

HEALTH AND SENIOR SERVICES

SENIOR SERVICES AND HEALTH SYSTEMS BRANCH

HEALTH FACILITIES EVALUATION AND LICENSING DIVISION

OFFICE OF CERTIFICATE OF NEED AND HEALTHCARE

FACILITY LICENSURE

Safe Patient Handling

Proposed New Rules: N.J.A.C. 8:43E-12

Proposed Amendment: N.J.A.C. 8:43E-3.4

Authorized by:

Poonam Alaigh, MD, MSHCPM, FACP,

Commissioner, Department of Health and Senior Services

(with the approval of the Health Care Administration Board)

Authority: N.J.S.A. 26:2H-14.15

Calendar Reference: See Summary below for explanation of exception to
calendar requirement.

Proposal Number: PRN 2010 –

Written comments on the proposal must be postmarked on or
before _____, 2010 and mailed to:

Ruth Charbonneau, Director

Office of Legal and Regulatory Affairs

New Jersey Department of Health and Senior Services

PO Box 360

Trenton, New Jersey 08625-0360

The official version of any departmental rulemaking activity (notices of proposal or adoption) are published in the *New Jersey Register* or *New Jersey Administrative Code*. Should there be any discrepancies between this document and the official version of the proposal or adoption, the official version will govern.

The agency proposal follows:

Summary

The “Safe Patient Handling Act” (hereinafter “the Act”), approved on January 3, 2008, N.J.S.A. 26:2H-14.8 et. seq., requires general hospitals, special hospitals, county and private psychiatric hospitals, and nursing homes licensed in accordance with the Health Care Facilities Planning Act, P.L. 1971, c. 136 (N.J.S.A. 26:2H-1 et seq.) to minimize unassisted patient handling by utilizing assistive patient handling technology.

N.J.S.A. 26:2H-14.15 requires the Commissioner of Health and Senior Services to adopt rules and regulations to implement the Act. The proposed new rules at N.J.A.C. 8:43E-12 would regulate the facilities licensed by the Department of Health and Senior Services (Department). State psychiatric hospitals and State developmental centers are not licensed by the Department, but are regulated by the Department of Human Services.

The Department’s proposed new rules at N.J.A.C. 8:43E-12 would establish the requirements for general hospitals, special hospitals, county and private psychiatric hospitals, and nursing homes to minimize unassisted patient handling in order to decrease the number of job-related musculoskeletal injuries suffered by health care workers and to improve the comfort, dignity, satisfaction and quality of care for patients.

In addition to the proposed new rules set forth at N.J.A.C. 8:43E-12, the Department is proposing an amendment at N.J.A.C. 8:43-3.4(a) that would: (1)

establish a monetary penalty of \$2,500 per violation, which may be assessed for each day noncompliance is found, for violations of N.J.A.C. 8:43E-12 resulting in either actual harm, or immediate and serious risk of harm, to individuals who are directly employed by a covered health care facility; and (2) establish a monetary penalty of \$1,000 per violation, which may be assessed for each day noncompliance is found, for any violations of N.J.A.C. 8:43E-12 that do not result in harm as described in (1) above.

The proposed new rules at N.J.A.C. 8:43E-12.1 would include the following:

Proposed new N.J.A.C. 8:43E-12.1, “authority, scope and purpose,” would provide that the provisions of the new subchapter apply to health care workers whose job duties entail patient handling and who are employed by the covered facilities licensed by the Department, would describe the purposes of the subchapter, and would provide that the subchapter shall not limit the right of a patient to refuse the use of assisted patient handling.

Proposed new N.J.A.C. 8:43E-12.2 would establish definitions of the following words and terms used in the proposed new subchapter: “assessment of patient’s need for assisted patient handling” or “patient assessment,” “assisted patient handling,” “committee,” “covered health care facility” or “covered facility,” “health care worker,” “injury investigation,” “near miss,” “OSHA,” “patient,” “patient handling,” “safe patient handling program” or “program,” and “unassisted patient handling.”

