OSHA’s New Enforcement Initiative: Targeting Inpatient Health Care Facilities and Nursing Homes

Part II

Valerie Butera
July 29, 2015
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Agenda

1. Identification of the Expansive Range of Inpatient Care Facilities that OSHA is Targeting
2. The Seven Health and Safety Hazards that OSHA Plans to Focus on During Inspections
3. OSHA’s Bold Plan to Rely Heavily on the General Duty Clause in Issuing Citations
4. How Specific Worksites Will be Selected for an OSHA Inspection in this Initiative
5. What to Expect if Your Worksite is Inspected
Identification of the Expansive Range of Inpatient Care Facilities that OSHA is Targeting
What is an “Inpatient Healthcare Setting”?

- Residential intellectual and developmental disability facilities
- Continuing care retirement communities and assisted living facilities
- Convalescent homes
- Hospices
- Skilled nursing facilities
- Residential group homes for the emotionally disturbed
- Group homes for the disabled, hearing impaired, and visually impaired
- Psychiatric hospitals
- Substance abuse hospitals
- Children’s hospitals
- Pediatric hospitals
But Wait, There’s More...

- On July 13, 2015, OSHA issued updated “Enforcement Procedures and Scheduling for Occupational Exposure to Tuberculosis.”

- The enforcement guidance became effective as of June 30, 2015.

- Inspections shall take place in “healthcare settings.”

- The targets:
  - Inpatient settings
  - Outpatient settings
  - Nontraditional facility-based settings
The Seven Health and Safety Hazards that OSHA Plans to Focus on During Inspections
The Seven Identified Hazards

1. Musculoskeletal disorders (MSDs) relating to patient or resident handling
2. Workplace violence
3. Bloodborne pathogens
4. Tuberculosis
5. Slips, trips, and falls
6. Exposure to multi-drug resistant organisms such as MRSA
7. Exposures to hazardous chemicals, such as sanitizers, disinfectants, anesthetic gases, and hazardous drugs
Musculoskeletal disorders (MSDs) relating to patient or resident handling

- Bureau of Labor Statistics data demonstrate that almost half of all reported injuries in inpatient health and nursing settings were attributable to overexertion-related incidents.

- This rate equates to almost one and a half times the total rate for all reported MSD injuries for all other industries.

- Nurses and nursing assistants were most likely to experience this type of injury.
Workplace Violence

- Bureau of Labor Statistics data demonstrate that workplace violence is a significant hazard for inpatient health care and nursing home settings. In 2013, hospitals reported 5,660 assaults and residential care facilities reported 8,780.

- Again, these rates far exceed the national average for all other industries.

- OSHA has been working to reduce violence in health care for years, and recently published updated, extremely comprehensive guidance on how to create an effective workplace violence prevention program for a variety of health care settings.
Bloodborne Pathogens

- 29 C.F.R. § 1910.1030, as amended pursuant to the 2000 Needlestick Safety and Prevention Act, is a regulation that prescribes safeguards to protect workers against health hazards related to bloodborne pathogens.
- It has provisions dealing with exposure control plans, engineering and work practice controls, hepatitis B vaccination, hazard communication and training, and recordkeeping.
- The standard imposes requirements on employers of workers who may be exposed to blood or other potentially infectious materials such as certain tissues and body fluids.
Tuberculosis

- Tuberculosis is among the most common infectious diseases and frequent causes of death worldwide.
- Tuberculosis disease in persons over the age of 65 constitutes a large proportion of tuberculosis cases in the United States.
- Employees at inpatient hospitals and nursing homes have been identified by the CDC as among the occupational groups with the highest risk from exposure due to the case rate of the disease in persons over the age of 65.
- Many of these individuals have latent TB infection -- with aging, these individuals' immune function starts to decline, placing them at increased risk of developing active tuberculosis disease, and increasing the risk that employees in inpatient hospitals and nursing homes will experience occupational exposure to tuberculosis.
Slips, Trips and Falls

- Maintain floors in a clean and, so far as possible, dry condition, and mats provided where practicable.
- Provide warning signs for wet floor areas.
- Implement a program to provide safe, immediate, clean-up of floor spills.
- Housekeeping procedures such as only cleaning one side of a passageway at a time, providing good lighting for all halls and stairwells can help reduce accidents.
- Instruct workers to use the handrail on stairs, to avoid undue speed, and to maintain an unobstructed view of the stairs ahead of them—even if that means requesting help to manage a bulky load.
- Eliminate uneven floor surfaces.
Exposure to multi-drug resistant organisms

- Targeted employers should evaluate every area of the inpatient facility to determine areas that pose particularly high risks of exposure. The CDC has found that some of the most common exposure sites are:
  - Intensive care units
  - Burn units
  - Pediatrics
  - Nursing homes

- Employers should have an infection control policy in place, and your employees must have received training on it and be able to demonstrate that they understand it.

