AHPA
ADVENTIST HEALTH
POLICY ASSOCIATION

August 20, 2021

James Frederick
Acting Assistant Secretary of Labor for
Occupational Safety and Health
Occupational Safety and Health Administration
200 Constitution Ave NW
Washington, DC 20210

Re: Docket No. OSHA–2020–0004, Occupational Exposure to COVID–19; Emergency Temporary Standard; Occupational Safety and Health Administration Interim Final Rule and Request for Comments (Vol. 86, No. 116), June 21, 2021.

Dear Acting Assistant Secretary Frederick:

On behalf of the Adventist Health Policy Association (AHPA), we appreciate the opportunity to comment on the Occupational Safety and Health Administration's (OSHA) Occupational Exposure to COVID-19 Emergency Temporary Standard (ETS). Our organization is the policy voice of five Seventh-day Adventist affiliated health systems that include 94 hospitals and more than 600 other health care facilities across the nation.

AHPA represents a major segment of the U.S. hospital sector. Our member hospitals operate in a variety of settings, ranging from rural Appalachia to urban areas of California. With such diverse facilities, populations served and geographic locations, we strive to provide objective and sound policy recommendations that work well for health care as a whole. Specifically, we offer comment to OSHA on the following issue areas within the ETS:

- The prospect of making the ETS permanent
- The current ETS requirements

Making the OSHA COVID-19 ETS Permanent

OSHA has requested comment pertaining to whether the provision of the ETA should be adopted as a permanent standard.

AHPA does not support the permanent adoption of the OSHA COVID-19 ETS. It is our understanding that the focus of this ETS is to protect health care workers from occupational exposure to COVID-19 in settings where people with COVID-19 are reasonably expected to be present. Over the course of the COVID-19 pandemic, securing health care personnel's well-being, health and safety has been the utmost priority of health systems across the nation. While we wholeheartedly concur with

OSHA's mission, we view the proposition of permanent adoption counterintuitive. Prior to the ETS, hospitals adopted infection prevention and control standards established by the Center for Disease Control and Prevention (CDC) that incorporate best practices and prevention measures. These measures have been malleable and adaptive to the changing landscape of the COVID-19 pandemic. The permanent adoption of the current COVID-19 ETS would solidify rules and impose requirements that may no longer be relevant in the future as new evidence becomes available or more individuals become vaccinated. While the COVID-19 ETS offers beneficial guidance for hospitals, the notion of permanent adoption seems overly burdensome. **If OSHA decides to move forward with the permanent adoption of the COVID-19 ETS, AHPA recommends that the agency establish a technical expert panel comprised of different sectors of the health care industry, that could provide recommendations on how to redesign the ETS for permanent use.** This taskforce could help ensure that the ETS meets the goals set by OSHA and that the requirements imposed are not overly burdensome or duplicative of other federal requirements.

A Renewed Focus on Intent

AHPA also recommends that OSHA better define the intent behind the ETS before moving forward with permanent adoption. There should be better clarification on whether the objective is to protect workers from COVID-19 exposure or better prepare for future pandemics. If the goal of this ETS is to protect health care workers from occupational exposure to COVID-19, then making the ETS permanent would render the provisions unnecessary and burdensome when the threat of COVID-19 exposure drops as a result of vaccination efforts. If the intent behind the ETS is to aid in warding off future pandemics, then OSHA needs to consider that current ETS requirements are tailored specifically to COVID-19 and might not be applicable to a future disease. The lack of flexibility within the ETS would render it inadequate, thus leading to a rule that would need to be revised for future pandemics.

Current ETS Requirements

Physical Barriers

The OSHA ETS dictates that for each fixed work location where each employee is not separated from all other people by at least six feet of distance, the employer must install cleanable or disposable solid barriers, except where the employer can demonstrate it is not feasible.

AHPA understands the rationale behind this requirement but recommends that OSHA contemplate providing financial compensation to help health providers, such as hospitals and physician

practices, offset implementation costs. This requirement could have a disproportionate impact on smaller hospitals whose resources have already been depleted due to the demands of the COVID-19 pandemic. This mandate does not equitably address the needs or availability of resources among different health providers.

Employee Screening

The OSHA ETS dictates that regular health screening for possible indications of COVID–19 is needed for detecting employees who might be COVID–19 positive. The ETS states, "Screening for employee symptoms, particularly when combined with their recent activities (e.g., the likelihood they have had a recent exposure to COVID–19), can help determine if the employee is suspected to have COVID–19 or should be tested." The ETS also states that the employer must provide the test to each employee at no cost to the employee.

It is our belief that the lack of specificity of the employee screening requirement will create obstacles in its adoption. For example, OSHA does not adequately define what "recent activities" or "recent exposure" means. This puts the burden of interpretation on the health provider, which could result in this requirement being applied differently. We recommend that OSHA align these definitions with CDC guidelines, as the CDC regularly updates their guidance. Doing so will better reflect the real time outlook of the COVID-19 pandemic. For example, the current ETS fails to account for the fact that health care workers caring for COVID-19 patients are wearing highly effective forms of PPE. It also fails to account for the vaccine status of the health care personnel. Lastly, the current ETS does not capture the length of time during which an infected person and a health care worker were together, which is critical to determining whether an individual was exposed to COVID-19. Failing to take these factors into consideration could result in many health care workers being removed from work when there is minimal risk of exposure, exacerbating existing staffing shortages.

AHPA also urges OSHA to eliminate the requirement for hospitals to log all COVID-19 non-workplace exposures from employees. Hospitals are implementing many safety protocols to protect employees within the confines of their facility; however, it is challenging to track the potential exposure of an individual outside of their workplace.

AHPA objects to the requirement of employers being responsible for COVID-19 testing costs in all circumstances. We believe that there are circumstances that could warrant shifting the financial burden of testing to the employee. Specifically, if an employee's refusal to obtain COVID-19 vaccination has put

them in a situation where testing is needed at more frequent intervals. Given that COVID-19 could continue to be a challenge for many years, we do not think it is prudent to require employers to assume the costs of regular COVID-19 testing for non-vaccinated employees. This requirement would pose a significant financial burden on health providers.

Vaccination Paid Leave and Medical Removal Benefits

The OSHA COVID-19 ETS requires that employers support COVID–19 vaccination for their employees by making reasonable time and paid leave available to the employee for vaccination and recovery from any side effects. Reasonable time may include, but is not limited to, time spent during work hours related to the vaccination appointment(s), such as registering, completing required paperwork and all time spent at the vaccination site. In addition, the ETS requires payment to employees removed from the workplace due to exposure or illness.

Since employee compensation issues generally fall under the Department of Labor's (DOL) Wage and Hour Division (WHD) jurisdiction, OSHA's requirement generates ambiguity on the impact of overtime and other employee compensation calculations. As an example, the ETS does not address the relationship between vaccination paid leave or medical removal benefits and having existing sick time or paid time off benefits. The regulation does not clarify whether the ETS has created a new time off benefit entitlement, resulting in the requirement being applied differently across all health providers. **AHPA recommends the removal of any requirements dictating employee compensation and benefits, unless the requirements are expressly set by the DOL or the agency has the opportunity to weigh in and provide further guidance.**

Conclusion

AHPA welcomes the opportunity to further discuss any of the recommendations provided above. If you have any questions or would like further information, please do not hesitate to contact me at Carlyle.Walton@AdventistHealthPolicy.org or Susana Molina, Director of Public Policy, at Susana.MolinaRamos@AdventHealth.com.

Sincerely,

Carlyle Walton, FACHE

President

Adventist Health Policy Association