



Consumer Federation of America

1620 I Street, N.W., Suite 200 * Washington, DC 20006

Office of the Secretary
Consumer Product Safety Commission
Room 502
4330 East-West Highway
Bethesda, Maryland 20814
Via: www.regulations.gov

August 5, 2013

**Comments of Consumer Federation of America to the U.S. Consumer Product Safety
Commission on
“Petition Requesting a Ban or Standard on Adult Portable Bed Rails”
Docket No. CPSC–2013-0022**

I. Introduction

Consumer Federation of America (CFA) submits the following comments to the U.S. Consumer Product Safety Commission (“CPSC” or “Commission”) in the above-referenced matter.¹

II. Background

On April 25, 2013, Consumer Federation of America (CFA), the National Consumer Voice for Quality Long-Term Care (Consumer Voice), bed rail activist Gloria Black, and 60 other organizations¹ filed a petition with the U.S. Consumer Product Safety Commission (CPSC) requesting a ban of adult portable bed rails or mandatory standards if a ban is not accepted. The petitioners also requested CPSC to recall dangerous bed rails and refund consumers.

For the purposes of the petition, and for our comments, portable bed rails are considered to be those that are sold and marketed directly to the public, and intended to be used with a home-style bed. This would include those marketed on the Internet, in department stores and other retail outlets, directly by manufacturers, and also in medical supply stores.

III. Discussion & Recommendations

A. The Risk of Serious Injury Caused by Adult Portable Bed Rails

CPSC has been aware of deaths and injuries involving bed rails since 1985. In an October 11, 2012 report from CPSC, “Adult Portable Bed Rail-Related Deaths, Injuries, and Potential

¹ **Petition Requesting a Ban or Standard on Adult Portable Bed Rails**, Vol. 78, No.107, (June 4, 2013).

Injuries: January 2003 to September 2012,” CPSC documented that in that nine year period there were an estimated 36,900 visits to hospital emergency departments due to incidents related to both portable and non-portable bed rails. CPSC also reported 155 portable bed rail deaths for that same time period. These statistics represent only a fraction of the actual number of alleged bed rail related deaths. According to CPSC’s 2012 report, these deaths and injuries most commonly occur when the victim is “caught, stuck, wedged, or trapped between the mattress/bed and the bed rail, between bed rail bars, between a commode and rail, between the floor and rail, or between the headboard and rail.”

In the last three months since we filed our petition last April, CFA has become aware of additional incidents caused by adult bed rails, some of which occurred before we filed our petition.

An 88 year old man died in 2011 while at a hospital after suffering a heart attack. He died the day he was scheduled to be discharged after being trapped between the mattress and a side rail. In documents filed in a law suit by his daughters, he was found “wedged between the bed’s mattress and a side rail in such a manner as to cause mechanical asphyxia, strangulation and his death.”² The hospital, Lehigh Valley Hospital- Cedar Crest, continued to use the bed, which was rented, after a previous non-fatal entrapment of a patient between the mattress and the bed rail.

In July of 2013, the Minnesota Department of Health urged health facilities throughout the state to conduct “safety checks on patient bed rails after finding neglect in the case of a nursing home resident who died at a care facility in Cold Spring,” Minnesota.³ A resident of the nursing home “died of asphyxiation after her neck became lodged between her bed’s mattress and the bed rail,” according to a report on the incident by the Minnesota Department of Health.”⁴ The department ordered a review of health facilities due to a failure of the Cold Spring facility to conduct an assessment of the risks and benefits of using bed rails and the concern that other facilities are similarly failing to conduct appropriate assessments.

A July 11, 2013 Chicago Tribune article documents a death of a patient in a long term care center in Decatur, Illinois who was found dead after her head was lodged between the mattress and a bed rail.⁵ The article further mentions that in Illinois, at least 10 nursing homes have been sited since 2011 for “placing patients at risk of entrapment or suffocation, failing to protect residents from injuries related to bed rails and for using bed rails as restraints.”⁶

² Amerman, Kevin, “Daughters of Patient who died at LVH file lawsuit,” Morning Call, March 21, 2013, available on the web at http://articles.mcall.com/2013-03-21/news/mc-lehigh-valley-hospital-lawsuit-20130321_1_risk-of-gradual-movement-frequently-individual-patients-specialty-beds.

³ Snowbeck, Christopher, “Cold Spring nursing home cited after resident’s bed-rail asphyxiation,” St. Paul Pioneer Press, July 24, 2013, available on the web at http://www.twincities.com/politics/ci_23724793/minnesota-warns-health-care-centers-check-patient-bed.

⁴ <http://www.health.state.mn.us/divs/fpc/directory/surveyapp/ohfcfindings/h5446012.pdf>

⁵ Deardorff, Julie, “Bed rails for elderly, their risks long known, face relative lack of scrutiny,” Chicago Tribune, July 11, 2013, available on the web at http://articles.chicagotribune.com/2013-07-11/news/ct-met-bed-rail-safety-20130707_1_rails-bed-medical-devices.