Proposed new N.J.A.C. 8:43E-12.3 would provide for the establishment, requirements, composition, and responsibilities of the safe patient handling committee; and would require the safe patient handling committee to select a chairperson from among its members.

Proposed new N.J.A.C. 8:43E-12.4 would require the establishment of a safe patient handling program in each covered health care facility to reduce the risk of injury to both patients and health care workers. This section also would require facilities to allow employee input and to designate a representative from administration who would be responsible for overseeing all aspects of the safe patient handling program.

Proposed new N.J.A.C. 8:43E-12.5 would require a detailed written description of the program; the provision of copies to the Department upon request, healthcare workers at the facility, and collective bargaining agents representing these workers; and translation of the description under specified circumstances.

Proposed new N.J.A.C. 8:43E-12.6 would require a covered facility to establish a written safe patient handling policy, and require its translation under specified circumstances. The policy would require an assessment of each patient's need for assisted patient handling; the use of patient handling devices, with exceptions; a statement that a patient has a right to refuse assisted handling; visible posting of a summary of the policy; approval by the chief executive officer; compliance with N.J.A.C. 8:43E-12; and consistency with patient and health care worker safety and well-being.

Proposed new N.J.A.C. 8:43E-12.7 would require the safe patient handling committee to ensure the performance of assessments of patient need for assisted patient handling, and would provide standards and procedures for conducting these assessments.

Proposed new N.J.A.C. 8:43E-12.8 would require a covered facility, under the direction of the safe patient handling committee, to conduct a needs assessment for each unit within the facility to determine the type and quantity of assisted patient handling equipment required and the units or areas within the facility where assisted patient handling is most needed. Proposed new N.J.A.C. 8:43E-12.8 also would describe the factors on which the assessment would focus, and would specify certain resources that would be used by a covered facility to conduct a needs assessment.

Proposed new N.J.A.C. 8:43E-12.9 would require the safe patient handling committee to draft an implementation plan for the program, and would describe components of the implementation plan.

Proposed new N.J.A.C. 8:43E-12.10 would require the safe patient handling committee to establish a financial plan for a facility's program and would set forth the components of this plan.

Proposed new N.J.A.C. 8:43E-12.11 would require the safe patient handling committee to be responsible for equipment selection, usage and maintenance, and would provide certain standards for equipment selection, usage and maintenance.

Proposed new N.J.A.C. 8:43E-12.12 would require a covered facility, under the direction of the safe patient handling committee, to conduct training of health care workers prior to their use of safe patient handling equipment, and at least annually thereafter. Proposed new N.J.A.C. 8:43E-12.12 also would require interim training for new health care workers, would specify additional classes of health care workers and others who would receive training, would require that training be conducted during paid work time, and would specify the content and duration of the training program.

Proposed new N.J.A.C. 8:43E-12.13 would require the safe patient handling committee to develop educational materials for educating patients and their families about patient handling.

Proposed new N.J.A.C. 8:43E-12.14 would mandate a covered facility, under the direction of the safe patient handling committee, to establish procedures for injury reporting, investigation, analysis, and recordkeeping. This section also would require a covered facility to encourage employees to report injuries and near misses in a non-punitive environment, and to appoint an appropriate facility department to receive and analyze reports and to generate de-identified, aggregated data reports.

Proposed new N.J.A.C. 8:43E-12.15 would require the safe patient handling committee to evaluate de-identified, aggregated data to identify units and shifts with ongoing patient handling injuries and to track their impact; to determine measures to increase patient acceptance of safe patient handling; and to make recommended improvements regarding the program to the facility's

governing body at least annually, or more frequently as needed. This section also would provide the safe patient handling committee access to data prior to de-identification and aggregation as determined necessary by the committee.

Proposed new N.J.A.C. 8:43E-12.16 would specify the meaning of “retaliatory action,” would prohibit retaliatory actions against health care workers under certain circumstances, and would require that a healthcare worker who refuses to perform a patient handling task pursuant to this section would promptly notify her or his supervisor.

