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Privacy regs could be bitter pill for occupational health providers to swallow

Goal to protect medical info, but effect is unknown

New privacy regulations enacted by the federal government may mean that occupational health providers have to change some of the ways they handle confidential information. The new rule threatens to cause problems for the way occupational health providers have traditionally operated, yet the rule may not go far enough in solving some ethical dilemmas about patient information.

Released recently as part of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the privacy rule applies to virtually all health care providers, including occupational health. It is intended to give consumers more control over and access to their health information; set boundaries on the use and release of health records; safeguard that information; establish accountability for inappropriate use and release; and balance privacy protections with public safety.

The Clinton administration finalized the rule just before leaving office, changing the proposed rule by strengthening several key protections.

Those changes include:

❒ extending protections to personal medical records in all forms including paper records and oral communications;

❒ providing for written consent for routine use and disclosure of health records;

❒ protecting against unauthorized use of medical records for employment purposes;

❒ ensuring that health care providers have all

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the information necessary to appropriately treat their patients.

Occupational health professionals may have a lot of work to do to comply with HIPAA, says **Jack Rovner**, partner and co-chair of the Chicago Health Law Practice Group for Michael Best & Friedrich. Before the end of the two-year implementation window, occupational health providers will need to examine and evaluate their patient data privacy, electronic data security, and transmission policies, procedures, and practices, as well as their electronic health information exchange capabilities and protocols. They may need to review and audit every operation and every business relationship that may involve use, disclosure, or electronic transmission or storage of individually identifiable health information.

"The good news for occupational health providers is that some of the last-minute changes will make it easier to implement the rules than the version we saw before," Rovner says.

Penalties can be severe

The final version of the rule includes a major change that occupational health providers will welcome. In the proposed version of the rule, providers could make available only the "minimum necessary" information about a patient even when the patient gave consent for the information transfer. Particularly in a field like occupational health, that provision raised all sorts of questions about how physicians would communicate with each other, with some analysts suggesting that the primary physician would have to be cryptic when talking with a specialist for fear of revealing too much patient information. No one in the health care industry liked that possibility, and it apparently won't come to pass.

Now the rule states that the "minimum necessary" provision does not apply to physician-to-physician consultations. "That's a major change and a good one," Rovner says.

But the "minimum necessary" provision still applies to a great many situations.

"The 'minimum necessary' provision says that employees should only see information they need to do their job. You can't just hand over the medical record and let them find what they need," he says. "That's going to require some major analysis of what everyone's job functions are and how you can control information so [staff] get what they need to do their jobs but nothing else. Claims processing doesn't need to see the same

Protecting employee privacy

The American Association of Occupational Health Nurses in Atlanta and the American College of Occupational and Environmental Medicine in Arlington Heights, IL, offer this advice for protecting employees' medical information:

- ✔ Companies should establish corporate policies that outline their information practices as they relate to collecting and maintaining personal health information, including information collected through occupational health and safety programs. The policies should be included in an employee handbook and reviewed with all employees.
- ✔ All employee health information should be kept confidential and released only when required by law or overriding public health consideration, when needed by other health professionals for specific reasons, and when needed by designated individuals at the request of the employee. Disclosure should be limited to the *minimum amount* necessary for the purpose requested.
- ✔ Health information should not be used in making determinations about hiring, firing, or promotion.
- ✔ The policy should address where and how the employee medical records are stored; security of records (of both electronic and physical files); management of files of employees who are terminated, resign, or are laid off; mechanisms for employee access and consent for disclosure.
- ✔ Employees should be provided a copy of the company's employee handbook and encouraged to review their rights regarding personal health information records kept at the workplace.
- ✔ Employers should remind employees that insurance claims forms and other legal medical documents they sign may include permission for the release of health information. ■

information that the nursing staff does."

The rule also includes provisions that should appeal specifically to occupational health providers. In the part of the rule explaining what a provider can and cannot disclose without specific authorization from the patient, the rule notes an exception for situations in which the provider is hired by the employer to provide health care to the employer's workers. Furthermore, the provider specifically is allowed to state whether the injury is work-related. No special consent or authorization is needed for that information.

The results of drug tests and workers' compensation cases fall under that provision, Rovner says, because the employee must acknowledge that the employer hired the provider. Other exceptions state that the provider can report information resulting from a medical evaluation or surveillance of the workplace to the employer, but it may be necessary to alert the patient to such work.

