

## NOTES

### PROTECTING NURSES WITH WORKPLACE VIOLENCE PREVENTION LEGISLATION IN PENNSYLVANIA

Bailey McKinney Varrati

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# NOTES

## PROTECTING NURSES WITH WORKPLACE VIOLENCE PREVENTION LEGISLATION IN PENNSYLVANIA

Bailey McKinney Varrati\*

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\* RN; BSN; JD Candidate, University of Pittsburgh School of Law, May 2024. Although state law is often changing in this area, the research for this Note is current as of March 2024.

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## INTRODUCTION

The U.S. healthcare system has its fair share of problems that are often hot topics of discussion in the media and politics. Often problems like inadequate health insurance coverage, the high cost of care, and staffing shortages are given a lot of attention.<sup>1</sup> However, another critical issue may be overlooked—workplace violence in healthcare. Unfortunately, healthcare worker safety is a significant concern in the United States as healthcare workers experience violence at a rate of 7.8 per 1,000 workers per year.<sup>2</sup> For reference, this is almost four times more than other private industry rates.<sup>3</sup> Physicians, nurses, and other healthcare workers dedicate their careers to helping others heal. Yet, they must fear experiencing violence when they arrive at work each day. The regularity of violence against healthcare workers has led some to believe that it is an inherent risk in the industry.<sup>4</sup> However, violence in healthcare should never be thought of as “part of the job.”<sup>5</sup>

Despite the alarming prevalence of violence in healthcare, federal legislative and regulatory action addressing it has been limited. Under federal law, the Occupational Safety and Health Administration (“OSHA”) is tasked with ensuring safe working conditions by setting and enforcing standards.<sup>6</sup> However, OSHA does not have specific standards for workplace violence or require employers to

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<sup>1</sup> See, e.g., *Inadequate Health Insurance Coverage Drives Medical Debt—Four Solutions to Address this Significant Problem*, AM. HOSP. ASS’N (Aug. 11, 2023, 8:17 AM), <https://www.aha.org/news/perspective/2023-08-11-inadequate-health-insurance-coverage-drives-medical-debt-four-solutions-address-significant-problem> [https://perma.cc/L7D6-P5R4]; Lunna Lopes et al., *Americans’ Challenges with Health Care Costs*, KFF (Mar. 1, 2024), <https://www.kff.org/health-costs/issue-brief/americans-challenges-with-health-care-costs/> [https://perma.cc/TSM7-QG2H]; Caitlin Owens, *The Health Care Workforce Crisis Is Already Here*, AXIOS (June 7, 2024), <https://www.axios.com/2024/06/07/health-care-worker-shortages-us-crisis> [https://perma.cc/PL4L-6BK6].

<sup>2</sup> David C. Grossman & Bechara Choucair, *Violence and the US Health Care Sector: Burden and Response*, 38 HEALTH AFFS. 1638, 1638 (2019).

<sup>3</sup> See *id.* (“Health care workers experience the highest rates of violent injuries in the workplace in the US: 7.8 per 1,000 workers per year, compared to rates under 2.0 per 1,000 for other private industry.”).

<sup>4</sup> See Lauren B. Querin, Gary L. Beck Dallaghan & Christina Shenvi, *A Qualitative Study of Resident Physician and Health Care Worker Experiences of Verbal and Physical Abuse in the Emergency Department*, 79 ANNALS EMERGENCY MED. 391, 394 (2022).

<sup>5</sup> See Jason Silverstein, *Violence Is Just Part of the Job When You’re a Nurse*, VICE (Feb. 27, 2018, 4:53 PM), <https://www.vice.com/en/article/pamv59/violence-abuse-nurses-effects> [https://perma.cc/2VWT-VV4R].

<sup>6</sup> *About OSHA*, OSHA, <https://www.osha.gov/aboutosha> [https://perma.cc/B6GE-KLUN] (last visited Sept. 19, 2024).

implement violence prevention programs.<sup>7</sup> Similarly, the Centers for Medicare and Medicaid (“CMS”), a healthcare agency, only reminds healthcare entities of existing obligations and has not established explicit requirements for workplace violence prevention programs.<sup>8</sup> Further, federal legislative attempts to address violence in healthcare have been unsuccessful thus far.<sup>9</sup>

The escalating problem of workplace violence in healthcare and the lack of federal action has prompted some states to pass legislation requiring employers to implement violence prevention programs.<sup>10</sup> Pennsylvania has introduced such legislation, but each attempt has failed to progress through the legislature.<sup>11</sup> Pennsylvania should join those states that have successfully established violence prevention program standards to adequately address the rate of violence and its detrimental effects.

This Note explores the incidence and impact of violence against nurses and proposes potential requirements for Pennsylvania using other states’ legislation as a guide. This Note is focused on nurses specifically because nurses have frequent direct contact with patients, which places them at a greater risk of experiencing workplace violence.<sup>12</sup> Part I discusses the prevalence of violence against nurses and its negative impact on patient care and the physical and psychological well-being of nurses. Part II provides an overview of efforts to combat violence in healthcare by the federal government, the Joint Commission, and the Pennsylvania legislature. Part III reviews the benefits and drawbacks of other states’ workplace violence prevention requirements to gain insight into what standards are best for Pennsylvania. Part IV then suggests potential workplace violence prevention standards for Pennsylvania, drawing inspiration from legislation already introduced in Pennsylvania and other states’ enacted provisions.

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<sup>7</sup> *Workplace Violence: Enforcement*, OSHA, <https://www.osha.gov/workplace-violence/enforcement> [<https://perma.cc/UF5G-Q4BM>] (last visited Sept. 19, 2024).

<sup>8</sup> See discussion *infra* Section II.A.2.

<sup>9</sup> See discussion *infra* Section II.A.3.

<sup>10</sup> See discussion *infra* Part III.

<sup>11</sup> See discussion *infra* Section II.B.

<sup>12</sup> See Smita Kafle, Swosti Paudel, Anisha Thapaliya & Roshan Acharya, *Workplace Violence Against Nurses: A Narrative Review*, 8 J. CLINICAL & TRANSLATIONAL RSCH. 421, 422 (2022), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9536186/> [<https://perma.cc/35TA-HJ8Q>] (“Nurses are the frontline workers, and patients spend more time with nurses in care facilities than other health-care providers, automatically increasing the risk of violence.”).

## I. BACKGROUND

OSHA defines workplace violence as “any act or threat of physical violence, harassment, intimidation, or other threatening disruptive behavior that occurs at the work site.”<sup>13</sup> In 2020, the U.S. Bureau of Labor Statistics reported that 20,050 workers in the private industry were victims of nonfatal workplace violence resulting from intentional injury by another person.<sup>14</sup> A review of collected data indicates that this issue disproportionately affects healthcare workers.<sup>15</sup> Data from 2018 revealed that 73% of all nonfatal workplace injuries and illnesses resulting from violence affected healthcare workers.<sup>16</sup> Further, the U.S. Bureau of Labor Statistics found that the incidence of nonfatal workplace violence in the healthcare industry rose from 6.4 per 10,000 full-time workers in 2011 to 10.4 per 10,000 full-time workers in 2018.<sup>17</sup>

Nurses, specifically, are at a higher risk of workplace violence when compared to other occupations.<sup>18</sup> Researchers attribute this increased risk to nurses spending more time with patients and working in close contact with them, providing more opportunities for nurses to be victims of violence.<sup>19</sup> According to the American Nurses Association, nearly one in four nurses have been assaulted at work.<sup>20</sup> Furthermore, Press Ganey’s National Database of Nursing Quality Indicators—which includes a collection of data from more than 2,000 healthcare facilities—

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<sup>13</sup> *Workplace Violence: Overview*, OSHA, <https://www.osha.gov/workplace-violence> [<https://perma.cc/8D46-V7CK>] (last visited Sept. 19, 2024).

