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AN ACT

To direct the Secretary of Labor to issue an occupational safety and health standard that requires covered employers within the health care and social service industries to develop and implement a comprehensive workplace violence prevention plan, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ``Workplace Violence Prevention for Health Care and Social Service Workers Act''.

SEC. 2. TABLE OF CONTENTS.

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TITLE I--WORKPLACE VIOLENCE PREVENTION STANDARD

SEC. 101. WORKPLACE VIOLENCE PREVENTION STANDARD.

(a) Interim Final Standard.--

(1) In general.--Not later than 1 year after the date of enactment of this Act, the Secretary of Labor shall promulgate an interim final standard on workplace violence prevention--

(A) to require certain employers in the health care and social service sectors, and certain employers in sectors that conduct activities similar to the activities in the health care and social service sectors, to develop and implement a comprehensive

workplace violence prevention plan to protect health care workers, social service workers, and other personnel from workplace violence;

(B) that shall, at a minimum, be based on the Guidelines for Preventing Workplace Violence for Health care and Social Service Workers published by the Occupational Safety and Health Administration of the Department of Labor in 2015 and adhere to the requirements of this title; and

(C) that provides for a period determined appropriate by the Secretary, not to exceed 1 year, during which the Secretary shall prioritize technical assistance and advice consistent with section 21(d) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 670(d)) to employers subject to the standard with respect to compliance with the standard.

(2) Applicability of other statutory requirements.--The following shall not apply to the promulgation of the interim final standard under this subsection:

(A) The requirements applicable to occupational safety and health standards under section 6(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655(b)).

(B) The requirements of chapters 5 and 6 of title 5, United States Code, and titles 2 and 42, United States Code.

(3) Notice and comment.--Notwithstanding paragraph (2)(B), the Secretary shall, prior to promulgating the interim final standard under this subsection, provide notice in the Federal Register of the interim final standard and a 30-day period for public comment.

(4) Effective date of interim standard.--The interim final standard shall--

(A) take effect on a date that is not later than 30 days after promulgation, except that such interim final standard may include a reasonable phase-in period for the implementation of required engineering controls that take effect after such date;

(B) be enforced in the same manner and to the same extent as any standard promulgated under section 6(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655(b)); and

(C) be in effect until the final standard described in subsection (b) becomes effective and enforceable.

(5) Failure to promulgate.--If an interim final standard described in paragraph (1) is not promulgated not later than 1 year of the date of enactment of this Act, the provisions of this title shall be in effect and enforced in the same manner and to the same extent as any standard promulgated under section 6(b) of the Occupational Safety and Health Act (29 U.S.C. 655(b)) until such provisions are superseded in whole by an interim final standard promulgated by the Secretary that meets the requirements of paragraph (1).

(b) Final Standard.--

(1) Proposed standard.--Not later than 2 years after the

date of enactment of this Act, the Secretary of Labor shall, pursuant to section 6 of the Occupational Safety and Health Act (29 U.S.C. 655), promulgate a proposed standard on workplace violence prevention--

(A) for the purposes described in subsection

(a) (1) (A); and

(B) that shall include, at a minimum, the elements contained in the interim final standard promulgated under subsection (a).

(2) Final standard.--Not later than 42 months after the date of enactment of this Act, the Secretary shall promulgate a final standard on such proposed standard that shall--

(A) provide no less protection than any workplace violence standard adopted by a State plan that has been approved by the Secretary under section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667); and

(B) be effective and enforceable in the same manner and to the same extent as any standard promulgated under section 6(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655(b)).

#### SEC. 102. SCOPE AND APPLICATION.

In this title:

(1) Covered facility.--

(A) In general.--The term ``covered facility'' includes the following:

(i) Any hospital, including any specialty hospital, in-patient or outpatient setting, or clinic operating within a hospital license, or any setting that provides outpatient services.

(ii) Any residential treatment facility, including any nursing home, skilled nursing facility, hospice facility, and long-term care facility.

(iii) Any non-residential treatment or service setting.

(iv) Any medical treatment or social service setting or clinic at a correctional or detention facility.

(v) Any community care setting, including a community-based residential facility, group home, and mental health clinic.