"You also could go to the workplace and do a medical evaluation of the employees' records or the employees themselves and then give a report to the employer," he says. "The only thing is that you would have to give written notice to the patient — meaning the employee — that you're doing the evaluation and the results will be given to the employer. You could give that notice to the patient during the evaluation, or you could post a notice prominently when doing an on-site evaluation."

That is a new requirement, Rovner says. However, that sort of notice is necessary only when you are using protected health information from the employee records, for instance. It is not needed if you are just on site observing the workplace to understand the working conditions.

"The touchstone of the entire rule is whether you're working with protected health information," he says. "If you review records maintained by the employer as part of the hiring process, that is not protected because the employer is not a covered entity. But if the employer hires or contracts with an occupational medicine physician, any information maintained there is covered and requires protection, plus notice of review before anyone else looks at it."

Despite the complexity of the rule, some occupational health providers say it does not address all of the potential privacy problems in their field.

The Atlanta-based American Association of Occupational Health Nurses (AAOHN) and the American College of Occupational and Environmental Medicine (ACOEM) in Arlington Heights, IL, released a joint statement calling the privacy regulations "a major step toward protecting personal health and medical information."

The new federal regulations will help address major areas of individuals' concerns regarding privacy of health information held by employers, the groups say.

Both occupational health groups note, however, that the protection of specific health information used by employers — such as information collected by occupational health professionals for

wellness programs and for management of occupational injuries and routine consultations at work — may not be covered by the privacy rules. Both AAOHN and ACOEM made recommendations for changes during the comment period prior to the new regulations being issued, saying the routine activities of occupational health professionals challenges their ethical obligations to not disclose protected information. They also acknowledged that there is the potential for improper use of employee medical information for decision making about nonhealth-related employee personnel issues, such as hiring, firing, and promotional opportunities.

"AAOHN and ACOEM believe that some of their initial concerns have been addressed in the final rules, yet are concerned that all health information at the work environment is not included under the protections," the groups state.

Larri Short, JD, privacy rights expert and attorney at the Washington, DC-based law firm Arent Fox, says the new privacy rules are a step in the right direction, but occupational health professionals should not rest easy and assume that their ethical quandaries regarding employees' medical information are addressed.

"This new rule represents a significant first step toward health privacy, but it does not do enough to eliminate employees' risk of health information disclosures to their employers. Simply put, employers are not always subject to the rule," Short says. "As a result, they will continue to have relatively free access to personal health information obtained through fitness-to-work examinations, occupational safety and health initiatives, and workers' compensation programs."

Deborah DiBenedetto, MBA, RN, COHN-S, ABDA, president of AAOHN agrees, saying occupational health professionals still will be faced with dilemmas when employers want access to information that may not be protected.

"Employers do have legitimate needs to have access to certain health information for managing workers' compensation or other benefits, accommodating a disabled employee, or assessing an employee's physical capability to complete assigned tasks." she says. "However, this does not mean that an employer should have access to unrelated information — such as an employee's diagnosis or entire medical file."

DiBenedetto says legislation is needed to authorize the development of privacy rules that will draw the privacy lines appropriately for information collected and used in the work environment.

Robert Goldberg, MD, FACOEM, director of the ergonomics program and assistant clinical professor at the University of California, San Francisco, agrees that more work is needed.

"Protecting confidentiality and privacy is imperative to preserving patient trust. Personal medical information obtained as a result of employment should be extended the same confidentiality protections as that collected for payment purposes," he says.

Until such rules are established, ACOEM and AAOHN recommend that occupational health professionals hold the line in protecting medical information from overeager employers. **(For some advice from ACOEM and AAOHN, see box, p. 27.)**

Exchange of information within system OK

Other changes in the final rule allow integrated health care organizations to share information as if they were a single entity, even if they are actually several facilities. That change recognizes the "real world of how health care is delivered," and could prove especially important in occupational medicine, Rovner says. In a hybrid organization with both health care and nonhealth care members, the rule allows the information to be shared between the health care entities but not with other branches.

Also, protected health care information cannot be provided to any human resources department within the organization. The only exception is a situation, such as workers' compensation treatment, in which an outside employer has purchased the health care and the patient has consented to such a release.

Probably the greatest impact, however, will be felt on the financial side of the health care operation. The rule makes it clear that accounts receivable employees, for instance, must not have access to protected patient information. It is not sufficient to ensure that they do not disclose or otherwise misuse the information; systems may have to be revamped to ensure they do not even have access to that information.

