LEGAL HOT TOPIC:

Workplace Violence and Home Care

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This issue’s legal hot topic focuses on violence in the workplace, prevention, investigation and reporting incidents.
Workplace Violence and Home Care

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I. Background

Over the past year, a number of high profile cases involving individuals attacking, and even killing, their co-workers have brought significant attention to the issue of workplace violence. Although the coverage of these stories gave the distinct impression that workplace violence was rapidly increasing, the most recent Bureau of Labor Statistics (the “BLS”) data paints a different picture. According to the BLS, the number of murders occurring in the workplace have declined year over year.

While the trend in workplace murders may be on the decline, there are many other forms of workplace violence and it is important for employers to take steps to protect their employees from workplace violence. Workplace violence that results in a murder may get the media’s attention, but workplace violence covers in a much broader range of situations. Workplace violence includes assaults that lead to major and minor injuries, as well as attempted assaults that result in no harm. In 2012, workplace violence resulted in an average of 4 missed days of work for every 10,000 private sector employees.

A. More Significant Trend in Health Care

In contrast to all private sector employees, employees in the health care industry are much more likely to be involved in workplace violence. According to the BLS, in 2012, workplace violence involving healthcare workers resulted in 15.1 missed days of work for every 10,000 full time employees. This is almost 400% greater than the number of days missed by private sector employees overall. Approximately 80% of nurses responding to a 2014 survey reported in the Journal of Emergency Nursing indicated
that they had been attacked on the job within the previous 12 month period. “Incidence and Cost of Nurse Workplace Violence Perpetrated by Hospital Patients or Patient Visitors”, Journal of Emergency Nursing, Vol. 40, Pages 218-228. Emergency department employees are not the only healthcare workers impacted by workplace violence. Workplace violence is an issue for home health, hospice and private duty employees as well, because of the unique nature of homecare.

B. Workplace Violence in Homecare

The Department of Health and Human Services (“DHS”), in cooperation with the CDC and OSHA, published a document that discusses the special risks of workplace violence in homecare. DHS noted that the threat of workplace violence to home health workers ranged from verbal abuse, to stalking or threats of assault and even murder. These concerns were further described in a study published in 2013, Exploring Workplace Violence Among Home Care Workers in a Consumer-Driven Home Health Care Program, which showed in more detail the heightened risk of workplace violence to homecare workers. Workplace Health & Safety, p. 441. Vol. 61, No. 10, 2013, Lindsay Nakaishi, et. al. This study examines workplace violence in consumer driven home care. Id. The authors surveyed homecare workers who provided care through a program in Oregon. Of the homecare workers who were surveyed, 44.6% reported experiencing physical violence in the patients’ homes. Of the case managers surveyed, 65.7% reported that they had received reports from homecare workers of workplace violence. Respondents also reported high rates of “non-physical aggression”, sexual harassment and 14.5% of responding homecare workers reported being subjected to sexual violence. Although this was a limited survey of one program in one state, this report raises serious concerns about the significantly higher rate of workplace violence to which homecare workers are exposed.

I.B.1. Unique Nature of Homecare Leads to Heightened Risks for Employees

This heightened risk of workplace violence in homecare is due, in large part, to the nature of the care provided. Home health, hospice and private duty employees routinely travel to their patients homes, alone, to provide needed care. These visits may occur late at night or early in the morning and may be in neighborhoods that are not considered safe.

OSHA has specifically recognized this risk to homecare workers. OSHA has identified a number of factors that increase the potential for homecare workers to be victims of workplace violence. These risk factors include transporting patients, working alone in patients’ homes, lack of emergency communications, and prevalence of weapons among patients and their family members and/or friends. OSHA has also recognized a number of organizational factors that can lead to increased risk of
workplace violence. These organizational factors, although not unique to homecare, are often issues in home care. These organizational factors include lack of policies and staff training, working when understaffed, and high worker turnover. The risk of workplace violence in homecare is quite real and requires preparation by providers.