<sup>14</sup> *Injuries, Illnesses, and Fatalities*, U.S. BUREAU OF LAB. STATS., <https://www.bls.gov/iif/nonfatal-injuries-and-illnesses-tables/case-and-demographic-characteristics-table-r4-2020.htm> [<https://perma.cc/R95Z-82EV>] (last visited Sept. 19, 2024).

<sup>15</sup> Nat’l Inst. for Occupational Safety & Health (NIOSH), *About Workplace Violence*, CDC (Apr. 22, 2024), <https://www.cdc.gov/niosh/violence/about/> [<https://perma.cc/2G7Y-XHTL>] (reporting that of the 20,050 workers affected, 76% worked in the healthcare and social assistance industry).

<sup>16</sup> *Fact Sheet, Workplace Violence in Healthcare, 2018*, U.S. BUREAU OF LAB. STATS. (Apr. 2020), <https://www.bls.gov/iif/factsheets/workplace-violence-healthcare-2018.htm> [<https://perma.cc/NR6K-SAC2>].

<sup>17</sup> *Id.*

<sup>18</sup> See Nat’l Inst. for Occupational Safety & Health (NIOSH), *Extent of the Problem*, CDC, [https://www.cdc.gov/WPVHC/Nurses/Course/Slide/Unit1\\_6](https://www.cdc.gov/WPVHC/Nurses/Course/Slide/Unit1_6) [<https://perma.cc/HUZ8-DN7G>] (last reviewed May 16, 2024).

<sup>19</sup> See Kafle et al., *supra* note 12, at 422.

<sup>20</sup> *Workplace Violence in Nursing: Dangerous & Underreported*, AM. NURSES ASS’N, <https://www.nursingworld.org/practice-policy/work-environment/end-nurse-abuse/workplace-violence/> [<https://perma.cc/7ZGF-MALF>] (last visited Sept. 19, 2024).

showed that more than two nursing personnel were assaulted every hour, equating to about “1,739 assaults per month and 5,217 assaults per quarter.”<sup>21</sup> Despite these concerning assault statistics, nurses are even more likely to be victims of non-physical violence like verbal abuse, threats, and harassment.<sup>22</sup>

The COVID-19 pandemic amplified the already alarming rate of workplace violence against nurses. A survey revealed that 31% of the 5,000 nurses surveyed reported an increase in workplace violence during the pandemic.<sup>23</sup> Another study found that during the pandemic, 44.4% of the nurses surveyed reported experiencing physical violence and 67.8% reported verbal abuse at least once from their patients, visitors, or family members.<sup>24</sup>

Pennsylvania independently experienced an increase in violence against healthcare workers during the pandemic. Geisinger, a health organization headquartered in Danville, Pennsylvania, with nine hospitals across central, south-central, and northeastern Pennsylvania, experienced a significant 21% increase from 2020 to 2021 in instances of patients or visitors exhibiting “combative behavior” including “full-blown physical assault.”<sup>25</sup> Similarly, Allegheny Health Network, a healthcare organization with fourteen hospitals across Pennsylvania, New York, Ohio, and West Virginia, noted a rise in aggressive behavior against healthcare workers by patients and visitors.<sup>26</sup> In response to these findings, the Western

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<sup>21</sup> *On Average, Two Nurses Are Assaulted Every Hour, New Press Ganey Analysis Finds*, PRESSGANNEY (Sept. 8, 2022), <https://www.pressganey.com/news/on-average-two-nurses-are-assaulted-every-hour-new-press-ganey-analysis-finds/> [https://perma.cc/3AUW-ECH8].

<sup>22</sup> See Jianxin Liu et al., *Prevalence of Workplace Violence Against Healthcare Workers: A Systematic Review and Meta-Analysis*, 76 OCCUPATIONAL ENV'T MED. 927, 927 (2019) (finding that 42.5% of healthcare worker participants reported exposure to non-physical violence, and 24.4% reported experiencing physical violence).

<sup>23</sup> *National Nurse Survey Reveals that Health Care Employers Need to Do More to Comply with OSHA Emergency Temporary Standard*, NAT'L NURSES UNITED (Sept. 27, 2021), <https://www.nationalnursesunited.org/press/national-nurse-survey-reveals-health-care-employers-need-to-do-more-to-protect-workers> [https://perma.cc/GB6A-HFJP].

<sup>24</sup> Ha Do Byon et al., *Nurses' Experience with Type II Workplace Violence and Underreporting During the COVID-19 Pandemic*, 70 WORKPLACE HEALTH & SAFETY 412, 414 (2022).

<sup>25</sup> David Wenner, *Pa. Hospital Workers Face Increasing Abuse, Violence from Patients and Visitors*, PENN LIVE (June 16, 2022, 7:26 AM), <https://www.pennlive.com/news/2022/06/pa-hospital-workers-face-increasing-abuse-violence-from-patients-and-visitors.html> [https://perma.cc/MKS3-C4GB].

<sup>26</sup> Meghan Schiller, *Health Care Workers Report Spike in Aggressive Behavior from Patients and Visitors*, CBS NEWS (Jan. 20, 2023, 7:53 PM), <https://www.cbsnews.com/pittsburgh/news/health-care-workers-aggressive-behavior-patients-visitors/> [https://perma.cc/7QXC-XQ5Q].

Pennsylvania Regional Chief Medical Officer Consortium issued a letter urging the public to refrain from using aggressive words and actions in healthcare settings to ensure that care can be administered safely.<sup>27</sup>

The prevalence of violence in healthcare may be even worse than statistics suggest, as violent incidents are widely underreported.<sup>28</sup> An older study found that only 57% of the participants who experienced physical violence and 40% of victims of non-physical violence at a healthcare organization reported the events to their employers.<sup>29</sup> Additionally, results from another study discovered that of those healthcare employees who did report violence, most still did not formally document the incident.<sup>30</sup> Violence against nurses has become so common that some nurses feel as if it is “part of the job,”<sup>31</sup> which might lead them to consider it undeserving of a formal report. A lack of policies or training regarding reporting, concerns about victim blaming, a lack of response to reports, and the complexity and time-consuming nature of reports may also contribute to underreporting.<sup>32</sup>

If the staggering statistics above do not make the importance of preventing workplace violence in healthcare more apparent, its effect on patients and nurses will. Studies indicate that violence against healthcare workers can take a physical and emotional toll on nurses.<sup>33</sup> While bodily injury is a more obvious result, workplace violence can also lead to severe emotional distress, post-traumatic stress

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<sup>27</sup> See W. PA Reg’l CMO Consortium, *Violence in Health Care—A Renewed Call for Support*, LATROBE BULL. (Feb. 2, 2023), [https://www.latrobebulletinnews.com/opinion/letters\\_to\\_editor/violence-in-health-care-a-renewed-call-for-support/article\\_c8340da5-5b62-5f6f-8961-cac926959ffb.html](https://www.latrobebulletinnews.com/opinion/letters_to_editor/violence-in-health-care-a-renewed-call-for-support/article_c8340da5-5b62-5f6f-8961-cac926959ffb.html) [https://perma.cc/D2WH-ATLV].

