

Assistant Secretary Douglas Parker  
% OSHA Docket Office  
Room N-3653  
U.S. Department of Labor  
200 Constitution Avenue NW  
Washington, DC 20210

Re: Docket No. OSHA-2020-0004 Occupational Exposure to COVID-19 in Healthcare Settings

Dear Assistant Secretary Parker,

We are a group of experts in occupational safety and health, medicine, epidemiology, industrial hygiene, aerosol science, public health law and other relevant fields, writing in response to OSHA's request for public comment related to the promulgation of a final Occupational Exposure to COVID-19 in Healthcare Settings standard.

We strongly support OSHA's promulgation of a final Occupational Exposure to COVID-19 in Healthcare Settings standard. This standard is urgently needed. However, to adequately protect healthcare workers, this standard must be more protective than the Emergency Temporary Standard (ETS) that OSHA issued last year, which the agency has announced it is no longer enforcing.

COVID-19 poses a significant risk to healthcare workers and has sickened more than a million of them and killed thousands. This risk is not only in the past. During the first 3 months of this year, CDC reports that 345,000 nursing home staff have been confirmed with COVID-19 infections.<sup>1</sup> Exposed healthcare workers remain at increased risk for contracting COVID-19, as well as suffering from stress, mental health trauma and the impacts of long-COVID from workplace exposure.<sup>2,3</sup>

Strengthening this standard will particularly benefit workers of color who are at particularly increased risk of exposure and disease and who are over-represented among healthcare workers who will be covered by this standard. Black and Latino people have suffered a much higher rate of COVID-19 infections and death than their White counterparts, particularly among working age adults. At the peak of the recent omicron surge, the COVID-19 death rate among working age Black and Latino people was more than 1.5 times to 2.0 times the death rate among White people.<sup>4</sup>

By the nature of their work, healthcare workers face an elevated risk of exposure to COVID-19. A strong and comprehensive standard is needed to protect these workers from exposure to this deadly virus. The standard must recognize the ease with which this airborne disease is

transmitted from person to person and should require employers to follow the hierarchy of controls, including engineering controls, to provide clean indoor air involving ventilation, filtration and/or application of germicidal ultraviolet technology; respiratory protection programs requiring NIOSH-certified respirators; medical removal benefits (paid leave); and enhanced recording and reporting of cases.

### **The OSHA Standard Must Protect All Healthcare Workers from Exposure to Airborne Particles**

On March 23, 2022, Dr. Alondra Nelson, head of the White House Office of Science and Technology Policy and Deputy Assistant to the President, wrote: “The most common way COVID-19 is transmitted from one person to another is through tiny airborne particles of the virus hanging in indoor air for minutes or hours after an infected person has been there.”<sup>5</sup> This White House statement reflects the best current understanding of the means through which SARS-CoV-2 spreads in workplaces, and is supported by numerous studies in the scientific literature.<sup>6</sup>

OSHA’s final Occupational Exposure to COVID-19 standard must be designed to prevent or minimize exposure to these “tiny airborne particles of virus” and include the appropriate requirements for effective respiratory protection for all workers in all settings covered by the standard. OSHA’s ETS did not fully reflect this understanding of the importance of aerosol exposure and, as a result, workers may not have been provided with fully protective respiratory protection, putting them, their co-workers, patients and their families at risk of exposure, illness, and death.<sup>7</sup>

### **Do Not Align the OSHA Standard with Current CDC Recommendations for Healthcare Infection Control Practices**

OSHA standards that protect healthcare workers must be based on the best scientific evidence, gathered through a transparent public notice and comment process and rigorous study of current science related to airborne transmission of the COVID-19 virus, to assure “to the extent feasible . . . , that no employee will suffer material impairment of health or functional capacity”.<sup>8</sup> Since the beginning of the pandemic, it is well-documented that some of CDC’s recommendations are not set through a transparent process and often prioritize political considerations and supply considerations over the best available scientific evidence about how best to protect workers.<sup>9</sup> Furthermore, CDC guidance is not based on the statutory criteria OSHA is required to apply when setting a standard. The different statutory goals of OSHA and CDC have resulted in confusion among employers and workers, and increased risk for employees.<sup>10</sup> The extended delay in CDC’s recognition of the importance of airborne transmission of SARS-CoV-2, despite robust evidence, is a prime example of CDC’s failure to update its recommendations to incorporate the best available scientific evidence.<sup>11</sup>

Given the inadequacy of many of CDC's recommendations, providing a "safe harbor" enforcement policy for employers who are in compliance with CDC guidance, but not in compliance with OSHA standards, could endanger the safety and health of that employer's workers. For that reason, providing this sort of safe harbor would conflict with the Occupational Safety and Health Act's requirement that OSHA standards must substantially reduce or eliminate significant risk of material impairment of health to the extent feasible, and would hamper OSHA's ability to revise its approach to COVID-19 as new facts develop.