Homecare workers are at substantially greater risk to become the victims of workplace violence than other non-healthcare employees. Unfortunately, due to the numerous other pressing regulatory issues, workplace violence has been widely ignored by employers. However, ignoring the issue will not work as a compliance strategy. Home care providers need to take steps now to protect their employees from workplace violence. The urgency of this need is reinforced by OSHA’s recent revisions to its Guidelines for Preventing Workplace Violence for Healthcare and Social Services Workers. Homecare employers need to consider the guidance and either update old policies or implement new policies to address workplace violence. Addressing workplace violence in homecare requires employers to consider a number of other regulatory issues, because any violence is likely to occur in the patient’s home, which will trigger other regulatory ramifications.

II. OSHA’s Revised Guidelines

On April 2, 2015, OSHA updated its voluntary Guidelines for Preventing Workplace Violence for Healthcare and Social Service Workers (“Guidelines”). OSHA had not updated the guidelines in more than ten years. OSHA recognizes that not all healthcare providers are the same and it has identified five different health care settings. OSHA identified homecare in the “Field Work” category. Because the Guidelines recognize that each provider’s specific policies and procedures designed to address workplace violence may vary, rather than attempting to define a “one-size fits all” program, the Guidelines define five elements and provide guidance related to each element.

The five elements defined in the Guidelines are:

1. Management Commitment and Worker Participation;

2. Worksite analysis;

3. Hazard prevention and control;

4. Safety and Health Training; and

5. Recordkeeping and Program Evaluation.

Homecare employers need to consider the guidance and either update old policies or implement new policies to address workplace violence.

Each element encompasses certain aspects of workplace violence. Because of the breadth of provider types, disparity in threats posed to staff, difference in resources and similar issues, OSHA is not providing a one-size fits all policy. The Guidelines are a framework within which
each provider may develop a program that best addresses the providers specific needs.

1. Management Commitment and Worker Participation

Management commitment and worker participation are key elements to a successful workplace violence prevention effort. Management must lead the effort to demonstrate the employer’s commitment to violence prevention. Management can show its commitment by providing necessary resources, endorsing the program and by being visibly involved in the company’s efforts. Providing resources may mean more than simply budgeting funds for a program. It includes providing access to information, personnel, time, training, tools and/or equipment. Management can show its involvement by attending safety meetings, attending trainings, supporting the actions of staff to prevent and/or respond to workplace violence, etc.

Workplace violence prevention should also include the governing body designating an executive/management staff member or members to be responsible for overseeing the provider’s workplace safety efforts. This individual would be responsible for implementing the policy and procedures. The individual would also be responsible for investigating reports of violence or threatened violence promptly and thoroughly, reporting on investigations and implementing necessary corrective steps, in conjunction with other staff members. This individual would also be responsible for reporting to the governing body and similar compliance efforts. The individual or individuals to whom this responsibility is given must also be provided with the authority to execute these tasks.

Management must establish written workplace violence prevention policies and procedures. These policies and procedures should clearly state the employer’s commitment to preventing workplace violence. They should include specific policies related to prevention, reporting incidents, receiving reports of workplace violence, recording of reports and company responses, investigating reports, discharging patients and strictly prohibiting any retaliation or reprisal against employees who report instances of violence or threatened violence.

Homecare employers may also consider establishing counseling programs and related medical programs to assist employees who have been victims of workplace violence or who have witnessed workplace violence. Directing employees to such programs may be a key part of responding to incidents.

2. Worksite Analysis

The Guidelines recommend employers engage in a “mutual step-by-step assessment of the workplace to find existing or potential hazards that may lead to incidents of workplace violence.” This assessment is a workplace violence risk assessment. A risk assessment is necessary to allow a provider to identify risks and develop appropriate policies and
procedures to prevent or mitigate those risks. Properly identifying risks requires cooperation between the employer and the employees. This cooperation is the “foundation of a successful violence prevention program.”

The homecare risk assessment will be very different from other health care providers, because, unlike a hospital or SNF, homecare employers cannot just assess their “facility”. For homecare, each patient’s home is a “worksite.” This will require an analysis that focuses, in part, on risks that may arise in any home as well as assessing each patient’s individual home for specific risks. The Guidelines describe several sources of information which employers can consult in performing this assessment, including canvassing employees. Homecare management should canvas employees to obtain their input regarding what they perceive to be the major risks that can lead to workplace violence. These responses can be used to form a picture of the baseline risks in any home, because they are likely to be similar.