<sup>28</sup> See *Workplace Violence in Nursing: Dangerous & Underreported*, *supra* note 20.

<sup>29</sup> Mary J. Findorff, Patricia M. McGovern, Melanie M. Wall & Susan G. Gerberich, *Reporting Violence to a Health Care Employer: A Cross-Sectional Study*, 53 AAOHN J. 399, 403 (2005).

<sup>30</sup> Judith E. Arnetz et al., *Underreporting of Workplace Violence: Comparison of Self-Report and Actual Documentation of Hospital Incidents*, 63 WORKPLACE HEALTH & SAFETY 200, 203, 208 (2015).

<sup>31</sup> See *Nurses Say Violent Assaults Against Healthcare Workers Are a Silent Epidemic*, NURSE.ORG (Sept. 10, 2023), <https://nurse.org/articles/workplace-violence-in-nursing-and-hospitals/> [https://perma.cc/X96C-GPPJ].

<sup>32</sup> Nat’l Inst. for Occupational Safety & Health (NIOSH), *The Challenge of Underreporting*, CDC, [https://www.cdc.gov/WPVHC/Nurses/Course/Slide/Unit1\\_8](https://www.cdc.gov/WPVHC/Nurses/Course/Slide/Unit1_8) [https://perma.cc/3PXU-69RU] (last reviewed May 16, 2024).

<sup>33</sup> See Nat’l Inst. for Occupational Safety & Health (NIOSH), *Consequences for the Nurse*, CDC, [https://www.cdc.gov/WPVHC/Nurses/Course/Slide/Unit2\\_4](https://www.cdc.gov/WPVHC/Nurses/Course/Slide/Unit2_4) [https://perma.cc/59UA-SLQF] (last reviewed May 16, 2024); Kafle et al., *supra* note 12, at 421.



disorder, depression, and potentially suicide among nurses.<sup>34</sup> Additionally, workplace violence can contribute to increased job stress, burnout, and worker turnover,<sup>35</sup> potentially worsening an already significant staffing shortage.<sup>36</sup> Nurses may also experience low morale and low productivity following a violent encounter.<sup>37</sup> Further, injuries resulting from violence against nurses can have financial repercussions like lost time at work, medical costs, legal costs, or other out-of-pocket expenses.<sup>38</sup>

Similarly, research shows that violence against healthcare workers negatively impacts patient care.<sup>39</sup> When nurses experience violence or threatening behavior from patients, the recovery time and documentation required can take away from the time needed to take care of other patients. Further, fear and anxiety can diminish the quality of care provided by the nurse and negatively affect the therapeutic relationship between a patient and a nurse.<sup>40</sup> Violence can also reduce patient satisfaction and increase the potential for adverse medical events.<sup>41</sup>

Pennsylvania must act to address the prevalence and impact of violence in healthcare to protect nurses and patients. Nurses, and all healthcare workers, should not live in fear of violence when caring for their patients. Mandating workplace violence prevention requirements can help ensure healthcare facilities provide a safe environment where healthcare workers can deliver the highest quality care.

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<sup>34</sup> Kafle et al., *supra* note 12, at 422–23.

<sup>35</sup> *Id.* at 422.

<sup>36</sup> Carol Davis, *One-Third of Nurses Plan to Quit Their Jobs in 2022, Thanks to High Stress and Burnout*, HEALTHLEADERS (Mar. 18, 2022), <https://www.healthleadersmedia.com/nursing/one-third-nurses-plan-quit-their-jobs-2022-thanks-high-stress-and-burnout> [<https://perma.cc/5UFP-2WAM>].

<sup>37</sup> Nat'l Inst. for Occupational Safety & Health (NIOSH), *supra* note 33.

<sup>38</sup> *Id.*

<sup>39</sup> See Sandro Vento, Francesca Cainelli & Alfredo Vallone, *Violence Against Healthcare Workers: A Worldwide Phenomenon with Serious Consequences*, 8 FRONTIERS PUB. HEALTH, Sept. 2020, at 1, 2.

<sup>40</sup> Kafle et al., *supra* note 12, at 423.

<sup>41</sup> *Fact Sheet: Health Care Workplace Violence and Intimidation, and the Need for a Federal Legislative Response*, AM. HOSP. ASS'N (June 2022), <https://www.aha.org/fact-sheets/2022-06-07-fact-sheet-workplace-violence-and-intimidation-and-need-federal-legislative> [<https://perma.cc/AWM5-92SW>].

## II. INTERVENTIONS

### A. Federal Action

#### 1. OSHA

Congress created OSHA through the Occupational Safety and Health Act of 1970 and tasked the agency with ensuring safe and healthy conditions for workers.<sup>42</sup> Under the General Duty Clause of the Occupational Safety and Health Act of 1970, employers are required to “furnish . . . a place of employment . . . free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees.”<sup>43</sup> OSHA does not have any specific standards or requirements for workplace violence prevention.<sup>44</sup> However, according to OSHA’s “Enforcement Procedures and Scheduling for Occupational Exposure to Workplace Violence,” employers can be found to have violated the General Duty Clause if they “fail to reduce or eliminate serious recognized hazards.”<sup>45</sup>

To aid employers in addressing violence, OSHA has released a guidance document titled *Guidelines for Preventing Workplace Violence for Healthcare and Social Service Workers*.<sup>46</sup> This guidance provides “recommendations for developing policies and procedures to eliminate or reduce workplace violence in a range of healthcare and social service settings.”<sup>47</sup> However, while these recommendations are helpful, they are advisory in nature and do not create any specific legal obligations for employers to establish workplace violence prevention plans.<sup>48</sup>

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<sup>42</sup> See Occupational Safety and Health Act of 1970, 29 U.S.C. §§ 651–678.

<sup>43</sup> *Id.* § 654(a)(1).

<sup>44</sup> See *Workplace Violence: Enforcement*, *supra* note 7.

<sup>45</sup> OCCUPATIONAL SAFETY & HEALTH ADMIN., DIRECTIVE NO. CPL 02-01-058, ENFORCEMENT PROCEDURES AND SCHEDULING FOR OCCUPATIONAL EXPOSURE TO WORKPLACE VIOLENCE 3 (2017), [https://www.osha.gov/sites/default/files/enforcement/directives/CPL\\_02-01-058.pdf](https://www.osha.gov/sites/default/files/enforcement/directives/CPL_02-01-058.pdf) [<https://perma.cc/Z5YJ-X6YZ>].

<sup>46</sup> See OCCUPATIONAL SAFETY & HEALTH ADMIN., OSHA 3148-06R, GUIDELINES FOR PREVENTING WORKPLACE VIOLENCE FOR HEALTHCARE AND SOCIAL SERVICE WORKERS 1 (2016), <https://www.osha.gov/sites/default/files/publications/osha3148.pdf> [<https://perma.cc/9PE6-5ZNH>] (“These guidelines reflect . . . the latest and most effective ways to reduce the risk of violence in the workplace.”).

<sup>47</sup> *Id.*

<sup>48</sup> See *id.* (“This guidance document is advisory in nature and informational in content. It is not a standard or regulation, and it neither creates new legal obligations nor alters existing obligations created by [OSHA] . . . .”); *Directives—Directive Number*, OSHA, <https://www.osha.gov/enforcement/directives/directivenumber/CPL> [<https://perma.cc/3E58-E3NY>] (last visited Sept. 22, 2024) (“Instructions . . . are

OSHA is also in the early stages of creating a workplace violence prevention standard titled *Prevention of Workplace Violence in Healthcare and Social Assistance*.<sup>49</sup> In May 2023, OSHA reopened the comment period on a request for information about “a potential rule addressing prevention of workplace violence in healthcare and social assistance.”<sup>50</sup> However, as of March 2024, OSHA has taken no further action.

