

April 21, 2022



Douglas L. Parker
Assistant Secretary of Labor for
Occupational Safety and Health
US Department of Labor
200 Constitution Avenue NW
Washington, DC 20210

RE: Docket No. OSHA-2020-0004: Occupational Exposure to COVID-19
RIN: 1218-AD36

Dear Assistant Secretary Parker:

LeadingAge appreciates the opportunity to submit additional comments with the reopening of Docket No. OSHA-2020-0004: *Occupational Exposure to COVID-19*.

About LeadingAge: We represent more than 5,000 aging-focused organizations that touch millions of lives every day. Alongside our members and 38 state partners, we address critical issues by blending applied research, advocacy, education, and community-building. We bring together the most inventive minds in our field to support older adults as they age wherever they call home. We make America a better place to grow old. For more information: www.leadingage.org.

LeadingAge members work tirelessly every day to provide a safe environment for their staff and the older adults they serve.

Overview

We reiterate the comments we previously filed in regards to the OSHA Healthcare Emergency Temporary Standard (ETS) and do not believe a final rule is necessary as there are existing federal agencies - Center for Disease Control and Prevention (CDC) and Centers for Medicare and Medicaid Services (CMS) that have issued sufficient guidance and regulations to protect America's healthcare workers and those we serve. Moreover, the existing OSHA tools to enforce workplace safety are adequate to address the concerns raised by the pandemic. Nonetheless, we address the issues OSHA identified in the reopening of the comment period below.

Potential Changes from the ETS

Alignment with CDC Recommendations for Healthcare Infection Control Practices

LeadingAge agrees with other commenters that if OSHA issues a rule it should align with the CDC recommendations as to avoid confusion for providers. CDC (and CMS) has the clinical

expertise and OSHA should defer to their judgment. As we stated previously, this would eliminate the confusion and time-consuming efforts to sort out what guidance applies, where it applies, and how it applies. It is frustrating and burdensome for providers to sort out conflicting sets of guidance and recommendations. There should be one set of guidance and it should be the CDC guidance.

Any rule must also take into account that the CDC guidance will adjust based on the current situation and evidence available to public health experts. Any rule should acknowledge this fact and allow flexibility to follow the CDC guidance in real time. Providers are used to changing guidance and prepared to loosen or tighten restrictions based on the current situation in their broader communities.

Additional Flexibility for Employers

We think the Healthcare ETS was overly prescriptive and support an approach with broader requirements that would allow employers flexibility such as a “safe harbor” for those in compliance with CDC guidance. As noted above, providers are following the current CDC and/or CMS guidance (as well as any relevant state or local requirements) to ensure a safe workplace for employees and home for residents. Having flexibility under a broader approach is preferred over a prescriptive approach that does not take into account the changing circumstances we have grown accustomed to.

Tailoring Controls to Address Interactions with People with Suspected or Confirmed COVID-19

We support tailoring or eliminating infection control measures in areas where employees are not reasonably expected to encounter people with suspected or confirmed COVID-19. The current CDC guidance allows for some flexibility so that employees can remove facemasks in well-defined areas where there is no expectation of interacting with individual with suspected or confirmed COVID-19. By tailoring a rule in this manner it would be appropriate to ramp up infection control measures if an “outbreak” occurs, but that definition should be also defined by the CDC guidance in place at the time.

Vaccination

Booster Doses and Employer Support of Employee Vaccination

We agree with OSHA’s stated intention to not mandate vaccination for employees in any final rule. Healthcare providers are already subject to the CMS vaccine mandate and any additional mandate from OSHA would sow confusion.

CMS defines “fully vaccinated” as the completion of the initial vaccine series. If OSHA incorporates the term “up to date” it needs to be very clear in what it means because it could conflict with and cause unnecessary confusion with the current CMS guidance and definition of “fully vaccinated.”

We support the encouragement of employees to get vaccinated and our members adhere to the CMS rule on this issue. We do not, however, support any additional OSHA requirements

and employers should maintain the flexibility to provide appropriate benefits to their employees when supporting vaccinations.

Requirements for Vaccinated Workers

We feel that this is an area best left to the CDC and public health officials and does not require intervention by OSHA. Relaxing of precautions based on “vaccination status” is often operationally problematic for employers and a better approach may be utilizing community transmission rates as outlined by the CDC.

