



August 20, 2021

Acting Assistant Secretary James Frederick
Occupational Safety and Health Administration (OSHA)
Department of Labor
Docket No. OSHA-2020-0004
200 Constitution Ave NW
Washington, DC 20210

RE: OSHA-2020-0004 – Occupational Exposure to COVID-19; Emergency Temporary Standard, published in Vol. 86 No. 116 on June 21, 2021

Submitted electronically via <http://www.regulations.gov>

Dear Acting Assistant Secretary Frederick,

UnityPoint Health appreciates this opportunity to provide comments on the Occupational Safety and Health Administration (OSHA) Occupational Exposure to COVID-19; Emergency Temporary Standard (ETS). UnityPoint Health is one of the nation's most integrated healthcare systems. Through more than 33,000 employees and our relationships with more than 480 physician clinics, 40 hospitals in urban and rural communities and 14 home health agencies throughout our 9 regions, UnityPoint Health provides care throughout Iowa, central Illinois and southern Wisconsin. On an annual basis, UnityPoint Health hospitals, clinics and home health provide a full range of coordinated care to patients and families through more than 8.4 million patient visits.

As a member of the American Hospital Association (AHA), UnityPoint Health supports the AHA comment letter submitted in response to the ETS. In addition, UnityPoint Health respectfully offers the following input.

GENERAL COMMENTS

OSHA is issuing an ETS to protect health care workers and health care support service workers from occupational exposure to COVID-19 in settings where people with COVID-19 are reasonably expected to be present.

Comment: UnityPoint Health understands the importance of safe work environments, particularly as it relates to COVID-19 and the safety of our health care workforce. In Spring 2020, UnityPoint Health quickly established policies and procedures to create a safe environment not only for our workforce but our

patients. Our timely action was in response to the rising impact of COVID-19 in our communities and facilities and occurred without specific guidance from OSHA but in reliance upon infectious disease prevention principles and science. These processes have proven to be highly effective. Prior to implementing the ETS at the end of June 2021, UnityPoint Health’s work-related exposure rate resided at 12% as compared to non-work-related exposures at 88%. Furthermore, with the advent of the ETS in July, the number of employees with non-work-related exposure who are currently off work with COVID symptoms has increased more than three-fold over the month of July.

Effective Date - **UnityPoint Health recommends OSHA withdraw the ETS to permit meaningful stakeholder input, drawing upon hospital best practices and promoting regulatory flexibilities to recognize effective measures in place prior to release of the ETS.** While OSHA’s jurisdiction includes establishing occupational exposure policies and procedures, the ETS detail and timing puts extra burden on facilities to replace and operationalize new standards in lieu of current effective practices.

Enforcement Turnaround Times – Again, **UnityPoint Health recommends OSHA withdraw the ETS.** The ETS contains complex scenarios that creates undue confusion and administrative burden. Moreover, the ETS includes 98 frequently asked questions, 9 different implementation tools and 68 pages of inspection procedures. Complying to the ETS takes valuable time in evaluating the new standards, educating workforce, deploying change management, and operationalizing final policies and procedures. Most health care workers are exhausted after a year and a half long battle in supporting a global pandemic, and managing new restrictions brings an added level to an already kindled workplace burnout.

Setting the Bar – If OSHA elects not to delay or withdraw the ETS, **UnityPoint Health is concerned about the precedent set by adopting regulations specific to COVID-19 and urges OSHA to allow the ETS to expire at the end of six months and not be published as a final rule.** While the COVID-19 pandemic is a global emergency, it will certainly not be the last public health emergency our nation faces. By adopting infection specific regulations for this particular virus, these actions set a precedent for future regulations that potentially burden both the agency as well as health care facilities – ultimately limiting the ability for health care workers to deliver high value and impactful care by instituting operational barriers. As the world continues to learn more about the current pandemic, it is even more evident that, having a standard designed for one specific infectious disease and at one point of time, does not allow for the ebb and flow of a disease nor permit health care facilities to be as nimble as they should be.