While OSHA has encouraged healthcare employers to establish workplace violence prevention plans, more direct state legislation would ensure employers must meet specific standards. Although OSHA may find employers in violation of the General Duty Clause for workplace violence hazards, OSHA can only issue a citation when the hazard is “likely to cause death or serious physical harm,”<sup>51</sup> which ignores non-physical violence and the potential psychological impacts of violence. Because OSHA has not taken further action to implement a specific rule, state action is necessary.

## 2. Centers for Medicare and Medicaid

CMS is a federal agency that provides healthcare coverage for Americans through “Medicare, Medicaid, the Children’s Health Insurance Program, and the Health Insurance Marketplace.”<sup>52</sup> In November 2022, CMS released a memorandum regarding workplace violence in hospitals to remind Medicare-certified hospitals of their regulatory obligations to provide patient care in a safe environment.<sup>53</sup> CMS explained that these obligations require hospitals to provide effective staff training

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not standards, regulations, or any other type of substantive rule. No statement in these Instructions should be construed to require the regulated community to adopt any practices, means, methods, operations, or processes beyond those which are already required by the Occupational Safety and Health Act of 1970 . . . or standards and regulations promulgated under the OSH Act.”).

<sup>49</sup> *Workplace Violence SBREFA: Prevention of Workplace Violence in Healthcare and Social Assistance SBREFA*, OSHA, <https://www.osha.gov/workplace-violence/sbrefa> [https://perma.cc/6HZ3-M8JX] (last visited Sept. 22, 2024).

<sup>50</sup> OCCUPATIONAL SAFETY & HEALTH ADMIN., MEMORANDUM REOPENING THE COMMENT PERIOD ON DOCKET NO. OSHA-2016-0014 TO ALLOW FOR SUBMISSION OF DOCUMENTS AND COMMENTS (2023), <https://www.regulations.gov/document/OSHA-2016-0014-0286> [https://perma.cc/VJ8G-2LHC].

<sup>51</sup> OCCUPATIONAL SAFETY & HEALTH ADMIN., *supra* note 45, at 8.

<sup>52</sup> *See About Us*, CMS.GOV, <https://www.cms.gov/about-cms> [https://perma.cc/Y5MF-RKKE] (last visited Sept. 22, 2024).

<sup>53</sup> *See* CTRS. FOR MEDICARE & MEDICAID SERVS., QSO-23-04-HOSPITALS, WORKPLACE VIOLENCE-HOSPITALS 1 (2022), <https://www.cms.gov/files/document/qso-23-04-hospitals.pdf> [https://perma.cc/VL27-U32E].

and education concerning violence and to have “policies and procedures aimed at protecting both their workforce and their patients.”<sup>54</sup>

However, this memorandum only serves as a reminder to Medicare-certified hospitals of their already existing obligations. Further, these obligations do not apply to other healthcare entities that do not participate in Medicare, and there are still no established specific workplace violence prevention program requirements. Thus, state law is necessary to set these specific standards and ensure they are applicable to a wide range of healthcare employers.

### 3. Legislation

There have been attempts to pass federal legislation requiring workplace violence prevention programs. As of March 2024, Congress’s most recent attempt was the Workplace Violence Prevention for Health Care and Social Service Workers Act that was introduced in the House of Representatives in 2021.<sup>55</sup> This Act would require the Secretary of Labor to issue standards requiring health care and social service employers to develop and implement a workplace violence prevention program based on OSHA standards.<sup>56</sup> Employers would also need to keep detailed reports and logs of each violent incident, provide annual employee training and education about the prevention plan, and investigate incidents.<sup>57</sup> The Act passed the House and was referred to the Senate Committee on Health, Education, Labor, and Pensions on April 19, 2021.<sup>58</sup> Although the bill seemed promising, Congress has yet to take further action.<sup>59</sup>

In another attempt to reduce violence against healthcare workers, Representative Madeline Dean, a Democrat from Pennsylvania, introduced the Safety from Violence for Healthcare Employees (“SAVE”) Act.<sup>60</sup> This proposed legislation would establish criminal penalties for individuals who knowingly assault

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<sup>54</sup> *Id.* at 2.

<sup>55</sup> *See* Workplace Violence Prevention for Health Care and Social Service Workers Act, H.R.1195, 117th Cong. (2021).

<sup>56</sup> *See id.* § 101(a)(1).

<sup>57</sup> *Id.* § 103(2)–(4).

<sup>58</sup> *H.R.1195—Workplace Violence Prevention for Health Care and Social Service Workers Act*, CONGRESS.GOV, <https://www.congress.gov/bill/117th-congress/house-bill/1195/all-actions> [https://perma.cc/L3BE-E5W6] (last visited Sept. 22, 2024).

<sup>59</sup> *See id.*

<sup>60</sup> Safety from Violence for Healthcare Employees (SAVE) Act, H.R. 7961, 117th Cong. (2022).

or intimidate healthcare workers.<sup>61</sup> The SAVE Act seeks to provide healthcare workers with heightened federal-level protections similar to those of airport and aircraft workers.<sup>62</sup> Additionally, the SAVE Act includes provisions for the United States Attorney General to award grants to hospitals “for the purpose of carrying out programs to reduce the incidence of violence at hospitals, including violence or intimidation against hospital personnel in the performance of their duties.”<sup>63</sup> However, the SAVE Act did not progress through Congress as it failed to advance after being referred to the House Subcommittee on Crime, Terrorism, and Homeland Security on November 1, 2022.<sup>64</sup>

On April 13, 2023, the SAVE Act was reintroduced to the House but, again, has not progressed.<sup>65</sup> A simplified version of the SAVE Act was also introduced in the Senate in September 2023, but it has not left the Senate Judiciary Committee.<sup>66</sup> The lack of additional federal legislative action regarding workplace violence in healthcare at this time suggests state intervention is necessary.

### B. *Pennsylvania Action*

Pennsylvania has taken some steps to address violence against healthcare workers. In 2020, former Pennsylvania Governor Tom Wolf signed Act 51 into law, amending Title 18 of the Pennsylvania Consolidated Statutes.<sup>67</sup> This Act strengthened penalties for assault against healthcare workers and technicians by

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<sup>61</sup> *See id.* § 2(b)(1).

<sup>62</sup> *Reps. Dean and Bucshon Introduce Bill to Protect Healthcare Employees*, CONGRESSWOMAN MADELINE DEAN (June 7, 2022), <https://dean.house.gov/2022/6/rep-dean-and-bucshon-introduce-bill-to-protect-healthcare-employees> [<https://perma.cc/Q5PD-2WAU>].

<sup>63</sup> H.R. 7961 § 3061(a).

<sup>64</sup> *H.R. 7961—SAVE Act*, CONGRESS.GOV, <https://www.congress.gov/bill/117th-congress/house-bill/7961/all-actions?s=1&r=15> [<https://perma.cc/E3HJ-3GUN>] (last visited Sept. 22, 2024).