⁶ Deardorff, Julie, “Bed rails for elderly, their risks long known, face relative lack of scrutiny,” Chicago Tribune, July 11, 2013, available on the web at http://articles.chicagotribune.com/2013-07-11/news/ct-met-bed-rail-safety-20130707_1_rails-bed-medical-devices.

These and many other examples of bed rail incidents illustrate that many deaths result from asphyxiation caused by entrapment within openings of the rail or between the rail and the mattress or bed frame, that these products pose a significant risk to consumers and that an effective mandatory standard or a ban is necessary to protect consumers from this hazard.

B. Existing Voluntary Standards are Inadequate to Address the Risks Caused by Portable Adult Bed Rails

Existing voluntary standards exist for children's bed rails but these standards do not address the risks posed by adult portable bed rails. The Consumer Product Safety Improvement Act required CPSC to issue a mandatory standard for these products. Given the limited scope of the voluntary standard, it is clear that the voluntary standard is failing to address the hazards posed by adult portable bed rails. Further, given that the hazards posed by adult portable bed rails have persisted and are well documented and that ASTM has failed to write a voluntary standard that adequately addresses these products, reliance upon such a nonexistent voluntary standard would not reduce the product risk. While a voluntary standards process for adult portable bed rails is just beginning, effective action by the CPSC is necessary to protect consumers.

C. Misleading Advertising and Need for Effective Warning Labels

Existing advertising for many adult bed rails makes claims about improving the safety of the bed, without evidence supporting that claim. Further, the risks of entrapment and suffocation are not effectively raised in warning labels on the product. In addition, risks are greater to certain users of the product such as those with dementia and such risk should be communicated clearly as should the need to seriously assess whether a particular consumer should use bed rails based upon their medical condition(s). A CPSC mandatory standard, if promulgated should include clear warning labels.

IV. Conclusion

CFA strongly urges the Commission to take strong action to protect consumers from the hazards posed by adult bed rails by promulgating mandatory standards that effectively address the hazard or by banning the product.

Respectfully submitted,

A handwritten signature in black ink that reads "Rachel Weintraub". The signature is written in a cursive, flowing style with a long horizontal line extending to the right.

Rachel Weintraub

Legislative Director and Senior Counsel Consumer Federation of America

¹ These groups include: Georgia Office of the Long-Term Care Ombudsman, Resident Councils of Washington, California Advocates for Nursing Home Reform, Ombudsman Services of San Mateo County, Inc., Delaware Office of the State Long-Term Care Ombudsman, Centralina Area Agency on Aging, Senior Care Cooperative, Regional Long-Term Care Ombudsman Program – Area Agency on Aging, PSA 3, Barren River Long-Term Care Ombudsman, Council on Aging - Orange County, District 9 Long-Term Care Ombudsman, San Francisco Long-Term Care Ombudsman Program, The Alliance for Better Long Term Care, Maryland Office of the State Long-Term Care Ombudsman, Center for Advocacy for the Rights and Interests of the Elderly (CARIE), Rainbow Connection Community, Michigan Campaign for Quality Care, King George County Social Services, Catherine Hunt Foundation, Inc., ABLE Ombudsman Program, Kansas Advocates for Better Care, Family Council of Ellicott City Health and Rehabilitation Center, NICHE (Nurses Improving Care for Healthsystem Elders), Detroit Area Agency on Aging, Indiana Association of Adult Day Services, Massachusetts Advocates for Nursing Home Reform, Our Mother's Voice, New York City Long Term Care Ombudsman Program, Kentuckians for Nursing Home Reform, Areawide Aging Agency, Ohio Office of the State LTC Ombudsman, Ombudsman Program, Alamo Area Agency on Aging, California Office of the State Long-Term Care Ombudsman, Terence Cardinal Cooke Health Care Center, Long Term Care Community Coalition, Nursing Home Victim Coalition, Inc, PA State LTC Ombudsman Office, NY Office of the State Long Term Care Ombudsman, New Hampshire Office of the Long Term Care Ombudsman, Levin & Perconti, Chicago, Bethany Village Senior Action, Snohomish County Long Term Care Ombudsman Program, DC Coalition on Long Term Care, Legal Assistance Foundation (LAF), Friends of Residents in Long Term Care, Our Mother's Voice (NC Chapter), Advocacy, Inc., California Long-Term Care Ombudsman Association, Montgomery County Long-Term Care Ombudsman Program, Long-Term Care Ombudsman Program, Central Ohio Area Agency on Aging, OWL – The Voice of Older and Midlife Women (national), PHI – Quality Care through Quality Jobs (national), National Association of States United for Aging and Disabilities (national), National Association of State Long-Term Care Ombudsman Programs (national), National Senior Citizens Law Center (national), Service Employees International Union (SEIU) (national), Direct Care Alliance (national), United Spinal Association (national), Center for Medicare Advocacy (national), National Research Center for Women and Families (national)