There is a strong incentive for complying with the HIPAA regulations. Rovner says HIPAA gives the U.S. Department of Health and Human Services (HHS) the power to impose civil monetary penalties of $100 for each knowing failure to meet one of the HIPAA standards, up to a

maximum annual fine of $25,000 for multiple violations of the same standard. As the cap applies only per standard, the exposure can be far greater should a health care organization be out of compliance with multiple standards. For example, violations of 100 different standards 250 or more times each in any year would bring an exposure of $2.5 million for that year.

For knowingly obtaining or disclosing patient data in violation of HHS regulations, the penalties are $50,000 and one year in prison. If the infraction involves false pretenses, the penalties increase to $100,000 and five years in prison; if it involves commercial or personal gain or malicious harm, the penalties are $250,000 and 10 years in prison. This criminal exposure is both personal and corporate. There's also potential substantial liability under state negligence or other tort principles premised on noncompliance with HIPAA standards.

Some providers expressed concern that the rule places an unreasonable burden on them to obtain consent from patients before disclosing medical information in almost any way. The requirement was strengthened from the original proposal so that now the patient must give written consent for just about any type of information release. Providers will have to retain the consent forms for a minimum of six years. ■

Workers' comp rates on the way up in 2001

Injury and illness rates to blame

Employers all around the country can expect across-the-board rate increases for workers' compensation insurance in 2001, according to one analyst. When policy renewals come due in 2001, employers may be in for a real shock, says **Mike McGowan**, vice president of Staffing Risk Solutions, a full-service risk management services company in Fort Lauderdale, FL.

"Costs, on average, will increase 20% to 40% nationwide, and employers with poor experience in 2000 may be looking at increases exceeding 60%." McGowan says the increases are a symptom of the "hardening" of the insurance market. Overall, insurers did not achieve the profit levels they had anticipated in 2000 and, therefore, are more discerning about the risk they will carry and the policies they will write in 2001, he says. As a result, employers with poor experience and few safety controls in place in 2000 not only will experience significant increases, but may have difficulty finding a carrier altogether.

"In general, carriers will be looking to reduce exposure and liability and increase their profitability by targeting employers with proven controls in place," he says.

To combat the increased costs, McGowan says some employers are turning to staffing companies to help insulate them from increased risks and workers' compensation costs.

John Cox, safety services director for Tandem Staffing, an industrial staffing company in Delray Beach, FL, that places about 23,000 employees per day on job sites throughout the country, says he is seeing the same trend.

"This is a natural reaction from employers. We've already seen an influx of calls from employers wanting to know how they can combat these cost increases," Cox says. "The good news is that the issue of safety has come front and center; the bad news is that it's taken these unfavorable market conditions to move employers to action."

Now that the workers' comp increases are high, there may be little that occupational health professionals and employers can do to reduce rates immediately. But Cox says the higher costs are proof of what happens without adequate attention to workplace hazards and illnesses.

"Employers looking for a quick fix to the problem of effective safety programming won't find it," Cox says.

Nevertheless, Cox says that through effective risk control implementation and monitoring, risks can be limited and experience positively affected. He points out that Tandem Staffing will experience only a moderate workers' comp rate increase in 2001 because its experience the past two years was well below industry averages.

Garry Meier, president and chief executive officer of Outsource International, Tandem Staffing's parent company, which is also in Delray Beach, says there's a direct correlation for business leaders.

Tandem's below-average injury and illness history will help it remain price-competitive in the marketplace, while other staffing companies may be forced to raise rates considerably due to higher-than-anticipated workers' comp costs.

"We are probably the most aggressive staffing company when it comes to risk management,"

Meier says. "We understand that next to payroll, workers' comp is the next biggest expense. And unlike payroll, it can fluctuate dramatically based on frequency and severity of accidents."

Meier and Cox both say workers' compensation exposure and hazards can be effectively controlled.

"We treat our safety program as a vehicle to safeguard our workers as well as our clients' and our own bottom lines. By assisting our clients in providing a safe work environment, accidents are limited, morale is kept high, downtime is minimized, and workers' comp costs are effectively managed," says Meier.

Tandem assists clients in safeguarding their employees, managing risks and limiting their workers' compensation exposure, but Cox notes that employers must take the lead.

"Safety programs are only as effective as the management support they receive. Because the client is on-site, they ultimately determine the success or failure of the program by their actions," he says.