Proposed new N.J.A.C. 8:43E-12.17 would mandate that a covered health care facility that violates the provisions of this subchapter would be subject to enforcement actions and penalties specified in N.J.A.C. 8:43E-3.

As the Department has provided a 60-day comment period on this notice of proposal, pursuant to N.J.A.C. 1:30-3.3(a)5, this notice is excepted from the rulemaking calendar requirement as set forth at N.J.A.C. 1:30-3.1 and 3.2.

Social Impact

The Department anticipates that the proposed new rules and amendment would decrease the number of job-related musculoskeletal injuries suffered by health care workers. Patients would benefit because health care workers would require less days away from work. Similarly, families would likely be pleased that the proposed new rules would help decrease falls and improve the comfort, dignity, and quality of care for patients. Finally, society in general would benefit because workers’ compensation costs would decrease and fewer health care workers would leave the profession due to job-related musculoskeletal injuries.

The Department estimates that 465 covered facilities licensed by the Department would be affected by the proposal (general acute care hospitals-71; special hospitals-16; county psychiatric hospitals-4, private psychiatric hospitals-6, and nursing homes-368).

The Department met with hospital, nursing home, and health care worker representatives to seek their input on this draft. After completing detailed discussions, consensus was reached regarding the content of these proposed rules.

The Department expects a positive response to the proposal, although some covered facilities may object to the costs attendant upon purchasing safe patient handling equipment and training health care workers.

Economic Impact

The Department has no current way of estimating the costs of this proposal for covered health care facilities. However, some facilities have expressed concern about the cost of purchasing patient handling equipment that has been found effective in reducing job-related musculoskeletal injuries and patient falls. Administrators are concerned about whether they can recover the cost of implementing a safe patient handling program. According to the National Institute for Occupational Safety and Health (NIOSH), multiple cost-benefit analyses have demonstrated that the initial investment in lifting equipment and employee training can be recovered in two to three years through reductions in workers' compensation expenses. (See *Safe Lifting and Movement of Nursing*

Home Residents, NIOSH Publication No. 2006-117,
www.cdc.gov/niosh/docs/2006-117/).

The proposed amendment at N.J.A.C. 8:43-3.4(a) that would establish monetary penalties for violations of N.J.A.C. 8:43E-12 that either result in harm or do not result in harm are consistent with penalties in other regulations developed by the Department and are only incurred should a facility fail to comply with the chapter which is mandated by statute.

The proposed new rules and amendment would not affect existing funding sources, although the Department would be required to use existing staff and resources to administer and enforce the requirements of the proposed new rules and amendments.

Federal Standards Statement

The federal OSHA ergonomics standard was rescinded in 2001. (See 66 FR 20403). Since then, several healthcare worker unions and injured worker advocacy groups initiated campaigns to introduce “safe patient handling” at the state level. The proposed new rules and amendment are mandated by the “Safe Patient Handling Act,” N.J.S.A. 26:2H-14.8 et seq., and are not subject to federal standards or requirements. Therefore, a federal standards analysis is not required.

Jobs Impact

The Department does not expect that the proposed new rules and amendment would result in a loss of jobs. In fact, it is expected that these new rules and amendment would allow more healthcare workers to keep their existing

jobs. In addition, when the rules and training take effect, new jobs might be generated in the industries that manufacture patient handling equipment.

Agriculture Impact Statement

The proposed new rules and amendment would not have any impact on the agriculture industry in New Jersey.

Regulatory Flexibility Statement

The proposed new rules and amendment would impose requirements on general hospitals, special hospitals, county and private psychiatric hospitals, and nursing homes licensed by the Department of Health and Senior Services pursuant to P.L. 1971, c. 136 (N.J.S.A. 26:2H-1 et seq.). Covered facilities such as general hospitals, special hospitals, and county and private psychiatric hospitals are not considered to be “small businesses” within the meaning of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., as each generally employs more than 100 people full-time. Some of the 368 nursing homes employ more than 100 people full-time and others do not. The covered facilities that employ less than 100 people full-time would be considered small businesses. Therefore, the proposed new rules and amendment would impose compliance, reporting and recordkeeping requirements on the covered facilities that employ less than 100 people full-time.

