August 12, 2021

Edmund C. Baird, Associate Solicitor of Labor
Occupations Safety and Health
Office of the Solicitor
U.S. Department of Labor

Mr. Baird,

The Kansas Hospital Association appreciates the opportunity to comment on the OSHA emergency temporary standard issued on June 21, 2021, on behalf of our 123 community hospital members. Throughout the COVID-19 pandemic, Kansas hospitals have worked diligently to protect their employees to the best of their ability in the face of an unknown virus that has challenged supply chains, budgets, and human endurance over the last eighteen months.

While our hospitals appreciate the intent of the new emergency temporary standard in keeping workers safe, it has raised several concerns we would like to share with you.

The first concern is the timing of the ETS, which, when released, was fifteen months behind the actual start of the pandemic. The requirement that hospitals comply with a 916 page standard within a two-to-four-week timeframe was unreasonable. The depth and breadth of the standard has made it difficult for even large hospitals with teams of staff focused only on the ETS to come into compliance and nearly impossible for our small critical access hospitals whose staff often serve in multiple capacities.

In addition, the standards being imposed are already in place under CMS and CDC guidelines. The result is not an increase in safety for healthcare workers, but instead an increase in paperwork at a time when hospitals are concentrating their resources to address the health care needs for both COVID and non-COVID patients as COVID surges across the country.

The second is the inflexibility of the ETS. The ETS does not take into consideration the differing impacts of COVID-19 across the country. Our experience in Kansas is that the COVID pandemic has impacted each hospital differently and at different times. The ETS would require already financially vulnerable hospitals to dedicate resources to address a threat that may not exist in their area. In addition, applying a one-size-fits-all standard for hospitals with varying degrees of threat from COVID-19 will place unnecessary demand on PPE, potentially creating the type of shortages that occurred last year. A more focused approach in the standards could help protect the nation from a recurrence of this type of shortage.

The third concern is the burden of requiring paid leave for employees if they do not have sick leave or their hospital uses PTO instead of differentiating between paid and sick leave. This erroneously places the responsibility for an employee's COVID-19 illness on the hospital, assuming the hospital is the source of their infection. Given the current transmissibility of the COVID-19 Delta variant, community spread is a more likely source than a hospital, which has infection prevention protocols in place. It also disadvantages facilities using PTO for leave time instead of separate sick and vacation leave. In addition, forcing an employer to absorb the cost of an employee's non-work
relate exposure not just once for replacement staff but twice by forcing the employer to pay for sick days the employee may not have earned is too great a burden for employers as the deadlines for expending portions of the provider relief funds have now passed.

The fourth concern is that the agency may make the ETS a permanent standard after the six-month effective period. Our country has not faced a pandemic like COVID-19 in a century. We continue to learn about the COVID-19 virus, and its variants each day. Making the ETS permanent is likely to have unforeseen consequences as we continue to wrestle with curtailing COVID-19 by limiting the ability of health care employers to adapt to meet new challenges, exhausting supply lines and creating financial hardships on safety net providers across the country. We ask for the following changes to the ETS based on the concerns expressed above:

1. Delay implementation of the ETS to allow hospitals to comply with the standard.
2. Update the ETS to reflect the differing circumstances around the country, using specific metrics for levels of protection correlating with the level of threat.
3. Update the ETS to avoid duplication of requirements already in required by other agencies like CMS.
4. Update the paid leave language to more evenly spread the burden between the employee and employer, allowing the required use of a portion of an employees PTO for COVID-19 illness.
5. Do not make this a permanent standard for employers to follow after the six month effective date, but instead make the standard effective only during the COVID-19 public health emergency.

Thank you for your consideration of our comments. Working together, we can create a safe environment for all American workers as we continue to face this pandemic. If you should have any follow up questions relating to our comments, please contact Audrey Dunkel at adunkel@kha-net.org or (785) 233-7436.

Thank you,

Chad Austin
President and CEO