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Advocates Laud OSHA's Nursing, Residential Care NEP, Urge Wider Health Care Enforcement

Health care worker advocates are generally praising OSHA's launch of a new National Emphasis Program (NEP) for nursing and residential care facilities, saying the program is a needed step to address issues such as ergonomics and workplace violence, but also lodging persistent concerns that the agency has not reached more broadly into the health care sector. Industry officials, however, are concerned that OSHA is using the directive to tackle issues for which there are no specific standards.

OSHA unveiled the NEP directive last week, several months after revealing it was under development. Some union officials have called on OSHA in recent years to focus more enforcement attention on the health care sector — which has rapidly grown as a share of the economy compared to manufacturing and construction, and has also experienced growing numbers of injuries and illnesses. The agency says its new three-year targeted approach to nursing homes and residential care partly responds to the need for greater health care enforcement.

OSHA points to Bureau of Labor Statistics data showing that in 2010 nursing and residential care facilities experienced one of the highest rates of lost workdays due to injuries and illnesses of all major U.S. industries. The incidence rate for cases involving days away from work in the nursing and residential care sector was 2.3 times higher than that of all private industry as a whole, despite the availability of feasible controls to address hazards, OSHA says in a press release.

Data further indicate that an “overwhelming proportion” of the injuries within this sector were attributed to overexertion as well as to slips, trips and falls, and taken together, those two categories accounted for 62.5 percent of cases involving days away from work within the industry in 2010, OSHA states.

The NEP directive targets facilities with a days-away-from-work rate of 10 or higher per 100 full-time workers.

“These are people who have dedicated their lives to caring for our loved ones when they are not well. It is not acceptable that they continue to get hurt at such high rates,” OSHA chief David Michaels says in the release.

OSHA cites numerous hazards associated with nursing and residential care on which compliance officers will focus inspections: exposure to blood and other potentially infectious material; exposure to other communicable diseases such as tuberculosis; ergonomic stressors related to lifting patients; workplace violence; and slips, trips and falls. Workers also may be exposed to hazardous chemicals and drugs, OSHA states.

The agency is making information available for employers and employees in nursing homes and residential care facilities — including guidance on ergonomics and workplace violence — on an OSHA web page.

A key union official on health care worker safety issues praises the NEP launch but tells *Inside OSHA Online* a much greater effort is needed sector-wide. “It’s a step in the right direction,” says Bill Borwegen, of Service Employees International Union. “It is kind of troubling that they continue to treat nursing homes in a disparate fashion. But we applaud them for pursuing this National Emphasis Program.”

“We’re happy that they’ve expanded it to include workplace violence this time,” Borwegen says, citing the high numbers of assaults against employees in nursing homes. Borwegen notes that the section of the directive focusing on workplace violence references state laws covering the issue.

However, he points out that OSHA does not make a similar references to state laws in the area covering ergonomics, even though states such as New Jersey have their own laws governing safe patient handling — a central issue for health care worker advocates. “[The state law] demonstrates leadership at the state level. It supports federal activity,” Borwegen says. “It would have been helpful to include a similar reference to safe patient handling laws in the ergonomics section.” Borwegen also raises concerns that the directive’s section on outreach does not spell out quantifiable goals for regional offices to meet.

“Bolder steps are necessary to stem the epidemic throughout the health care sector and this is a relatively modest step that is good step, but ... we need a much more aggressive approach,” he says.

An industry attorney, however, says the NEP effectively has a broad reach. Eric Conn, head of the OSHA Group at Epstein Becker & Green, suggests the NEP will have a sweeping effect because of the inspector training involved in

rolling out the directive. “Even though this NEP focuses on Nursing Homes, it will likely impact all employers in the healthcare industry, because the result will be a group of compliance officers across the country trained in the hazards and related OSHA standards that impact nursing homes, which happen also to be the same hazards and standards that impact hospitals, doctors’ offices, and rehab centers,” Conn says in an email.

“We saw the same thing in the chemical industry after the Petroleum Refinery PSM NEP got underway. OSHA suddenly had a much larger group of compliance officers who understand the PSM Standard, and knew what to look for in PSM covered processes,” Conn says. “Even before the Chemical Facilities PSM NEP launched, chemical manufacturers were already seeing an increase in PSM enforcement because of the new pool of PSM-knowledgeable compliance officers created by the Refinery NEP.”

Industry representatives are taking a cautious approach to the NEP directive, expressing concern about some of the hazard categories OSHA is seeking to target. “It will be interesting to see what citations arise out of these inspections. The directive requires compliance officers to look for ‘ergonomic’ and ‘workplace violence’ violations — neither of which, of course, are based on any standard, but rather on an employer’s duty under Section 5(a)(1) to keep the workplace free from ‘recognized hazards,’” Michael Billok, an attorney with Bond, Schoeneck and King, tells *Inside OSHA Online* in an email.

“If OSHA starts issuing a significant number of these citations, it may find the employers are more willing to challenge the citations for failure to provide employers fair notice of what is required of them,” Billok says, especially in light of the D.C. Circuit’s decision last week rejecting the Labor Secretary’s recordkeeping statute-of-limitations interpretation. — *Christopher Cole*