"To be effective, we must have a commitment from the client, not just in word, but in practice. Clients with effective safety and risk-management programs in place are our optimum partners, as they understand that safety programming will affect their workers' comp experience and ultimately their financial performance," Cox adds.

In fact, Tandem, like the workers' compensation insurance carriers, evaluates risk vs. reward before taking on a new account, assessing each work site for potential exposure and hazards and determining if it can comfortably control these risks.

"A key element in our client screening process is determining whether client management is committed to [its] safety program. [Management] must show a high regard for safeguarding the welfare of [its] entire work force," says Cox. ■

Employer cited, cleared for employee's violence

An employer in Hawaii was cleared of a charge that it failed to prevent the worst mass shooting in Hawaii history, but not before the complaint and a more recent shooting in Wakefield, MA, ignited a debate over employers' responsibility for such incidents.

The state labor department filed a complaint in November against Xerox, saying it failed to enforce workplace-violence policies that might have prevented the deadly shooting. The labor department's occupational safety and health division soon withdrew the complaint, saying it was satisfied with additional information that showed Xerox developed and implemented a safety and health program.

Xerox, based in Stamford, CT, contested the findings. A jury already had convicted the shooter. Byran Uyesugi, a Xerox copier repairman, was convicted last June of first-degree murder and sentenced to life in prison without the possibility of parole for gunning down seven coworkers at a Xerox warehouse on Nov. 2, 1999.

Homicide is the second-leading cause of workplace death in the United States, so many experts say employers should take precautionary measures to limit the potential for violence on the job. Indeed, the recent history of work-related homicides represents only part of the violence-related challenges facing American companies. In 1998, for example, there were more than 8,000 serious on-the-job assaults, says **Kathryn Hartrick**, a partner in the Chicago law firm of Stickler & Nelson, who advises employers on violence-related issues.

"The bad news is that workplace violence is becoming more widespread across a broader range of companies and not-for-profit organizations," she says. "However, there is some good news for employers. There are usually warning signs that precede an outbreak of violence in the workplace. As a result, employers can take preventive steps to minimize the chances of assaults and deadly attacks."

Hartrick says there are three key ingredients that most often contribute to lethal work-related violence:

- **An employee with a heightened potential for violence.** Potentially violent employees may have a substance abuse problem, experience mental illness, or harbor a longstanding perception of being treated unfairly by an employer.
- **A workplace environment that can be a catalyst for an unstable or angry employee.** High-pressure, fast-pace, low-paying workplaces can be high-risk environments for employees predisposed to violence.
- **A triggering event experienced by a company employee, either on the job or at home.** This could include the termination or layoff of an employee, or a personal setback, such as a divorce or the breakup of a relationship.

Other factors, including personal financial pressures and the accessibility of guns, can also play a role in workplace violence.

Although there are no foolproof steps to prevent workplace violence, companies can establish and implement comprehensive workplace violence policies, Hartrick says. She lists these key elements in a strong prevention program:

- Assessment of high-risk employees and workplace stress factors.
- Creation of a crisis intervention action plan.
- Incorporation of violence prevention measures, policies, and protocols as part of an employee-relations program.
- Development of a management-level committee to monitor ongoing risks of violence.
- Anticipating volatile behavior when high-risk employees are disciplined, demoted, or lose their jobs.

Hartrick says it is important that companies set up clear lines of communication, all along the reporting chain, regarding the monitoring of aberrant employee behavior, including verbal or physical threats. Employers should implement a zero-tolerance policy toward any kind of violence, with clearly communicated disciplinary measures commensurate to the threats.

"Companies should use every tool possible to create a safe working environment," she says. "Many employers are uncomfortable confronting mental health and personality issues, which are frequently the basis for aberrant behavior. But in order to maximize on-the-job safety, management needs to be tuned into the behaviors that are high-risk."

In addition, companies need to create proactive policies that also address disgruntled customers who pose security risks.

"A while back, we saw a day trader murder several people in Atlanta, allegedly because of his anger at losing thousands of dollars in the stock market. Creating a system in which management can be promptly alerted when an employee becomes abusive or threatening is essential. Having a clear policy of how to handle such an individual is equally important," explains Hartrick.

ComPsych Corp., a business consulting company in Chicago, often addresses employers' concerns about addressing workplace violence. **Anita Madison**, a vice president with ComPsych, says employers are increasingly concerned.

