

# Meeting Summary

Joint Task Force on Improving the Safety of  
Behavioral Health Workers

Meeting #3

[Link](#) to Task Force on OLIS



**LPRO**  
LEGISLATIVE POLICY  
AND RESEARCH OFFICE

Date/Time	August 30, 2024 ( <a href="#">link</a> to recording)
Attendees	Rep. Travis Nelson, Chair Rep. Cyrus Javadi, Vice Chair Devarshi Baipai Ryan Bell Dave Boyer Clay Cruden Stacy England, Jeremy Lankenau Alexander Mackaben Linda Patterson Anna Peña Eric Sevos Matt Swanson Sommer Wolcott Penny Wolf-McCormick  Excused: Sen. Lynn Findley, Sen. Chris Gorsek
Adoption of Preliminary Report ( <a href="#">link</a> )	Motion: Vice Chair Javadi Vote: 13-0-0
Informational Meeting: Overview of Existing Safety Plan and Assault Log Requirements Penny Wolf-McCormick, Statewide Health Enforcement Manager, Oregon OSHA ( <a href="#">link</a> to slides)	<p>OSHA provided an overview of how the federal government and State of Oregon establish rules related to workplace health and safety. In 1970, the national Occupational Safety and Health Act established the Occupational Safety and Health Administration (federal OSHA). Under this law, every state is required to either operate under federal OSHA regulations or enact their own state plan with the same or higher standards for safety. In 1973, Oregon enacted the Oregon Safe Employment Act and created its own state plan. The state is monitored quarterly by federal OSHA and any state OSHA rules must be inspected federally.</p> <p>The Oregon Safe Employment Act contains certain specific requirements and authorizes state OSHA to develop safety and health rules. Rules can be promulgated several ways.</p> <ul style="list-style-type: none"><li>• When federal OSHA adopts a rule, Oregon OSHA has 180 days to either adopt this rule or develop a similar rule that is at least as effective.</li><li>• Oregon's legislature or its Governor can direct Oregon OSHA to adopt a rule.</li><li>• Emerging trends and new hazardous situations can cause the agency to develop a new rule. This can occur through requests from unions, industry groups, or specific employer requests.</li></ul>

When Oregon OSHA develops a new rule, they are required to include a report of the economic feasibility of implementing the rule. OSHA rules can be broad or specific.

- **Broad rules**, which address a wide variety of situations, do not give specific details to the employer on how to comply, and therefore it can be harder to prove a violation of these rules.
- **Specific rules** typically address narrow situations, are more straightforward, and offer specific details to employers on how to comply.

OSHA reviewed workplace health and safety rules that can apply to health care settings including behavioral health. Oregon health care entities can fall under one of two categories for OSHA regulation.

- Hospitals, surgical centers, and home healthcare agencies are subject to specific statutory requirements in ORS 654.412. These are further detailed in OSHA Program Directive A-267 (2008).
- All others, including most behavioral health entities, are subject to OSHA's Division 1 rules, further detailed in Program Directive A-283 (revised 2017) which was published by federal OSHA and adopted by Oregon OSHA.

#### **Hospitals and Surgical Centers**

ORS 654.412 through 423 applies specifically to hospitals and surgical centers. The statute specifically excludes most health care providers, including:

- offices of private physicians
- residential facilities licensed by OHA, ODHS or Department of Corrections
- residential facilities for treatment of substance use disorders
- community mental health programs or community developmental disability programs
- establishments primarily providing housing

The statute includes a definition of assault as “intentionally, knowingly or recklessly causing physical injury”. Violence that does not meet this definition may not be considered an assault.

It requires hospital and surgical center employers to:

- conduct periodic security and safety assessments that meet certain standards.
- develop and implement an assault prevention program based on the assessment. Among other things, this must include staffing plans and procedures for reporting assaults. The law requires employers to engage their workplace safety committee in reviewing the program at least every two years.
- provide assault prevention and protection training to workers on an ongoing basis. This requirement outlines several specific topics that training must address. Employees must be trained within 90 days of hire.



- Maintain an assault log, which is a critical input to planning by the employer and its' workplace safety committee. However, the time involved in maintaining the assault log can be a barrier.

The law outlines certain rights for workers, including:

- a *hospital or surgical center* employee who has been assaulted by a patient can require that another worker be present in any future treatment of that patient.
- a *home health* worker can require a second employee to be present when treating a patient if the employee believes the patient may assault them (based on the patient's past behavior or physical or mental condition).
- a *home health* worker can require a communication device for reporting assaults before treating a patient.
- A right to use physical force in self-defense against an assault.