### **The Standard Must Recognize Transmission by Asymptomatic Infected Individuals**

COVID is spread by infected individuals, many of whom will not have symptoms of the disease and who are not tested before healthcare workers come into contact with them. OSHA's standard must therefore require covered health care establishments to provide worker protections at all times, not merely when known or symptomatic cases of COVID-19 are present. Further, since fully vaccinated individuals may become infectious and spread the virus, limiting protections in situations where all or most of the patients or other workers are vaccinated will not provide an adequate level of protection.

### **The Standard Must Protect All Workers in Healthcare Settings, Regardless of Vaccination Status**

The standard should not permit employers to provide lesser protections for vaccinated healthcare workers. Although fully vaccinated workers are currently at lower risk for COVID-caused hospitalization or death than unvaccinated workers, they are still at significant risk for serious illness, as well as for less serious illness and spreading the virus. Moreover, current vaccines may not provide as much protection against future variants or long-term consequences of infection.

A fully vaccinated worker can still be infected at work and, even if that worker does not suffer a severe illness, the worker may spread the virus to patients, co-workers, family members or others in their community who are at far greater risk of serious illness or death. Further, the effectiveness of vaccines is not constant and often wanes in weeks or months after each vaccination. It is therefore difficult to ascertain the actual immune status of every worker, regardless of vaccination status, to ensure an adequate level of protection. Moreover, current vaccines were designed and authorized for use against the original SARS-CoV-2 virus strain and have shown to be less effective against infection by the delta, omicron BA.1 and BA.2 variants. The level of effectiveness against infection by future variants is not known.

### **The Standard Must Include Medical Removal Benefits (Paid Leave)**

In order to minimize virus transmission in workplaces, infected and potentially infectious individuals need to be enabled to remain outside the workplace without loss of pay or benefits. Paid medical leave has been shown to be effective in preventing workplace transmission.<sup>12</sup> The

OSHA standard must include paid medical leave for workers who need to isolate because they have been infected or quarantine because they have been exposed.

Because fully vaccinated individuals are less likely to become infectious and transmit the virus, encouraging workers to be vaccinated will help protect all workers – vaccinated and not vaccinated. Therefore, the standard must require employers to provide paid time off for workers who need to get vaccinated, and for the time necessary to recover from any side-effects of vaccination.

### **Maintain and Expand COVID-19 Recording and Reporting Requirements**

COVID-19 cases among workers can be an important source of information about the risk of transmission at their place of employment. This is especially true in healthcare settings, where employers and workers use information gained from recording cases that appear among workers in the same workplace to prevent future cases. The requirement for the maintenance of a workplace COVID-19 log that lists all confirmed COVID-19 cases, whether or not they are work-related, is a necessary and important tool to track workplace infections and should be maintained.

OSHA also needs timely information on workplace COVID-19 infections in order to identify and target those workplaces where workers may be at serious risk. Currently OSHA requires healthcare employers to report all work-related COVID-19 deaths or in-patient hospitalizations to OSHA. OSHA should expand this to require that employers report all workplace outbreaks - three or more probable or confirmed COVID-19 cases among workers at the same workplace within the last 14 days as California, Virginia and other states have done.

### **Prepare for the Possible Evolution of SARS-CoV-2 into a Second Novel Strain**

Since the beginning of the pandemic, SARS-CoV-2 has evolved into several variants with different infectiousness and virulence. Although it is not possible to predict how the virus will evolve, there is little doubt that it will continue to evolve. The OSHA healthcare worker standard needs to consider that the virus could evolve into an entirely different strain with increased virulence, infectiousness, and resistance to the vaccine.

In summary, we enthusiastically support OSHA's promulgation of a final standard to protect healthcare workers from exposure to SARS-CoV-2, but believe the standard must be strengthened, recognizing the importance of airborne transmission of the virus and addressing gaps in the ETS.

Thank you for considering these comments,

cc: Ashish Jha, MD MPH, White House COVID-19 Response Coordinator  
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<sup>1</sup> CDC COVID Data Tracker - Confirmed COVID-19 Cases and Deaths among Staff and Rate per 1,000 Resident-Weeks in Nursing Homes, by Week - United States, Accessed April 9, 2022

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<sup>6</sup> For evidence of aerosol transmission of SARS-CoV-2 and methods to control it, see:

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<sup>8</sup> The Occupational Safety and Health Act of 1970. Sec. 6: Occupational Safety and Health Standards. [https://www.osha.gov/laws-regs/oshact/section\\_6](https://www.osha.gov/laws-regs/oshact/section_6)

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