

Law H.B. 4298

ENROLLED COMMITTEE SUBSTITUTE FOR H. B. 4298

(By Delegates Hatfield, Leach, Rose, Spencer, Kelly, Perdue and L. Smith)

[Passed March 10, 2000; in effect ninety days from passage.]

AN ACT to amend chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article thirty-six, relating to creating a needlestick injury prevention program in hospitals, nursing homes, public health departments and home health agencies, including those staffed by public employees; requiring the proposal of rules by the director of the division of health; making compliance with rules a condition of licensure; requirements for facilities to use needleless systems; keeping sharps injury logs; maintaining list of existing needleless systems; establishing a needlestick injury prevention advisory committee; and exceptions to requirements.

Be it enacted by the Legislature of West Virginia:

That chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article thirty-six, to read as follows:

ARTICLE 36. NEEDLESTICK INJURY PREVENTION.

§16-36-1. Definitions.

As used in this article:

- (a) "Director" means the director of the division of health;
- (b) "Engineering controls" means sharps prevention technology including, but not limited to, systems not using needles and needles with engineered sharps injury protection;
- (c) "Facility" means every hospital licensed under the provisions of article five-b of this chapter; every nursing home licensed under the provisions of article five-c of this chapter; every local health department, every home health agency certified by the office of health facility licensure and certification, all hospitals and nursing homes operated by the state or any agency of the state and all hospitals, nursing homes, local health departments and home health agencies which are staffed, in whole or in part, by public employees;
- (d) "Health care worker" means any person working in a facility;
- (e) "Needleless system" means a device that does not utilize needles for the withdrawal of body fluids after initial venous or arterial access is established, and administration of medication or fluids, or any other procedure involving the potential for an exposure incident; and,
- (f) "Needlestick injury" means the parenteral introduction into the body of a health care worker, during the performance of his or her duties, of blood or other potentially infectious material by a hollow-bore needle or sharp instrument, including, but not limited to, needles, lancets, scalpels, and contaminated broken glass.
- (g) "Sharps" means hollow-bore needles or sharp instruments, including but not limited to, needles, lancets and scalpels.

§16-36-2. Needlestick injury prevention rules.

(a) On or before the first day of July, two thousand, the director shall, with the advice and cooperation of the advisory committee established under this article, propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code requiring facilities, as a condition of licensure certification or operation, to minimize the risk of needlestick and sharps injuries to health care workers. In developing the rules the director shall take into consideration the most recent guidelines of the occupational safety and health administration that relate to prevention of needlestick and sharps injuries.

(b) The rules shall include, but not be limited to, the following provisions:

(1) A requirement that facilities utilize needleless systems or other engineering controls designed to prevent needlestick or sharps injuries, except in cases where the facility can demonstrate circumstances in which technology does not promote employee or patient safety or interferes with a medical procedure. Those circumstances shall be specified by the facility and shall include, but not be limited to, circumstances where the technology is medically contraindicated or not more effective than alternative measures used by the facility to prevent exposure incidents: Provided, That no specific device may be mandated;

(2) A requirement that information concerning exposure incidents be recorded in a sharps injury log, to be kept within the facility and reported annually to the director. Information recorded in the log shall contain, at a minimum:

(A) The date and time of the exposure incident;

(B) The type and brand of sharp involved in the incident; and

(C) A description of the exposure incident which shall at a minimum include:

(i) The job classification of the exposed worker;

(ii) The department or work area where the exposure incident occurred;

(iii) The procedure that the exposed worker was performing at the time of the incident;

(iv) How the incident occurred;

(v) The body part involved in the exposure incident;

(vi) If the sharp had engineered sharps injury protection, whether the protective mechanism was activated and whether the injury occurred before the protective mechanism was activated, during activation of the mechanism or after activation of the mechanism, if applicable; and,

(vii) Any suggestions by the injured employee as to whether or how protective mechanisms or work practice control could be utilized to prevent such injuries;

(3) A provision for maintaining a list of existing needleless systems and needles and sharps with engineered injury protections. The director shall make the list available to assist employers in complying with the requirements of the standards adopted in accordance with this article; and,

(4) Any additional provisions consistent with the purpose of this article, including, but not limited to, training and educational requirements, measures to increase vaccinations, strategic placement of sharps containers as close to the work area as is practical and increased use of protective equipment.

§16-36-3. Needlestick injury prevention advisory committee.

- (a) There is established a needlestick injury prevention advisory committee to advise the director in the development of rules required under this article.
- (b) The committee shall meet at least four times a year for the initial two years after the effective date of this article and on the call of the director thereafter. The director shall serve as the chair and shall appoint thirteen members, one representing each of the following groups:
- (1) A representative of the health insurance industry;
 - (2) The commissioner of the bureau of employment programs, or his or her designee from the division of worker's compensation;
 - (3) Five nurses who work primarily providing direct patient care in a hospital or nursing home, at least one of which is employed in a state operated facility;
 - (4) A phlebotomist employed in a hospital or nursing home;
 - (5) Two administrators of different hospitals operating within the state;
 - (6) A director of nursing employed in a nursing home within the state;
 - (7) A licensed physician practicing in the state; and
 - (8) An administrator of a nursing home operating within the state.
- (c) Members of the committee serve without compensation. Each member shall be reimbursed for actual and necessary expenses incurred for each day or portion thereof engaged in the discharge of official duties, in a manner consistent with guidelines of the travel management office of the department of administration.
- (d) A majority of all members constitutes a quorum for the transaction of all business. Members serve for two-year terms and may not serve for more than two consecutive terms.

§16-36-4. Exception.

Until the first day of July, two thousand five, drugs and biologics regulated by the food and drug administration whose packaging, on the effective date of this article, includes needles and syringes, are considered to meet any standards promulgated under this article.