- Appropriate personal protective equipment should be provided by the employer to the employee free of charge and the employee must be trained on proper usage and be able to demonstrate their understanding.
Exposures to Hazardous Chemicals

- OSHA regulates exposure to hazardous chemicals by way of its Hazard Communication, or “HAZCOM” standard, 29 C.F.R. § 1910.1200.

- Employees in inpatient health care and nursing care facilities face a significant risk of exposure to hazardous chemicals, such as sanitizers, disinfectants, anesthetic gases, cleaning and disinfecting products and hazardous drugs (such as antineoplastic drugs).

- These chemicals can cause a host of health problems including eye irritation and allergic contact dermatitis, upper and lower respiratory symptoms, work-related asthma, chronic bronchitis, reproductive issues and cancer.
OSHA’s Bold Plan to Rely Heavily on the General Duty Clause in Issuing Citations
OSHA’s Broad Enforcement Power

**GENERAL DUTY CLAUSE**

Section 5 of the OSH Act provides OSHA with the power of the so-called General Duty Clause. The General Duty Clause provides that each employer must:

“furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees.”
OSHA’s Directions to Compliance Officers

- Field Operations Manual
- State Plan Equivalent Policies Relevant to the Focus Hazards and Other Hazards Encountered
- Sample General Duty Clause Violation Descriptions for Use in Issuing Citations for Hazards Without Applicable Standards
- Thousands of Pages of Additional Resources
How Specific Worksites Will be Selected for an OSHA Inspection in this Initiative
How Can OSHA Target Your Facility?

LET US COUNT THE WAYS

1. The enforcement initiative applies to all Federal OSHA inspections, programmed or unprogrammed, of the targeted workplaces.

2. Regions may determine that a Regional or Local Emphasis Program is appropriate after reviewing the relevant data.

3. State Plans are also encouraged to determine whether a State Emphasis Program, similar to a Regional or Local Emphasis Program, is appropriate after reviewing the relevant data.
Federal OSHA Programmed Inspections

A programmed inspection generally is a comprehensive inspection of the worksite but may be limited as necessary in view of resource availability and other enforcement priorities such as focused inspections.

OSHA’s site specific targeting program is its primary programmed inspection plan for establishments with 20 or more employees.

Targets are determined by a history of a higher than average number of work-related injuries and illnesses, as determined by injury and illness reporting required by OSHA.
Weighted Inspections

- One of the measures OSHA has historically used to measure its performance is the number of completed inspections.
- Because the agency has historically been underfunded and understaffed, in the past it seemed to focus more enforcement on manufacturing and construction over other industries because such inspections were relatively simple to conduct and tended to result in numerous citations.
- But in attempting to make its numbers, OSHA was ignoring many highly hazardous industries.
OSHA’s New Electronic Injury and Illness Reporting Requirements Change Everything

OSHA's updated reporting rule expands the list of severe injuries that employers must report to OSHA.

- Since January 1, 2015, ALL employers must now report:
  - All work-related fatalities within 8 hours.
  - All work-related inpatient hospitalizations, all amputations and all losses of an eye within 24 hours.
More Trouble on the Horizon

**Electronic Injury and Illness Recordkeeping Requirements**

- In the past, the forms have been hard copy documents.
- OSHA has announced, however, that in September of this year it will publish a new rule requiring the vast majority of employers that keep OSHA injury and illness logs to provide injury and illness information to OSHA electronically, on a frequent basis. This will enable OSHA to more quickly identify workplaces with high rates of injuries and illnesses and dispatch compliance officers to those locations to conduct inspections.
- Disturbingly, the electronically submitted injury and illness data will be “scrubbed of identifiers” and then placed on a publicly accessible database so the public will be able to review employers’ injury and illness data.
What to Expect if Your Worksite is Inspected
Inspection Procedures for Hazards Found in Health Care Settings

