

Post-Acute Providers Must Protect Staff from Violence/Threatened Violence

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Post-acute providers owe their employees a duty of reasonable care. That is, they are responsible to take reasonable precautions to protect their employees from harm. This obligation is becoming far easier to talk about than to fulfill in increasingly threatening environments for personnel who provide care in patients' homes. Providers must, for example, deal with the potential for violence. The murder of a home care nurse in Maryland, along with the patient and the patient's mother, received national attention from the media. Managers of home care agencies in more rural areas often worry about the well-being of staff members in areas that are geographically isolated.

Of course, a key question regarding this obligation on the part of post-acute providers is: What is reasonable? Reasonableness is determined by what other providers are doing across the country. In other words, whether providers take reasonable precautions to protect workers will be judged by comparison to what other providers throughout the country would have done under the same or similar circumstances. This definition of reasonableness poses particular difficulty for post-acute providers. There is a lack of data or even anecdotal information about how other providers are dealing with a number of key issues in home care, including the protection of workers from harm.

Failure of providers to fulfill their obligation of reasonable care can take several forms: (1) acts or errors, and (2) omissions. In other words, providers must show that nothing happened to harm workers because of something that the provider did or should have done.

First, providers' obligations to employees include a requirement to avoid doing anything that causes injury or damage to them. Providers may be found to have caused injury to employees, if the damage to employees would not have occurred "but for" an act or omission by their employers.

Second, the primary obligation is to avoid errors or omissions that cause physical injury or damage to employees. Courts generally require proof that employees were injured physically, as opposed to only emotionally, in order to compensate them for their injuries.

Post-acute providers that fail to meet their obligations in this regard may be the target of suits for negligence by employees and/or workers' compensation claims. Since occupational health and safety requirements include a general mandate to employers to provide a safe working environment for their employees, providers may also face OSHA violations when workers allege that conditions are unsafe.

From a practical point of view, therefore, it is important to ask what home care providers can do legally to protect their employees from harm. The most important answer to this question is that managers must carefully evaluate patients referred with regard to the potential for violence. Managers must also listen and take action when workers complain about possible violence from patients already admitted.

One of the strengths of the home care industry has always been that staff is willing to go the extra mile to care for patients. The perception of many who know the industry well is that workers tend to put up with safety hazards that others would not hesitate to avoid. So, it becomes essential for coordinators and supervisors to gather information after receiving referrals and to listen carefully to staff members who complain about safety hazards. The assessment of most staff members that they regard a situation as

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unsafe can usually be taken at face value, since their natural inclination is to stay in unsafe situations, as opposed to terminating services to patients whose care involves exposure to risk.

It is also extremely important for managers to take action in response to complaints by personnel. There is an old legal adage that "every dog is entitled to one bite." This means that, as soon as the dog has bitten one person, those responsible for the animal are on notice that the dog is dangerous and they must take reasonable precautions to prevent further injury or damage. Appropriate action may include refusal to readmit patients following their discharge from hospitals and various types of facilities.

Once employees have registered even a single complaint regarding dangers associated with the care of particular patients, the employer is on notice that further care may involve harm to workers. In view of this "first bite," so to speak, providers must take appropriate action or face almost certain liability for injuries to their personnel.

Termination of services to patients is also an appropriate response to concerns regarding the safety of post-acute providers even when the only alternative may be hospitalization.

Post-acute providers knock on the doors of thousands of patients each day unaware of what may be inside the patients' homes. They regularly encounter unfamiliar terrain and unknown risks. These risks are likely to become even greater as the use of post-acute services continues to expand. Case managers/discharge planners must be prepared to deal with a constant potential for compromised safety that may force post-acute providers to refuse referrals, to decline to readmit patients, and to terminate services to patients.

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