

AB 1083 (Perez)

Assembly Bill No. 1083 CHAPTER 506

An act to amend Section 1257.7 of the Health and Safety Code, relating to health facilities.

[Approved by Governor October 11, 2009. Filed with Secretary of State October 11, 2009.]

legislative counsel's digest

AB 1083, John A. Perez. Health facilities: security plans.

Under existing law, the State Department of Public Health licenses and regulates hospitals, as defined. Violation of these provisions is a crime. Existing law requires hospitals to conduct a security and safety assessment and, using the assessment, develop a security plan with measures to protect personnel, patients, and visitors from aggressive or violent behavior. Existing law requires the plan to include specified security considerations. This bill would require hospitals to annually review and update the security and safety assessment and plan. The bill would permit the plan to include security considerations relating to efforts to cooperate with local law enforcement regarding violent acts in the facility and would require the hospital to consult with affected employees, including the recognized collective bargaining agent or agents, if any, and members of the medical staff. Because this bill expands the definition of a crime, it would impose a state-mandated local program. The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 1257.7 of the Health and Safety Code is amended to read: 1257.7. (a) After July 1, 2010, all hospitals licensed pursuant to subdivisions (a), (b), and (f) of Section 1250 shall conduct, not less than annually, a security and safety assessment and, using the assessment, develop, and annually update based on the assessment, a security plan with measures to protect personnel, patients, and visitors from aggressive or violent behavior. The security and safety assessment shall examine trends of aggressive or violent behavior at the facility. These hospitals shall track incidents of aggressive or violent behavior as part of the quality assessment and improvement program and for the purposes of developing a security plan to deter and manage further aggressive or violent acts of a similar nature. The plan may include, but shall not be limited to, security considerations relating to all of the following:

- (1) Physical layout.
- (2) Staffing.
- (3) Security personnel availability.
- (4) Policy and training related to appropriate responses to violent acts.
- (5) Efforts to cooperate with local law enforcement regarding violent acts in the facility. In developing this plan, the hospital shall consider guidelines or standards on violence in health care facilities issued by the department, the Division of Occupational Safety and Health, and the federal Occupational Safety and Health Administration. As part of the security plan, a hospital shall adopt security policies including, but not limited to, personnel training policies designed to protect personnel, patients, and visitors from aggressive or violent behavior. In developing the plan and the assessment, the hospital shall consult with affected employees, including the recognized collective bargaining agent or agents, if any, and members of the hospital medical staff organized pursuant to Section 2282 of the Business and Professions Code. This consultation may occur through hospital committees. (b) The individual or members of a hospital committee responsible for developing the security plan shall be familiar with all of the following:
 - (1) The role of security in hospital operations.
 - (2) Hospital organization.
 - (3) Protective measures, including alarms and access control.
 - (4) The handling of disturbed patients, visitors, and employees.
 - (5) Identification of aggressive and violent predicting factors.
 - (6) Hospital safety and emergency preparedness.
 - (7) The rudiments of documenting and reporting crimes, including, by way of example, not disturbing a crime scene.

(c) The hospital shall have sufficient personnel to provide security pursuant to the security plan developed pursuant to subdivision (a). Persons regularly assigned to provide security in a hospital setting shall be trained regarding the role of security in hospital operations, including the identification of aggressive and violent predicting factors and management of violent disturbances.

(d) Any act of assault, as defined in Section 240 of the Penal Code, or battery, as defined in Section 242 of the Penal Code that results in injury or involves the use of a firearm or other dangerous weapon, against any on-duty hospital personnel shall be reported to the local law enforcement agency within 72 hours of the incident. Any other act of assault, as defined in Section 240 of the Penal Code, or battery, as defined in Section 242 of the Penal Code, against any on-duty hospital personnel may be reported to the local law enforcement agency within 72 hours of the incident. No health facility or employee of a health facility who reports a known or suspected instance of assault or battery pursuant to this section shall be civilly or

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criminally liable for any report required by this section. No health facility or employee of a health facility who reports a known or suspected instance of assault or battery that is authorized, but not required, by this section, shall be civilly or criminally liable for the report authorized by this section unless it can be proven that a false report was made and the health facility or its employee knew that the report was false or was made with reckless disregard of the truth or falsity of the report, and any health facility or employee of a health facility who makes a report known to be false or with reckless disregard of the truth or falsity of the report shall be liable for any damages caused. Any individual knowingly interfering with or obstructing the lawful reporting process shall be guilty of a misdemeanor. "Dangerous weapon," as used in this section, means any weapon the possession or concealed carrying of which is prohibited by Section 12020 of the Penal Code.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of

Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California.