"We receive a significant amount of calls from our clients regarding violence in the workplace, especially when the topic hits the headlines like the recent fatal shooting in Wakefield, MA," she says. "Employers today realize that workplace violence is cause for major concern."

Madison offers a summary of the advice her company gives employers:

- **Pay close attention to unusual behavior and address it from the onset.** You as an organization have set behavior and performance standards for your employees. If an employee is not meeting these expectations, address it with him or her immediately and discuss the consequences involved in a future violation. Dealing with irrational behavior early on can prevent it from spiraling into something more serious.
- **Take a look at your security.** Adopt physical security measures as part of your approach to combating violence against your employees.
- **Does your company perform pre-employment screening?** Do you perform background checks? They may be expensive, but they are well worth the money when it comes to your employees' safety.
- **Also, during the interview process, pose questions to your candidates that gauge their ability to deal with high-pressure situations.** Ask them how they deal with tense situations they encountered at work. Oftentimes, their responses may be good indicators of whether the candidates can deal with high-pressure predicaments.

Safety engineers say risk assessment crucial

Occupational health professionals also can look to the findings from a national "Workplace Violence Survey and White Paper" and the American Society of Safety Engineers (ASSE) for help. The ASSE urges employers to do two things:

- Review their workplace violence prevention policies.
- Conduct a risk assessment and vulnerability audit now in an effort to save lives and prevent additional acts of workplace violence.

A recent analysis of a national survey of safety professionals and risk managers conducted by the 89-year-old Illinois-based ASSE and the Risk and Insurance Management Society (RIMS) assessing the awareness and prevention techniques used to avoid workplace violence found that although the number of incidents in the respondents' workplaces have stayed the same, employees remain concerned. In response to those concerns, the ASSE/RIMS white paper outlines several steps

Violent acts in the workplace don't have to be a surprise

Most violent incidents at work take the employer by surprise, but they don't have to. Forensic psychiatrists at the Isaac Ray Center for Forensic Psychiatry at Rush-Presbyterian-St. Luke's Medical Center in Chicago say there are several warning signs that an employee might exhibit violent behavior. They offer these precautions:

1. An employee with a fascination for guns is more likely to commit a violent act in the workplace. But psychiatrists differentiate between gun ownership, or collecting, and an obsession with guns. The gun fanatic feels empowered by having or owning a gun.
2. An employee with a substance-abuse problem is more likely to commit a violent act than someone who does not have an alcohol or drug-abuse problem.
3. Be aware of severe stress in any employee. Stress does not cause violence, but it does create an environment in which it is more likely to occur.
4. An employee with a violent history is more likely to commit a violent act in the future.
5. A severe change in an employee's personality, for example, is a warning sign to be aware of. A quiet worker who becomes argumentative, or vice versa, is another warning sign.
6. A significant decrease in an employee's productivity may be a tip-off to watch out for.
7. An employee who is isolated socially or has poor peer relations could be a candidate for potential problems.
8. An employee with a significant change for the worse in his or her personal hygiene can indicate a problem. Look for signs such as the employee who used to be neat who now comes to work unshaven or wearing the same clothes as the day before.
9. Severe changes in psychological functioning. For instance, a man who works in the mailroom who hears voices only he can hear or the staff member who begins to see his fellow employees as part of a conspiracy to harm him. ■

employers should take to prevent a violent incident and what can be done following one to assist employees to cope with the tragedy.

In the "Workplace Violence Survey and White Paper" the ASSE Risk Management/Insurance Practice Specialty members suggest that officers and directors establish a workplace violence prevention and security policy. Upper management of any organization needs to promote a clear anti-violence corporate policy by addressing the issue in a formal written policy that must be distributed and discussed with all employees.

Human resource managers are advised to examine and improve hiring practices, implement pre-screening techniques, use background checks, encourage employees to report threats or violent behavior, establish termination policies, and provide post-termination counseling. Risk management and safety departments are advised to train all employees in the warning signs of aggressive or violent behavior, train management in threat assessment and de-escalation techniques, and review and verify insurance coverage, exclusions, and so on.

Also recommended is that a supportive, harmonious work environment should be fostered that allows employees to be empowered and, at the same time, empathetic management skills should be encouraged, as authoritarian leadership styles tend to promote higher rates of on-the-job violence, according to the study.