The assessment should also include a review of records of past incidents, both cases were there was actual workplace violence and “near misses.” These records will help the employer to identify risk factors for workplace violence that could be prevented or reduced with the implementation of appropriate controls, but which may not have been identified in canvassing staff. The results of the record review and employee canvassing can be placed into a grid that identifies department/unit impacted by the identified violence, the areas impacted (bedroom, kitchen, dining room, car, etc.), the job titles of employees who have been impacted, activities that were occurring before or at the time of the incident and the time of day. This grid helps to arrange the data obtained from the record review into a format that can be used to identify risk areas and preventive actions.

Although the previous two steps addressed identifying general risk factors, that does not mean that each home is not a unique location that may present its own special challenges. Because of this element, homecare employers will have a home-specific assessment for risks. This need not be a burdensome task, but may only require adding questions or assessment tasks to the current assessment agencies perform based upon the risks identified when canvassing employees and reviewing past records. For example, the intake assessment already includes a review of psychological issues. This could lead to training the assessing nurse to note, if she does not already, whether patient psychological issues may increase the likelihood of violence. For example a patient with a diagnosis of dementia may be more agitated and likely to become aggressive. This could lead to workplace violence and could be noted in the assessment.

There may be other health-related risk factors, personality issues as well as other risk factors in the home such as family members, friends, weapons, illegal drugs, and animals, which

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present an increased risk of workplace violence. These can all be noted as part of the initial assessment. Some of these risk factors may not come to light at the initial assessment, but may arise in later home visits. As with other assessments in homecare, the worksite analysis will be ongoing and homecare employees need to clearly understand that they can report these concerns to management at any time. The patient specific worksite assessments will likely result in employees following procedures identified as part of the broader risk assessment developed

The Guidelines also recommend performing a job hazard analysis, which is discussed in a prior OSHA publication, and performing client/patient surveys. These surveys are intended to provide employers with additional feedback regarding triggers to patient violence, so that appropriate safeguards can be taken.

Performing the worksite assessment is not a one-time assessment. Providers will, at a minimum, revisit this issue at least once a year, although each time an incident of workplace violence occurs, employers will want to assess their prevention policies in light of the incident to determine if any policies and procedures need to be revised or added. The ongoing need to review and reassess is a concept with which providers should be familiar from other compliance efforts, including HIPAA.

3. Hazard Prevention and Control

Once the risk assessment has been performed, it can be used to identify policies and procedures that can be implemented to reduce or eliminate the identified risks. This process is called Hazard Prevention and Control in the Guidelines. Hazard Prevention and Control requires employers to: (i) identify and evaluate options for controls that will reduce or eliminate identified hazards; (ii) select controls that will be effective and feasible to eliminate or reduce hazards; (iii) implement the identified controls; (iv) follow up to confirm that the identified and implemented controls are being used and maintained; and (v) evaluate the effectiveness of these controls and improve, expand, or update them as needed.

A. Engineering Controls

There are two broad categories of controls: “engineering controls” and “administrative and work practice controls.” Engineering controls are methods to reduce or control workplace violence that involve making physical changes to the worksite. Because the worksite for homecare is, in most cases, a patient’s home or a facility owned by another entity, engineering controls provide limited opportunities to address workplace violence. Despite this fact, there are some engineering controls that homecare provider might consider. For example, if there was a concern about employee safety due to the neighborhood and homecare employees would be coming and going late at night or early in the morning, lack of exterior lighting could be a potential safety concern. In that circumstance, the homecare provider might consider working with the patient to ensure that the home’s exterior lights are working and sufficient. This can help reduce the risks to employees as they arrive at work or leave from work.
Another engineering control that might be appropriate for a provider whose employees are traveling into dangerous neighborhoods would be encouraging employees to maintain cars they use to get back and forth to work. Keeping their cars maintained reduces the risk of the car breaking down, which could reduce workplace violence by reducing the chance they are attacked while sitting along the side of the road.