(vi) Any psychiatric treatment facility.

(vii) Any drug abuse or substance use disorder treatment center.

(viii) Any independent freestanding emergency centers.

(ix) Any facility described in clauses (i) through (viii) operated by a Federal Government agency and required to comply with occupational safety and health standards pursuant to section 1960 of title 29, Code of Federal Regulations (as such section is in effect on the date of

enactment of this Act).

(x) Any other facility the Secretary determines should be covered under the standards promulgated under section 101.

(B) Exclusion.--The term ``covered facility'' does not include an office of a physician, dentist, podiatrist, or any other health practitioner that is not physically located within a covered facility described in clauses (i) through (x) of subparagraph (A).

(2) Covered services.--

(A) In general.--The term ``covered service'' includes the following services and operations:

(i) Any services and operations provided in any field work setting, including home health care, home-based hospice, and home-based social work.

(ii) Any emergency services and transport, including such services provided by firefighters and emergency responders.

(iii) Any services described in clauses (i) and (ii) performed by a Federal Government agency and required to comply with occupational safety and health standards pursuant to section 1960 of title 29, Code of Federal Regulations (as such section is in effect on the date of enactment of this Act).

(iv) Any other services and operations the Secretary determines should be covered under the standards promulgated under section 101.

(B) Exclusion.--The term ``covered service'' does not include child day care services.

(3) Covered employer.--

(A) In general.--The term ``covered employer'' includes a person (including a contractor, subcontractor, a temporary service firm, or an employee leasing entity) that employs an individual to work at a covered facility or to perform covered services.

(B) Exclusion.--The term ``covered employer'' does not include an individual who privately employs, in the individual's residence, a person to perform covered services for the individual or a family member of the individual.

(4) Covered employee.--The term ``covered employee'' includes an individual employed by a covered employer to work at a covered facility or to perform covered services.

#### SEC. 103. REQUIREMENTS FOR WORKPLACE VIOLENCE PREVENTION STANDARD.

Each standard described in section 101 shall include, at a minimum, the following requirements:

(1) Workplace violence prevention plan.--Not later than 6 months after the date of promulgation of the interim final standard under section 101(a), a covered employer shall develop, implement, and maintain an effective written workplace

violence prevention plan for covered employees at each covered facility and for covered employees performing a covered service on behalf of such employer, which meets the following:

(A) Plan development.--Each Plan shall--

- (i) be developed and implemented with the meaningful participation of direct care employees, other employees, and employee representatives, for all aspects of the Plan;
- (ii) be tailored and specific to conditions and hazards for the covered facility or the covered service, including patient-specific risk factors and risk factors specific to each work area or unit; and
- (iii) be suitable for the size, complexity, and type of operations at the covered facility or for the covered service, and remain in effect at all times.

(B) Plan content.--Each Plan shall include procedures and methods for the following:

- (i) Identification of the individual responsible for implementation of the Plan.
- (ii) With respect to each work area and unit at the covered facility or while covered employees are performing the covered service, risk assessment and identification of workplace violence risks and hazards to employees exposed to such risks and hazards (including environmental risk factors and patient-specific risk factors), which shall be--
  - (I) informed by past violent incidents specific to such covered facility or such covered service; and
  - (II) conducted with, at a minimum--
    - (aa) direct care employees;
    - (bb) where applicable, the representatives of such employees; and
    - (cc) the employer.
  - (iii) Hazard prevention, engineering controls, or work practice controls to correct hazards, in a timely manner, applying industrial hygiene principles of the hierarchy of controls, which--

- (I) may include security and alarm systems, adequate exit routes, monitoring systems, barrier protection, established areas for patients and clients, lighting, entry procedures, staffing and working in teams, and systems to identify and flag clients with a history of violence; and

- (II) shall ensure that employers correct, in a timely manner, hazards identified in any violent incident investigation described in paragraph

(2) and any annual report described in paragraph (5).

