



Via Electronic Submission

April 22, 2022

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

Re: Docket No. OSHA-2020-0004, limited reopening of comment period on interim final rule establishing an Emergency Temporary Standard (ETS), “Occupational Exposure to COVID-19.”

Dear Mr. Parker,

The Home Care Association of America (HCAOA) respectfully submits these comments to the U.S. Department of Labor’s Occupational Safety and Health Administration in response to the above-referenced interim final rule published in the Federal Register on June 21, 2021, at [86 Fed. Reg. 32376](#).

By way of background, HCAOA is the home care industry’s leading trade association. We currently represent over 4,000 companies that employ nearly two million caregivers (home care aides) across the country. HCAOA member companies primarily provide supportive services in people’s private homes. Our caregivers assist with a variety of non-medical activities of daily living, such as bathing, dressing, eating, and many other services necessary to live as independently as possible at home.

By serving our clients in their homes rather than in a facility, we lower their COVID-19 related risk while allowing them to remain in the comfort of their own home. Our members are always conscious of our duty to adequately protect the caregivers of these clients from the coronavirus.

The purpose of these comments is to assist OSHA in forming and implementing a final rule that is both safe for caregivers and practical for the operational needs of our small businesses. It is with OSHA’s current COVID-19 related requirements and its General Duties Clause¹ in mind that HCAOA offers the following suggestions, which directly correspond to the headings listed in the notice of the limited reopening of the comment period dated March 23, 2022.

¹ See 29 U.S.C. § 654



A.1—Alignment with CDC Recommendations for Healthcare Infection Control Practices

HCAOA believes regulatory clarity assists in ensuring a safe working environment for our caregivers. Aligning OSHA standards with CDC infection control practices provides small businesses like ours a consistent standard to follow and eliminates confusion surrounding overlapping federal government requirements/recommendations.

Additionally, OSHA should draft its standards to directly correlate with levels of community transmission in the location where each caregiver is present. Prevalence statistics are made widely available by local and state health departments, allowing OSHA to more narrowly tailor its requirements and reduce our compliance costs.

A.2—Additional Flexibility for Employers

No two workplaces are the same, just as no two industries are exactly alike. The need for regulatory flexibility in the wake of a pandemic is dire. Home care is a unique industry that engages its clients in their own homes. The ETS appears to be aimed primarily at institutional or office settings that are generally not relevant to our industry. HCAOA requests clearer standards that encompass a better understand of the unique nature of an industry that exists primarily in the homes of others, not a workplace setting. We believe a less prescriptive approach, as outlined below, would increase our already robust compliance with OSHA standards.

OSHA should restate several provisions of the ETS as broader requirements without the initial level of detail it included. For example, the steps that employers must take when notified that an employee is COVID-19 positive, told by a licensed healthcare provider that they are suspected to have COVID-19 or is experiencing certain COVID-19 symptoms, or has been in close contact with a COVID-19 positive person in the workplace are unnecessarily rigid and not particularly relevant to the home care industry.

The steps outlined in the ETS for the paid medical removal and return to work of employees exposed to, suspected to have, or have COVID-19 is fraught with confusion and the potential for misinterpretation. A simpler flow chart than the one published [here](#) that takes into account the workforce protections provided by the various vaccines would substantially increase caregiver's safety.

Home care as a service is more important to and more coveted by clients than ever, but an astoundingly tight labor market is making it nearly impossible for home care agencies to serve everyone who requires their care. Medical removal and return to work burdens must be eased, particularly for those who are fully vaccinated.



Additionally, OSHA should provide a “safe harbor” enforcement policy for those employers who in good faith follow applicable CDC guidance. Doing so will provide our industry greater flexibility in balancing the need to protect our workers with the need to properly serve our clients.

A.3—Removal of Scope Exemptions

There exists significant confusion within the non-medical home care community surrounding the applicability of the ETS to our industry. As mentioned above, the ETS is mainly focused on institutional or office settings and does not adequately contemplate the nuances of home care, which is provided primarily inside our client’s homes, a setting that is not fully ours to control or monitor.