B. Administrative and Work Practice Controls

The other form of controls suggested by the Guidelines are administrative and work practice controls. Administrative and workplace controls should be considered when engineering controls are not an option. Because homecare employers’ employees are most often exposed to risks of workplace violence in patients’ homes, they are limited in their ability to implement engineering controls, but would be able to consider administrative and work practice controls instead.

Administrative controls involve creating or changing policies and procedures to reduce risks of workplace violence by altering the way the provider and/or its employees operate. When a provider identifies a risk that may lead to workplace violence for which an engineering solution is not an option, the provider should assess if there are changes to operations that would reduce the identified risks. These operational changes would then become the basis for policies and procedures.

One important administrative control all homecare providers should consider is a clear policy regarding immediately ending a visit if there is a threat of violence or a situation that causes an employee to be concerned for their safety. This policy should address not only leaving immediately, but may include training on de-escalation or other techniques to allow an employee the opportunity to leave the home safely. This policy would also address the issue of violence or threatened violence in a facility. When addressing potential violence in a facility, the provider may need to become familiar with each facility’s procedures and orient its employees to them. In all cases, the provider’s policy should include training on dealing with patients who present a higher risk of violence, such as patients suffering from dementia, psychological conditions and other health issues.

Homecare providers should inform patients, patients' families and others in the home that violence is not permitted and will not be tolerated. This should include informing them that your employees have the authority to immediately end a visit if they feel threatened and that the agency will terminate services if employees are subjected to violence or threatened in any fashion. Any policy on ending visits or discharging patients due to actual or threatened violence must include procedures for informing the attending physician and providing appropriate notice to any regulatory authority and the patient. A provider will not want their efforts to protect their employees to lead to a wrongful discharge or abandonment lawsuit. Although some notice is required, if your employee(s) has been threatened, discharge must be handled promptly. The agency may attempt to resolve the issue in a manner that removes the threat of harm and
allows the agency to continue serving the patient, but until the threat of violence has been addressed, services must, at a minimum, be suspended.

The Guidelines also recommend providers have specific log-in and log-out procedures for their employees to use with any timekeeping systems that is in place; require employees to contact the office after each visit; require management to follow up with employees who do not contact management; and provide employees with the authority to decide whether or not to start a visit or end a visit early.

The Guidelines recommend providers implement a policy and procedure for employees to report actual or threatened violence or harm – to put it simply: employees should be required to report actual or threatened harm. This policy and procedure will address to whom the report must be made, how to document the report, investigating the report, and responding to the results of the investigation. The policy should also describe how to document the investigation, the conclusions as a result of the investigation and any responses made to the report.

Although these suggestions are relatively reasonable, the Guidelines also include a number of suggestions that are not as reasonable in the homecare setting, and agencies will need to give them additional consideration. For example, the Guidelines recommend allowing employees the “discretion to receive backup assistance from another worker or law enforcement officer.” Allowing employees this level of discretion may work in a facility, but homecare employees cannot be given discretion to unilaterally add staff to an assignment, without risking losing care coordination, overstaffing cases and other problems. Staffing changes must be handled through scheduling and management. A better policy would be to have a staff member who felt they were in danger report this to management and request, as a safety measure, that two staff persons be assigned to each visit. Management could then consider this request and respond accordingly.

C. Investigation of Incidents

As with any compliance effort, any report of violence or threatened violence must be promptly investigated by the agency. The Guidelines identify five basic steps in this process: 1) Report Incident to appropriate authorities; 2) Involve workers in the incident investigations; 3) Identify “root causes”; 4) Collect and review other information; and 5) Investigate near misses. Identifying these as “steps” is a misnomer. For example, Number 5, investigate near misses is really a description of the scope of what should trigger an investigation.

The foundation of this effort will be a written policy and procedures that require investigating all instances in which an employee was injured, violence was attempted (a punch that missed, an attempt to assault an employee who escaped, etc.) or even when violence was threatened through statements or actions. You cannot overlook these “near misses,” because these instances put you on notice that your staff may be in danger. Near misses require investigation and appropriate follow-up to protect your
staff, because a near miss may not be a near miss the next time.

