

June 3, 2024

Via Email to: HCR_PRU@hhs.texas.gov

Rules Coordination Office
Texas Health and Human Services Commission
P.O. Box 13247
Mail Code 4102
Austin, Texas 78711-3247

Re: Comments on Proposed Rule 24R013

On behalf of our more than 460 member hospitals, including public, rural, urban, children's, teaching and specialty hospitals, the Texas Hospital Association (THA) appreciates the opportunity to provide feedback on Texas Health and Human Service Commission's (HHSC) proposed new rule, Section 133.55, located in Title 25, Part 1, Chapter 133 relating to Hospital Licensing – specifically relating to the amendments to implement Senate Bill (SB) 240 which has new requirements for health care facilities related to workplace violence prevention.

The statistics surrounding workplace violence incidents in the healthcare setting portray a stark reality for healthcare workers. In 2022, 98% of Texas hospitals reported that workplace violence had significantly increased or stayed the same since the start of the COVID pandemic and 61% of responding hospitals reported that the violence severity has increased. THA is committed to advocating for the over 400,000 hospital workers in Texas. To that end, THA supports HHSC's rulemaking efforts to implement SB 240. However, we offer the following clarifying comments related to the proposed new rule at 25 TAC §133.55.

Use of a Single Committee by a Health Care System

HHSC proposes a Rule 133.55 that mostly restates the statutory requirements of Chapter 331, Health and Safety Code except for replacing the "facility" with the term "hospital." As a result, THA requests clarity regarding the establishment or delegation of the workplace violence committee, specifically where a hospital is part of a health care system that owns more than one of the facilities subject to Chapter 331, Health and Safety Code. HHSC's proposed rule 133.55(a)-(c) reads as follows:

- (a) "In accordance with Texas Health and Safety Code (HSC) §331.002, a hospital shall establish a workplace violence prevention committee or authorize an existing hospital committee to develop a workplace violence prevention plan.
- (b) A hospital shall ensure the committee includes at least:
 - (1) One registered nurse who provides direct care to the hospital's patients;

- (2) One physician licensed to practice medicine in Texas who provides direct care to the hospital's patients; and
- (3) One hospital employee who provides security services for the hospital if any and if practicable.
- (c) A health care system that owns or operates more than one hospital may establish a single workplace violence prevention committee for all of the system's hospitals if:
 - (1) The committee develops a violence prevention plan for implementation at each hospital in the system; and
 - (2) data related to violence prevention remains distinctly identifiable for each hospital in the system."

Section 331.002(d), Health and Safety Code allows a health care system that “owns or operates more than one *facility* may establish a single committee *for all of the system's facilities if...*” (emphasis added) meaning that a health care system that owns multiple hospitals, ambulatory surgical centers, and/or nursing facilities can use a single committee for all the different facilities if certain requirements listed in Section 331.002(d) (1-2) are met. HHSC's proposed rule as written would seem to require a health care system to establish a workplace violence committee for only its hospitals and another committee for only its ambulatory surgical centers etc., and it is unclear whether this committee could also be the committee for other owned or operated facilities that are subject to Chapter 331. We seek clarity from HHSC that the proposed rule does not seek to limit Section 331.002(d)'s allowance by a health care system to establish a single committee for all its facilities. The legislation was specifically drafted to limit the administrative burden of multi-facility systems to comply with these important reforms.

To that end, THA requests HHSC consider revising the proposed Section 133.55(c) as follows:

- “(c) A health care system that owns or operates more than one facility, including a hospital may establish a single workplace violence prevention committee for all of the system's facilities including its hospitals if:
- (1) The committee develops a violence prevention plan for implementation at each hospital in the system; and
 - (2) data related to violence prevention remains distinctly identifiable for each hospital in the system.”

We also note that recent rulemaking by HHSC to implement not only the requirements of Senate Bill 240, but also Senate Bill 490,¹ propose rules that are much simpler but still ensure that hospitals and other facilities are required to abide by all the requirements established by these new laws and can be subject to disciplinary action for non-compliance. In fact, THA provided public comment on April 15, 2024, to HHSC regarding the proposed rule 23R071 in the hopes that the proposed language, as amended by our suggested revisions, would be used for the other health

¹ See THA's letter dated May 22, 2024, on Proposed Rule 24R004 related to new requirements for hospitals to provide itemized bills to patients.

care facilities subject to Chapter 331, Health and Safety Code. Instead, HHSC has decided to propose a much lengthier rule, that may lead to confusion.

Therefore, THA recommends that HHSC consider withdrawing its proposed rule 133.55 and propose a new revised Rule 133.55 that simply read as follows:

“A hospital shall comply with the workplace violence prevention requirements outlined in Texas Health and Safety Code, Chapter 331.”

Our proposal here would include the same proposed requirements outlined by HHSC’s proposed rule but with significantly less verbiage and is aligned with the rule proposed for nursing facilities – ensuring consistency amongst the facilities that must comply with these new requirements.

Committee Membership

While THA supports proposed rulemaking generally to implement the requirements of SB 240, we seek clarity from HHSC on how it will enforce committee membership requirements specifically as it relates to the physician requirement, if a hospital has exhausted all good faith efforts to encourage physicians to voluntarily serve on such committees but is unable to successfully do so. Most hospitals do not directly employ physicians and are in fact prohibited by law from doing so. Many physicians are employed by independent physician groups that contract with the hospitals to provide physician services or simply practice independently as a member of the hospital’s medical staff. Hospitals, therefore, have limited ability to require a physician to serve on hospital committees. Additionally, hospitals in rural communities, with access to fewer physicians, may find it difficult to recruit participants given their already heavy load of workplace responsibilities. THA requests information from HHSC on how it intends to enforce the committee membership requirement for physicians if a hospital is unable to successfully encourage, after exhausting all good faith efforts, a physician to participate on the workplace violence committee.

Conclusion

As previously mentioned, if HHSC decides to revise this proposed rule by including new or additional language either proposed by THA or other stakeholders, THA respectfully requests that HHSC withdraw the proposed rule and re-publish a new proposed rule so that THA and other stakeholders can receive adequate notice and comment. If HHSC elects to include new proposed language by other stakeholders, THA requests that HHSC convene a stakeholder meeting that includes THA and other hospital representatives.

June 3, 2024

THA is grateful for the opportunity to comment on this important issue and proposed rulemaking. Should you have any questions or concerns with our recommendations and clarifications discussed in this letter, please do not hesitate to contact me at hdelagarza@tha.org.

Respectfully submitted,

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