**MUSCULOSKELETAL DISORDERS**

- Complete an initial assessment of the extent of patient/resident handling hazards and the manner in which they are or are not addressed.
- Program evaluation – is the ergonomics program management and implementation effective?
- Evaluate employee training.
- Evaluate occupational health management.
- This is an area in which OSHA will be providing expert assistance to its compliance officers. Do not be surprised if an OSHA inspector intent on conducting an ergonomics inspection brings an expert along or contacts an expert for additional information during the course of the inspection.
Inspection Procedures for Hazards Found in Health Care Settings

WORKPLACE VIOLENCE
Inspection Procedures for Hazards Found in Health Care Settings

**Tuberculosis**

- All inspections related to occupational exposure to TB should include a review of the employer’s written plans for employee TB protection.
- Upon entry, the compliance officer should request the presence of the infection control director and the occupational health professional responsible for the control of occupational health hazard(s).
- The compliance officer will determine whether the facility has had a suspected or confirmed TB case among patients/clients or employees within the six months prior to the opening conference.
- If the facility has had a suspected or confirmed TB case within the previous six months, the compliance officer will proceed with a full TB inspection.
The facility administrator, as well as the directors of infection control, employee (occupational) health, training and education, and environmental services (housekeeping) will likely be included in the opening conference or interviewed early in the inspection.

The facility's sharps injury log and any other file of "incident reports" that document the circumstances of exposure incidents in accordance with the provisions in the exposure control plan, and any first aid log of injuries, will be reviewed.

Compliance officers should use appropriate caution when entering patient care areas of the facility. When such visits are judged necessary for determining actual conditions in the facility, the privacy of patients must be respected.
Inspection Procedures for Hazards Found in Health Care Settings

SLIPS, TRIPS, AND FALLS

- Compliance officers will evaluate the work environments that they observe during the walkthrough inspection and document hazards likely to cause slips, trips and falls, such as:
  - Slippery or wet floors
  - Uneven floor surfaces
  - Cluttered or obstructed work areas
  - Poorly maintained walkways
  - Broken equipment
  - Inadequate lighting

- Note any policies, procedures and/or engineering controls used to deal with wet surfaces.
Inspection Procedures for Hazards Found in Health Care Settings

Unprotected Occupational Exposures to Multi-Drug Resistant Organisms
Inspection Procedures for Hazards Found in Health Care Settings

EXPOSURE TO HAZARDOUS CHEMICALS
Be In The Know

OIG Warns Pharmaceutical Manufacturers of Improper Part D Beneficiary Coupon Use

by Constance Wilkinson, Alan Arville, and Benjamin Zegarelli

October 2014

On August 29, 2014, two whistleblower developments of particular interest to health care and life science entities emerged from the Securities and Exchange Commission (SEC), and the Department of Health and Human Services Office of the Inspector General (OIG). The SEC, through its Office of Compliance Inspections and Examinations, settled an enforcement action against a large pharmaceutical company for alleged违反 the False Claims Act. The company agreed to pay $57 million to resolve the matter. The OIG, through its Office of Audits and Evaluations, reported on a compliance program review of a different pharmaceutical company, which identified significant deficiencies in its compliance program.

Whistleblowers Rewarded Again by SEC and the Judiciary

September 10, 2014

By Stuart M. Garson; Frank C. Morris, Jr.; and Meghan F. Chapman

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Act Now Advisory

Massachusetts Now Requires Employers to Provide Domestic Violence Leave

By Barry A. Guryan and Kate B. Rhodes

September 18, 2014

Acting As Whist

1. Employers must provide employees with up to 15 days of paid or unpaid leave in any 12-month period if:

- the employee, or a family member of the employee, is a victim of "abusive behavior";
- the employee is the perpetrator of the abusive behavior against the employee's abused family member; and
- the employee is using the leave from work to do any of the following:
  - seek or obtain medical attention, counseling, victim services, or legal assistance;

2. Protective Orders: An Act [Relative to Domestic Violence] was approved by Governor Deval Patrick on August 15, 2014.

Sixth Circuit Expands the Liability of Health Care Employers for Sponsorship Costs

USCIS Expands H-1B Eligibility for Nurses

Obama Administration Warns ACA Sign-Ups to Provide Proof of Legal Status

California Supreme Court Expands Rights of Immigrants Working in that State

DHS Issues Technical Assistance Regarding Employer’s Receipt of Excessive Documentation During the Form I-9 Process

DHS Settles Immigration-Related Discrimination Claims Against Staffing Agency

Colorado Employers Must Use New Affirmation Form Starting October 1, 2014

Silicon Valley Man Receives 10-Month Sentence for H-1B Fraud

DHS Issues October 2014 Visa Bulletin
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