Your initial response to a report may also include obtaining appropriate medical care for the employee. The policy may also provide for post-incident leave, counseling and other care. This treatment should be provided by the employer without charge to the employee.

The homecare employer’s immediate response to a report of an incident involving workplace violence should be a prompt and thorough investigation. Without such an investigation, you cannot know whether the incident occurred and if it did, what led to it. If you cannot determine the cause, there is no way to take preventive action. The policy and procedure should provide details regarding how this investigation will be handled. It is important to address suspending services while the investigation is pending. Until you can investigate the allegations and determine that your staff will remain safe when providing care to the patient, you cannot risk sending anyone back to the home. For this reason, the policy should address notifying the patient, patient’s family and the physician of the suspension of services. It is important to think through, in advance, how much or how little you wish to communicate to the physician or other third parties while remaining compliant with regulations.

The Guidelines recommend that the investigation include reviewing the patient’s chart, agency complaint logs, and similar sources to identify any prior incidents involving the patient. This may help to identify what happened or what may have precipitated the incident. The investigator should interview the employee who reported the incident as well as the individual who was the victim, if the victim is not the one who reported the incident. The investigator should also interview the patient, the patient’s family and/or friends and anyone else who may have been present at the time of the incident.

The investigator should also interview other staff who provide care to the patient. Interviewing other staff is important, because despite the lack of any prior reports of incidents, the staff may be aware of the problem or have even witnessed behaviors by the patient that provide additional insight into what happened or even why it happened. This may result in the agency discovering other incidents that simply were not reported.

During your investigation, you should consider giving the employee who was subjected to workplace violence or a “near miss” time off. You should also be sure this employee is aware of any counseling, or other benefits that may be available to help the employee cope. Depending upon the nature of the violence or the near miss, you may also direct the employee to any counseling or related services that are available to the employees through your health plan or other assistance programs. If the employee was injured, they will need to file a claim with worker’s compensation as well.

The investigation must result in a written report. The report will include copies of the investigators notes, employee statements and other
information. Because the report will contain protected health information (“PHI”), it must be treated as any other PHI. The investigation report should explain what the agency has determined to be the “root cause” of the incident. A “root cause” should not be “worker error” or “unpredictable event.” The event may have been due to worker error, for example, failing to follow protocols resulting in agitating a patient. This would be “worker error,” but the report needs a more detailed description of the “worker error.” A listed cause could relate to the patient’s condition or a specific action by an employee. If you cannot identify a circumstance or event that precipitated the incident, it will be hard to develop a method to prevent a future recurrence.

After the root cause has been identified, the agency will need to take action in response. The response should be designed to prevent future recurrences of the incident. The response may range from immediately discharging the patient to implementing engineering controls or administrative controls to prevent the hazard. For example: an RN travels to patient’s home to provide care. Patient’s dog charges at the nurse and attempts to attack her. The RN is able to get out of the house and close the door behind her. All visits are suspended immediately, pending investigation to prevent an employee from being mauled. Investigation concludes that patient has always had the large, aggressive dog, but that it has always been secured in the backyard during home health visits. Response from agency would be to inform patient that dog must be secured in the backyard or in a cage and that nonmember of agency’s staff will enter home if the dog is not secured. Staff would be informed that they do not need to perform a visit if the dog is not fully secured.

An appropriate response to an incident may include reports to law enforcement authorities including Adult Protective Services, Child Protective Services, etc. For example, if the workplace violence your employees reported was violence against the patient, the provider’s response policies and procedures should address when such reports are required and who will make those reports. It may also address informing employees that the provider will make the report on behalf of the employee, which will eliminate the employee’s need to make an independent report.

4. Safety and Health Training

A workplace violence prevention program must also include education and training to help prevent workplace violence. Workers need to know of the potential risks and/or hazards and what they can do to protect themselves from these hazards. Training is important for a number of reasons, training can: (1) help raise overall health and safety knowledge of your workforce; (2) prepare your employees to identify workplace safety risks; and (3) identify and address problems before they arise. This would then lead to a reduction in the overall likelihood
of employees being assaulted or otherwise being victims of workplace violence.