(iv) Reporting, incident response, and post-incident investigation procedures, including procedures--

(I) for employees to report workplace violence risks, hazards, and incidents;

(II) for employers to respond to reports of workplace violence;

(III) for employers to perform a post-incident investigation and debriefing of all reports of workplace violence with the participation of employees and their representatives;

(IV) to provide medical care or first aid to affected employees; and

(V) to provide employees with information about available trauma and related counseling.

(v) Procedures for emergency response, including procedures for threats of mass casualties and procedures for incidents involving a firearm or a dangerous weapon.

(vi) Procedures for communicating with and training the covered employees on workplace violence hazards, threats, and work practice controls, the employer's plan, and procedures for confronting, responding to, and reporting workplace violence threats, incidents, and concerns, and employee rights.

(vii) Procedures for--

(I) ensuring the coordination of risk assessment efforts, Plan development, and implementation of the Plan with other employers who have employees who work at the covered facility or who are performing the covered service; and

(II) determining which covered employer or covered employers shall be responsible for implementing and complying with the provisions of the standard applicable to the working conditions over which such employers have control.

(viii) Procedures for conducting the annual evaluation under paragraph (6).

(C) Availability of plan.--

(i) In general.--Each Plan shall be--

(I) made available at all times to the covered employees who are covered under such Plan; and

(II) to the extent possible, emailed to each such employee upon

completion of the employee's annual training under paragraph (3) (A).

(ii) Rule of construction.--Nothing in this subparagraph shall be construed to serve in lieu of training or any other requirements under this Act.

(2) Violent incident investigation.--

(A) In general.--As soon as practicable after a workplace violence incident, risk, or hazard of which a covered employer has knowledge, the employer shall conduct an investigation of such incident, risk, or hazard under which the employer shall--

(i) review the circumstances of the incident, risk, or hazard, and whether any controls or measures implemented pursuant to the Plan of the employer were effective; and

(ii) solicit input from involved employees, their representatives, and supervisors about the cause of the incident, risk, or hazard, and whether further corrective measures (including system-level factors) could have prevented the incident, risk, or hazard.

(B) Documentation.--A covered employer shall document the findings, recommendations, and corrective measures taken for each investigation conducted under this paragraph.

(3) Training and education.--With respect to the covered employees covered under a Plan of a covered employer, the employer shall provide training and education to such employees who may be exposed to workplace violence hazards and risks, which meet the following requirements:

(A) Annual training and education shall include information on the Plan, including identified workplace violence hazards, work practice control measures, reporting procedures, record keeping requirements, response procedures, anti-retaliation policies, and employee rights.

(B) Additional hazard recognition training shall be provided for supervisors and managers to ensure they--

(i) can recognize high-risk situations; and

(ii) do not assign employees to situations that predictably compromise the safety of such employees.

(C) Additional training shall be provided for each such covered employee whose job circumstances have changed, within a reasonable timeframe after such change.

(D) Additional training shall be provided for each such covered employee whose job circumstances require working with victims of torture, trafficking, or domestic violence.

(E) Applicable training shall be provided under this paragraph for each new covered employee prior to the employee's job assignment.

(F) All training shall provide such employees

opportunities to ask questions, give feedback on training, and request additional instruction, clarification, or other followup.

(G) All training shall be provided in-person and by an individual with knowledge of workplace violence prevention and of the Plan, except that any annual training described in subparagraph (A) provided to an employee after the first year such training is provided to such employee may be conducted by live video if in-person training is impracticable.

(H) All training shall be appropriate in content and vocabulary to the language, educational level, and literacy of such covered employees.

(4) Recordkeeping and access to plan records.--

(A) In general.--Each covered employer shall--

(i) maintain for not less than 5 years--

(I) records related to each Plan of the employer, including workplace violence risk and hazard assessments, and identification, evaluation, correction, and training procedures;

(II) a violent incident log described in subparagraph (B) for recording all workplace violence incidents; and

(III) records of all incident investigations as required under paragraph (2)(B); and

(ii)(I) make such records and logs available, upon request, to covered employees and their representatives for examination and copying in accordance with section 1910.1020 of title 29, Code of Federal Regulations (as such section is in effect on the date of enactment of this Act), and in a manner consistent with HIPAA privacy regulations (defined in section 1180(b)(3) of the Social Security Act (42 U.S.C. 1320d-9(b)(3))) and part 2 of title 42, Code of Federal Regulations (as such part is in effect on the date of enactment of this Act); and

(II) ensure that any such records and logs that may be copied, transmitted electronically, or otherwise removed from the employer's control for purposes of this clause omit any element of personal identifying information sufficient to allow identification of any patient, resident, client, or other individual alleged to have committed a violent incident (including the individual's name, address, electronic mail address, telephone number, or social security number, or other information that, alone or in combination with other publicly available information, reveals such individual's identity).