Analysis:

AB1083 (Perez)

Previous law:

- The Dept of Public Health licenses and regulates hospitals
- Violations of these provisions are a crime
- Hospitals are required to conduct a security/safety assessment
- That assessment is used to develop a security plan with measures to protect personnel, patients and visitors from aggressive or violent behavior
- Plan includes specified security considerations

New law:

- After July 1, 2010, hospitals are required to, not less than annually; conduct a security and safety assessment. Using the assessment, develop and annually update the security and safety plan with measures to protect personnel, patients and visitors from aggressive or violent behavior. The assessment shall examine trends of aggressive or violent behavior at the facility.
- In developing the assessment and plan, the hospital shall consult with affected employees, including the recognized collective bargaining agent(s) and members of the hospital medical staff. This consultation may occur through hospital committees. The individual or members of a

hospital committee responsible for developing the security plan shall be familiar with all of the following:

1. The role of security in hospital operations.
 2. Hospital organization
 3. Protective measures, including alarms and access control
 4. The handling of disturbed patients, visitors and employees
 5. Identification of aggressive and violent predicting factors
 6. Hospital safety and emergency preparedness
 7. The rudiments of documenting and reporting crimes, for example not disturbing a crime scene.
- Permits the plan to include security considerations relating to efforts to cooperate with local law enforcement regarding violent acts in the facility.
 - These hospitals shall track incidents of aggressive or violent behavior as part of the quality assessment and improvement program and for the purposes of developing a security plan to deter and manage further aggressive or violent acts of a similar nature.
 - The security plan contains measures to protect personnel, patients and visitors from aggressive or violent behavior. The plan may include, but is not limited to, security considerations relating to all of the following:
 1. Physical layout
 2. Staffing
 3. Security personnel availability
 4. Policy and training related to appropriate responses to violent acts
 5. Efforts to cooperate with local law enforcement regarding violent acts in the facility.
 - As part of the security plan, a hospital shall adopt security policies including, but not limited to, personnel training policies designed to protect personnel, patients and visitors. The hospital shall have sufficient personnel to provide security pursuant to the security plan developed. Persons regularly assigned to provide security in a hospital setting shall be trained regarding the role of security in hospital operations, including the identification of aggressive and violent predicting factors and management of violent disturbances.
 - In developing the plan, the hospital shall consider guidelines or standards on violence in health care facilities issued by the department, the Division of Occupational Safety and Health, and federal Occupational Safety and Health Administration.
 - Expands the definition of a crime, it would impose a state-mandated local program. CA Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement. This provides that no reimbursement is required by this act for a specified reason.

- Any act of assault that results in injury or involves the use of a firearm or other dangerous weapon, against any on-duty hospital personnel **shall** be reported to the local law enforcement agency within 72 hours of the incident.
- Any other assault or battery against any on-duty hospital personnel **may** be reported to the local law enforcement agency within 72 hours of the incident.
- No health facility or employee of a health facility who reports a known or suspected instance of assault or battery shall be civilly or criminally liable for any report required by this section. Unless it can be proven that a false report was made.
- Any individual knowingly interfering with or obstructing the lawful reporting process shall be guilty of a misdemeanor.

Annual security assessments become California law

June 1, 2010 (press release by SEIU Local 121RN)

Annual security assessments become California law

Noncompliance becomes a crime

California, often the forerunner in compliance standards, may be leading the pack when it comes to security assessments.

In October 2009, the state revised California Health and Safety Code 1257.7, requiring hospitals to conduct security risk assessments annually and making failure to do so a crime. It took effect in January and requires that the first annual assessments begin no later than July 1, 2010, making some California hospitals scramble to perform a security assessment. CEOs or managers responsible for failure to comply could receive a criminal complaint. The law is a revision of AB 508, which passed in 1995.

