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Texas Requires Workplace Violence Prevention Plans for Healthcare Facilities

Labor & Employment Workforce Watch

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On September 1, 2023, Chapter 331 of the Texas Healthcare and Safety Code, the "Workplace Violence Prevention" ("WVP") law went into effect, which requires healthcare facilities in Texas to adopt workplace violence prevention policies and plans by September 1, 2024.

The WVP law applies to: (a) licensed home health service providers that employ at least two registered nurses; (b) licensed hospitals and state-run hospitals exempt from licensing; (c) licensed nursing facilities that employ at least two registered nurses; (d) licensed ambulatory surgical centers; (e) freestanding emergency medical care facilities; and (f) licensed mental hospitals.

To comply with the new WVP law, covered facilities must establish a workplace violence prevention committee, or authorize an existing facility committee, to develop a written workplace violence prevention plan. The assigned committee is required to include at least (a) one registered nurse who provides direct care to patients of the facility; (b) one physician licensed to practice medicine in Texas who provides direct care to patients of the facility; and (c) one facility employee who provides security services for the facility, if any and if practicable. If a licensed home health service provider does not have at least one physician on staff, the facility is not required to include a physician on the committee.

The new law also mandates covered facilities to adopt, implement, and enforce both written workplace violence prevention policies and plans.

Under the written workplace violence prevention policy aspect of the law, covered facilities must:

- require the facility to:
  - significantly consider the violence prevention plan recommended by the facility's committee; and
  - evaluate any pre-existing facility violence prevention plan;
- encourage health care providers and employees of the facility to provide to the committee confidential information regarding workplace violence at the facility;
- include a process to protect from retaliation any facility health care providers or employees who provide information to the committee; and
- comply with the Health and Human Services Commission's rules relating to workplace violence.

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The facility's written workplace violence prevention plan must:

- be based on the practice setting;
- adopt a definition of "workplace violence" that includes:
  - an act or threat of physical force directed toward a health care provider or employee that results in, or is likely to result in, physical injury or psychological trauma; and
  - an incident involving the use of a firearm or other dangerous weapon, regardless of whether or not the weapon injures a health care provider or employee;
- require the facility to provide, at least annually, workplace violence prevention training or education to the facility's health care providers and employees who provide direct patient care; the training may be included as part of other required training or education provided to the facility's health care providers and employees;
- prescribe a system for responding to and investigating violent incidents or potentially violent incidents at the facility;
- address physical security and safety;
- require the facility to solicit information from health care providers and employees when developing and implementing the plan;
- allow health care providers and employees to report incidents of workplace violence through the facility's existing occurrence reporting systems; and
- require the facility to adjust patient care assignments, to the extent practicable, to prevent a health care provider or employee of the facility from treating or providing services to a patient who has intentionally physically abused or threatened the provider or employee.

The law includes anti-discrimination and anti-retaliation provisions, and prohibits discipline, including by suspension or termination of employment, of a person who in good faith reports an incident of workplace violence, or advises a health care provider or employee of the provider of the employee's or provider's right to report an incident of workplace violence.

Although the statute does not include penalties for violations, the law authorizes the appropriate licensing agency to take disciplinary action against non-compliant covered facilities.

While healthcare facilities have until September 1, 2024 to comply with the requirements of the WVP law, covered employers are advised not to delay reviewing current plans and policies to ensure compliance or, for employers that do not currently have workplace violence prevention plans in place, taking steps to establish the committee and develop their plans. Additionally, given the anti-discrimination and retaliation provisions of the new law, covered employers should notify employees of the workplace violation prevention plan when it is implemented or revised to comply with the requirements of the WVP law, so that employees are aware of the requirements of the plan, understand how to use the employer's reporting systems, and know that they are both encouraged and equipped with the information necessary to report and/or respond to incidents of workplace violence.

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