Covered facilities may need to obtain professional services or new hires in order to comply with the training requirements and the need to assess and purchase patient handling equipment proposed by the new rules. Covered facilities would also incur costs to comply with the recordkeeping requirements of

the proposed new rules. Although the Department is unable to estimate these costs, small businesses would incur costs and savings similar to those incurred by all facilities covered by these proposed regulations as described in the Economic Impact Statement above. However, since the smaller covered facilities house fewer patients, the overall costs should be less than for the larger facilities. Because of the need for safe patient handling in all covered facilities, no lesser requirements may be imposed on these small businesses.

Smart Growth Impact

The proposed new rules and amendment would not have an impact on the achievement of smart growth and the implementation of the State Development and Redevelopment Plan.

Housing Affordability Impact

The proposed amendments and new rules will have an insignificant impact on affordable housing in New Jersey and there is an extreme unlikelihood that the regulation would evoke a change in the average costs associated with housing because the proposal affects patient handling in licensed general hospitals, special hospitals, county and private psychiatric hospitals, and nursing homes operating in New Jersey.

Smart Growth Development Impact

The proposal will have an insignificant impact on smart growth and there is an extreme unlikelihood that the regulation would evoke a change in housing production in Planning areas 1 or 2 or within designated centers under the State Development and Redevelopment Plan in New Jersey because the proposal

concerns safe patient handling in licensed general hospitals, special hospitals, county and private psychiatric hospitals, and nursing homes, operating in New Jersey.

Full text of proposed amendment and new rules follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

8:43E-3.4 Civil monetary penalties

(a) Pursuant to N.J.S.A. 26:2H-13 and 14, the Commissioner may assess a penalty for violation of licensure regulations in accordance with the following standards:

1. - 15. (No change.)

16. For violation of N.J.A.C. 8:43G-12A or 36.3(b)4, governing emergency care for sexual assault victims, \$5,000 per violation, which may be assessed for each day noncompliance is found[.];

17.-18. (Reserved.)

19. For violations of N.J.A.C. 8:43E-12 resulting in either actual harm or immediate and serious risk of harm, to individuals who are directly employed by a covered health care facility, \$2,500 per violation, which may be assessed for each day noncompliance is found; and

20. For other violations of N.J.A.C. 8:43E-12 not resulting in harm as set forth in paragraph 19 of this subsection, \$1,000 per violation, which may be assessed for each day noncompliance is found.

(b) - (c) (No change.)

SUBCHAPTER 12. SAFE PATIENT HANDLING

8:43E-12.1 Authority, scope and purpose

(a) The provisions of this subchapter apply to health care workers whose job duties entail patient handling and who are employed by general hospitals, special hospitals, county and private psychiatric hospitals, and nursing homes licensed by the Department of Health and Senior Services pursuant to P.L. 1971, c.136 (N.J.S.A. 26:2H-1 et seq.).

(b) The purpose of this subchapter is to minimize unassisted patient handling in order to decrease the number of job-related musculoskeletal injuries and disorders suffered by health care workers; to minimize health care worker days away from work and workers' compensation costs due to job-related musculoskeletal injuries and disorders; to diminish the role that job-related musculoskeletal injuries and disorders play in exacerbating the loss of health care providers in New Jersey; and to improve the comfort, dignity, satisfaction and quality of care for patients.

(c) Nothing in this subchapter shall be construed to limit the right of a patient to refuse the use of assisted patient handling.

8:43E-12.2 Definitions

The following words and terms, as used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

“Assessment of patient’s need for assisted patient handling” or “patient assessment” means the assessment required to determine a patient’s required level of assisted patient handling, taking into account the patient’s physical and cognitive condition and ensuring consistency with patient safety, well-being and preference.