The Guidelines describe a training and education model that is similar to the model used in the OIG compliance guidance documents. It starts with a baseline level of training regarding workplace safety and violence generally. The Guidelines refer to this as “universal precautions for violence.” The universal precautions are part of the training that all employees receive, regardless of their role. Beyond the universal precautions training, employees whose jobs were higher risk, due to location or patient, will receive additional training that other staff members do not receive. Similarly, a homecare employer’s office staff will receive a different type of training, with different topics than the employer’s field staff.

For example, your billing staff will likely need very little, if any, training on dealing with patients, patients’ families and guests in the patients’ homes, as they will be in the office. However, that does not mean that they would not benefit from training on de-escalation. Your managers and supervisors will receive additional training above what the rest of your staff receives. This additional training will be designed to help your management team identify potentially high-risk situations in order to avoid problems before they place staff into dangerous situations. This training may include ways to address the safety concern before assigning staff or understanding their ability to decline to accept a patient if there are safety concerns.

The Guidelines recommend using qualified trainers who provide the training in a manner designed to meet the comprehension level of the agency’s staff – but, this may prove too expensive for many providers. Most providers will likely rely upon their administrator or DON to provide this training. All training should be documented. This documentation will include an attendance list showing the names and signatures of everyone in attendance. It will also include a copy of the training materials used. If the provider tests employees after the training, copies of the tests will be maintained as well.

Workplace violence prevention training should include training regarding: (1) the employer’s workplace violence prevention policy; (2) policies and procedures for documenting changes in the patients’ behavior; (3) early recognition of escalating behavior or recognition of warning signs or situations that may lead to assaults; (4) ways to recognize, prevent, or diffuse volatile situations or aggressive behavior, and manage anger; (5) ways to deal with hostile individuals in the home other than the patient, such as patients’ family members or other guests in the home; (6) a standard response action plan for dealing with violent situations; and (7) policies and procedures for obtaining medical care, trauma-informed care, counseling, workers’ compensation or legal assistance after a violent episode or injury. Homecare providers should also consider training topics such as: (1) staying safe when providing care in dangerous neighborhoods; (2) identifying and addressing threats from animals in the home; (3)
firearms in the home; and, (4) responding to illegal activity in the home.

5. Recordkeeping and Program Evaluation

The Guidelines state that accurate record keeping related to workplace safety and violence are important for a number of reasons, but primarily, due to their ability to help employers identify the severity of a problem and identify any developing trends or patterns, amongst other benefits. There are a number of “key records” employers can consult for this purpose. These records include: OSHA Log of Work-Related Injuries and Illnesses, which all employers are required to maintain; Medical Reports of work injuries, workers’ compensation reports and supervisors’ reports for each recorded assault; records of incidents of abuse; reports conducted by security personnel; verbal attacks or aggressive behavior that may be threatening; information on patients with a history of past violence, drug abuse or criminal activity; documentation of minutes of safety meetings; records of hazards analyses and corrective actions recommended and taken; and records of all training programs, attendees, and qualifications of trainers.

The above documentation is important for employers, because, as with any compliance effort, this compliance effort includes an ongoing program evaluation. Providers are expected to review their program at least annually, but may review it more often in response to specific incidents. The ongoing review provides a tool to evaluate, at least annually, the performance of the agency’s workplace violence prevention program in order to identify deficiencies and determine what, if any, changes are needed to improve it.

In addition to the annual program review, the employer will perform an incident specific review after an incident of workplace violence, a threat of violence, a near miss or similar report. This review will identify whether the incident occurred due to deficiencies in the workplace violence policies and procedures and, if so, implement corrective actions intended to fix those deficiencies. Every time there is an instance of actual workplace violence or a “near miss” where violence was threatened or attempted, there should be not only an investigation/response, but an assessment of your workplace violence policies and procedures intended to determine if your policies and procedures failed in some manner.

The process of annual review, or instance specific review, is important to help ensure you are taking the necessary actions to protect your staff from violence. It is important, that when performing these reviews, you document the review and the conclusions you reach. If you determine, especially after an incident, that no additional action is necessary, you need to clearly document the basis for this conclusion for future reference. If you determine action is necessary, you need to identify what action you are taking, when that action was taken and then follow up in the future to ensure compliance is achieved.