<sup>65</sup> *Safety from Violence for Healthcare Employees (SAVE) Act*, H.R. 2584, 118th Cong. (2023); *H.R. 2584—SAVE Act*, CONGRESS.GOV, <https://www.congress.gov/bill/118th-congress/house-bill/2584/all-actions> [<https://perma.cc/9SP4-BW7U>] (last visited Sept. 22, 2024).

<sup>66</sup> *See Safety from Violence for Healthcare Employees (SAVE) Act*, S. 2768, 118th Cong. (2023); *S. 2768—SAVE Act*, CONGRESS.GOV, <https://www.congress.gov/bill/118th-congress/senate-bill/2768/all-actions?s=1&r=10> [<https://perma.cc/XH6J-4XVZ>] (last visited Sept. 22, 2024).

<sup>67</sup> S.B. 351, 2019 Leg., Reg. Sess. (Pa. 2020); 18 PA. CONS. STAT. § 2702 (2020).

upgrading assault with a physical injury from a misdemeanor to a felony.<sup>68</sup> Act 51 also extended protections to a larger number of healthcare workers.<sup>69</sup>

Despite this increased penalty, violence against nurses has continued to rise since Act 51's enactment.<sup>70</sup> There is no clear indication of why this legislation has not been effective in reducing violence. However, factors such as underreporting, the high incidence of non-physical violence,<sup>71</sup> and a reluctance to press charges may explain Act 51's lack of impact.<sup>72</sup> While holding violent offenders criminally responsible is important, it is essential to focus on preventing the violence before it occurs.

Pennsylvania has attempted to pass legislation requiring workplace violence prevention programs, but these efforts have been unsuccessful thus far. As of March 2024, the most recent attempt was the Health Facility Employee Violence Prevention Act.<sup>73</sup> This proposed Act would require healthcare facilities to create violence prevention committees to establish and oversee workplace violence prevention programs.<sup>74</sup> These committees would conduct violence risk assessments, review all incidents of reported workplace violence, adjust the program as necessary, and annually report the results of the review to the Department of Labor and Industry of the Commonwealth.<sup>75</sup> Additionally, the Act would require healthcare facilities to

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<sup>68</sup> S.B. 351; § 2702 (adding healthcare practitioners and technicians to a list of occupations where “attempts to cause or intentionally or knowingly causes bodily injury” against them is aggravated assault with the criminal penalty being a felony).

<sup>69</sup> S.B. 351.

<sup>70</sup> See Jenny Stephens, *Pennsylvania State Representatives Shusterman and Pielli Want to Defend Health Care Workers from Intimidation and Violence*, BUCKS CNTY. BEACON (Apr. 10, 2024), <https://buckscountybeacon.com/2024/04/pennsylvania-state-representatives-shusterman-and-pielli-want-to-defend-health-care-workers-from-intimidation-and-violence> [<https://perma.cc/QG5D-6W9K>].

<sup>71</sup> See Byon et al., *supra* note 24.

<sup>72</sup> See Kevin B. Mahoney & James Ballinghoff, *Violence Against Health Care Workers Is at Crisis Levels. We Should Seek to Protect Them from Harm.*, PA. CAP.-STAR (Feb. 22, 2024, 6:00 AM), <https://penncapital-star.com/commentary/violence-against-health-care-workers-is-at-crisis-levels-we-should-see-to-protect-them-from-harm/> [<https://perma.cc/A6FJ-JW6V>].

<sup>73</sup> H.B. 1088, 2023 Leg., Reg. Sess. (Pa. 2023); Health Facility Employee Violence Prevention Act, S.B. 849, 2023 Leg., Reg. Sess. (Pa. 2023). Identical versions of the Acts were introduced in both the House and the Senate. *Id.*

<sup>74</sup> H.B. 1088 § 3. Because the Act was introduced identically in both the House and Senate, analysis will only refer to the House version for simplicity.

<sup>75</sup> *Id.* § 4(a)–(c).

educate and train employees on workplace violence prevention and compel employees to report incidents when they “reasonably believe[] that an incident of workplace violence has occurred.”<sup>76</sup> The Act was introduced in both the House and the Senate. However, the Act has yet to progress after referral to the House and Senate Committees on Labor and Industry.<sup>77</sup>

### C. *Joint Commission Action*

The Joint Commission is a nonprofit organization based in the United States that accredits over 22,000 healthcare organizations and programs.<sup>78</sup> In response to the increasing violence in the healthcare setting, the Commission released workplace violence prevention standards that went into effect on January 1, 2022.<sup>79</sup> The standards apply to “all Joint Commission-accredited hospitals and critical access hospitals.”<sup>80</sup>

These standards require accredited hospitals to: (1) manage safety and security risks; (2) collect information like reported injuries and workplace violence incidents to monitor conditions in the environment; (3) provide ongoing education and training to staff about workplace violence; and (4) maintain a culture of safety and quality.<sup>81</sup> The Commission defines violence broadly to include non-physical action such as verbal, nonverbal, or written aggression; “threatening, intimidating, harassing, or humiliating words or actions”; bullying; and sabotage.<sup>82</sup> The requirements of these standards seem promising, and the definition of violence is widely inclusive of all the violence that nurses may experience.

However, these standards only apply to hospitals and only those accredited by the Commission. About 70% of U.S. hospitals are accredited by the Joint

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<sup>76</sup> *Id.* §§ 4(d), 5(a).

<sup>77</sup> H.B. 1088; S.B. 849.

<sup>78</sup> *Facts About the Joint Commission*, JOINT COMM’N, <https://www.jointcommission.org/who-we-are/facts-about-the-joint-commission/> [<https://perma.cc/RBS4-SFP7>] (last visited Sept. 22, 2024).

<sup>79</sup> THE JOINT COMM’N, WORKPLACE VIOLENCE PREVENTION STANDARDS 1 (2021), [https://www.jointcommission.org/-/media/tjc/documents/standards/r3-reports/wpvp-r3-30\\_revised\\_06302021.pdf](https://www.jointcommission.org/-/media/tjc/documents/standards/r3-reports/wpvp-r3-30_revised_06302021.pdf) [<https://perma.cc/N9TL-UUG6>].

<sup>80</sup> *Id.*

<sup>81</sup> *Id.* at 2–5.

<sup>82</sup> *Id.* at 1.

Commission.<sup>83</sup> While this is a large majority, accreditation is voluntary, and there are no legal penalties for not having a prevention program.<sup>84</sup> Thus, state legislation is still necessary to establish similar standards for other non-accredited healthcare entities and hospitals.

## II. STATE WORKPLACE VIOLENCE PREVENTION LAWS

While Pennsylvania has no laws mandating employers to establish workplace violence prevention programs and OSHA has not implemented federal regulations, some states have passed legislation and regulations requiring healthcare companies to develop such programs. As of March 2024, these states include California, Connecticut, Illinois, Louisiana, Maine, Maryland, Minnesota, New Hampshire, New Jersey, New York, Oregon, Texas, and Washington.<sup>85</sup>

In 1993, California was the first state to mandate healthcare facilities to develop and maintain workplace violence prevention programs.<sup>86</sup> Other states followed and incorporated elements of California's law into their own requirements.<sup>87</sup> California's regulation currently requires covered employers to establish, implement, and maintain a workplace violence prevention plan, maintain a violent incident log, and

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<sup>83</sup> *Hospital Accreditation Fact Sheet*, JOINT COMM'N, <https://www.jointcommission.org/resources/news-and-multimedia/fact-sheets/facts-about-hospital-accreditation/> [<https://perma.cc/2T7V-8D84>] (last visited Sept. 22, 2024).

