

What Workplace Violence Law Means For Texas Healthcare

By **Anne Yuengert, Lauren Green and Amanda Hutson** (March 11, 2024)

Violence in the workplace is something all employers prohibit and try to prevent. Healthcare employers have a tougher time, because the violence often comes from patients.

How do you best protect workers while still providing needed patient care? There are no federal laws addressing this issue, so some states have stepped in.

Recently, Texas joined states like California in enacting statutory protections against workplace violence directed at healthcare workers.[1] Texas S.B. 240, now Chapter 331 of the Texas Health and Safety Code, requires healthcare facilities in Texas to address, prevent and respond to incidents of workplace violence in the industry.[2]

Workplace violence incidents can cause physical and psychological injury to healthcare workers, but can also negatively affect patients and healthcare organizations as a whole.

Incidents negatively affect patient safety culture, interrupt patient care, create new injuries that must be treated and contribute to high rates of staff turnover. These factors provide a backdrop to legislative protections like Chapter 331.

Workplace Violence in Healthcare Settings

Workplace violence in the healthcare industry is a persistent problem. According to the U.S. Occupational Safety and Health Administration, the healthcare industry experiences workplace violence at a rate four times greater than in private industries on average.[3]

Between 2011 and 2013, the average annual number of workplace assaults was 24,000, with 75% of those assaults occurring in the healthcare industry.[4] Most research about this issue has focused on quantifying the problem, rather than preventing it.

Healthcare facilities are unique settings that foster an environment in which workplace violence can occur. Modern healthcare systems are places where everyday encounters with patients and their families, visitors and coworkers can easily escalate into a violent situation.

Why? Because the healthcare sector presents workers with intersecting risk factors: working directly with the general public, transporting or delivering patients, working with people who are more likely to be violent, working during nighttime or early morning hours, and working alone or without direct supervision.

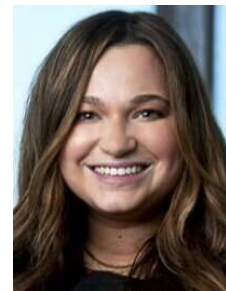
Coworkers, former employees and family members of patients account for some workplace violence incidents. But perhaps surprisingly, 75% of aggravated assaults and 93% of all



Anne Yuengert



Laura Green



Amanda Hutson

assaults against employees in the healthcare industry are perpetrated by patients.[5]

Despite the known risks, healthcare workers have historically underreported incidents of violence. Healthcare workers often decide not to report violent incidents because the incident did not cause injury, because reporting is too time-consuming and because reporting would not help prevent other incidents.[6]

While violent incidents in the healthcare industry are unlikely to stop anytime soon, Texas has taken steps to provide a reporting and response structure for healthcare workers.

Legislative History of Chapter 331

Texas has been looking at this issue for several years. In 2015, the Texas Legislature asked the Texas Center for Nursing Workforce Studies to conduct studies on workplace violence against nurses in Texas. Since that time, the center has published multiple survey reports on the topic. According to the Texas Senate committee report on S.B. 240:

[M]ore than two nurses were assaulted in the United States every hour in the second quarter of 2022, equating to roughly 57 assaults per day. These assaults can range from verbal abuse to physical harm, and they can come from patients, patient families, and even coworkers.

According to the 2022 Texas Workplace Violence Against Nurses Employer Survey conducted by the Department of State Health Services, approximately 90 percent of hospitals that responded had implemented a workplace violence prevention policy. However, while there are some health care facilities with strong policies in place to address workplace violence incidents, the general landscape is a patchwork of solutions.[7]

The Texas Legislature also discussed the Oct. 22, 2022, shooting at Methodist Dallas Medical Center that took the lives of two hospital employees, and recognized that events like this highlighted the need for legislative action.[8] S.B. 240 is the Legislature's response.

Chapter 331 Requirements

Quick Overview

- Texas healthcare facilities must adopt workplace violence prevention policies and plans by Sept. 1, 2024.
- Texas healthcare facilities now have defined obligations when responding to incidents of workplace violence.
- While Chapter 331 lacks a citation and penalty structure, licensing agencies may take disciplinary action against noncompliant healthcare facilities.

Who Needs to Comply

The law applies to:

- Licensed home health service providers that employ at least two registered nurses;
- Licensed hospitals and state-run hospitals exempt from licensing;

- Licensed nursing facilities that employ at least two registered nurses;
- Licensed ambulatory surgical centers;
- Freestanding emergency medical care facilities; and
- Licensed mental hospitals.

Establishing a Workplace Violence Prevention Committee

If you are covered, you must establish a workplace violence prevention committee. Your committee must include at least one registered nurse and one physician licensed to practice medicine in Texas, both of whom must provide direct care to patients of the facility.

The committee also must include one facility employee who provides security services. If you have an existing committee, you can add this to its duties. The committee must, at least annually, review and evaluate the prevention plan and report results of its evaluation to the governing body of the facility.

Requirements of the Workplace Violence Prevention Plan

The committee must develop a written workplace violence prevention plan. According to Section 331.003, the prevention plan must:

- Be based on the practice setting;
- Adopt a definition of "workplace violence" that includes:
 - An act or threat of physical force against a healthcare 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 a healthcare provider or employee is injured by the weapon;
- Require the facility to provide workplace prevention training or education at least annually;
- Prescribe a system for responding to and investigating violent or potentially violent incidents at the facility;
- Address physical security and safety;
- Require the facility to solicit information from healthcare providers and employees when developing and implementing the workplace violence prevention plan;
- Allow healthcare providers and employees to report incidents through existing occurrence reporting systems; and
- Require the facility to adjust patient care assignments, to the extent practicable, to prevent a healthcare provider or employee from treating a patient who has intentionally physically abused or threaten the provider or employee.

