OSHA Targets Inpatient Health Care Facilities and Nursing Homes for Enforcement Actions

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By Valerie Butera

On June 25, 2015, the Occupational Safety and Health Administration (“OSHA”) created a new compliance nightmare for inpatient health care facilities and nursing homes. Specifically, Dorothy Dougherty, Deputy Assistant Secretary of Labor for Occupational Safety and Health, announced the details of OSHA’s new health care enforcement initiative in a memorandum to OSHA Regional Administrators and State Plans. This memorandum is entitled “Inspection Guidance for Inpatient Healthcare Settings” (“guidance memo”).

The guidance memo requires both federal OSHA Regional Offices and State Plans to evaluate the number of work-related injuries and illnesses at inpatient health care facilities and nursing homes in their areas and to target those facilities for inspections. Compliance officers are instructed to focus on five major hazards:

- Musculoskeletal disorders (“MSDs”) relating to patient or resident handling
- Workplace violence
- Bloodborne pathogens
- Tuberculosis
- Slips, trips, and falls

OSHA also reminded compliance officers that they can and should expand the scope of the inspection when additional hazards come to their attention during the inspection. These hazards include, but are not limited to, exposure to multi-drug resistant organisms, 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, MSDs, workplace violence, and other unregulated hazards that they may identify in the workplace.

The agency noted that it has developed additional sources of information to aid compliance officers in these inspections, and had made compliance assistance specialists available to address technical issues related to the targeted hazards, including ergonomics and the evaluation of MSD recordkeeping procedures. MSDs are anticipated to be a prime target in this initiative, as OSHA has repeatedly reported that almost half of all injuries reported in inpatient health care facilities and nursing homes are MSDs—about one and a half times the rate of MSDs reported in all other industries combined.

Workplaces Most Likely to Be Inspected

It is critical to note that OSHA includes a broad range of inpatient facilities on the list of potential targets. Included among the facilities that OSHA designates as “hospitals” and “nursing homes” are a wide variety of workplaces, including among others: (i) psychiatric and substance abuse hospitals, (ii) residential intellectual and developmental disability facilities, (iii) continuing care retirement communities and assisted living facilities, (iv) convalescent homes or convalescent hospitals, (v) hospices, (vi) skilled nursing facilities, and (vii) residential drug addiction rehabilitation facilities. Virtually any type of health care or nursing care facility that provides residential or inpatient services is at risk—particularly if the employer has a high rate of work-related injuries and illnesses.

How to Prepare

Employers operating inpatient health care facilities and nursing homes should immediately take the following actions to prepare for inspections:

- Conduct an internal OSHA compliance audit with the assistance of outside counsel—this audit is protected 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. 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.

- Consult with counsel regarding preparation for an OSHA inspection. Counsel 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.

**Unionization**

Union organizing activity is on the rise in the health care industry. This industry is an attractive target for unionization because of the ever-increasing number of jobs that it provides and projections for continued rapid growth. Employers that are selected for inspections under the new health care enforcement initiative should know that employees have a right to participate in most aspects of the inspection, and they are permitted to select a union representative to work with OSHA on their behalf, even if the facility is not already unionized. Employees and union organizers frequently use this right as a tool to aid in unionization efforts.

**Conclusion**

Inpatient health care facilities and nursing homes should begin preparations for an OSHA inspection immediately. Inspections will begin shortly. Strategic planning is critical to successfully navigating any OSHA inspection.

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