

## **OSHA Adopts Stricter, Expanded Enforcement Protocols Against Hospitals, Nursing Homes, and Long-Term Care Facilities**

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The Occupational Safety and Health Administration has released a memorandum to Regional Administrators and state designees which establishes guidance for inspections conducted in inpatient healthcare settings, North American Industry Classification System (NAICS) Major Groups 622 (hospitals) and 623 (nursing and residential care facilities). This Guidance announces a new and stricter enforcement policy for the healthcare industry, promising to crack down on the most common hazards in hospitals, nursing homes, and residential care facilities. The new enforcement policy requires that OSHA inspections in healthcare facilities focus on five major hazard areas, **regardless** of the original reason for the inspection.

The policy, released on June 25, represents the second time in two months that OSHA has warned those in the healthcare industry of its intent to increase enforcement. In April, OSHA issued revised guidelines for preventing workplace violence against workers in the healthcare and social service fields. The agency states that it is responding to “some of the highest rates of injury and illness” for these workplaces when compared with industries tracked nationwide. This includes “57,680 work-related injuries and illnesses” in U.S. hospitals, a rate “almost twice as high as the rate for private industry as a whole,” according to OSHA.

### **Five Specific Hazards**

The new enforcement policy promises that OSHA will monitor closely compliance with health and safety rules relating to:

- Safe Patient Handling,
- Workplace Violence,
- Bloodborne Pathogens,
- Tuberculosis, and
- Slips, Trips, And Falls.

OSHA states that it is also interested in:

- Exposure to multi-drug resistant organisms (MDROs), such as Methicillin-resistant Staphylococcus aureus (MRSA), and
- Exposures to hazardous chemicals, such as sanitizers, disinfectants, anesthetic gases, and hazardous drugs.

Although there are no OSHA regulations applicable to several of these hazards, compliance officers are urged to rely upon the general duty clause, which enables OSHA to issue citations whenever it finds that an employer has failed to provide safe work and a safe work environment for its employees. In fact, the agency went so far as to include sample general duty clause citation language in the guidance memo that compliance officers may reference in issuing citations related to MRSA, musculoskeletal disorders (MSDs), workplace violence, and other unregulated hazards that they may identify in the workplace.

It is critical to note that OSHA includes a broad range of inpatient facilities in the list of potential targets. Virtually any type of health care or nursing care facility that provides residential or inpatient services is at risk of an OSHA inspection—particularly if the employer has a high rate of work-related injuries and illnesses.

Even if an inspection begins for an unrelated reason, OSHA now will take the opportunity to examine a facility’s compliance in each of these areas. It anticipates seeking access to employee, patient, and resident medical records and interviewing employees to confirm what it finds in injury and illness records. Compliance Safety Health Officers (CSHOs) are instructed that a partial walkthrough should be conducted

and workers should be interviewed in order to verify injury and illness records. CSHOs are reminded to follow current OSHA procedures regarding privacy of employee, patient and resident medical records.

### **Safe Patient Handling: Heightened Requirements for Lifting and Ergonomics**

For most of these hazards, the new enforcement policy restates OSHA's prior guidance on how to comply with safety rules. In the case of safe patient handling and the ergonomic challenges it presents, however, the policy provides new, detailed guidance. OSHA will examine the sufficiency of a facility's injury prevention program relating to ergonomics, paying close attention to when manual lifting will be performed by caregivers, and what lifting and repositioning equipment is available to reduce injuries. OSHA also is focused on whether employees have a mechanism to raise concerns about manual lifting or get assistance when needed.

Another particularly troubling aspect of OSHA's enforcement memoranda is their directive that OSHA investigators evaluate resident handling ***in the areas that it takes place*** (e.g., restrooms, showers, and bathing areas). All healthcare providers should very carefully consider the privacy concerns raised by the OSHA's directive before granting inspectors *carte blanche* access to such sensitive areas.

**Musculoskeletal Disorders and Overexertion** - OSHA alleges that musculoskeletal disorders (MSD) related to resident handling (e.g., lifting, transferring, or repositioning) account for 44 percent of all reportable injuries in the healthcare industry. The Guidance remarks that the rate equates to almost one and a half times the total MSD rate (33 percent) for all reported injuries for all industries. In 2013, orderlies, nursing assistants, and personal care aides continued to have some of the highest MSD rates of all occupations. MSD cases accounted for 53 percent of total reported cases that occurred to nursing assistants in 2013.

OSHA's enforcement memoranda instruct OSHA investigators to spend considerable time to review the number of ergonomic injuries at a worksite and determine whether the employer's ergonomic program adequately addresses issues related to program management, program implementation, employee training, and occupational health management to ensure that employees are:

- (1) Protected from ergonomic injuries and illnesses; and
- (2) Properly treated in the event they experience an ergonomic injury or illness.