Requirements of the Workplace Violence Prevention Policy

Based upon the plan, the facility must adopt a workplace violence prevention policy. The policy must require the facility to consider the plan and evaluate any existing plan; encourage healthcare providers and employees to provide confidential information on workplace violence to the committee; include a process to protect those who provide confidential information from retaliation; and comply with the Texas Health and Human Services Commission's rules relating to workplace violence.

The facility must make its policy available to all healthcare providers and employees upon request.

Responding to Incidents of Workplace Violence

The law sets forth what employers must do when incidents of workplace violence occurs. At minimum, an employer must offer immediate post-incident services to the healthcare provider or employee, including any necessary acute medical treatment of those directly involved in the incident.

A facility may not discourage anyone involved in the incident from contacting law enforcement. Employers cannot discipline, discriminate against or retaliate against any person who in good faith reports an incident of workplace violence, or advises a healthcare provider or employee of their right to report an incident of workplace violence.

Other States' Workplace Violence Protections

At a state level, approaches vary. Besides Texas, five other states — California, Delaware, Florida, Oklahoma and South Carolina — have enacted or proposed legislation creating or expanding protections related to violence against healthcare workers. Most other states do not have mandates requiring workplace violence prevention programs, training, education, etc.

A total of 36 states have criminal provisions imposing higher penalties on those who commit violence against healthcare workers. For example, Wisconsin law enhances the criminal penalties against those who harm nurses or other healthcare workers.

OSHA Guidelines

For its part, OSHA issued guidelines for preventing workplace violence for healthcare and social service workers in 2016, but these guidelines are advisory in nature.[9] It is worth noting, however, that OSHA has historically interpreted the general duty clause of the Occupational Safety and Health Act to encompass workplace violence incidents.

For instance, in June 2015, an administrative law judge affirmed OSHA's findings that an employer violated the general duty clause after a mentally ill client with a documented violent past stabbed a healthcare coordinator to death.[10] The ALJ noted that the employer failed to conduct a hazard assessment of the healthcare coordinator's position, had not developed a written program to prevent workplace violence hazards, and had not trained employees on prevention mechanisms.

Thus, while the guidelines are advisory in nature, OSHA may still penalize a healthcare facility for a general duty clause violation.

Federal Workplace Violence Protections Could Be on the Horizon

Currently no federal laws address these issues, but there have been attempts to pass legislation. The Workplace Violence Prevention for Health Care and Social Service Workers Act was introduced as H.R. 2663 in the U.S. House of Representatives on April 18, 2023, but the bill did not make it out of committee.[11]

H.R. 2663 would require the secretary of labor to "issue an occupational safety and health standard that requires covered employers within the health care and social service industries to develop and implement a comprehensive workplace violence prevention plan, and for other purposes." A similar bill failed in the 2019-2020 congressional session.

Texas Facilities, Get Your Plans and Policies in Place by September

Texas healthcare facilities have a deadline: September 2024. While Chapter 331 does not include a citation and penalty structure, Texas licensing agencies, such as the Texas Health and Human Services Commission, may take disciplinary action against noncompliant healthcare facilities. Any discipline taken against a facility or person operates "as if the person violated an applicable licensing law."

Facilities outside of Texas that are not already bound by a state law on this subject should still pay close attention. A federal standard may be coming, and OSHA can still proceed under the general duty clause.

While facilities outside of Texas may not need to follow all the steps in the Texas law, the law offers a useful road map to providing more protections to employees.

Anne Yuengert is a partner, and Lauren Green and Amanda Hutson are associates, at Bradley Arant Boult Cummings LLP.

The opinions expressed are those of the author(s) and do not necessarily reflect the views of their employer, its clients, or Portfolio Media Inc., or any of its or their respective affiliates. This article is for general information purposes and is not intended to be and should not be taken as legal advice.

[1] Cal. Code Regs., tit. 8, § 3342 at <https://www.dir.ca.gov/Title8/3342.html>.

[2] Tex. Health & Safety Code Ann. §§ 331.001 to 331.006 at <https://statutes.capitol.texas.gov/Docs/HS/htm/HS.331.htm#331.004>.

[3] OSHA, Workplace Violence in Healthcare: Understanding the Challenge, Preventing Workplace Violence in Healthcare (Dec. 2015), <https://www.osha.gov/Publications/OSHA3826.pdf>.

[4] James P. Phillips, M.D., Workplace Violence against Health Care Workers in the United States, 374 The New England J. of Med. 1661 (2016).

[5] Id.

[6] Julie Stene, MHA, MSN, RN et al., Workplace Violence in the Emergency Department: Giving Staff the Tools and Support to Report, 19 The Permanente J. e113 (2015).

[7] April 16, 2023 Committee Report, 2023 Texas Senate Bill No. 240, Texas Eighty-Eighth Legislature.

[8] Texas Bill Analysis, S.B. 240, May 25, 2023.

[9] OSHA, Guidelines for Preventing Workplace Violence for Healthcare and Social Service Workers (2016), <https://www.osha.gov/sites/default/files/publications/osha3148.pdf>.

[10] Integra Health Mgmt. Inc., 2019 O.S.H. Dec. (CCH) ¶ 33713 (04 National/Federal March 4, 2019).

[11] Tex. H.B. 2663, 118th Leg., R.S. (2023) at <https://www.congress.gov/bill/118th-congress/house-bill/2663/text?s=1&r=1&q=%7B%22search%22%3A%22HR+2663%22%7D>.