New Hospital Requirements in Healthcare Violence Prevention

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MEMORANDUM

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During the Spring 2018 session, the “Health Care Violence Prevention Act” (House Bill 4100) was unanimously passed by both chambers of the Illinois General Assembly and was signed by the Governor on August 24, 2018. The new law, Public Act 100-1051, becomes effective on January 1, 2019.

The goal of the Health Care Violence Prevention Act is to outline specific responsibilities and procedures for healthcare providers and law enforcement to more effectively ensure the safety of healthcare workers while providing care to “committed persons” (e.g., persons in the criminal justice or juvenile justice systems). The legislation was introduced by the sponsor in response to a violent hospital incident in her district. IHA worked with the sponsor throughout the session to mitigate the significant regulatory and compliance concerns IHA had with the original bill. IHA supported the final agreed upon language and worked closely with the bill’s sponsor, as well as other affected stakeholder groups, including healthcare unions and law enforcement.

This memo highlights major components and requirements of the legislation, but hospitals are encouraged to review the entire Act.

Key Definitions:

Committed person: A person who is in the custody of or under control of a custodial agency, including, but not limited to, a person who is incarcerated, under arrest, detained, or otherwise under the physical control of a custodial agency.

Custodial agency: The Illinois Department of Corrections, the Illinois State Police, the sheriff of a county, a county jail, a correctional institution, or any other State agency, or unit of local government that employs personnel designated as police, peace officers, wardens, corrections officers, or guards or that employs personnel vested by law with the power to place or maintain a person in custody.

Healthcare worker: Nursing assistance and other support personnel, any individual licensed under Illinois laws to provide health services.

Workplace Safety: Reporting Incidents and Resource Availability

Healthcare provider management (e.g., hospital leadership) may not discourage a healthcare worker from exercising his or her right to contact law enforcement or file a report with law enforcement because of workplace violence. The Whistleblower Act applies to healthcare providers and their employees with respect to actions taken in this respect. In return, healthcare workers who contact law enforcement or file a report with law enforcement must provide notice to their management within three days of contacting law enforcement or filing the report.

Additionally, healthcare providers are required to display a notice stating that verbal aggression will not be tolerated and physical assault will be reported to law enforcement. Healthcare providers must also offer immediate post-incident services for a healthcare worker directly involved in a workplace violence incident cause by patients or their visitors, including acute treatment and access to psychological evaluation.
Workplace Safety: Program Structure and Requirements

Healthcare providers are required to create a workplace violence prevention program that complies with the Occupational Safety and Health Administration (OSHA) guidelines for preventing workplace violence. The program includes the following components:

1. Classifications of workplace violence.
   a. Type 1 violence: Workplace violence committed by a person who has no legitimate business at the work site and includes violent acts by anyone who enters the workplace with the intent to commit a crime.
   b. Type 2 violence: Workplace violence directed at employees by customers, clients, patients, students, inmates, visitors, or other individuals accompanying a patient.
   c. Type 3 violence: Workplace violence against an employee by a present or former employee, supervisor, or manager.
   d. Type 4 violence: Workplace violence committed in the workplace by someone who does not work there, but has or is known to have had a personal relationship with an employee.

2. Management commitment and worker participation in the program. Worker participation should include nurses as well as additional staff.

3. Worksite analysis and identification of potential hazards.

4. Hazard prevention and control.

5. Safety and health training with required hours to be determined by rule.

6. Recordkeeping and evaluation of the violence prevention program.

Medical Care for Committed Persons

Department of Corrections, Department of Juvenile Justice, County, and Municipal Law Enforcement Procedures

Hospitals or medical facilities may establish protocols for the receipt of committed persons in collaboration with the Department of Corrections (DoC), Department of Juvenile Justice (DJJ), county, or municipality, specifically with regard to potentially violent persons and/or persons recently exhibiting violence.

If a committed person receives medical care and treatment at a place other than an institution or facility of the DoC, DJJ, a county, or a municipality, then that custodial agency is required to do the following:

1. To the greatest extent practicable, notify the hospital or medical facility that will be treating the committed person prior to the committed person’s visit and notify the hospital or medical facility of any significant medical, mental health, recent violent actions or other safety concerns about the patient.

2. To the greatest extent practicable, ensure the transferred committed person is accompanied by the most comprehensive medical records possible.

3. Provide at least one guard trained in custodial escort and custody of high-risk committed persons to accompany any committed person (see Guard Training). In cases of DJJ involved individuals, two guards may also accompany the committed person.

4. Ensure that only medical personnel, DoC, DJJ, county, or municipality personnel and visitors on the committed person’s approved institutional visitors list may visit the committed person while they are in the hospital. Visitation is subject to the rules and procedures of the hospital or medical facility as well as the DoC, DJJ, county, or municipality, respectively. In any situation where a committed person is being visited, all of the following rules apply:
   a. The name of the visitor must be listed per the facility’s or institution’s documentation.
   b. The visitor shall submit to the search of his or her person or any personal property under his or her control at any time.
   c. The custodial agency may deny the committed person access to a telephone or limit the number of visitors the committed person may receive for purposes of safety.

5. If the committed person is in the custody of the DoC, county, or municipality, the custodial agency shall ensure that the committed person is wearing security restraints in accordance with the custodial agency’s rules and procedures if the
custodial agency determines that restraints are necessary for any of the following reasons:

a. To prevent physical harm to the committed person or another person.

b. Because the committed person has a history of disruptive behavior that has placed others in potentially harmful situations or presents a substantial risk of inflicting physical harm on himself or herself or others as evidenced by recent behavior.

c. There is a well-founded belief that the committed person presents a substantial risk of flight.

6. If the committed person is in the custody of the DJJ, the custodial agency shall ensure that the committed person is wearing security restraints on either his or her wrists or ankles in accordance with the rules and procedures of the DJJ. Any restraints used on a DJJ-involved committed person shall be the least restrictive restraints necessary to prevent flight or physical harm to the committed person or another person. The DJJ may determine that restraints are necessary for the following reasons:

a. To prevent physical harm to the committed person or another person.

b. Because the committed person has a history of disruptive behavior that has placed others in potentially harmful situations or presents a substantial risk of inflicting physical harm on himself or herself or others as evidenced by recent behavior.

c. There is a well-founded belief that the committed person presents a substantial risk of flight.

Guard Training

Custodial agencies will attest to training for custodial escort and custody of high-risk committed persons through one of the following three routes:

1. Training of the DoC or Department of Juvenile Justice (DJJ).

2. Law enforcement training that is substantially equivalent to the training of the DoC or DJJ.

3. Custodial agency training provided by the Illinois Law Enforcement Training Standards Board. This curriculum will confer certification for custodial escort and custody of high-risk committed persons by covering handcuffing or shackling of a high-risk committed person, mobile transportation of a committed person with defense from the committed person’s attack, outside facility threat assessment, hands-on weapons retention training, and custodial considerations for a high-risk committed person in outside facilities, among other topics.

Use of Restraints: Pregnant Committed Persons and Medical Treatment Implications

Under no circumstances may leg irons or shackles or wrist shackles be used on any pregnant female prisoner who is in labor. Restraining a pregnant female prisoner who is in the custody of Cook County will comply with existing county code.

Restrains will not be used on committed individuals if medical personnel determine that the restraints would impede medical treatment.