<sup>84</sup> See Judith E. Arnetz, *The Joint Commission's New and Revised Workplace Violence Prevention Standards for Hospitals: A Major Step Forward Toward Improved Quality and Safety*, 48 JOINT COMM'N J. ON QUALITY & PATIENT SAFETY 241, 241 (2022) (explaining that hospitals must seek Joint Commission accreditation for the workplace prevention standards to apply).

<sup>85</sup> See CAL. LAB. CODE § 6401.8 (West 2022); CONN. GEN. STAT. § 19a-490q (2023); 210 ILL. COMP. STAT. 160/1 (2022); LA. STAT. ANN. § 2199:11 (2023); ME. STAT. tit. 22, § 1832 (2023); MD. CODE ANN., LAB. & EMPL. § 5-1101 (LexisNexis 2023); MINN. STAT. § 144.566 (2023); N.H. REV. STAT. ANN. § 277-C:1 (2023); N.J. STAT. ANN. § 26:2H-5.17 (West 2023); N.Y. LAB. LAW § 27-b (McKinney 2022); OR. REV. STAT. § 654.414–654.423 (2017); TEX. HEALTH & SAFETY CODE ANN. § 331.001 (West 2023); WASH. REV. CODE § 49.19.005 (2023).

<sup>86</sup> OSHA, WORKPLACE VIOLENCE PREVENTION AND RELATED GOALS: THE BIG PICTURE 2 (2015), <https://www.osha.gov/sites/default/files/OSHA3828.pdf> [<https://perma.cc/TK3R-QCJ7>]. California also became the first state to enact workplace violence prevention legislation applicable to the general industry. See CAL. LAB. CODE § 6401.9 (West 2023). However, employers already covered by California's violence prevention in healthcare standard are exempt from the requirements of the new law. *Id.* § 6401.9(b)(2). Because this Note focuses on violence in healthcare, this analysis will consider only requirements from the laws and regulations specific to healthcare facilities.

<sup>87</sup> See OSHA, *supra* note 86, at 2.



provide training to employees.<sup>88</sup> Other states have similar requirements with some unique provisions and differences regarding the entities subject to the requirements and the types of violence addressed.<sup>89</sup> This Section analyzes the advantages and disadvantages of those differences to create an effective healthcare workplace violence standard for Pennsylvania.

### A. *Applicability*

The applicability of state workplace violence prevention requirements varies, with some having a broad reach and others being much more limited. California's requirements apply to the following: "(A) Health facilities . . . ; (B) Home health care and home-based hospice; (C) Emergency medical services and medical transport, including these services when provided by firefighters and other emergency responders; (D) Drug treatment programs; [and] (E) Outpatient medical services to the incarcerated in correctional and detention settings."<sup>90</sup> The term "health facilities" is defined as

any facility, place, or building that is organized, maintained, and operated for the diagnosis, care, prevention, or treatment of human illness, physical or mental, including convalescence and rehabilitation and including care during and after pregnancy, or for any one or more of these purposes, for one or more persons, to which the persons are admitted for a 24-hour stay or longer.<sup>91</sup>

This definition covers a wide variety of settings where nurses could be subject to violence, but the coverage could be broader.

Connecticut's requirements encompass a broader range of settings, applying to "[h]ealth care employer[s]" with fifty or more employees.<sup>92</sup> "Health care employer" includes institutions such as hospitals, home health agencies, outpatient clinics, clinical laboratories, residential care homes, nursing homes, and many more.<sup>93</sup> Similarly, Louisiana's law applies to "[r]egulated entit[ies]," meaning any licensed

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<sup>88</sup> CAL. CODE REGS. tit. 8, § 3342(c) (2023).

<sup>89</sup> See OSHA, *supra* note 86, at 2.

<sup>90</sup> CAL. CODE REGS. tit. 8, § 3342(a)(1).

<sup>91</sup> *Id.* § 3342(b).

<sup>92</sup> CONN. GEN. STAT. § 19a-490q(a)(1) (2023).

<sup>93</sup> *Id.* §§ 19a-490q(a)(1), 19a-490(a).

healthcare facility, federally qualified health centers, pharmacies, and healthcare provider offices with five or more healthcare professionals.<sup>94</sup> “Licensed healthcare facilities” include hospitals and a wide range of outpatient facilities.<sup>95</sup>

Texas and Washington’s requirements are not as broad but are still fairly inclusive. For example, Texas’s law applies to home health services, hospitals, mental health hospitals, nursing facilities, ambulatory surgical centers, and freestanding emergency medical care facilities.<sup>96</sup> Likewise, Washington’s requirements cover “health care setting[s],” including hospitals; home health, hospice, and home care agencies; evaluation and treatment facilities; behavioral health programs; and ambulatory surgical facilities.<sup>97</sup>

Other states have more limited applicability by excluding many outpatient facilities. Illinois, for example, has two separate laws: one applying only to mental health and developmental disability facilities and another applying only to a specific subset of retail healthcare facilities, hospitals, and veterans’ homes.<sup>98</sup> Maine and Minnesota’s requirements are limited to licensed hospitals,<sup>99</sup> while Maryland’s law applies to hospitals, state residential centers, and nursing homes.<sup>100</sup> New Hampshire’s law covers certain hospitals and licensed urgent care centers.<sup>101</sup> New Jersey’s requirements extend to hospitals, psychiatric hospitals, nursing homes, and state developmental centers.<sup>102</sup> Oregon’s requirements apply to “health care

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<sup>94</sup> LA. STAT. ANN. §§ 2199:15, 2199:12(3) (2023).

<sup>95</sup> *See id.* § 2006(A)(2).

<sup>96</sup> TEX. HEALTH & SAFETY CODE ANN. §§ 331.001(3), 331.004 (West 2023).

<sup>97</sup> WASH. REV. CODE § 49.19.010 (2016).

<sup>98</sup> 210 ILL. COMP. STAT. 160/5, 160/10 (2022). The term “retail health care facilities” excludes “hospitals, long-term care facilities, ambulatory treatment centers, blood banks, clinical laboratories, offices of physicians, advanced practice registered nurses, podiatrists, and physician assistants, and pharmacies that provide limited health care services.” *Id.* 160/5.

<sup>99</sup> ME. STAT. tit. 22, § 1832 (2023); MINN. STAT. § 144.566(1)(e) (2023).

<sup>100</sup> MD. CODE ANN., LAB. & EMPL. § 5-1101(b) (LexisNexis 2023); MD. CODE ANN., HEALTH-GEN. § 19-1410.2 (LexisNexis 2023).

<sup>101</sup> N.H. REV. STAT. ANN. §§ 277-C:2.I, 277-C:1.I (2023).

<sup>102</sup> N.J. STAT. ANN. §§ 26:2H-5.19, 26:2H-5.20.a(1) (West 2022).

employers,” which is defined only to include hospitals and ambulatory surgical centers.<sup>103</sup> Lastly, New York’s law applies exclusively to public employers.<sup>104</sup>

Because violence can occur in any healthcare setting, it is important that workplace violence prevention requirements apply to a wide range of healthcare entities. Requirements with expansive applicability, like Louisiana’s, are ideal and would address violence in a variety of healthcare settings.

