

LEGAL UPDATES

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BARBARA A. GRANDJEAN
DENVER:

303.892.4458

BARBARA.GRANDJEAN@
HUSCHBLACKWELL.COM

California and Illinois Move Forward on Healthcare Laws to Protect Patient Safety

Key Points

California law provides enhanced whistleblower protection to employees who work in healthcare facilities, protecting their right to speak privately with state regulators.

Illinois' General Assembly seeks to enact bill requiring mandatory staffing limits for registered nurses in healthcare facilities.

In the wake of ongoing reports of safety issues adversely affecting patients and their families and the working conditions of healthcare workers, these constituents have lobbied for changes in state laws to address patient safety issues and workers' employment conditions. Recent legislative developments in California and Illinois exemplify the types of laws being enacted as well as portend changes being considered in other states.

California enacts whistleblower protection law for healthcare facility workers

On July 10, 2019, Governor Gavin Newsom signed into law SB 322 amending section 1278.5 of the California Health and Safety Code to enhance the whistleblower protections provided to employees of healthcare facilities. The California Nurses Association sponsored SB 322 which was passed by the legislature and signed into law without opposition. The amendment protects the right of an employee or their representative to speak privately with an inspector during a Department of Public Health (DPH) inspection or investigation about potential regulatory violations or safety concerns.

The amendment establishes parity in federal and state health and safety inspection laws in California. Under CAL/OSHA regulations, employees are entitled to meet privately with CAL/OSHA inspectors regarding potential safety concerns or regulatory violations in healthcare facilities. The amendment to section 1278.5 ensures that employees are entitled to the same right to meet privately with state healthcare facility inspectors from DPH. According to the bill's author, Senator Bradford, and a supporter of the bill, the Services Employees International Union-California (SEIU), the presence of management during DPH inspections has a chilling effect on employees' willingness to speak freely about potential safety concerns or legal violations. A June 11, 2019 Senate Bill Policy Committee Analysis of the hearing before the Committee on Health noted that roughly 71% of whistleblower complaints submitted to DPC from 2016 to 2018 were submitted anonymously. The purpose of the bill is to improve the oversight function of DPC inspectors during healthcare facility inspections and investigations to better protect workers, patients, families, and visitors at healthcare facilities.

A willful violation of the new law constitutes a misdemeanor violation and a fine of not more than \$75,000.00, in addition to any civil penalties that may be assessed under applicable anti-discrimination and retaliation provisions.

Illinois General Assembly seeks mandatory staffing ratios for nurses

On May 31, 2019, Illinois bill HB 2604, the Safe Patient Limits Act, which establishes a maximum patient-to-nurse staffing ratio, was re-referred to the Illinois Rules Committee. While the bill applies only to registered nurses, if successful, Illinois will join California in requiring mandatory staffing ratios. (Massachusetts has maximum patient-to-nurse staffing ratios for ICU patients only.)

The mandatory staffing ratios established by the bill are based on the type of care needed by the patient. Facilities subject to the law cannot assign a nurse to more than two critical care patients, three intermediate care patients, or one patient in the operating room. The bill also limits the number of patients assigned to a nurse in various hospital units, including emergency rooms, maternal child care units, pediatric units, psychiatric units, and surgical care units. For nurses assigned to units not specifically enumerated in the bill, the maximum number of patients assigned to a nurse cannot exceed four. All nurses must also receive sufficient training and orientation related to their assigned nursing unit or critical care unit to assure their ability to provide competent care in the clinical area to which they are assigned.

Enforcement powers under the bill are delegated to the Department to the Attorney General, which is empowered to bring an action for injunctive and civil relief against facilities that violate the bill's provisions. Violations can result in a maximum penalty of \$25,000.00 per day beginning from the date of receipt of written notice of the violation from the Department of Public Health.

Facilities subject to the bill are:

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Hospitals licensed under the Hospital Licensing Act or organized under the University of Illinois Hospital Act,

Private or state-owned and state-operated general acute care hospitals,

Acute care psychiatric hospitals,

Acute care specialty hospitals, and

Acute care units within a healthcare facility.

What this means to you

Hospitals and healthcare facilities face a dynamic legislative and enforcement environment punctuated by financial strains exacerbated by burgeoning competition and a tight job market. Rules and policies should be developed to best address the needs of your institution and comply with state law. Strategies that comply with these laws and enhance the working environment of employees even without increasing employees' earnings can result in not only greater retention rates but also an increase in the application rate for nursing employees at your institution.

For more information on compliance strategies with these and other changes in healthcare employment laws, contact Barb Grandjean, Chad Grell or your Husch Blackwell attorney.

Tracey Oakes O'Brien was a contributing author of this content.