In an important section, the white paper states that employers may be legally liable for failing to provide adequate on-site safety and security measures after they have been notified of a potential danger. According to the white paper, the U.S. Supreme Court recently rendered an opinion that stated that an employer is subject to vicarious liability to a victimized employee for an actionable hostile environment created by a supervisor with immediate (or successfully higher) authority over the employee.

ASSE and RIMS members noted the urgency of equipping employers with the knowledge and resources needed to prevent violent workplace occurrences following a major increase in the number of deadly incidents in the workplace over the past few years. For instance, the U.S. Department of Justice found that 21,300 recent assaults and violent acts in the workplace resulted in fatalities, injuries, grief-stricken family and friends, and missed days off from work due to the emotional impact. The department estimates that the cost to employers in days missed

and legal fees annually was $4.2 billion in 1992.

The report emphasizes that workplace violence causes far more than a financial toll. Employees witnessing violent acts in the workplace report increased levels of stress and lower morale, which not only can affect them negatively in their daily lives, but can lead to decreased productivity and increased absenteeism and turnover.

Workplace violence is more than homicide, the white paper states, and harassment is the leading form of on-the-job workplace violence with 16 million workers being harassed each year. Other violent acts can include stalking, threats, inappropriate communication, trespassing, telephone and e-mail harassment, property defacing, and invasion of privacy and confining or restraining victims.

[For a copy of the "Workplace Violence Survey and White Paper," contact ASSE. Telephone: (847) 699-2929. E-mail: customerservice@asse.org.] ■

Study raises questions about ergonomics rule

The eagerly awaited ergonomics study from the National Academy of Sciences (NAS) does not endorse new federal ergonomics nearly as much as the Clinton administration had hoped, adding fuel to the debate over whether the rule is necessary and workable. Some opponents had called for the rule to be delayed until the NAS report was ready, and now they say it is obvious why the Clinton administration pushed the rule into effect before the study results could be released.

The new report confirms that particular jobs can be tied to workplace injuries and estimated that these cases lead to 70 million doctor visits annually and cost the nation billions of dollars in lost wages and decreased productivity. But the report also includes dissenting opinions and questions about how much some job-related injuries can be traced to working conditions.

That is enough to give opponents of the rule reason to continue the fight. The rules in dispute were issued in November by the Occupational Safety and Health Administration. They take effect in October 2001 and are intended to prevent injuries.

According to the study, scientific evidence shows that disorders of the lower back and upper extremities can be attributed to working at particular jobs, including those involving heavy lifting, repetitive and forceful motions, and stressful environments.

Overall, the new study found that back pain made up the overwhelming share of workplace problems, along with muscle and bone disorders and wrist injuries, including carpal tunnel syndrome. It estimated that those maladies cost the country $45 billion to $54 billion annually in compensation, lost wages, and lowered productivity.

Most back problems were related to jobs that involved heavy lifting, twisting and turning, and whole-body vibration. But the study says back pain also occurred in jobs where workers faced a rapid work pace, monotonous work, low job satisfaction, little decision-making power, and high levels of stress.

Repetitive motion, force, and vibration were the primary risk factors in shoulder, arm and wrist injuries. For muscle and bone disorders, the men at greatest risk were carpenters, construction laborers, and operators of industrial machinery. For women, those most at risk were nurses and those in nursing-support jobs, domestic and commercial cleaning workers, and janitorial workers.

Programs can be developed to reduce these injuries, the report says, but they will be effective only if they are tailored to specific workplaces.

The study was requested by the Department of Health and Human Services and issued by the National Research Council and the Institute of Medicine, two branches of the NAS. The academy is a private organization chartered by Congress to advise the government.

Opponents say study supports their position

Sen. Christopher "Kit" Bond (R-MO) says the long-awaited study shows that more work is needed to confirm that specific procedures and safeguards in the workplace will prevent musculoskeletal disorders. The results raise new questions about OSHA's decision to hurriedly finalize and impose its ergonomics rule, the most-far-reaching regulation in history, he says.

"The panel's review is proof positive that OSHA put the cart before the horse in drafting the ergonomics rule," Bond says. "It makes clear that a whole other universe of factors, specifically psychosocial stress, is at play in work-related injuries. Unfortunately, that fact was never even considered by OSHA in developing the ergonomics rule now being implemented."

Bond is troubled by a rare, dissenting view from one panelist, one of the country's leading hand surgeons and an expert in carpel tunnel syndrome, who maintains that no scientific study has confirmed that specific procedures in the workplace will reduce or eliminate musculoskeletal injuries.

