

November 29, 2018

Dear Members of Congress:

The undersigned organizations write today to urge you to demand that the Department of Labor rescind its reckless and [dangerous proposal that](#) repeals child labor protections for young workers in nursing homes and hospitals. Contrary to its title, this proposed rule will not increase any apprenticeship or employment opportunities for young workers, but rather, will endanger vulnerable workers as well as patients.

The proposed rule will reverse an almost decade old [common sense Labor Department enforcement policy](#) requiring that 16- and 17- year old health care workers be assisted and supervised by an employee at least 18 years of age when using power driven hoisting equipment to lift and transfer patients with limited mobility. Despite the fact that nursing homes have the [highest injury and illness rate](#) of any industry, the Administration is reversing this current policy and proposing to allow young workers in nursing homes and hospitals to operate these complicated hoisting devices by themselves, with no assistance from an adult worker.

Alarming, this proposed rule ignores the clear expert and scientific evidence from the government's own worker safety experts, the National Institute for Occupational Safety and Health (NIOSH), who reviewed the data and literature and [determined in 2011](#) that "many 16 and 17 year olds cannot safely operate power driven hoists to lift and transfer patients by themselves." Moreover, NIOSH found that the scientific literature indicates that most 16- and 17-year old workers do not have the ability to properly assess the risks associated with using power-driven lifts. To protect young workers in health care, NIOSH recommended that the Labor Department require that at least two caregivers operate a mechanical lift, one of whom should be an experienced caregiver at least 18 years of age. This recommendation provides the basis for the current DOL policy. Yet, without presenting any countervailing evidence to refute the expert recommendations of NIOSH, the Labor Department is proposing to rescind the current policy.

Further, despite the title of this proposed rule, the Labor Department presents no evidence that this proposal will increase any job training or apprentice opportunities for young workers. The only [data the Labor Department](#) presents to substantiate its assertion that the current policy might be a barrier to apprenticeship programs in the health care industry, is a brief mention of a survey done 7 years ago in Massachusetts. The survey, however, is of dubious quality, to say the least, and cannot serve as a legal basis to promulgate a new regulation. In fact, despite repeated requests, the Department has refused to place the survey in the docket so the public can review the findings and provide comments.

We have learned that the survey was conducted through Survey Monkey and had a miniscule number of respondents, a grand total of 22. The survey was never published and demonstrated that half of respondents (11 of the 22) were not even sure what the Labor Department policy was regarding teen workers in health care. Only five respondents opined that the current policy may have made it more difficult to place young workers in nursing homes. Upon closer examination of this survey, the conclusion was not that current policy is a barrier for young workers, but that there was confusion about recent regulatory changes. This confusion prompted Massachusetts to issue a fact sheet for schools and employers to clarify the conditions that must be met for 16-17 year olds to use power driven patient lifts, solving the only real problem identified by this otherwise lackluster survey.

In the proposed rule, the Department also blatantly misrepresents a 2011 letter from the [American Health Care Association and the National Center for Assisted Living](#) as further evidence of the need to change current policy. In reality, the letter cited is simply a request for clarification of the current policy and clearly states that **both** organizations “fully support the new conditions under which 16 and 17 year olds can operate patient lifting devices [with the assistance of an experienced caregiver 18 years or older].”

Finally, the Labor Department’s proposal is extremely dangerous for patients. Two months ago on Friday, September 24, 2018, a group of resident advocates met with officials from the Office of Management and Budget to voice their opposition to the rule. In particular, they delivered a statement from nursing home advocates that said: “Revoking the 2011 DOL Field Assistance Memo that prohibits 16-and 17-year-old nursing home assistants from operating patient lifts by themselves would recklessly ignore research and experience and turn over one of the most complicated and hazardous tasks in nursing homes being performed to the least experienced workers. The most vulnerable and dependent patients in the health care system would be at increased risk of injuries that can cause pain, broken bones, medical complications, increased disablement, hospitalization and frequently death.” (Janet Wells, California Advocates for Nursing Home Reform; Toby Edelman, Center for Medicare Advocacy; Richard Mollot, Long Term Care Community Coalition; Lori Smetanka, National Consumer Voice for Quality Long-Term Care; and Penelope Ann Shaw, Nursing Home Resident.)

We urge you to demand that the Labor Department withdraw this new proposed rule. If the Department is truly interested in protecting young workers and increasing training and apprenticeship opportunities, it should instead work to codify the [current enforcement policy](#) that allows a 16-or 17-year old caregiver to use a powered driven patient hoist if they are trained and assisted by an experienced caregiver who is at least 18 years of age.

Sincerely,

AFL-CIO  
AFSCME  
American Federation of Teachers  
Center for Medicare Advocacy  
Child Labor Coalition  
Long Term Care Coalition  
National Consumers League  
National Council for Occupational Safety and Health  
National Education Association  
National Employment Law Project  
Service Employees International Union  
United Food and Commercial Workers International Union