“Assisted patient handling” means patient handling using mechanical patient handling equipment including, but not limited to, electric beds, portable base and ceiling track-mounted full body sling lifts, stand assist lifts, and mechanized lateral transfer aids; and patient handling aids including, but not limited to, gait belts with handles, sliding boards and surface friction-reducing devices.

“Committee” means the safe patient handling committee established at a covered facility.

“Covered health care facility” or “covered facility” means a general hospital, special hospital, county or private psychiatric hospital, or nursing home licensed by the Department of Health and Senior Services pursuant to P.L.1971, c.136 (N.J.S.A. 26:2H-1 et seq.).

“Health care worker” means an individual who is directly employed by a covered health care facility and whose job duties entail patient handling.

“Injury investigation” means an in-depth analysis of a health care worker injury sustained during patient handling that is designed to identify both direct and underlying causes of the injury, in order to develop corrective actions that could reduce the potential for similar injuries in the future.

“Near miss” means an occurrence that could have resulted in an adverse event to someone, but the adverse event was prevented.

“OSHA” means the Occupational Safety and Health Administration of the United States Department of Labor.

“Patient” means a patient or resident at a covered health care facility.

“Patient handling” means the lifting, transferring, repositioning, transporting or moving of an individual who is a patient in a covered health care facility.

“Safe patient handling program” or “program” means the program established by a covered facility pursuant to N.J.S.A. 26:2H-14.8 et seq. and N.J.A.C. 8:43E-12.

“Unassisted patient handling” means patient handling using a health care worker’s body strength without the use of mechanical patient handling equipment or patient handling aids.

8:43-12.3 Safe patient handling committee

(a) Within three months of the adoption of these rules, each covered health care facility shall establish a safe patient handling committee.

1. The committee shall meet as needed, but no less than quarterly.

(b) In the case of a health care system that owns or operates more than one covered health care facility, the system may operate the safe patient handling committee at the system level, provided that committee membership includes at least one health care worker from each facility, and the system develops a safe patient handling program for each facility, taking into account the characteristics of the patients at the facility.

(c) At least 50 percent of the members of the committee shall be health care workers who are representative of the different disciplines at the facility or facilities.

1. The committee members shall include supervisors, health care workers and other facility staff as appropriate who have experience, expertise, or responsibility relevant to the operation of a safe patient handling program.

2. The safe patient handling committee shall select a chairperson from among its members.

(d) In a facility or health care system where health care workers are represented by one or more collective bargaining agents, the management of the facility or system shall consult with the collective bargaining agents regarding the selection of the health care worker committee members.

(e) The committee shall be responsible for all aspects of the development, implementation and periodic evaluation and revision of the facility's safe patient handling program, including the evaluation and selection of patient handling equipment.

8:43E-12.4 Establishment of the safe patient handling program

(a) A covered health care facility shall establish a safe patient handling program to reduce the risk of injury to both patients and health care workers in the facility.

(b) The covered facility shall designate a representative of administration who shall be responsible for overseeing all aspects of the safe patient handling program.

(c) The representative shall ensure that the covered facility supports the program by providing assistance that includes:

- 1. Recognizing problems related to patient handling;**
- 2. Developing clear goals;**
- 3. Assigning responsibilities to designated staff members;**
- 4. Allocating fiscal resources for planning and training;**
- 5. Allocating fiscal resources for the purchase, implementation and maintenance of the required equipment in the time allowed; and**
- 6. Ensuring follow-up and revisions to the plan.**

(d) A covered facility shall allow employee input regarding the program through means developed by the safe patient handling committee.

8:43E-12.5 Written description of the program

(a) A covered facility shall maintain a detailed written description of the program and its components.

(b) A covered facility shall make a copy of the written description of the program available upon request, to the Office of Certificate of Need and Health Care Facility Licensure in the Department of Health and Senior Services.