#### **Other Health Care Employers (including Behavioral Health)**

Oregon OSHA follows a broad "general duty clause" for health care employers not covered by the more specific ORS 654.412. The general duty clause requires that:

- employers shall "furnish employment and a place of employment which are safe and healthful for employees..." While it covers a broad range of scenarios, it is more difficult to enforce.
- Workers are "properly instructed and supervised in the safe operation of any machinery, tools, equipment, process or practice..."
- Where there is a known hazard, the employer uses "all reasonable means and methods" necessary to keep workers safe.

Oregon OSHA requires a workplace safety committee and safety meetings of **all employers** in Oregon. The safety committee must:

- Meet monthly on work time and keep minutes of meetings
- be trained in hazard identification and accident investigation
- be composed of members who represent the majority of activities of the employer
- have an equal number of management-selected members and employee-selected members
- investigate lost-time injuries and make recommendations to prevent recurrence

The employer is required to respond to committee recommendations. Employers are also required to assess the workplace for any hazards that may require personal protective equipment (PPE), and where present, provide the PPE for use. Oregon OSHA reviewed suggested control measures that federal OSHA has determined can be effective in reducing workplace violence. The guidance varies by setting type, and includes:

- Security/silenced alarm systems
- Exit routes



- Metal detectors – hand-held or installed
- Monitoring systems and natural surveillance
- Barrier protection
- Patient and client areas that support de-escalation
- Furniture and materials that are appropriate and maintained
- Discretion for working alone in nonsecure areas

Task Force Members asked questions after the presentation as follows:

Chair Nelson asked how a union can request a rule change?

Penny Wolf-McCormick explained that it is common for labor unions to bring ideas to Oregon OSHA because of their proximity and knowledge of the workplace and employees.

Task Force Member Matt Swanson asked about specific exemptions for the Department of Corrections and Oregon Youth Authority.

Task Force Member Alexander Mackaben asked the legislative history of the Oregon OSHA requirements related specifically to health care?

Michael Woods explained the health care specific requirement were legislatively driven and a conscious decision made by the legislature in 2007.

Task Force Member Stacy England asked whether hospitals developed required violence prevention trainings themselves or was it done with the help of Oregon OSHA?

Wolf-McCormick explained that it is a little of both. Task Force Member Patterson further explained that large hospitals have come up with training on their own, use a third party, or train the trainer model.

Task Force Member England asked what happens if Oregon Health Authority rules and Oregon OSHA rules are in tension?

Wolf-McCormick acknowledged that there is a tension, some real and some perceived. But this is a place where we can do a lot of work.

Task Force Member Jeremy Lankenau asked how you address assault – intentional and knowingly – when the assault is an outgrowth of the person’s mental health condition.

Wolf-McCormick noted that best practice would be that every assault or near miss should be logged because it gives a wealth of information to employees about an



individual. This means going beyond than the minimum reporting requirement.

Chair Nelson verified that Oregon State Hospital is covered by Oregon OSHA rules and asked if there are consequences if an employee does not receive training within 90 days?

Wolf-McCormick explained that there is a complaint, referral, injury, or accident resulting in an inspection. Oregon OSHA can issue a citation and first-time sanction. There is also schedule of inspections of facilities.

Chair Nelson asked if the log requirement was a honor system? And if initial training can be virtual?

Wolf-McCormick explained that, yes, the rule allows training to be by video, verbal, and recording.

Informational Meeting:  
Best Practices for  
Violence Prevention in  
Behavioral Health  
Settings

Gina Malfeo-Martin,  
Associate Director,  
Standards Interpretation  
Group, The Joint  
Commission  
Mary Wei, Senior  
Associate Director of  
State Relations, The  
Joint Commission

([link](#) to slides)

Staff from The Joint Commission provided an overview of their new workplace violence prevention standards for behavioral health and human services organizations which were published January 2024. They define workplace violence as “an act or threat occurring at the workplace that can include any of the following: verbal, written, or physical aggression; threatening, intimidating, harassing, or humiliating words or actions; bullying, sabotage, sexual harassment; or physical assaults involving staff, patients, or visitors.”

The Joint Commission considers “sentinel events” to be those that result in death or serious harm to a worker or client and are not related to the course of a condition or illness. Their accredited behavioral health organizations are expected to do a root-cause analysis when a sentinel event occurs. From these analyses, TJC noted common **contributing factors** can include:

- **communication issues**, such as inadequate staff during transitions or information that is not transferred between care team members.
- **management issues**, such as not having clear policies or procedures in place, having unclear roles, or not following the procedures.
- **environmental issues**, such as poor visibility or line of sight in a physical workspace.