### B. *Definition of Workplace Violence*

State workplace violence prevention laws also differ based on the types of violence addressed. California defines workplace violence as “any act of violence or threat of violence that occurs at the work site.”<sup>105</sup> The term does not include “lawful acts of self-defense or defense of others.”<sup>106</sup> The definition clarifies that workplace violence includes:

- (A) The threat or use of *physical* force against an employee that results in, or has a high likelihood of resulting in, injury, psychological trauma, or stress, regardless of whether the employee sustains an injury;
- (B) An incident involving the threat or use of a firearm or other dangerous weapon, including the use of common objects as weapons, regardless of whether the employee sustains an injury . . . .<sup>107</sup>

While this includes threats of physical violence, it does not suggest that other non-physical violence, such as verbal abuse or harassment, would be covered.

Other states’ requirements similarly focus on physical violence and threats of physical violence. Maryland uses “workplace safety” to include “the prevention of any physical assault or threatening behavior.”<sup>108</sup> Likewise, New Jersey’s law defines violence as “any physical assault, or any physical or credible verbal threat of assault

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<sup>103</sup> OR. REV. STAT. §§ 654.414(a), 654.412(3) (2021).

<sup>104</sup> N.Y. COMP. CODES R. & REGS. tit. 12, § 800.6 (2023); N.Y. LAB. LAW § 27-b (McKinney 2022).

<sup>105</sup> CAL. CODE REGS. tit. 8, § 3342(b).

<sup>106</sup> *Id.*

<sup>107</sup> *Id.* (emphasis added).

<sup>108</sup> MD. CODE ANN., LAB. & EMPL. § 5-1101(f) (LexisNexis 2023); MD. CODE ANN., HEALTH-GEN. § 19-1410.2(a) (LexisNexis 2023).

or harm,”<sup>109</sup> and New York considers workplace violence to be “[a]ny physical assault or acts of aggressive behavior,” including attempts or threats to cause physical injury and stalking with the intent to cause fear of physical harm.<sup>110</sup> Washington also restricts its definition of workplace violence to “any physical assault or verbal threat of physical assault.”<sup>111</sup> While Texas and Maine do not specifically define workplace violence, their laws also aim to prevent violent behavior and threats of violent behavior.<sup>112</sup>

Some state requirements are more exclusive and only consider physical actions as “violence.” Louisiana defines workplace violence as “violent acts, including battery or the intentional placing of another person in reasonable apprehension of sustaining battery.”<sup>113</sup> Similarly, Minnesota’s definition of “acts of violence” only includes specific physical acts of violence, sexual harassment, actions that would qualify as assault, and knowingly transferring communicable diseases.<sup>114</sup> Lastly, Oregon’s requirements only apply to “assault” or “intentionally, knowingly or recklessly causing physical injury.”<sup>115</sup>

In comparison, Illinois and New Hampshire’s requirements encompass more non-physical violence. Illinois requires healthcare providers to follow OSHA’s guidelines that define workplace violence as “any act or threat of physical violence, harassment, intimidation, or other threatening disruptive behavior that occurs at the work site.”<sup>116</sup> New Hampshire also uses OSHA’s definition of violence,<sup>117</sup> but includes “hostile words” incidents within its requirements.<sup>118</sup> The term “hostile words” is defined as “aggressive and belligerent verbal abuse in which the recipient

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<sup>109</sup> N.J. STAT. ANN. § 26:2H-5.19 (West 2022); N.J. ADMIN. CODE § 8:43E-11.2 (2023).

<sup>110</sup> N.Y. COMP. CODES R. & REGS. tit. 12, § 800.6(d)(11) (2023).

<sup>111</sup> WASH. REV. CODE § 49.19.010(4) (2016).

<sup>112</sup> See ME. STAT. tit. 22, § 1832 (2023); TEX. HEALTH & SAFETY CODE ANN. § 331.004(a) (West 2024).

<sup>113</sup> LA. STAT. ANN. § 40:2199.12(4) (2023).

<sup>114</sup> MINN. STAT. § 144.566(1)(b) (2023).

<sup>115</sup> OR. REV. STAT. § 654.412 (2017).

<sup>116</sup> *Healthcare: Workplace Violence*, OSHA, <https://www.osha.gov/healthcare/workplace-violence/> [https://perma.cc/8J66-YU7P] (last visited Sept. 22, 2024); see 210 ILL. COMP. STAT. 160/20 (2022).

<sup>117</sup> N.H. REV. STAT. ANN. § 277–C:1.II (2023). New Hampshire’s definition of workplace violence is “any act or threat of physical violence, harassment, intimidation, or other threatening behavior.” *Id.*

<sup>118</sup> *Id.* § 277–C:1.III.

reasonably believes that the speaker intends to injure or create excessive stress, or in which the recipient suffers actual psychological trauma.”<sup>119</sup>

New Hampshire’s requirements, including workplace violence and hostile words incidents, are the most comprehensive and should be the standard for Pennsylvania. Broad definitions of violence better address non-physical violence like verbal abuse and harassment, the most common forms of violence faced by nurses.<sup>120</sup> States addressing these forms of non-physical violence in their requirements may make nurses more comfortable reporting violence and realize that experiencing any violence, including non-physical violence, is not simply “part of the job.”

### C. *Unique Provisions*

Some state laws contain unique provisions that would be beneficial to include in Pennsylvania’s requirements. For example, Connecticut and Texas have laws that require healthcare employers to adjust patient care assignments, if possible, to prevent an employee from caring for a patient who “intentionally physically abused or threatened” the employee.<sup>121</sup> Under Connecticut law, if the adjustment is not possible, the employee can request a second healthcare employee be present when treating the patient.<sup>122</sup> Oregon has this same request provision, but it also provides that the employer cannot require the employee to treat the patient if the employer refuses the request.<sup>123</sup> Requiring entities to adjust patient care assignments whenever possible after a nurse experiences a violent encounter may decrease the negative psychological impact on nurses and reduce burnout. Further, allowing nurses to request another healthcare employee accompany them when caring for a previously violent patient could decrease feelings of fear and improve the quality of care delivered.

Additionally, Illinois, Louisiana, Minnesota, New Hampshire, New Jersey, New York, and Texas all feature legislation that provides healthcare employees who report violence general protection from retaliation.<sup>124</sup> This provision may be helpful

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<sup>119</sup> *Id.*

<sup>120</sup> See Byon et al., *supra* note 24.

<sup>121</sup> CONN. GEN. STAT. § 19a-490q(e) (2022); TEX. HEALTH & SAFETY CODE ANN. § 331.004(b)(8) (West 2023).

<sup>122</sup> CONN. GEN. STAT. § 19a-490q(e).

<sup>123</sup> OR. REV. STAT. §§ 654.418 (2017).

<sup>124</sup> See 210 ILL. COMP. STAT. 160/25 (2022); LA. STAT. ANN. § 40:2199.17 (2023); MINN. STAT. § 144.566.7(4) (2023); N.H. REV. STAT. ANN. § 277-C:2.V(b) (2023); N.J. STAT. ANN. 26:2H-5.21 (West

in addressing the widespread underreporting of violence. With this protection, nurses who may be hesitant to report violent encounters due to fear of negative consequences may feel more comfortable making a formal report.

Lastly, New Hampshire's law includes a provision that decreases the burden on Joint Commission-accredited hospitals to comply with state law.<sup>125</sup> Because the Joint Commission has accreditation standards for workplace violence, New Hampshire allows accredited organizations to provide proof of compliance with the Joint Commission standards rather than separately meeting state requirements.<sup>126</sup> Provisions like this are common in other health law areas and are beneficial for healthcare entities.<sup>127</sup> Having only one standard to meet can save accredited hospitals time and money by simplifying the process of creating these workplace violence prevention programs.