(B) Violent incident log description.--Each violent incident log shall--

(i) be maintained by a covered employer for each covered facility controlled by the employer and for each covered service being performed by a covered employee on behalf of such employer;

(ii) be based on a template developed by the Secretary not later than 1 year after the date of enactment of this Act;

(iii) include, at a minimum, a description of--

(I) the violent incident (including environmental risk factors present at the time of the incident);

(II) the date, time, and location of the incident, and the names and job titles of involved employees;

(III) the nature and extent of injuries to covered employees;

(IV) a classification of the perpetrator who committed the violence, including whether the perpetrator was--

(aa) a patient, client, resident, or customer of a covered employer;

(bb) a family or friend of a patient, client, resident, or customer of a covered employer;

(cc) a stranger;

(dd) a coworker, supervisor, or manager of a covered employee;

(ee) a partner, spouse, parent, or relative of a covered employee; or

(ff) any other appropriate classification;

(V) the type of violent incident (such as type 1 violence, type 2 violence, type 3 violence, or type 4 violence); and

(VI) how the incident was abated;

(iv) not later than 7 days after the employer learns of such incident, contain a record of each violent incident, which is updated to ensure completeness of such record;

(v) be maintained for not less than 5 years; and

(vi) in the case of a violent incident involving a privacy concern case, protect the identity of employees in a manner consistent with section 1904.29(b) of title 29, Code of Federal Regulations (as such section is in effect on the date of enactment of this Act).

(C) Annual summary.--

(i) Covered employers.--Each covered employer shall prepare an annual summary of each violent incident log for the preceding calendar year that shall--

(I) with respect to each covered facility, and each covered service, for which such a log has been maintained, include the total number of violent incidents, the number of recordable injuries related to such incidents, and the total number of hours worked by the covered employees for such preceding year;

(II) be completed on a form provided by the Secretary;

(III) be posted for 3 months beginning February 1 of each year in a manner consistent with the requirements of section 1904 of title 29, Code of Federal Regulations (as such section is in effect on the date of enactment of this Act), relating to the posting of summaries of injury and illness logs;

(IV) be located in a conspicuous place or places where notices to employees are customarily posted; and

(V) not be altered, defaced, or covered by other material.

(ii) Secretary.--Not later than 1 year after the promulgation of the interim final standard under section 101(a), the Secretary shall make available a platform for the electronic submission of annual summaries required under this paragraph.

(5) Annual report.--Not later than February 15 of each year, each covered employer shall report to the Secretary, the frequency, quantity, and severity of workplace violence, and any incident response and post-incident investigation (including abatement measures) for the incidents set forth in the annual summary of the violent incident log described in paragraph (4)(C). Not later than May 15 of each year, the Secretary shall provide to Congress a report containing statistical data with respect to, and a summary of, reports submitted to the Secretary under this paragraph. The contents of the report of the Secretary shall not disclose any confidential information.

(6) Annual evaluation.--Each covered employer shall conduct an annual written evaluation, conducted with the full, active participation of covered employees and employee representatives, of--

(A) the implementation and effectiveness of the Plan, including a review of the violent incident log; and

(B) compliance with training required by each

standard described in section 101, and specified in the Plan.

(7) Plan updates.--Each covered employer shall incorporate changes to the Plan, in a manner consistent with paragraph (1)(A)(i) and based on findings from the most recent annual evaluation conducted under paragraph (6), as appropriate.

(8) Anti-retaliation.--

(A) Policy.--Each covered employer shall adopt a policy prohibiting any person (including an agent of the employer) from discriminating or retaliating against any employee for reporting, or seeking assistance or intervention from, a workplace violence incident, threat, or concern to the employer, law enforcement, local emergency services, or a government agency, or participating in an incident investigation.