"OSHA's ergonomics rule clearly assumes that such a scientific foundation exists," Bond says. "Frankly, the weight of the panel's review has reconfirmed fears in Congress that OSHA cobbled together a subjective, incomplete ergonomics standard, which is plainly inadequate to reduce effectively the majority of musculoskeletal disorders or to justify the most-extensive and costly workplace regulation in history."

The dissent also raises serious questions about how studies were selected for this review. After waiting a year for the panel to conclude its work, "this is a disappointing result" and raises many of the same doubts about the legitimacy of the ergonomics rule, says Bond.

Congress intended for the panel to review a broad range of medical literature that may not have been considered by OSHA in the formulation of the rule. However, Bond faulted the study for going beyond the questions raised in the congressional request, saying it leads Congress in new, unintended directions, rather than toward a better understanding of the medical data available on workplace injuries.

"If OSHA had waited for this panel to complete its work, the agency would have benefited from a clearer understanding of the available science," Bond says. "This is a very complicated issue and we need sound science and thorough medical evidence to help guide us down the right path for both small business and their employees."

In October 1999, Bond offered an amendment to the Labor, Health and Human Services Appro-priations bill, which would have delayed OSHA from moving forward with its proposed ergonomics standard until the NAS study was completed.

That amendment would have required OSHA to halt work on publishing a proposed rule. The amendment would have allowed the agency, however, to continue collecting data and conducting research on the prevention of musculoskeletal disorders, such as carpal tunnel syndrome, muscle aches, and back pain, which in some instances have been attributed to on-the-job activities.

Released in the final week of the Clinton administration, the NAS report focused attention once again on a rule that American businesses had begrudgingly accepted as fact, no matter how much they had opposed it. With the study seeming to reinforce ideas that the rule was not based on good science, organizations like the National Association of Manufacturers encouraged the Bush administration to overturn the rule.

"If there ever was any doubt that the rule should be overturned by Congress or the courts, this study removes it by underscoring the lack of clarity about the exact causes of musculoskeletal disorders," says **Jenny Chris**, the association's director of employment policy.

"While we strongly believe the panel was biased in favor of the regulation, we welcome the study's admission that there are dozens of complex and difficult-to-determine factors," she says.

The Bush administration has indicated that it will review the ergonomics rule, along with a number of other actions taken by the Clinton administration at the last minute. ■

Flight attendants win major victory for safety

Flight attendants and aircraft cabin safety won a major victory recently with a government report that said federal workplace safety standards should apply to them.

The report was issued by the Federal Aviation Administration (FAA) / Occupational Safety and Health Administration (OSHA) Aviation Safety and Health Team. It concluded that OSHA's standards on medical records, record keeping, anti-discrimination, hazard communication, and sanitation should apply to aircraft. The blood-borne pathogen and noise standards also can be applied in a modified form.

If the recommendations of this report are fulfilled, flight attendants will get employer-paid hepatitis B vaccinations, hearing tests, formal sanitation standards, and the right to refuse dangerous or life-threatening work. Employers also will be required to share injury and illness records as well as medical and exposure records with OSHA and the flight attendants, says **Patricia Friend**, AFA International president. AFA is the largest flight attendant union in the world, joining together more than 50,000 flight attendants from 27 airlines.

"This study was long overdue and conclusively proves that OSHA protections can be extended to aircraft cabins to help ensure the safety and health of flight attendants and passengers," Friend says. "But this is only a first step. We must continue to push to get these standards implemented and enforced."

However, Friend says there are issues in the report that must be further considered. The current limitation on OSHA's jurisdiction, within three miles of U.S. borders, poses special issues for flight attendants whose work takes them outside of the territorial United States. The issue of jurisdiction needs to be carefully studied in light of the fact that a flight attendant's workplace is a U.S.-registered aircraft, wherever that aircraft happens to be, Friend says.

Another item that may require careful examination is federal vs. state OSHA jurisdiction. Friend says she remains concerned that the dispute could hamper implementation of the report's recommendations.

Flight attendants lost OSHA protections in 1975 when the FAA claimed jurisdiction over the health and safety of flight attendants and pilots. And while the pilots are medically certified and their health is closely monitored by the FAA's Office of Aviation Medicine, occupational safety and health hazards faced by the overwhelmingly female flight attendant profession have essentially been ignored for the past 25 years, she says.