In a recent report aired on National Public Radio, OSHA may be working from the premise that there is no safe way to lift or reposition a patient manually. The report stated, "OSHA's inspectors will interview nursing staff and managers, and review internal hospital documents, to answer questions such as: What kinds of machines and other devices are used by the hospital to move patients? Does the hospital have an adequate supply of the equipment? How well does the hospital train its staff to use it? Does management track and promptly treat injuries among nursing staff?"

In short, OSHA's enforcement memoranda now require healthcare employers to develop ergonomic injury and illness prevention programs (IIPP), even though no Federal regulations mandate it.

### **Inpatient Facilities Particularly Vulnerable to Workplace Violence (WPV)**

Workplace Violence is defined as violent acts (including physical assaults and threats of assaults) directed toward persons at work or on duty. OSHA has publicly stated that workplace violence is a "recognized hazard in hospitals, and in nursing and residential care facilities," alleging that workplace violence accounts for ***13 percent of all recorded injuries and illnesses***. According to OSHA, in the healthcare and social assistance sector, 13 percent of the injuries and illnesses were the result of violence. Fifteen percent of the days-away-from-work cases for nursing assistants were the result of violence. In 2013, Bureau of Labor Statistics (BLS) data reported approximately 14,440 assaults by persons in hospitals and nursing and residential care facilities. Hospitals reported approximately 5,660 assaults and nursing

and residential care facilities reported approximately 8,780 assaults. Accordingly, **WPV will be evaluated in every inpatient healthcare OSHA inspection.** OSHA investigators will evaluate the number of injuries related to workplace violence and determine whether an employer has established appropriate controls and policies to handle aggressive or violent patients. If OSHA determines that a high incident of workplace violence occurs at a worksite, an employer can expect a General Duty Clause citation to be issued.

The new enforcement policy comes just two months after OSHA significantly revised its guidance for preventing workplace violence against workers in the healthcare and social service fields. The guidelines include what OSHA views as industry best practices on handling violence from patients, providing insight on how to reduce the risk of violence in different healthcare and social service settings.

To protect against violence, OSHA recommends that healthcare providers develop an effective workplace violence prevention program that includes these key components:

- Management commitment to supporting and funding the program and providing training and safety devices;
- Employee participation through safety committees and surveys;
- Worksite and job analysis with a focus on areas and tasks that may expose employees to potential violence, such as transferring patients and providing intimate care;
- Tracking and trending workplace violence complaints, injuries, and near misses for purposes of identifying patterns and new controls;
- Implementing hazard prevention and control measures to reduce violence;
- Safety and health training of all employees on how to recognize the potential signs of violence, how to defuse a situation and defend against an encounter, and how to use the controls and safety devices;
- Investigating complaints and near misses to understand root causes of the actions, and moving away from merely stating unforeseeable incident or employee misconduct; and
- Evaluating a program annually.

### **Bloodborne Pathogens**

OSHA's enforcement data indicated that 29 CFR 1910.1030, the Bloodborne Pathogens Standard, is one of the most frequently cited standards in nursing and residential care facilities. Following the recent healthcare worker Ebola infection incidents, OSHA has increasingly focused on the issue of bloodborne pathogens and infection control. During the time period from October 2013 through September 2014, the OSHA standards governing blood-borne pathogens ranked the highest by far in the number of citations issued to hospitals. A total of 110 citations were issued for violations of these standards with fines totaling **\$333,568**. In the Guidance, OSHA investigators are instructed to evaluate employers' Exposure Control Plans (ECPs), engineering and work practice controls, bloodborne pathogen training, personal protective equipment (PPE), and post-exposure treatment.

### **Tuberculosis**

Employees working in nursing and residential care facilities have been identified by the Centers for Disease Control and Prevention as having the highest risk for exposure to TB due to the case rate of disease among persons 65 years of age. In 2013, for example, the CDC reported an overall TB case rate of 3.0 per 100,000 persons across all age groups. The corresponding case rate for persons 65 years of age was 4.9 per 100,000. OSHA's enforcement memoranda also require OSHA investigators to evaluate whether a healthcare establishment has had a suspected or confirmed tuberculosis case among patients within the prior six months, whether the employer has procedures to promptly isolate and manage the care of the suspected or infected patient, and whether the employer offers tuberculin skin tests for employees treating the infected patient. Thus, similar to bloodborne pathogens, employers should be prepared to demonstrate that they have effective protocols in place to safely control tuberculosis cases.

BBP and TB will continue to receive substantial focus under the National Emphasis Program in every inpatient healthcare OSHA inspection.

### **Slips, Trips, and Falls**

While not typically the source of serious injuries, OSHA indicates that injuries from STF's were a driving cause of occupational injury and illness cases reported in nursing and residential care facilities. OSHA claims that slips, trips, and falls, combined with overexertion, account for nearly 69 percent of all reported cases with days away from work within the healthcare industry. Consequently, OSHA investigators are instructed to look for slippery or wet floors, uneven walking surfaces, unguarded floor openings, and/or inadequate aisles for moving residents. OSHA investigators also will look at the employer's policies regarding spill cleanup and appropriate footwear, as well as whether slip, trip, and fall hazards can be abated through nonslip or coated surfaces. Thus, healthcare employers should ensure that its walkways are in good repair, spills are promptly cleaned, and aisleways are not overly crowded with equipment.