(B) Prohibition.--No covered employer shall discriminate or retaliate against any employee for--

(i) reporting a workplace violence incident, threat, or concern to, or seeking assistance or intervention with respect to such incident, threat, or concern from, the employer, law enforcement, local emergency services, or a local, State, or Federal government agency; or

(ii) exercising any other rights under this paragraph.

(C) Enforcement.--This paragraph shall be enforced in the same manner and to the same extent as any standard promulgated under section 6(b) of the Occupational Safety and Health Act (29 U.S.C. 655(b)).

#### SEC. 104. RULES OF CONSTRUCTION.

Notwithstanding section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667)--

(1) nothing in this title shall be construed to curtail or limit authority of the Secretary under any other provision of the law;

(2) the rights, privileges, or remedies of covered employees shall be in addition to the rights, privileges, or remedies provided under any Federal or State law, or any collective bargaining agreement;

(3) nothing in this Act shall be construed to limit or prevent health care workers, social service workers, and other personnel from reporting violent incidents to appropriate law enforcement; and

(4) nothing in this Act shall be construed to limit or diminish any protections in relevant Federal, State, or local law related to--

- (A) domestic violence;
- (B) stalking;
- (C) dating violence; and
- (D) sexual assault.

#### SEC. 105. OTHER DEFINITIONS.

In this title:

(1) Workplace violence.--

(A) In general.--The term ``workplace violence'' means any act of violence or threat of violence, without regard to intent, that occurs at a covered facility or while a covered employee performs a covered service.

(B) Exclusions.--The term ``workplace violence'' does not include lawful acts of self-defense or lawful acts of defense of others.

(C) Inclusions.--The term ``workplace violence'' includes--

(i) the threat or use of physical force against a covered employee that results in or has a high likelihood of resulting in injury, psychological trauma, or stress, without regard to whether the covered employee sustains an injury, psychological trauma, or stress; and

(ii) an incident involving the threat or use of a firearm or a dangerous weapon, including the use of common objects as weapons, without regard to whether the employee sustains an injury, psychological trauma, or stress.

(2) Type 1 violence.--The term ``type 1 violence''--

(A) means workplace violence directed at a covered employee at a covered facility or while performing a covered service by an individual who has no legitimate business at the covered facility or with respect to such covered service; and

(B) includes violent acts by any individual who enters the covered facility or worksite where a covered service is being performed with the intent to commit a crime.

(3) Type 2 violence.--The term ``type 2 violence'' means workplace violence directed at a covered employee by customers, clients, patients, students, inmates, or any individual for whom a covered facility provides services or for whom the employee performs covered services.

(4) Type 3 violence.--The term ``type 3 violence'' means workplace violence directed at a covered employee by a present or former employee, supervisor, or manager.

(5) Type 4 violence.--The term ``type 4 violence'' means workplace violence directed at a covered employee by an individual who is not an employee, but has or is known to have had a personal relationship with such employee, or with a customer, client, patient, student, inmate, or any individual for whom a covered facility provides services or for whom the employee performs covered services.

(6) Threat of violence.--The term ``threat of violence'' means a statement or conduct that--

(A) causes an individual to fear for such individual's safety because there is a reasonable possibility the individual might be physically injured; and

(B) serves no legitimate purpose.

(7) Alarm.--The term ``alarm'' means a mechanical, electrical, or electronic device that does not rely upon an employee's vocalization in order to alert others.

(8) Dangerous weapon.--The term ``dangerous weapon'' means an instrument capable of inflicting death or serious bodily injury, without regard to whether such instrument was designed for that purpose.

(9) Engineering controls.--

(A) In general.--The term ``engineering controls'' means an aspect of the built space or a device that removes a hazard from the workplace or creates a barrier between a covered employee and the hazard.