Friend says the lack of occupational safety and health protections led to an extremely high rate of injury to flight attendants. An AFA review of injury and illness logs at 13 U.S. airlines showed that out of 31,422 flight attendants, 10% reported an injury that required follow-up medical attention or caused them to lose time from work in 1998. That's more than double the injury rate to miners (4.9%), and more than triple the national average of 3.1%, according to the Bureau of Labor Statistics.

In February 2000, AFA raised the intensity of the fight to win occupational safety and health protections with a campaign called OSHA NOW!, which included conducting high-profile media events, with flight attendant leafleting and rallying at airports and in front of the FAA, getting petitions signed, forming a coalition with sympathetic groups, and calling on politicians to support the fight.

In August, the FAA and OSHA signed a Memorandum of Understanding to establish a procedure for coordinating and supporting enforcement of the OSHA Act with respect to the working conditions of employees on the aircraft in operation (other than flight crew). ■

Work fatalities down by half, OSHA says

The federal Occupational Safety and Health Administration is patting itself on the back, reporting that workplace injuries and fatalities have been cut nearly in half by its efforts.

"At the beginning of its fourth decade, OSHA is meeting its mandate to see that workers go home whole and healthy," the agency announced recently. Since President Richard Nixon signed the Occupational Safety and Health Act on Dec.

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29, 1970, work-related fatalities are down 50% and occupational injuries have declined by 40%.

"The OSH Act established that America's workplaces should be free of hazards that threaten the lives and health of workers," said Alexis Herman, the outgoing secretary of Labor, as she made the announcement. "We have made significant progress toward that goal."

During the past 30 years, more than 700 work sites with topnotch safety and health programs were recognized under the Voluntary Protection Programs, and the agency is currently participating in nearly 100 additional specialized partnerships to find and fix hazards covering almost 110,000 employees across the country. More than 2.1 million individuals have taken safety and health training through OSHA-sponsored programs, while nearly 400,000 employers, mostly small businesses, have received free consultations to help them correct nearly 3 million hazards. Federal and state OSHA inspectors have visited more than 2.6 million work sites to help assure workplace safety and health.

Among OSHA's success stories, the agency points to the cotton-dust standard as a clear win for workers, employers, and the U.S. economy. The number of workers with byssinosis or "brown lung" has fallen during the past 22 years from 12,000 to about 700 today as a result of reduced exposures mandated by the 1978 standard. At the same time, the actual capital costs of the standard were lower than OSHA predicted: $153 million instead of $550 million, and productivity in the textile industry grew more rapidly after the standard was promulgated than it had before.

Other highlights include standards on hazard communication, bloodborne pathogens and ergonomics, the agency's Voluntary Protection Program and strategic partnerships, free consultations for small employers, the site-specific inspection targeting program, the agency's phone-fax procedure to speed handling of complaints, and the extensive educational materials available on OSHA's Web site.

The state of California also is reporting a trend toward improved occupational health and safety. Job-related nonfatal injury/illness rates in 1999 continued to decrease, reaching a record low of 6.3 workers injured out of every 100, reports the California Department of Industrial Relations' division of labor statistics and research. That is the lowest rate since collection of workplace injury and illness statistics began in 1971.

The injury/illness rate decreased from 6.7 per 100 workers in 1998 to 6.3 in 1999, while employment increased 3%. The greatest declines in job-related injuries were in agriculture and construction: injuries and illnesses declined by one per 100 agriculture employees and 0.7 per 100 construction employees. This decrease is due in large part to the Cal/OSHA inspection programs targeting agriculture and construction. The programs are designed to decrease the number of injuries suffered by employees working for general building contractors and for farms producing crops.

"Targeting employers in the highest-hazard industries, such as construction and agriculture, has proved that employers with workplaces containing the highest proportions of fatalities, injuries, illness, and workers' compensation losses often benefit the most from Cal/OSHA's assistance," says **Stephen Smith**, director of the department of industrial relations.

Of the eight major industries, only one — finance, insurance, and real estate — recorded an increase in injuries and illnesses, up from 2.7 per 100 workers to 3.1. However, the number of lost workdays due to injuries and illnesses declined from 3.3 to 3.1 days per incidence.

Of the nonfatal occupational illnesses reported, 56% were disorders associated with repeated trauma, which is a workplace ergonomics issue. The workplace injury/illness rate is a statistic that counts nonfatal accidents and exposures caused on the job. ■