(c) A covered facility shall make the written description available within two business days after a request by a health care worker or collective bargaining agent who represents health care workers at the facility.

(d) If a language other than English is the exclusive language spoken by at least 10 percent of a covered facility's healthcare workers, the covered facility shall translate the description of the safe patient handling program into that language and make it available to those workers.

8:43E-12.6 Safe patient handling policy

(a) The covered facility, under the direction of the safe patient handling committee, shall establish a written safe patient handling policy for all units and for all shifts.

(b) The content of the safe patient handling policy shall include, at a minimum, the following:

1. A requirement that an assessment of a patient's need for assisted patient handling shall be performed for each patient.

2. A requirement that assisted patient handling shall be used for patient handling tasks except when not required based on an assessment of a patient's need for assisted patient handling or in the case of a medical emergency during which a patient's life would be threatened if the required safe patient handling equipment were not immediately available;

3. A statement that patients shall have the right to refuse the use of assisted patient handling; and

4. A commitment that all elements of the policy shall be consistent with patient and health care worker safety and well-being.

(c) The safe patient handling policy shall:

1. Comply with all of the requirements of N.J.A.C. 8:43E-12; and

2. Be signed by the Chief Executive Officer of the covered facility.

(d) A statement summarizing the policy shall be posted in a location easily visible to staff, patients, residents, and visitors.

(e) If a language other than English is the exclusive language spoken by at least 10 percent of a facility's healthcare workers, the covered facility shall translate the safe patient handling policy into that language and make it available to those workers.

8:43E-12.7 Assessments of patient need for assisted patient handling

(a) The safe patient handling committee shall:

- 1. Establish a uniform system of protocols and procedures to be used consistently throughout the facility for conducting patient assessments, which shall include, at a minimum, the following:**
 - i. Identification of who shall be responsible for conducting patient assessments;**
 - ii. Methods to be used to determine strength, physical ability, and cognitive ability; preferences; and any special circumstances likely to affect transfer or repositioning tasks; and**
 - iii. Determination of when to perform patient assessments including, at a minimum, at the time of initial admission and whenever there is a change in any of the factors that determine a patient's dependency level;**
- 2. Ensure that the patient assessments are communicated to everyone who may be responsible for lifting, transferring, or repositioning that patient; and**
- 3. Ensure that decisions about the selection and appropriate use of equipment shall be based on the patient assessments.**

8:43E-12.8 Needs assessment

(a) The covered facility, under the direction of the safe patient handling committee, shall conduct a needs assessment for each unit or department within the facility every three years, or sooner if needed, to determine the type and quantity of assisted patient handling equipment

required and, if necessary, to prioritize the need for equipment among the units or areas within the covered facility based on the needs assessments.

(b) The needs assessment for each unit or department shall focus on, at a minimum, the following:

- 1. Typical patient type and care needs on each unit;**
- 2. The categories of staff and types of patients to whom injuries are occurring;**
- 3. When and where injuries are occurring (department, unit, date, time and shift);**
- 4. The number and leading types of musculoskeletal injuries and disorders among healthcare workers;**
- 5. Types of tasks that caused injury (or are difficult or painful to perform) including, at a minimum, lifting, repositioning, and transferring patients;**
- 6. Specific equipment associated with employee or patient injuries;**
- 7. Available patient handling equipment and any problems associated with its use;**
- 8. Potential problems with new equipment and assurance of access, storage and maintenance;**
- 9. Facility costs associated with unassisted and assisted patient handling injuries including, at a minimum, medical and workers' compensation costs; and**
- 10. Indirect impact of injuries on staff turnover and replacement.**

(c) The covered facility and its committee shall conduct a needs assessment required by (a) and (b) above by using resources including, at a minimum, the following:

1. New Jersey Occupational Safety and Health form 300 (N.J.A.C. 12:110-5.1);

2. OSHA Log of Work-Related Injuries and Illnesses (OSHA Forms 300 and 301) required by 29 C.F.R. Part 1904, which is incorporated herein by reference, as amended and supplemented;

3. Reports of workers' compensation claims;

4. Accident and incident reports;

5. Facility incident reports for employees and patients;

6. Insurance company reports;

7. Employee interviews and surveys; and

8. Reviews and observations of workplace conditions.

8:43E-12.9 Implementation plan

(a) The safe patient handling committee shall draft an implementation plan which shall be approved by the covered facility's governing body.