Although it's unlikely OSHA has the resources to check each and every hospital throughout the state and charge individuals with noncompliance, it is more likely that a criminal complaint will result from an incident that is reported to state authorities, who then may decide to bring the case to the district attorney, says **Mark Mooring, MS, CPP, CHPA**, founder of consulting firm Proper Authorities in Ventura, CA. This threat would not only mean legal and financial troubles for the hospital, but a slew of bad press. "No one wants to be the first one to have the CEO get a criminal complaint," says Mooring. "You can imagine if it hits the news media and becomes negative publicity."

The law also states that hospitals should consider OSHA's *Guidelines for Preventing Workplace Violence for Health Care & Social Service Workers*. Although many hospitals consult these guidelines when developing a security plan, they still serve only as guidelines and are not required by law. The 42-page document is prescriptive and suggests performing risk assessments, creating a security plan, and training staff members on 11 content areas, says Mooring. He notes that a small handful of states have similar laws, but that California is in the forefront of compliance by making noncompliance a crime that can also result in civil penalties—a move that may be a sign of things to come.

Violence on the rise

California's current Health and Safety Code 1257.7, previously known as AB 1083, was originally brought to California legislators by Southern California's Registered Nurse Union, SEIU Local 121RN, which surveyed

members about workplace violence in March and April 2009. The survey found that about half of respondents witnessed violence or aggression at their hospitals, and more than half said they had not received adequate safety training at their hospital. This survey was on par with another well-cited study by the Emergency Nurses Association, "Violence Against Nurses in U.S. Emergency Departments," published in the July/August 2007 *Journal of Nursing Administration*. That study found that more than half of 3,465 ED nurses experienced physical violence—including being spit on, pushed, scratched, and kicked—and 67% of ED nurses rated their perception of safety at five or lower on a 10-point scale. One in three even said they had considered leaving the department or nursing because of the violence.

"Our members were reporting acts of violence and aggression by patients who were disoriented by their medical conditions and/or under the influence of drugs or alcohol," says **Aimee Barajas**, communications director for SEIU 121RN. "Many hospital security policies prevented security guards from restraining patients or helping medical staff who are dealing with an aggressive patient." Barajas says the new law, with criminal penalties, brings to the attention of hospital leaders the importance of preventing violence in hospitals.

"Our members felt that hospital administration could be a bit out of touch with what really happens in the emergency room or any other department of the hospital," Barajas says. "Many hospital security plans are out of date and don't reflect reality. So our nurses felt it was critical to have input when safety and security plans are written. This bill accomplishes that."

To the joy of Barajas and other SEIU Local 121RN members, the bill passed unanimously through all committees and the Senate floor. "The bill will allow registered nurses and other healthcare workers who are on the floor and at the bedside day after day to give their realistic input on whether the current security plan has been successful or not and how it can be amended to make the hospital safer for employees and visitors," says Barajas.

Joint Commission may take notice

Mooring says the overwhelming support of the bill indicates that California just might be the first of many states to require annual assessments.

"You may see this continue to expand into other states, particularly as statistics and surveys show that violence against healthcare workers is on the rise. I think more and more legislators are going to get involved in it and want to pass something that gets [workplace violence] out in front and gets hospitals to create as safe an environment as possible," he says.

Fredrick G. Roll, MA, CHPA-F, CPP, president and principal consultant at Healthcare Security Consultants, Inc., in Frederick, CO, also believes the new state law will help reinforce security compliance.

"I think it is going to help strengthen the OSHA guidelines somewhere down the road because similar violent events are going to happen across the country, and all of a sudden it will tighten up, and I predict that eventually, they'll move from a guideline to standard," says Roll.

It's very likely The Joint Commission will take special notice, particularly because the bill makes noncompliance a crime—a sign that legislators did not believe hospitals were complying with the previous bill, AB 508, which addressed the need for hospitals to conduct a security assessment but did not require one every year and did not have criminal penalties attached, Roll says.

The perceived noncompliance leads Mooring to think that The Joint Commission may refocus attention on security assessments, planning, and training.

"I think The Joint Commission is very aware of the requirements of California law," he says. Although it may have looked to some as though security requirements were being watered down after they were made part of the safety management plan section under the Environment of Care standards, Mooring believes there will be a renewed focus on the area.

