

Navigating the hazard of rising violence in health care facilities

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While not widely spoken about, the health care industry has long been regarded as one of the most dangerous professions due to the recognized hazard of workplace violence many medical providers face while performing their duties. Due to a looming rise in violence against health care workers, causing severe injuries, many health care employees are demanding federal protections to be put in place as a response.

Prior to the onset of the current pandemic, health care workers suffered more workplace injuries as a result of violence than any other profession, with approximately 654,000 harmed annually, according to studies reported by the American Hospital Association (“AHA”). Since the onset of the pandemic, however, violence against hospital employees alone has markedly increased. For example, the AHA studies indicate that 44% of nurses reported an increase in physical violence, and 68% reported an increase of verbal abuse.

When violence erupts in a health care facility, there are many unpredictable consequences, including potential injury or death of building occupants, property damages, lawsuits, and an increased potential for adverse medical events. Health care employers have long had robust guidelines in place to detect and deter such violence against their employees. Given the recent push by industry employees for additional federal protections, though, it is imperative that health care employers ensure they review employment policies to protect against potential claims for alleged failure to protect their employees.

A health care hazard: workplace violence defined

The National Institute of Occupational Safety and Health (NIOSH), a research agency branch of the Centers for Disease Control (CDC), defines workplace violence as “an act of violence or threat of violence, without regard to intent, that occurs at a covered facility or while a covered employee performs a covered service.”

According to the NIOSH, there are four categories of violence that can occur in health care workplaces. The first type is by perpetrators who have no association with the workplace or its employees. In the second type, the assailant is a customer or a patient of the workplace or employee. The third type is when the attacker is a current or former employee of the workplace. Finally, the fourth type

occurs when the perpetrator has a personal relationship with the employee but not with the workplace.

According to reports conducted by the American Nurses Association (ANA), the second and third types of workplace violence are the most common categories of health care workplace violence. In fact, an ANA survey of more than 5,000 nurses establishes that 59% of nurses were verbally assaulted by a patient in 2019. That figure rose to 70% in 2021 based on reports from emergency room nurses having undergone increased assaults on the job due to the pressure exerted by the pandemic and its overall effect on the health care industry.

The push for a proposed solution

In November 2019, the U.S. House of Representatives introduced and passed the Workplace Violence Prevention for Health Care and Social Service Workers Act (H.R. 1309). If it becomes law, H.R. 1309 would require the Department of Labor (DOL) to create an occupational safety and health standard requiring certain health care employers to develop and implement a comprehensive plan for protecting health care workers, social workers, and other personnel from workplace violence.

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H.R. 1309 lays out the significant role the DOL will have in promoting health and safety standards by requiring employers to:

- (1) address violence in the social service and home care sectors;
- (2) promptly investigate workplace violence incidents, hazards, and risks;

- (3) provide sufficient training to workers who could be exposed to violent situations;
- (4) maintain appropriate documentation and records of workplace violence incidents; and
- (5) prohibit discrimination and retaliation against workers who report incidents or concerns of violence.

Most recently, H.R. 1309 was received by the U.S. Senate and referred to the Committee on Health, Education, Labor and Pensions for review. If H.R. 1309 is passed, it will eliminate the current patchwork approach implemented by various state protection laws. For instance, Illinois and Maryland passed laws attempting to protect nurses and other health care workers from abuse, but they are varied and not uniform. Some laws require training of employees regarding workplace violence, while others provide penalties to perpetrators of violence against health care workers.

H.R. 1309 provides a federal framework under which health care employment policies may be modeled and implemented. However, industry employers should be proactive and ensure they are implementing comprehensive policies and procedures to provide a safe working environment for employees.

In March 2022, as a push for a solution to the staggering rise in workplace violence faced by health care professionals, the AHA urged the Department of Justice (DOJ) to support H.R. 1309. In support of its plea for help, the AHA cited the DOJ commitment to address “the rise in violent behavior on commercial aircrafts by directing United States Attorneys to prioritize prosecutions when airline employees were harmed by passengers.” (Letter to Merrick Garland, Attorney General, March 23, 2022)

In its letter, the AHA emphasized that protections recently granted by the DOJ to flight crews and airport workers under federal statute 18 U.S.C. § 46504 should be used to model a similar federal protection for health care workers “from the even greater incident of violence [health care employees] experience.”

Prevention strategies and impact on health care industry

Prior to the pandemic onset, nearly 75% of 25,000 annually reported workplace assaults occurred in health care settings. Shockingly, an estimate of only 30% of nurses and 26% of physicians reported incidents of violence, which is a clear indication of underreporting. However, given the recent increase in demand for clinical care, lack of resources and supplies, and overall stress caused by the pandemic on the health care industry — underreporting may no longer be a viable option for many health care employees.

Accordingly, health care employers must be vigilant in implementing robust policies and procedures to, not only protect their employees, but also to prevent any potential liability exposure by allegations of failing to do same.

Considering the foregoing, health care organizations should develop and enforce comprehensive policies and procedures against violence perpetrated by visitors, staff, patients or other individuals.

Such policies can include but are not limited to: (1) “zero-tolerance” policies; (2) mandatory reporting; (3) non-retaliation policy explicitly forbidding any adverse employment actions against an employee for good-faith reporting of actual or threatened violence; and (4) procedures for responding to incidents of workplace violence clearly and effectively.

H.R. 1309 provides a federal framework under which health care employment policies may be modeled and implemented. However, industry employers should be proactive and ensure they are implementing comprehensive policies and procedures to provide a safe working environment for employees. If they have not, health care employers should consult with their attorneys to ensure their policies and procedures adequately protect their employees and the institution at large.

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