As the employer performs this assessment, the employer must
The annual program review will need to include a systemic, agency-wide system that allows management and executives to review demographic/statistical reports of workplace violence. Although management will need to respond to specific instances, this broader evaluation requires data regarding the overall performance of the agency regarding workplace violence throughout the year. The annual review cannot be performed without monitoring trends and rates in “illnesses, injuries or fatalities caused by violence relative to initial or ‘baseline’ rates.” This requires trend related data. This data will come from reports generated by the agency’s violence reporting system as well as safety committee reports, staff meeting minutes related to safety issues, data on number of recommended changes that have been successfully implemented, and similar reports.

This type of data is important, because providers are expected to lower the frequency and severity of workplace violence. A provider cannot know if it has lowered the frequency and severity, without the ability to track agency wide data on incidents of workplace violence. However, as agencies develop these reports, they must be certain to remove patient identifiers, so that the resulting report does not violate HIPAA. The Guidelines anticipate that the evaluation reports will be shared with all workers. Sharing reports with all workers makes it even more important that all identifiers are removed, lest these reports inadvertently disclose PHI to the agency’s employees.

OSHA suggests several sources of information that are relevant to the ongoing evaluation function. As noted above, OSHA recommends a uniform violence reporting system and ongoing review of the resulting reports that are made. OSHA also recommends: keeping records of administrative and work practice changes; surveying your workers before and after making changes to determine the effectiveness of the changes; surveying workers periodically to determine if they are experiencing workplace violence or hostility; and, complying with state and federal OSHA reporting/recordkeeping requirements. Each of these logs/reports will be valuable in identifying and tracking trends.

OSHA includes a number of template checklists and other resources in the guidance document designed to help providers evaluate their workplace and implement appropriate policies and procedures. As with many other government guidance documents, these may not all be completely relevant to homecare, but they provide valuable guidance and insight into OSHA’s expectations and providers’ responses.

III. Special Issue in Homecare

As noted above, in many instances an issue of workplace violence will be dealt with by discharging a patient from the agency. Discharging a patient in this fashion raises the concern that the agency will be accused of abandoning the patient. Discharging a patient in response to an incident of actual or threatened violence in the home will not constitute abandonment. In the case of violence in the home, the discharge was
precipitated by the patient’s violence conduct, not the Agency’s arbitrary decision.

The issue of abandonment can be mitigated somewhat by the approach to the discharge. As noted above, the agency must make it clear to patients at admission that violence or threatened violence in the home, whether committed by the patient, the patient’s family or another guest in the home will, under no circumstances, be tolerated by the agency. When an incident arises, the agency must promptly communicate to the patient services are being suspended, effective immediately. The investigation should be conducted promptly, yet thoroughly.

Once the conclusion is reached, if the original complaint is affirmed, the agency can consider immediately discharging the patient or putting a corrective action plan into place. If the agency chooses the latter, the corrective action plan should be provided in writing, delivered to the patient in person and explained in person. The agency should send two representatives so as to provide witnesses as to what was said or done. If the corrective action plan is not followed, the patient should be discharge immediately. This fact should be clearly stated in the plan and verbalized to the patient, the patient’s family, etc.

A corrective action plan may simply be to discharge immediately. In this situation, the patient will be provided a written notice of discharge. The notice will explain the reasons for the discharge, express the agency’s willingness to work with the patient to identify a new provider and provide a list of area providers who can provide the care the patient needs. It should also explain that, due to the nature of the problem, the agency will not be making any additional visits to the home. A copy of the notice, along with a brief explanation, should also be provided to the patient’s physician. A copy, with proof of delivery, should be kept in the patient’s file.

IV. Conclusion

Workplace violence is an issue for all employers, but even more so for homecare employers. OSHA’s revised guidance provides employers with additional insight into the problems and OSHA’s views on who to prevent workplace violence. The Guidance provides some helpful thoughts on addressing workplace violence, but more importantly, it reminds providers that this is a real concern and that they need to take action. Providers should review this guidance and revise their policies or implement a new workplace violence prevention policy.
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