While current CDC recommendations offer some strategies that differ based on vaccination status, the differing definitions of “fully vaccinated” and “up to date,” as well as analyzing how many and ideal timing for any boosters complicates any meaningful attempt to include this in a final rule. Also, the science on how many booster shots individuals may need continues to evolve and this is best left to any subsequent CDC recommendations.

When contemplating potential rulemaking, OSHA must also consider the severe workforce shortage in long-term care and healthcare in general, especially in rural areas of the country. Any percentage threshold of staff vaccination rates that would trigger different protocols may actually exacerbate the workforce crisis given the high levels of vaccination resistance in many areas.

As to the barrier requirements, there are a couple of issues OSHA needs to consider if they move forward. First, there is scant evidence that barriers are effective and they require extra resources and time to properly clean and sanitize. In addition, barriers can often interrupt proper ventilation, which is a better mechanism to prevent the spread of infectious particles in the air. Employers should retain the flexibility to determine the best utilization of any barriers and assess their necessity depending on their unique setting.

Limited Coverage of Construction Activities in Healthcare Settings

Any additional requirements for construction activities in healthcare settings are not necessary because this is already addressed in the CMS vaccination requirements.

Recordkeeping and Reporting: New Cap for COVID-19 Log Retention Period

There is no need for any additional OSHA recordkeeping and reporting requirements for COVID-19. Existing requirements are sufficient and any additional reporting would be unduly burdensome to employers. We would support, however, shortening the time required to retain records if OSHA moves forward with any provisions in this area.

Triggering Requirements Based on the Level of Community Transmission

If OSHA moves forward with any requirements based on the level of community transmission, it should rely on the CDC guidance as the sole measure. CDC requirements offer flexibility for healthcare facilities and its HCP to adjust to and adapt to COVID-19. This flexibility does not compromise protection of personnel nor patients but instead adjusts to the local data that is tracked by the CDC and state public health agencies.

Evolution of SARS-CoV-2 into a Second Novel Strain

OSHA is considering specifying that this final standard would apply not only to COVID-19, but also to subsequent related strains of the virus that are transmitted through aerosols and pose similar risks and health effects. Although new variants are likely, the nature, transmissibility, and severity cannot be predicted so LeadingAge does not support an OSHA rule to speculate on unknown future viruses/variants. The CDC is in the best position to offer public health recommendations and we are confident that CDC will issue appropriate recommendations to respond to new public health emergencies. Providers are also well versed on emergency preparedness, including infectious diseases so OSHA regulations are unnecessary.

Additional Information/Data Requested

OSHA has made a request for additional data and information since it issued the Healthcare ETS in June 2021. We strongly oppose any new data reporting requirements on healthcare providers. OSHA has access to the data reported on the OSHA 300 Log, Bureau of Labor and Statistics workplace injuries reports, and annual injury tracking requirements. Healthcare providers are already facing monumental paperwork and reporting requirements during the pandemic and requiring additional reporting is unnecessary and provides no additional benefit.

Information for Economic Analysis

Costs

OSHA has requested data and comments on the costs (one-time and ongoing) that healthcare providers incurred to comply with the Healthcare ETS and any proposed final rule. Providers have incurred significant one-time and ongoing costs with respect to personal protective equipment (PPE), complying with respiratory protection programs, training, medical removal benefits, ventilation, reporting requirements, and COVID-19 plan implementation and monitoring. These costs show no sign of abating and in-fact due to supply chain shortages and other factors have increased substantially from pre-pandemic levels. This is unsustainable and puts increasing financial pressures on providers. Additional regulatory requirements would only add to the costs and financial burdens on healthcare providers.

Closing

In closing, although OSHA's efforts are well-intended, a final healthcare rule is unnecessary and overly burdensome at this point as there are existing regulatory requirements that adequately address workplace and resident safety.

LeadingAge appreciates your time and attention to these issues and if you wish to discuss these concerns further or have any questions, please contact Cory Kallheim ckallheim@leadingage.org. We value OSHA's commitment to workplace safety and look forward to continued work together to ensure a quality workplace and home for older adults.

Sincerely,

Cory Kallheim
VP, Legal Affairs and Social Accountability
LeadingAge