(b) The implementation plan shall address topics including, at a minimum, the following:

1. How to phase in the safe patient handling program;

2. Communication and enforcement of the mandate that no person shall use patient handling equipment prior to completing the training required by N.J.A.C. 8:43E-12.12; and

3. Availability of an adequate number and variety of assisted patient handling equipment on each patient care unit as determined by the safe patient handling committee.

8:43E-12.10 Financial plan

(a) The safe patient handling committee shall recommend a financial plan for the program which shall include, at a minimum, the following:

1. A recommended annual budget for the safe patient handling program; and

2. A recommendation for a three-year plan, which takes into account the financial constraints of the facility to purchase the safe patient handling equipment necessary to carry out the safe patient handling policy.

8:43E-12.11 Equipment selection, usage and maintenance

(a) The safe patient handling committee shall:

1. Recommend equipment selection;

2. Promote and monitor the use and maintenance of the selected equipment; and

3. Ensure that healthcare workers and other employees who may handle safe patient handling equipment shall have the opportunity to

participate in the selection of equipment by trying out equipment from vendors that allow evaluation prior to purchase.

i. The evaluations of healthcare workers and employees shall be factored into purchasing decisions before the facility determines which equipment to purchase.

4. Establish an evaluation process to determine whether selected assisted patient handling equipment is appropriate for the task to be accomplished, comfortable for the patient, and safe and stable for both patient and caregiver;

5. Develop a plan to ensure that equipment users have prompt access to and availability of assisted patient handling equipment; and

6. Develop and implement procedures to ensure that all patient handling equipment shall be used, cleaned, maintained, and stored in a safe manner that complies with manufacturer recommendations.

8:43E-12.12 Training program

(a) A covered facility, under the direction of the safe patient handling committee, shall:

1. Ensure that the training required by this section shall be based on researched and proven approaches for performing safe patient handling;

2. Ensure that the patient handling training for a health care worker required by this section is conducted prior to any use of the safe patient

handling equipment by the healthcare worker, and at least annually thereafter;

3. Provide that training shall be at least two hours in duration and shall be held during paid work time;

4. Provide appropriate interim training for health care workers beginning work between annual training sessions; and

5. Provide refresher training as needed.

(b) A covered facility shall require all health care workers responsible for patient handling to participate in the annual safe patient handling training.

1. Training shall be mandated for supervisors, all equipment users, members of the safe patient handling committee; and all departments and staff that are engaged in patient handling activities.

(c) A covered facility shall provide patient handling training in a manner and language that employees can understand.

1. If a language other than English is the exclusive language spoken by at least 10 percent of a facility's health care workers, the training shall be conducted in that language and handouts shall be made available in that language.

(d) Training shall include, at a minimum, the following:

1. An explanation of the covered facility's safe patient handling policies and practices;

2. Causes and prevention of musculoskeletal injuries and disorders;

- 3. How to recognize and address early indications of musculoskeletal injuries and disorders before serious injury develops;**
 - 4. Identification, assessment, and control of patient handling risks, including use of assessments of patient need for assisted patient handling and appropriate communication with patients;**
 - 5. A demonstration of safe, appropriate, and effective use of patient handling equipment;**
 - 6. Trainee participation in operating unit-specific patient handling equipment and demonstration that they are proficient in using such equipment for patients with a range of physical limitations;**
 - 7. The facility's procedures for reporting work-related injuries and illnesses pursuant to the New Jersey Public Employees' Occupational Safety and Health Act, as required by N.J.S.A. 34:6A-40, or OSHA's injury and illness recording and reporting requirements at 29 CFR Part 1904, which is incorporated by reference, as amended and supplemented; and**
 - 8. Explanation, demonstration and practice of researched and proven methods and techniques that one or more health care workers may use for patient handling of a patient who refuses assisted patient handling.**
- (e) The safe patient handling committee shall, at least once a year, or more frequently as needed, review the training content and methods and make necessary revisions.**