"Some surveyors seemed like they had a lot of things on their plate, so they were not delving deeply into security sometimes, but I fully expect this will kind of get them going again because ... this shows that the

legislature was convinced that hospitals were not compliant. So that means The Joint Commission is going to look closer like they did when AB 508 passed originally," says Mooring.

AB 508 was more open to interpretation, leaving a wide discrepancy in what constituted compliance. The new law not only requires an annual assessment, but involvement of affected employees and unions when developing the plan. California hospitals must also collaborate with local law enforcement. New focus will also be spurred by what Mooring calls a growing, nationwide problem of assault against healthcare workers.

Striving for compliance and beyond

Although California hospitals are required to perform a security assessment every year, Mooring recommends making the best use of each assessment.

The first assessment should be a "full-blown, door-to-door, floor-to-floor, cover-every-little-iota assessment," he says.

After that, however, the assessment can focus on what incident reports show as high-problem areas and look at what's changed and progressed. Mooring notes that the new state law also focuses on better incident tracking and reporting; hospitals should have on record when incidents occur, what department they occurred in, what time of day they occurred, and so on. The safety assessor can then go back and review these data and focus on problem areas.

Although the law doesn't mandate a specific number of hours or frequency, Mooring says training should be supplied to all hospital employees. However, not everyone needs to receive the same type of training. "For example, the ED and security staff might receive all-day in-person training that includes hands-on elements, including restraint," he says, whereas other departments would receive less in-depth training.

Mooring reminds safety and security directors that assessments are a minimal expense compared to the potential expense of noncompliance. Training can be the more expensive element of security, but staggering the levels of education is a more frugal option, he says.

Mooring also reminds safety and security directors that The Joint Commission might take a close look at documentation of training, including the original sign-in sheet for a training class, who was there, what departments attended, and whether there was a 90% or higher compliance rate.

"They do look beyond just the management plan," says Mooring, who's been through seven surveys. "I've had them look at the outline for the curriculum of the training, of the trainer's résumé, etc."

Place a particular focus on security assessments and have all of them well documented, Mooring says. "Nationwide, I think hospitals are going to have to amp up their compliance a little more because California tends to be the forerunner in this sort of thing," he adds.

Workers' rights under the Occupational Safety & Health Act

Workers are entitled to [working conditions](#) that do not pose a risk of serious harm. To help assure a safe and healthful workplace, OSHA also provides workers with the right to:

- Ask OSHA to inspect their workplace;
- Use their rights under the law without retaliation and discrimination;
- Receive information and training about hazards, methods to prevent harm, and the OSHA standards that apply to their workplace. The training must be in a language you can understand;
- Get copies of test results done to find hazards in the workplace;
- Review [records of work-related injuries and illnesses](#);
- Get copies of their [medical records](#);

<http://www.osha.gov/SLTC/workplaceviolence/>

Any worker and/or their union representative has the right to get access to incident log OSHA 300 - and the incident report, OSHA 301

- * Once the OSHA logs or reports are requested the facility has 24 hours to turn them over.
- * The summary form of OSHA 300 is called OSHA 300(A). According to the regulations, 300(A) needs to be posted from February 1 - April 30th of each year. The form needs to be posted in a public place where all workers can see them.
- * If the facility is not in compliance with posting the OSHA 300(A) summaries during these months, a complaint can be filed with your regional OSHA office. Once the complaint is filed, the OSHA office has 14 calendar days to reply to the complaint.
- * What happens next? The OSHA officers will do an inspection of the facility. If it is found out that the facility is, in fact, in violation, this is considered a regulatory violation.
- * Regulatory violations of this sort generally carry a relatively low fine.
- * The Union's goal is to get access to the records, apply analysis -- and work to make changes for the workers' benefit. If the facility refuses to provide us the information we are legally allowed to have within 24 hours of the request, the fines the facility will get hit with can escalate.

OSHA and 300 logs for Workplace Injuries Recorded

<http://www.osha.gov/recordkeeping/new-osh300form1-1-04.pdf>

The summary of form 300A needs to be posted from February 1 - April 30th each year. 300A should be in a public place where all workers can see them. Workers and union representatives have the right to the 300A summary, 300 log and the 301 which is a separate report of each injury and illness.