TJC follows a standard framework to guide behavioral health organizations in developing plans for workplace violence prevention.

**Components of an effective employer approach** include:

- having a workplace violence prevention program with leadership oversight;
- clear policies and procedures;
- clear post-incident strategies;
- collecting and analyzing data on violence incidents;



- training and educating workers.

They noted that within behavioral health there is often a cultural norm or perception that experiencing violence or harassment is a part of the job. This cultural norm undermines creation of effective responses.

The **required standards** of their accredited behavioral health organizations include:

- **Leadership:** organizations must have “a workplace violence prevention program led by a designated individual and developed by a multidisciplinary team”;
- **Worksite analysis:** organizations must conduct “a worksite analysis related to its workplace violence prevention program” and take action to mitigate or resolve based on findings of the assessment.
- **Monitoring:** The organization must also have a process to collect data to continually monitor, internally report on, and investigate safety and security incidents.
- **Training:** organizations must provide training, education, and resources on its workplace violence prevention program at the time of hire, annually, and whenever changes occur.

Accredited organizations develop their own tailored plans to meet the standards, with consideration for their setting and context. However, TJC does provide specific detail on **what topics should be addressed in safety trainings**, including:

- Definitions and examples of workplace violence
- The responsibilities of leadership, staff, security personnel and law enforcement
- Training in de-escalation, nonphysical and physical intervention techniques, and emergency response
- The employer’s reporting process for violence incidents.

TJC suggested that employers implementing these standards should aim to 1) keep plans reasonable, building on and formalizing processes already in place when possible, and 2) make plans tailored to specific work sites rather than one-size-fits-all. Their [Workplace Violence Prevention Resource Center](#) offers published tools and information to support implementation of these approaches.

Task Force Members asked questions after the presentation as follows:

Task Force Member Linda Patterson asked if The Joint Commission (TJC) regulated anything smaller than a hospital?

Malfeo-Martin confirmed that they accredit behavioral health and human service organizations, including many in Oregon.



Chair Nelson asked if other accreditors have similar standards?

Malfeo-Martin explained that there are multiple accreditors within the hospital space but not regarding workplace violence standards for behavioral health organizations.

Chair Nelson asked if there are consequence for not meeting the standards?

Malfeo-Martin explained the different actions that TJC can take when there are complaints including the preliminary, or actual, denial of accreditation.

Chair Nelson asked if there is a requirement to tell employees that they can contact TJC?

Malfeo-Martin confirmed there must be process in place that employers use to tell employee that they can report and how to do it.

Task Force Member Matt Swanson asked about the cadence for updating the rules and standards. Is it something that TJC does proactively?

Malfeo-Martin explained that there is a cadence for updating standards at least twice a year. Updates are influenced by what they are citing and finding at facilities, new federal requirements, individual state activity, where they see needed improvements.

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Informational Meeting:  
Discussion:  
Implementing Enhanced  
Safety Plan  
Requirements  
Representative Travis  
Nelson, Chair

Chair Nelson led the Task Force in a discussion about recommendations for implementing enhanced safety plan requirements. The key points of the discussion were:

Task Force Member Sommer Wolcott noted one challenge is that staff in behavioral health settings often cannot leave a dangerous situation without abandoning or endangering other clients.

Task Force Member Eric Sevos identified how providers need to navigate overlapping obligations - different regulations, expectations from stakeholders, cultural understanding, environments – and entities do not have a full appreciation of what OSHA standards are.

Chair Nelson noted workers often do not know all their rights and may not be getting this information from employers.

Task Force Member Stacy England recognized the importance of safety plans and wondered what we can do when care settings are being pressured to treat people in lower-level care environments who require higher levels of care. It would be helpful if there was a



standard that if law enforcement will not enter a home, behavioral health workers are not required to either.

Task Force Member Matt Swanson commented that staff are being put in positions outside of their training and there are challenges with employees being trained.

Task Force Member Wolcott suggested the need to change the OAR regarding the 14-day evaluation of behavior prior to admission. A person may have behaved violently 15 days earlier, and because it is not within the 14-day window, providers are required to bring them in. This can endanger workers and other clients. In practice, health care workers do not have the ability to leave or refuse to work with someone.

Task Force Member Alexander Mackaben explained that low barrier shelters do not discriminate based on a client's behavior at previous shelter and do not turn anyone away. Yet employees at shelters often have no training to work with clients with challenging behaviors.