### III. BUILDING PENNSYLVANIA'S LAW

As mentioned above, Pennsylvania's most recent attempt to combat workplace violence in healthcare was by introducing the Health Facility Employee Violence Prevention Act.<sup>128</sup> This bill has some beneficial provisions and incorporates OSHA's building blocks for a workplace violence prevention program.<sup>129</sup> The Act protects employees from retaliation for reporting and mandates reporting by employees who "reasonably believe[] that an incident of workplace violence has occurred."<sup>130</sup> However, the Act has significant room for improvement regarding its applicability to healthcare entities and its definition of violence. Determining how this proposed

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2023); N.J. ADMIN. CODE § 8:43E-11.14; N.Y. COMP. CODES R. & REGS. tit. 12, § 800.6(j)(6); TEX. HEALTH & SAFETY CODE ANN. § 331.005(c) (West 2023).

<sup>125</sup> N.H. REV. STAT. ANN. § 277-C:2.II (2023).

<sup>126</sup> *Id.*

<sup>127</sup> See *Joint Commission 101: What is "Deemed Status" and Who Grants It?*, AKITABOX (Jan. 21, 2020), <https://home.akitabox.com/blog/deemed-status-and-joint-commission/> [https://perma.cc/Z4B2-V6WL].

<sup>128</sup> Health Facility Employee Violence Prevention Act, H.B. 1088, 2023 Leg., Reg. Sess. (Pa. 2023); Health Facility Employee Violence Prevention Act, S.B. 849, 2023 Leg., Reg. Sess. (Pa. 2023). The following analysis uses the Act as introduced in the Pennsylvania House of Representatives.

<sup>129</sup> OSHA lists five building blocks for a workplace violence prevention program: "(1) Management commitment and employee participation, (2) Worksite analysis, (3) Hazard prevention and control, (4) Safety and health training, and (5) Recordkeeping and program evaluation." OCCUPATIONAL SAFETY & HEALTH ADMIN., *supra* note 46, at 5.

<sup>130</sup> H.B. 1088 § 5(a)-(b).

Act can be improved using other states' requirements as a guide is a starting point for developing an effective Pennsylvania law.

### A. *Applicability*

The first issue with the Act is that it only applies to a "health facility," which is defined as "[a] hospital, long-term care nursing facility or home health care agency."<sup>131</sup> This definition is not broad or expansive enough. Because violence can occur in any healthcare environment, restricting the applicability of workplace violence prevention requirements to a limited group of settings decreases the potential beneficial effects of the law.

Pennsylvania should consider adopting language similar to Louisiana so that the majority of healthcare entities are covered under the Act.<sup>132</sup> Louisiana's law has the most expansive applicability by requiring all "regulated entities" with at least five healthcare employees to participate in workplace violence prevention programs, including a wide range of outpatient facilities.<sup>133</sup> By ensuring that these requirements apply to various healthcare settings, violence can be addressed in almost all healthcare environments.

### B. *Definition of Violence*

Another issue with that Act is that it defines "workplace violence" as "[v]iolence or the threat of violence against an employee,"<sup>134</sup> and does not further define violence. Like many other states' definitions of violence, this definition is too narrow and does not expressly encompass non-physical violence like verbal abuse or harassment.<sup>135</sup> Because nurses are more likely to be subject to non-physical violence than physical violence,<sup>136</sup> it is imperative that forms of non-physical violence are included within the definition of workplace violence.

Pennsylvania could incorporate non-physical violence into its requirements in a few ways. The law could use the Joint Commission's definition of violence: "An act or threat occurring at the workplace that can include any of the following: verbal,

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<sup>131</sup> *Id.* § 2.

<sup>132</sup> *See supra* Section III.A.

<sup>133</sup> *See* LA. STAT. ANN. §§ 40:2199.15, 40:2199.12(3) (2023).

<sup>134</sup> H.B. 1088 § 2.

<sup>135</sup> *See supra* Section III.B.

<sup>136</sup> *See* Byon et al., *supra* note 24; *see also* Liu et al., *supra* note 22, at 927.

nonverbal, written, or physical aggression; threatening, intimidating, harassing, or humiliating words or actions; bullying; sabotage; sexual harassment; physical assaults; or other behaviors of concern involving staff, licensed practitioners, patients, or visitors.”<sup>137</sup> This definition is broad and expressly includes forms of non-physical violence.

Alternatively, Pennsylvania could adopt OSHA’s definition of violence, like Illinois has done. OSHA defines workplace violence as “any act or threat of physical violence, harassment, intimidation, or other threatening disruptive behavior that occurs at the work site.”<sup>138</sup> While this definition addresses non-physical violence, it may not be as specific as the Joint Commission’s definition.

Pennsylvania could also take inspiration from New Hampshire and define “workplace violence” and “hostile words incidents” separately but still include both in its requirements.<sup>139</sup> New Hampshire adopted OSHA’s definition of workplace violence and defined “hostile words incidents” as “aggressive and belligerent verbal abuse in which the recipient reasonably believes that the speaker intends to injure or create excessive stress, or in which the recipient suffers actual psychological trauma.”<sup>140</sup> These two definitions may be beneficial by providing more specific information about why types of violence nurses are experiencing since workplace violence incidents and hostile words incidents are reported separately.

Any of the three listed options would ensure Pennsylvania’s requirements effectively address non-physical violence. As long as Pennsylvania expressly incorporates non-physical violence in its requirements, nurses and other healthcare employees may recognize that any violence is not “part of the job.” Subsequently, this recognition may result in increased reporting rates, giving employers a more accurate representation of the incidence of violence.

### C. *Additional Provisions*

Pennsylvania should also consider including a provision similar to New Hampshire’s Joint Commission exception.<sup>141</sup> Under this type of provision, the many Joint Commission-accredited hospitals in Pennsylvania would be exempt from state

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<sup>137</sup> See THE JOINT COMM’N, *supra* note 79, at 1.

<sup>138</sup> OSHA, *supra* note 116.

<sup>139</sup> N.H. REV. STAT. ANN. § 277-C:1.II-III (2023).

<sup>140</sup> *Id.*

<sup>141</sup> See *id.* § 277-C:2.II.



requirements as long as they are accredited. Thus, those hospitals would only have to comply with one set of standards.

Additionally, Pennsylvania should use Connecticut and Louisiana's laws as models and adopt a provision requiring employers to adjust patient care assignments to prevent nurses from having to work with a patient who was violent towards them.<sup>142</sup> This additional provision could allow nurses to provide more effective, efficient care, free from anxiety about repeated violence from the same patient. Which, in turn, may increase job satisfaction.

### CONCLUSION

Overall, the prevalence of workplace violence against nurses and the adverse outcomes that result shine a light on the need for legislative intervention in Pennsylvania. Pennsylvania should adopt comprehensive workplace violence prevention legislation applicable to healthcare employers, using the Health Facility Employee Violence Prevention Act as a starting point, with some adjustments. When implementing the requirements, Pennsylvania should ensure that the law applies to a wide range of healthcare settings and includes non-physical forms of violence in the definition of violence. To achieve this, Pennsylvania can take guidance from other states' laws and learn from their strengths and weaknesses. Hopefully, mandated workplace violence prevention programs will help establish that violence is not "part of the job" and contribute to a safer work environment for all nurses and healthcare workers.

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<sup>142</sup> See *supra* Section III.C.