8:43E-12.13 Educational materials

(a) The safe patient handling committee shall appoint a person or persons to:

1. Develop educational materials to help orient patients and their families to the facility's assisted patient handling program; and

2. Include the information specified in 1 above in the covered facility's admissions package and in a discussion with the patient and family following an assessment of a patient's need for assisted patient handling.

8:43E-12.14 Injury investigation, reporting, analysis, and recordkeeping

(a) A covered facility, under the direction of the safe patient handling committee, shall:

1. Encourage employees to report injuries and near misses in a non-punitive environment;

2. Designate a person or persons to develop procedures for performing injury investigations, preparing investigation reports, and educating staff when an injury or near miss occurs;

3. Establish a mechanism for reporting all incidents, including near misses and injuries, resulting from patient handling;

4. Appoint an appropriate facility department to receive and analyze the reports required by (a)3 above, and to generate de-identified, aggregated data reports that take into account, at a minimum, items identified at N.J.A.C. 8:43E-12.8(b); the safe and proper use of assisted

patient handling equipment; patient refusals of assisted patient handling associated with injuries to healthcare workers; and the overall efficacy of the safe patient handling program;

5. Establish a system for monthly reporting of the reports generated pursuant to (a)4 above to the safe patient handling committee.

6. Inform the safe patient handling committee of any violations of N.J.A.C. 8:43E-12; and

7. Maintain records of work-related musculoskeletal injuries and disorders to help identify problem areas in accordance with the New Jersey Public Employees' Occupational Safety and Health injury and illness record-keeping requirements (N.J.A.C. 12:110-5), or OSHA's injury and illness recording and reporting requirements at 29 CFR Part 1904, which are incorporated by reference, as amended and supplemented.

8:43E-12.15 Evaluation and recommendations

(a) The safe patient handling committee shall:

1. Evaluate the de-identified, aggregated data developed pursuant to N.J.A.C. 8:43E-12.14(a)4 in order to, at a minimum, identify units and shifts with ongoing injuries related to patient handling and track the impact of injuries on employee turnover.

2. Have access to reports and data collected pursuant to N.J.A.C. 8:43E-12.14 prior to de-identification and aggregation, as determined necessary by the committee and in keeping with procedures established by

the committee, in order to fulfill its obligations specified in 1 above and in N.J.A.C. 8:43E-12.3(e).

3. Determine what measures to take to increase patient acceptance of safe patient handling, including changes to the education of healthcare workers, patients, and family members.

4. Provide evaluation results and recommended improvements regarding the safe patient handling program to the facility's governing body at least annually, or more frequently as needed.

8:43E-12.16 Prohibition of certain retaliatory actions

(a) As used in this section, "retaliatory action" means the discharge, suspension or demotion of an employee, or other adverse employment action taken against an employee in the terms and conditions of employment, in accordance with section 2 of P.L. 1986, c. 105 (N.J.S.A. 34:19-2).

(b) A covered health care facility shall not take any retaliatory action against a health care worker because the worker refuses to perform a patient handling task due to a reasonable concern about worker or patient safety, or the lack of appropriate and available patient handling equipment.

1. A health care worker who refuses to perform a patient handling task pursuant to this section shall promptly notify her or his supervisor of the refusal and the reason for refusing.

8:43E-12.17 Enforcement and penalties

A covered health care facility licensed pursuant to P.L. 1971, c. 136 (N.J.S.A. 26:2H-1 et seq.), that is in violation of the provisions of this subchapter shall be subject to enforcement actions and penalties specified in N.J.A.C. 8:43E-3.