

Concealed Carry: Best Practices After November 1, 2011

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Wisconsin Governor Scott Walker signed legislation on July 8, 2011 making Wisconsin the 49th state to allow licensed individuals to carry concealed weapons.¹ As of November 1, 2011, individuals who have obtained a license from the Wisconsin Department of Justice may legally carry a concealed weapon in Wisconsin.

The laws in a number of states, such as Texas, Michigan, South Carolina and Missouri, prohibit the carrying of concealed weapons in a health care facility. Wisconsin law does not. Wisconsin health care facilities, as well as other business, residential and non-residential property owners, must decide whether to permit or prohibit the carrying of concealed weapons on their premises (except in parts of a building, grounds, or land used as a parking facility, where individuals may carry weapons in their own personal vehicles).

Regardless of the facility's decision, it should take steps to ensure that its policy is clearly identified and properly enforced. The information below can help a facility reduce and manage the risk associated with its weapons policy.

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Unique considerations for the health care industry

There are a number of considerations and circumstances unique to health care facilities that may influence their decision to allow or prohibit carrying of concealed weapons. Examples include the routine presence of oxygen and other combustible materials at many health care facilities, the fact many visitors may be in a state of mind that could result in impaired judgment (eg, semi-conscious, heavily medicated, having just received extremely upsetting news regarding the status of their health), and the urgency of care situations, especially in emergency and urgent care facilities.

The decision to permit weapons: best practices

The Wisconsin Legislature provided that businesses and employers that permit individuals to carry concealed weapons are "immune from any liability arising from its decision."² The breadth of that immunity has been the subject of some debate. Nonetheless, even if the grant of immunity is so broad to cover most if not all incidents that happen when a concealed weapon is permitted, health care facilities should take basic steps to continue to ensure a safe workplace for their employees and visitors.

It is important to recognize that laws and ordinances prohibiting the discharge of a firearm or illegal use of a weapon are still valid. For example, if an individual who is permitted to carry a concealed weapon threatens others with that weapon, the facility should contact local law enforcement and,

if available, in-house security staff to address the threatening behavior. Law enforcement also should be contacted if any individual carrying a concealed firearm is under the influence of an intoxicant, as this is a Class A misdemeanor punishable by 9 months in jail and/or a \$10,000 fine.³

Perhaps the most difficult aspect of permitting concealed weapons is where and when the facility should draw the line with respect to an individual's access to his or her weapon. The Wisconsin Legislature granted immunity for property owners who permit weapons on their land or in their building; if even a single person is prohibited from carrying a concealed weapon on those premises, that immunity could be lost. This can create challenges for a facility. For example, a situation may arise in which an individual is under the influence of legally prescribed narcotics, is in an altered state of mind, and/or may be hallucinating and carrying a concealed weapon. In such a situation, the facility may have concerns about the safety of the individual, patients, visitors, and its staff. It is important that a facility that opts to allow concealed weapons consider scenarios like this and work with the facility's in-house counsel or a private attorney to determine its options. The attorney can help the facility weigh benefits and risks to determine the best option based on its unique considerations and characteristics and to develop related policies and procedures.

For example, one facility may determine it is appropriate for a designated and specially trained staff member to approach an individual and request, but not require, that

the individual not carry a weapon into the facility because of concerns that the individual may be in physical or mental state that makes carrying a weapon a safety concern for the facility, its staff, and visitors. Another facility may be concerned that such an act by the facility will increase its liability by acknowledging a potential safety issue that it may not be able to eliminate (ie, an individual chooses to carry a concealed weapon even after a conversation with a facility staff member requesting that he or she not do so) and/or create an obligation for the facility to screen all visitors and staff to determine if a safety risk exists. The variety of actions a facility can take, as well as the possible implications of such actions, reaffirm the value and importance of a facility working closely with its in-house counsel or a private attorney to determine the option(s) best suited for their facility and develop the necessary policies and procedures.

The decision to prohibit weapons: best practices

If a decision has been made by a facility to prohibit weapons, it should take steps to enforce that prohibition. The first step is to post signs notifying individuals that weapons are prohibited. This applies to both owned and leased buildings. These signs must, by statute, be at least 5 x 7 inches.⁴ Many businesses have opted to include signs with a universal “no” symbol or a circle with a slash across a picture of a weapon or multiple weapons as these can be recognized by all cultures and languages.

A facility also should consider how emergency responders and health care workers should respond to an individual who may

have a concealed weapon. Such workers should assume that every person in the facility has a weapon. Training health care professionals and other employees to understand their role in making patients and others aware of the prohibition on weapons, as well as the proper procedure for handling a situation where a violation of the policy is suspected or occurs, is a valuable investment of time.

Another step a facility should take if it decides to prohibit weapons is to implement a written policy for all employees. At a minimum, the policy should:

- Emphasize the facility’s commitment to the health and safety of its employees.
- Explain the prohibition in terms of to whom it applies, to what weapons it applies, where it applies, and whether it applies to open carry as well as concealed carry of weapons.
- Define weapons to include all firearms (not just handguns) as well as any instrument or device that can cause bodily harm.
- Emphasize the prohibition in facility-owned or leased vehicles.
- Require employees to report any suspected violation of the policy to designated persons or positions such as building management, security staff, and human resources.
- Indicate that the facility will not retaliate against any employee who in good faith reports a suspected violation of the policy.
- Indicate that any violation of the policy will result in discipline, up to and including termination.

A facility that decides to prohibit weapons

may want to consider contacting local law enforcement to ask how they plan to handle reports about individuals violating a company’s weapons policy despite being notified of the policy via signage and verbal communication. Knowing and understanding the role local law enforcement will play will assist the facility as it refines policies and procedures and trains staff.

Conclusion

Health care facilities should evaluate whether they will permit or prohibit weapons in their facility and take reasonable steps, including but not limited to those noted above, to support that decision. Doing so will demonstrate the facility’s compliance with the new law, as well as help the facility mitigate and manage any risk associated with its decision.

Additional information on the new concealed carry law, including sample signage, FAQs and links to other resources such as the Department of Justice’s concealed carry law website, are available on the Wisconsin Medical Society’s website (member log-in required). Those interested in additional education on this issue may register to listen to an archive of the *Concealed Carry in the Clinic* webinar offered by the Society. Registration includes webinar, access to the presentation materials, and a sample policy.

References

1. 2011 Wisconsin Act 35.
2. Wis. Stat. § 175.60(21).
3. Wis. Stat. § 941.20(1)(b).
4. Wis. Stat. § 943.13(2)(bm)1.