(B) Inclusions.--For purposes of reducing workplace violence hazards, the term ``engineering controls'' includes electronic access controls to employee occupied areas, weapon detectors (installed or handheld), enclosed workstations with shatter-resistant glass, deep service counters, separate rooms or areas for high-risk patients, locks on doors, removing access to or securing items that could be used as weapons, furniture affixed to the floor, opaque glass in patient rooms (which protects privacy, but allows the health care provider to see where the patient is before entering the room), closed-circuit television monitoring and video recording, sight-aids, and personal alarm devices.

(10) Environmental risk factors.--

(A) In general.--The term ``environmental risk factors'' means factors in the covered facility or area in which a covered service is performed that may contribute to the likelihood or severity of a workplace violence incident.

(B) Clarification.--Environmental risk factors may be associated with the specific task being performed or the work area, such as working in an isolated area, poor illumination or blocked visibility, and lack of physical barriers between individuals and persons at risk of committing workplace violence.

(11) Patient-specific risk factors.--The term ``patient-specific risk factors'' means factors specific to a patient that may increase the likelihood or severity of a workplace violence incident, including--

(A) a patient's treatment and medication status, and history of violence and use of drugs or alcohol; and

(B) any conditions or disease processes of the patient that may cause the patient to experience confusion or disorientation, be non-responsive to instruction, behave unpredictably, or engage in disruptive, threatening, or violent behavior.

(12) Secretary.--The term ``Secretary'' means the Secretary of Labor.

(13) Work practice controls.--

(A) In general.--The term ``work practice

controls'' means procedures and rules that are used to effectively reduce workplace violence hazards.

(B) Inclusions.--The term ``work practice controls'' includes--

- (i) assigning and placing sufficient numbers of staff to reduce patient-specific Type 2 workplace violence hazards;
- (ii) provision of dedicated and available safety personnel such as security guards;
- (iii) employee training on workplace violence prevention methods and techniques to de-escalate and minimize violent behavior; and
- (iv) employee training on procedures for response in the event of a workplace violence incident and for post-incident response.

## TITLE II--AMENDMENTS TO THE SOCIAL SECURITY ACT

### SEC. 201. APPLICATION OF THE WORKPLACE VIOLENCE PREVENTION STANDARD TO CERTAIN FACILITIES RECEIVING MEDICARE FUNDS.

(a) In General.--Section 1866 of the Social Security Act (42 U.S.C. 1395cc) is amended--

(1) in subsection (a) (1)--

(A) in subparagraph (X), by striking ``and'' at the end;

(B) in subparagraph (Y), by striking at the end the period and inserting ``; and''; and

(C) by inserting after subparagraph (Y) the following new subparagraph:

``(Z) in the case of hospitals that are not otherwise subject to the Occupational Safety and Health Act of 1970 (or a State occupational safety and health plan that is approved under 18(b) of such Act) and skilled nursing facilities that are not otherwise subject to such Act (or such a State occupational safety and health plan), to comply with the Workplace Violence Prevention Standard (as promulgated under section 101 of the Workplace Violence Prevention for Health Care and Social Service Workers Act).''; and

(2) in subsection (b) (4)--

(A) in subparagraph (A), by inserting ``and a hospital or skilled nursing facility that fails to comply with the requirement of subsection (a) (1) (Z) (relating to the Workplace Violence Prevention Standard)'' after ``Bloodborne Pathogens standard''; and

(B) in subparagraph (B)--

(i) by striking ``(a) (1) (U)'' and inserting ``(a) (1) (V)''; and

(ii) by inserting ``(or, in the case of a failure to comply with the requirement of subsection (a) (1) (Z), for a violation of the Workplace Violence Prevention standard referred to in such subsection by a hospital or skilled nursing facility, as applicable, that is

subject to the provisions of such Act)' before  
the period at the end.

(b) Effective Date.--The amendments made by subsection (a) shall  
apply beginning on the date that is 1 year after the date of issuance  
of the interim final standard on workplace violence prevention required  
under section 101.

Passed the House of Representatives November 21, 2019.

Attest:

Clerk.

116th CONGRESS

1st Session

H. R. 1309

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AN ACT

To direct the Secretary of Labor to issue an occupational safety and  
health standard that requires covered employers within the health care  
and social service industries to develop and implement a comprehensive  
workplace violence prevention plan, and for other purposes.