If the facility is not in compliance, you can contact CalOSHA to file a complaint. While CalOSHA does not reveal who filed the complaint, if this is of a concern, it's best if your union representative does it for you and your co-workers. Once the complaint is filed, the OSHA office would need to investigate within 14 calendar days from when the complaint was filed.

What happens after that is an inspection of the facility -- if it is found out that the facility is, in fact in violation ... they will be cited. If they are cited as being in violation, this is considered a regulatory violation with a relatively low fine. However the point is that we want access to the records. If they still refuse to provide this information, the fines can escalate to "repeat" and "willful" penalties that can carry greater fines.

<http://www.dol.gov/compliance/guide/osha.htm#EmplRights>

Notices. Employees, former employees and their representatives have the right to review the OSHA Form 300, Log of Work-related Illnesses and Injuries, in its entirety. Employers are required to post the [Summary of Work-related Injuries and Illnesses \(Form300A\)](http://www.osha.gov/recordkeeping/new-osha300form1-1-04.pdf#Page=8) (<http://www.osha.gov/recordkeeping/new-osha300form1-1-04.pdf#Page=8>) in a visible location so that employees are aware of the injuries and illnesses that occur in their workplace. Employers are required to post the Summary Form (300A) by February 1 of the year following the year covered by the form and keep it posted until April 30 of that year.

OSHA Recognizes that Workplace Violence is an Occupational Hazard

Trade Release

U.S. Department of Labor For Immediate Release Occupational Safety and Health Administration Sept. 8, 2011 Office of Communications Contact: Office of Communications Washington, D.C. Phone: 202-693-1999 www.osha.gov

OSHA issues compliance directive to address workplace violence

WASHINGTON %u2013 The Occupational Safety and Health Administration today issued a directive on Enforcement Procedures for Investigating or Inspecting Incidents of Workplace Violence. The directive establishes uniform procedures for OSHA field staff for responding to incidents and complaints of workplace violence and conducting inspections in industries considered vulnerable to workplace violence, such as healthcare and social service settings, and late-night retail establishments.

Workplace violence is a serious recognized occupational hazard, ranking among the top four causes of death in workplaces during the past 15 years. More than 3,000 people died from workplace homicide between 2006 and 2010, according to the Bureau of Labor Statistics (BLS). Additional BLS data indicate that an average of more than 15,000 nonfatal workplace injury cases was reported annually during this time.

A recent OSHA inspection of a Maine psychiatric hospital found more than 90 instances in which workers were assaulted on the job by patients from 2008 through 2010. The hospital was cited for not providing its workers with adequate safeguards against workplace violence and a fine of more than \$6,000 was proposed. OSHA has also recently cited facilities in New York and Massachusetts where employees have been killed as a result of assaults.

'These incidents and others like them can be avoided or decreased if employers take appropriate precautions to protect their workers,' said Assistant Secretary of Labor for

Occupational Safety and Health Dr. David Michaels. 'We have accompanied this directive with a new Web page on Preventing Workplace Violence to help employers address workplace violence issues.'

Studies by the National Institute for Occupational Safety and Health and other organizations show that employers who implement effective safety measures can reduce the incidence of workplace violence. These measures include training employees on workplace violence, encouraging employees to report assaults or threats, and conducting workplace violence hazard analyses. Other methods such as using entrance door detectors or buzzer systems in retail establishments, and providing adequately trained staff, alarms and employee 'safe rooms' for use during emergencies in healthcare settings can help minimize risk.

OSHA has launched a new Web page on Preventing Workplace Violence and has published several workplace violence guidance documents including Recommendations for Workplace Violence Prevention Programs in Late-Night Retail Establishments and Guidelines for Preventing Workplace Violence for Health Care and Social Service Workers.

Under the Occupational Safety and Health Act of 1970, employers are responsible for providing safe and healthful workplaces for their employees. OSHA's role is to ensure these conditions for America's working men and women by setting and enforcing standards, and providing training, education and assistance. For more information, visit <http://www.osha.gov>.

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ENA Workplace Violence Toolkit can be accessed here
<http://www.ena.org/ENR/ViolenceToolKit/Documents/toolkitpg1.htm>