Standards Conflict with Other Federal Agency Guidance – The OSHA ETS is flawed as written because it locks in place standards at a point in time for a pandemic that is dynamic and for which science continues to evolve. Portions of OSHA ETS are not aligned with current scientific evidence and often contradict with Centers for Disease Control and Prevention (CDC) guidance, including critical areas such as masking and social distancing. Even where the ETS is currently aligned to CDC guidance, we fully expect more revisions to CDC guidance as evidence evolves and the virus mutates, placing the ETS even further out of alignment with the latest science. As a result, health care facilities across the nation continue to adapt to the fruit basket upset as transmission levels continue to grow and federal guidance continues to be released and revised. Spikes in hospitalized patients and workforce

shortages are leading health care facilities to lean into already exhausted resources all while managing disparate recommendations from multiple federal agencies and administration. Health care facilities need flexibility to focus resources appropriately on care for patients and workforce personnel during this pandemic. **UnityPoint Health recommends OSHA withdraw this ETS and work closely with other Federal agencies such as the CDC and determine if a disease specific ETS is necessary and appropriate to deploy at this time.**

COVID-19 EXPOSURE IN THE WORKPLACE

- **EXPOSURE NOTIFICATION**

OSHA states when the employer is notified that a person who has been in the workplace COVID-19-positive, employers must, within 24 hours: (1) notify each employee who was not wearing required PPE and was in close contact, (2) notify employees who were not wearing PPE and in close well-defined workspaces - e.g., a particular floor, and (3) notify other employers whose employees were in close contact or in close well-defined workspaces – e.g. vendors, visiting clinicians, etc.

Comment: UnityPoint Health recommends COVID-19 requirements around exposure notification be removed from the OSHA ETS and allowed to be managed at a local level. Most health care facilities currently have highly effective exposure notification processes in place today, especially in the hospital setting. The ETS 24-hour notification standard is an extremely short amount of time to operationalize these notification requirements. Often it takes at least 24 hours, if not more, to fully determine where a team member or patient has been and who they have been in contact with. To require notification of individuals in the general area within 24 hours makes this standard, at best, unrealistic. The additional contact tracing burden required by the ETS will fall to clinical leads within hospital units (e.g., nurse managers), taking time away from patient care. OSHA’s proposed exposure notification standard and its impacts are alarming when hospitals are already at capacity and workforce shortages are prevalent.

Aside from time frame and contact tracing burden, UnityPoint Health also has concerns about the notice itself and the definition of a close exposure. While the very nature of a notification is to inform, the OSHA notification brings little value in informing personnel to a degree by which they can feel assured in knowing the level of exposure they have encountered. As currently proposed, the OSHA exposure notification prohibits organizations from including any employee names, contact information, and/or occupation. In a health care setting, this unnecessarily broadens the scope of individuals notified and potentially could result in a daily notification in care settings where COVID-19 patients generally seek care, such as emergency departments and intensive care/critical care units. Also, if a team member has tested COVID-19 positive, any additional team members within 6 feet not wearing N95 masks will be considered a close exposure. OSHA has not required this level of notification for any other infectious disease, nor does this align with CDC guidance on masking. N95 masks are reserved for patient care, and team members do not generally wear N95 masks in non-patient care settings. This standard is burdensome as it leads to additional team members listed as close exposures and subject to work removal or testing standards and it places additional supply chain pressures for N95 masks.

- **MEDICAL REMOVAL FROM THE WORKPLACE**

OSHA states, if the employer knows an employee is COVID-19-positive, then the employer must immediately remove that employee and keep them removed until they meet specific return to work criteria. Removal is required for employees with close contact exposure who are asymptomatic.