Chair Nelson spoke to the need to address penalties for noncompliance.

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Informational Meeting:

Assault Reporting:  
Preventing Retaliation

Penny Wolf-McCormick,  
Statewide Health  
Enforcement Manager,  
Oregon OSHA

Michael Woods, Interim  
Civil Rights  
Administrator, Bureau  
of Labor and Industries  
(BOLI)

[\(link to slides\)](#)

Michael Woods from BOLI presented to the Task Force on state protections for workers when workplace safety issues arise. In industries like health care, enforcement of OSHA rules largely depends on workers identifying hazards, reporting complaints, and participating in investigations. If workers do not participate in these activities, the state's health and safety protections become functionally void.

The Oregon Safe Employment Act (ORS 654.062):

1. Protects workers from **retaliation** if they complain about workplace health or safety hazards, whether to their employer or to OSHA.
2. Establishes a worker's **right to refuse** work when there is a danger of serious physical harm or death, there is insufficient time for OSHA to inspect, and the employee has been unable to obtain correction of the dangerous condition from the employer.

These protections are enforced by the Civil Rights Division of Oregon's Bureau of Labor and Industries (BOLI) and are in addition to the rights reviewed by OSHA.

Under Oregon law, three conditions establish that retaliation has occurred:

1. A worker engages in a protected activity (such as reporting a workplace hazard);
2. An adverse action is taken by the employer (for example: firing/laying off, disciplining, intimidation, making threats, or reducing pay or hours).





3. There is a connection between the protected activity and the adverse action.

In practice, it can be difficult to establish that an adverse action was taken *in response to* a worker engaging in a protected activity. This challenge has resulted in a low rate (nationally and in Oregon) of complaints where the employer is found at fault. For this reason, ORS 654.062 recently established a presumption that a connection does exist unless the employer can prove otherwise.

Oregon OSHA and BOLI operate under an inter-agency agreement where BOLI investigates complaints of retaliation or discrimination related to workers' OSHA rights. The **investigation process** generally includes:

- **Intake screening** immediately upon notice of a complaint;
- **Sending a notification letter** to the employee and employer requesting information;
- **Interviewing** the employee about the allegations;
- **Investigating** the complaint through fact finding and additional interviews.

Oregon state law establishes a longer statute of limitations of one year to file a complaint. Outcomes can include a settlement (prior to BOLI concluding its investigation), a conciliation agreement where the employer and worker mutually agree to conditions to close the case, or a merit (or "cause") determination that results in further corrective action against the employer.

BOLI's ability to protect employees from retaliation is one of the most critical elements of Oregon's framework for worker health and safety. Yet the BOLI investigation process is slow and can take between five and 18 months from when an incident occurs. OSHA's ability to enforce proactive employer safety measures is also very important to the issues the Task Force is studying. For example, instructing employees not to call 911 when violence is occurring could be indicative of an employer failing to address a workplace hazard. Taking adverse action against an employee who called law enforcement could be an act of retaliation.

Task Force Members asked questions after the presentation as follows:

Chair Nelson clarified that the statute of limitation for reporting retaliation is one year. He asked if employers willingly take people back who were wrongfully terminated or if BOLI can demand reinstatement as part of settlement?

Michael Woods explained that is not unusual that reinstatement is part of a conciliation agreement.



Chair Nelson asked what the tried-and-true signs of retaliation are?

Woods explained circumstances that can result in findings of retaliation against an employer.

Task Force Member Eric Sevos asked how widespread retaliation is in the behavioral health field? Is there data on this?

Woods explained that actual retaliation is not frequent. The more complex issues are the cultural norms within the behavioral health field that can deter a worker from reporting a client. BOLI can follow up with what data they are able to provide. Woods also noted that OSHA and BOLI's definition of assault was legislatively established and could be modified to include violence where there is not intent.

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Public Comment	<i>None</i>
Meeting Materials	<ul style="list-style-type: none"><li>• <a href="#">Post Meeting Summary - Meeting 2 - Aug 7 2024</a></li><li>• <a href="#">September 2024 Status Update - (memorandum)</a></li><li>• <a href="#">LPRO (slides)</a></li><li>• <a href="#">The Joint Commission (slides)</a></li><li>• <a href="#">Oregon OSHA safety plan requirements (slides)</a></li><li>• <a href="#">BOLI retaliation protections (slides)</a></li><li>• <a href="#">Supplemental materials on safety plans and training requirements 8.30.24</a></li></ul>

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