. In their letter of support, the Association of California Healthcare Districts (ACHD) writes that patient transfers are the number one loss driver for hospitals through workers' compensation claims. They note that District Hospitals cannot afford to lose valuable health care workers as a result of transporting or lifting patients. ACHD asserts that preventing turnover from lift related injuries will save hospitals money in the long run and this bill will help prevent work related injuries in District Hospitals.

ARGUMENTS IN OPPOSITION :

In a letter that expresses their oppose unless amended position, the California Hospital Association (CHA) writes that several key provisions of the bill are ambiguous and, if interpreted narrowly, would prove problematic and potentially interfere with hospitals' ability to provide quality patient care. For example, CHA notes that the provision to provide trained lift teams or other support staff trained in safe lifting techniques, as written, suggests that the hospital must utilize lift teams and or other staff and may not require nurses to perform lifts. CHA also states the provision that would requires "safe patient handling policy" is vague and could be interpreted in one of two ways. It either gives the hospital discretion to develop the policy "consistent with the employer's safety policies, or it significantly curtails the hospital's discretion by requiring replacement of manual lifting and transferring of patients with powered transfer devices, lifting devices or lift teams. In addition, CHA writes that the implementation date of January 1, 2003 would be difficult for hospitals because their 2012 budgets would not account for any additional cost that may be associated with this bill. The California Children's Hospital Association (CCHA), write that this bill does not allow any flexibility and its one-size- fits -all approach is problematic for children's hospital because they differ greatly from all other hospitals in terms of patient population, staffing and resources. CCHA also notes that this bill fails to recognize much of the lifting done in children's hospitals, including that of newborns, infants and

young children.

PRIOR LEGISLATION :

SB 1152 (Perata) of 2008 would have required acute care hospitals to establish a patient protection and health care worker back injury prevention plan that would have included a safe patient handling policy. This bill was vetoed by the Governor. In his veto message, the Governor wrote that the bill was unnecessary because the current laws and regulations that were in place to address the workplace health and safety needs of health care workers. The Governor stated that existing statutes were flexible and allow employers to exercise discretion in determining what combination of lift teams and equipment is necessary to have an effective Injury and Illness Prevention Program.

SB 171 (Perata) of 2007 would have required acute care hospitals to establish a patient protection and health care worker back injury prevention plan. This bill was vetoed by the Governor. In his veto message, the Governor stated that, the bill would have imposed a one-size fits all mandate on hospitals to establish a "zero lift" patient handling policy similar to measures he vetoed in prior years.

SB 1204 (Perata) of 2006 would have required each general acute care hospital to establish a health care worker back injury prevention plan. This bill was vetoed by the Governor. In his veto message, the Governor stated that hospitals of all sizes from throughout the state had reported progress made on the implementation of lift policies. The Governor wrote that he believed that this was proof that allowing hospitals the flexibility to implement lift policies that meet their individual needs was far more effective than imposing a rigid one-size-fits-all mandate on every hospital in California.

SB 363 (Perata) of 2005 would have required general acute care hospitals, except rural those in rural areas, to provide "lift teams" to assist health care workers in lifting patients. This bill was vetoed by the Governor. In his veto message, the Governor wrote that the bill would have imposed a one-size-fits-all mandate on hospitals to establish a zero lift policy requiring teams and the use of equipment to lift patients. The Governor also stated that if hospitals did not initiate these measures on their own, he would consider legislation that imposes the mandate in the next year.

REGISTERED SUPPORT / OPPOSITION :

Support

ALPHA Fund
Association of California Healthcare Districts
California Labor Federation, AFL-CIO
California Nurses Association (Sponsor)
Engineers and Scientists of California
United Nurses Association of California/Union of Health Care Professionals

Opposition

California Hospital Association
California Children's Hospital Association
CSAC Excess Insurance Authority

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