Comment: UnityPoint Health recommends that health care facilities have protocols for medical removal from the workplace for employees with highly infectious diseases; however, detailed parameters should be removed from the OSHA ETS, and this should be managed at a facility level in compliance with infectious disease standards established at the CDC and similar research agencies or organizations. The ETS requires staff that are asymptomatic, due to a close contact exposure, to be removed from the workplace with pay for a minimum of 7 days. This does not align with CDC recommendations of asymptomatic exposures. Currently UnityPoint Health has over 1,400 nursing positions vacant. This standard has the potential to be devastating to a hospital when most exposures include many of the same staff on a single unit/floor. In order to qualify for an exemption due to staff shortages under this standard, hospitals must prove workforce necessity and send a letter to patients to inform them they are under the care of staff who have had a close exposure. A patient notification process of this magnitude has the potential to impact a significant number of patients and, has negative ramifications in the patient experience arena. Patients are already in distress when in the hospital and this notification would add further emotional stress. Additionally, this could lead to unnecessary and inappropriate requests for additional resource use (e.g., testing for patients who are asymptomatic).

- **MEDICAL REMOVAL PROTECTION BENEFITS**

Per OSHA when an employer removes an employee due to COVID-19 exposure, the employer must continue to provide the benefits to which the employee is normally entitled and must also pay them the same regular pay they would have received had they not been absent from work until the employee meets the return-to-work criteria.

Comment: UnityPoint Health believes medical removal benefit requirements are out of scope for OSHA standards and should be removed from the proposed ETS. The medical removal protection benefits are the most overreaching portion of the ETS. In no other circumstances do OSHA policies dictate paid personnel benefits. Historically this has been handled solely by the state’s workers compensation benefits. As written, the medical removal benefit standard is extremely difficult to interpret and overly burdensome to administer. This will undoubtedly lead to a significant overpayment of benefits to ensure standard compliance. As interpreted, this requirement dictates benefit payment to personnel who are off work for nonwork related conditions, an area out of scope for OSHA standards.

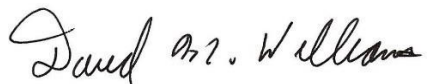
PHYSICAL BARRIERS

OSHA states each fixed work location outside of direct patient care areas (e.g., entryway, check-in desk, nurse station, triage) where an employee is not separated from all other people by at least 6 feet must have installed a cleanable or disposable solid barrier to block face-to-face pathways between individuals where persons would normally sit or stand.

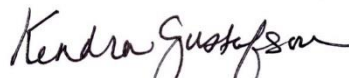
Comment: UnityPoint Health recommends that physical barrier requirements be restricted to fixed work locations in which patients, visitors, and/or other non-health care workers are reasonably expected to frequently visit. As written, this standard is overly broad and would require unnecessary physical barriers that hamper care coordination and entail additional expense, upkeep, and maintenance that detract from direct patient care. UnityPoint Health believes physical barriers are reasonable precautions in certain settings, such as café cashiers, gift shops, and intake or registration services, as a measure to help prevent the spread of COVID-19. The ETS does not distinguish settings or circumstances in which physical barriers may not facilitate quality health care. Examples include patient care collaboration in areas such as nursing stations, triage areas, and food prep stations. For example, nursing stations and triage areas become vital for teams to debrief, plan, and collaborate on patient care delivery, a prime setting to address any patient safety concerns. For catering and kitchen staff, physical barriers become challenging as preparing and plating patient food deliveries is a team effort. Physical movement is necessary to effectively and efficiently complete these tasks. Because certain areas of the hospital are highly collaborative workspaces, placing a blanket standard around physical barriers limit teams' ability to provide optimal patient care.

We are pleased to provide input on this ETS and its impact on our health system, our patients and communities served. To discuss our comments or for additional information on any of the addressed topics, please contact Cathy Simmons, Executive Director, Government & External Affairs at cathy.simmons@unitypoint.org or 319-361-2336.

Sincerely,



David M. Williams, MD, MMM
Chief Clinical Officer



Kendra Gustafson, MPA, BSN, RN, CPXP, CPPS
System Executive Director Clinical Excellence & Process Improvement



Cathy Simmons, JD, MPP
Executive Director, Government & External Affairs