For example, OSHA’s definitions of “Healthcare services” and “Healthcare support services” contemplate a wide range of patient care settings and situations yet fail to fully include our unique industry. We ask that OSHA provide more precise guidance regarding how its standards apply to caregivers who do not work in settings that OSHA traditionally regulates. We also desire a standard that contemplates the challenges that this historically tight labor market poses.

A.4—Tailoring Controls to Address Interactions with People with Suspected or Confirmed COVID-19

OSHA should eliminate certain requirements in the ETS relating to interactions with people with suspected or confirmed cases of COVID-19 as they are unnecessarily broad. For example, OSHA should impose cleaning requirements and medical removal provisions only to those who are working directly with COVID-19 positive patients. OSHA could also eliminate facemask requirements for vaccinated staff not working directly with COVID-19 positive patients. Relaxing these regulations would greatly reduce our PPE/compliance costs while allowing our vaccinated caregivers to work more comfortably in client’s private homes, which in turn keeps them on the job and caring for those who depend on them.

If OSHA does restrict infection control requirements to particular staff, it should consider balancing that narrower scope with a newly defined and industry specific “outbreak provision.” The current CDC definition of an “outbreak” is overly prescriptive and not appropriate for our industry because we generally lack traditional workplaces as contemplated by OSHA. Instead, an outbreak in the home care industry should be defined as “close contact between two or more COVID-19 positive caregivers” and should not trigger ramifications for the entire home care company. Those caregivers would then be immediately removed from client homes and would not be placed back into the workforce until a sufficient amount of time has passed as determined by the CDC.



A.5.1—Booster Doses

Changing the definition of “fully vaccinated” to include one or more booster shots in addition to the first two shot course is unnecessary and would worsen our inability to care for all clients needing in home care because of the dire workforce shortage. OSHA should wait to see how the next chapter of the pandemic unfolds before adding booster shots to the definition of “fully vaccinated.”

A.5.2—Employer Support of Employee Vaccination

HCAOA agrees with OSHA’s decision to refrain from making vaccination mandatory for employees covered by the ETS at this time. Reliable polling data² shows that the percentage of Americans who are uncertain about or unwilling to be administered one of the three CDC authorized vaccines available has remained largely frozen for some time. It appears unlikely that an OSHA mandate will change minds.

OSHA should no longer include any paid time off for employees to receive a vaccine nor should it mandate paid sick leave to allow for recovery from side effects. This approach was previously less onerous when government funding was available to offset it, but these monies are no longer available and are unlikely to be renewed.

A.5.3—Requirements for Vaccinated Workers

Due to the extraordinary efficacy of the three CDC authorized vaccines, HCAOA believes that ETS requirements related to masking, barriers, and physical distancing should be relaxed or eliminated for fully vaccinated caregivers in all areas, not just where there is no reasonable expectation that someone with suspected or confirmed COVID-19 will be present.

The vast majority of our caregivers are vaccinated under the CDC’s current definition. Our caregivers understand the importance of these vaccines and want to continue to safely care for their clients. Relaxing requirements for fully vaccinated caregivers will increase their quality of life and the level of care they are able to provide.

HCAOA and its members remain steadfast in our commitment to the health and safety of our caregivers and clients. We believe our collective efforts to safeguard our workforce by following the science have been effective in preventing infection, as have the various vaccines offered nationally. Further unnecessary regulation of one-to-one care in a private residence only hampers our ability to remain nimble in the face of this epidemic and would have a devastating effect on our small businesses.

² <https://morningconsult.com/covid19-vaccine-dashboard/>



Thank you for your consideration of our submission. Please know that our association is always here to assist OSHA in any way possible. Feel free to contact me at vicki@hcaoa.org or our Vice President of Government Relations, Eric Reinerman at eric@hcaoa.org with any questions you may have.

Sincerely,

A handwritten signature in black ink that reads "Vicki Hoak".

Vicki Hoak, CEO
Home Care Association of America