### **Other Concerns**

**Infectious Agents:** In addition to its focus on musculoskeletal disorders, bloodborne pathogens and tuberculosis, workplace violence, and slips, trips, and falls, the Guidance indicates that inspectors should also be watchful for exposure to multiple-drug resistant organisms (MDROs), such as Methicillin-resistant *Staphylococcus aureus* (MRSA).

**Hazardous Chemicals:** Exposures to hazardous chemicals, such as sanitizers, disinfectants, anesthetic gases, chemotherapeutic agents and other hazardous drugs.

### **Employer Preparations**

The Guidance instructs OSHA staff that **all** inspections of hospitals and nursing home facilities, including those prompted by complaints, referrals or severe injury reports, should include the review of potential hazards involving musculoskeletal disorders (MSDs) related to patient handling; bloodborne pathogens; workplace violence; tuberculosis; and slips, trips and falls. The Guidance is effective immediately. The Guidance notes that because these hazards are nationwide, State Plans are expected to follow the guidance.

Healthcare employers should take heed of this Guidance. Special attention should be taken to update your policies, procedures, and training systems to include these topics. Make note, OSHA inspectors certainly will. Employers in the healthcare industry and especially those operating inpatient care facilities should immediately take the following actions to prepare for inspections:

- Conduct an internal OSHA compliance audit with the assistance of outside counsel— this audit has protection from disclosure by the attorney-client privilege. Audit reports prepared without the aid of outside counsel can be subpoenaed by OSHA and used as a guide to potential violations at the worksite. Defending an OSHA citation can cost hundreds of thousands of dollars. An audit, by comparison, costs a tiny fraction of that amount and can help you identify and resolve gaps in your health and safety programs, dramatically decreasing the likelihood that a citation will be issued if OSHA targets your workplace. An added benefit of conducting an attorney-client privileged audit is the potential for a reduction in workers' compensation claims. When an employer addresses the gaps identified in a health and safety audit, it also usually experiences an enormous drop in workers' compensation costs.
- Read the guidance memo [[https://www.osha.gov/dep/enforcement/inpatient\\_insp\\_06252015.html](https://www.osha.gov/dep/enforcement/inpatient_insp_06252015.html)]. This document identifies a host of other resources that compliance officers are to rely upon in conducting inspections of inpatient care facilities—all of which are publically accessible—essentially giving employers a road map of what compliance officers may identify as hazards in the workplace.

- Develop or review the ergonomics policies and procedures on the manual lifting of patients and the availability, use, and maintenance of lifting and reposition devices;
- Develop or review your facility's workplace violence prevention plan and procedures to ensure key components have been included and consider if additional controls are needed to protect workers;
- Conduct an internal audit of the employer's bloodborne pathogens exposure control program, including the mandated annual review of safety devices and access to Hepatitis B vaccinations;
- Ensure that the company is following the latest guidance from the Centers for Disease Control and Prevention (CDC) on tuberculosis prevention;
- Develop or review the company's infectious diseases and MRSA prevention programs for effectiveness, paying special attention to whether employees know how to protect themselves from exposures to these hazards and wear appropriate personal protective equipment;
- Ensure that employees are aware of the hazards associated with the chemicals that they work with and know how to read labels and have access to safety data sheets;
- Train key personnel on strategies for handling OSHA inspections from the time OSHA arrives on site to minimize potential liability and to manage OSHA requests for employee interviews, site inspections, and documents; and,
- Consult with counsel or a qualified safety consultant regarding preparation for an OSHA inspection. Counsel and/or consultants can equip you with a host of strategies before OSHA ever sets foot at your workplace that will enable you to minimize work disruption during an inspection and greatly reduce the possibility of receiving a citation.

### **Bottom Line**

Without a doubt healthcare administrators need to be involved in strategic planning – this will be essential to successfully navigate any OSHA inspection, and inspections of inpatient care facilities are imminent. Employers operating inpatient care facilities are well advised to contact legal counsel and retain qualified safety consultants who specialize in healthcare regulatory compliance as soon as possible so that they are ready to demonstrate their commitment to employee health and safety when OSHA comes knocking.

The hazards identified and targeted in the Guidance are common in the healthcare industry and the new inspection policy, in essence, will broaden the scope of each healthcare facility inspection. It should be obvious that the outcome will be lengthier, broader, and more exacting inspections which are likely to result with the possibility that more citations and higher proposed penalties will be issued to employers in the healthcare industry.

### **How Can We Help?**

**Woods Rogers** in conjunction with [Healthcare Compliance Resources](#) (an affiliate of Woods Rogers Consulting) can assist you in determining your current compliance status by conducting a privileged and protected Regulatory Compliance Assessment.