



January 9, 2023

The Honorable Douglas L. Parker  
Assistant Secretary of Labor for Occupational Safety and Health  
Occupational Safety and Health Administration  
U.S. Department of Labor  
200 Constitution Ave NW  
Washington, DC 20210

Dear Mr. Parker:

On behalf of the members of the American Seniors Housing Association (ASHA), I want to share our members' concerns once again about the Occupational Safety and Health Administration (OSHA) Occupational Exposure to COVID-19 in Healthcare Settings pending final standard. ASHA represents the interests of more than 500 companies involved in the finance, development, and operation of the full spectrum of housing and services for seniors including independent living, assisted living, memory care, and continuing care communities.

ASHA's members have focused and dedicated significant resources and time on resident and staff safety throughout the COVID-19 pandemic including rigorous infection protection protocols, symptom screening, routine testing, enhanced cleaning protocols, providing vaccinations, and the use of personal protective equipment, while recognizing the need for residents, family and staff to be safely engaged and connected. Our members continue to cooperate with local, state, and federal agencies in the fight against Coronavirus (COVID-19) and adhere to preventive measures that are consistent with recommendations from local, state, and federal entities including state Departments of Health and Human Services, the Centers for Disease Control and Prevention (CDC), and the World Health Organization (WHO).

### **OSHA Should Closely Align with CDC Guidance and Include a Safe Harbor for CDC Compliance**

We urge OSHA to take into consideration the burden providers assume when required to follow similar but different guidance from multiple agencies. To this end, we recommend that OSHA more closely align the rule with the CDC guidelines and allow providers to adjust their responses to incorporate changes in the CDC guidelines. Specifically, we recommend OSHA recognize that compliance with CDC's infection control requirements would suffice as meeting OSHA's requirements.

The following describe a few areas where the CDC recommendations would allow providers some flexibility from OSHA's more prescriptive rule. These examples are from CDC's COVID-19 website for Healthcare Personnel (HCP) <https://www.cdc.gov/coronavirus/2019-ncov/hcp/infection-control-recommendations.html>.

- For masking and physical distancing, CDC guidance indicates “HCP who are up to date with all recommended COVID-19 vaccine doses: Could choose not to wear source control or physically distance when they are in well-defined areas that are restricted from patient access (e.g., staff meeting rooms, kitchen).”
- Regarding assisted living, CDC guidance indicates “in general, assisted living communities should follow recommendations for retirement communities or other non-healthcare congregate settings.”

ASHA encourages OSHA to be less prescriptive throughout the rule, and to instead defer to the published CDC guidelines that are current at a particular time. We would also support language providing a “safe harbor” enforcement policy for employers who are following CDC guidance applicable during the period at issue. This would allow providers to tailor, add, and eliminate requirements as the current situation, scientific findings, and guidelines allow. For example, OSHA’s rules would indicate employers should make decisions regarding masking and physical distancing in accordance with guidance from CDC’s current HCP Infection Control Recommendations <https://www.cdc.gov/coronavirus/2019-ncov/hcp/infection-control-recommendations.html>.

### **Vaccination Support**

The current ETS requires employers to provide reasonable time and paid leave for the vaccination and recovery of employees. The proposed change requires paid leave up to 4 hours for employees to receive vaccine and paid sick leave to recover from side effects. Senior living communities have done everything in their power to encourage, and in many cases mandate, vaccination for employees to keep their residents and other employees safe from infection. Senior living providers have been creative and flexible in meeting the needs of employees. The workforce shortage in our industry is creating ongoing financial challenges for these communities who are trying to recover from the pandemic. Higher wages, benefits and worker flexibility is key to attracting and retaining badly needed workers. Imposing additional employer requirements on matters of compensation can be detrimental to the progress being made in this area. We strongly believe that these decisions are best left with the employer and not the agency. We discourage this provision in the final rule.

### **One Time Costs**

The agency acknowledges that some costs (e.g., costs associated with initial training, upgrading ventilation, rule familiarization, COVID–19 Plan development, respiratory protection program development) have already been incurred to comply with the ETS. This proposal seeks comments relative to the extent to which employers and other entities will bear ongoing costs (e.g., those associated with training, PPE, respirators and the respiratory protection program, medical removal protection, COVID–19 plan monitoring and modification, and ventilation maintenance) under a final rule. These initial costs were additional and significant to the senior living industry. Unlike other health care providers, senior living communities had to procure these supplies without assistance from the government and were typically sourced at price

gouging levels. While the pandemic fueled costs have declined, many of these supplies, plan development and training will be an ongoing expense for the communities especially as new variants emerge. Therefore, we strongly urge consideration of assistance (financial and product support) to senior living providers for an uptick in demand and costs due to supply shortages for PPE, tests, etc., in the event of a surge or a new variant that may once again stress the system.

### **Requirement for Vaccinated Workers**

Consideration should be given to relaxing/eliminating requirements to mask, construct physical barriers and physical distance in health care settings based on vaccination status. Senior living serves the most vulnerable population and so it makes sense to recognize highly vaccinated communities and treat them differently than those with low vaccination rates. Communities with no known or suspected COVID cases, should have the restrictions lifted.

### **Recordkeeping and Reporting**

We support a revision to the ETS recordkeeping requirement and cap the record retention period for the COVID-19 log at one year from the date of the last entry in the log. Further, we recommend that the last version of the company COVID-19 plan be maintained and available for review.

Thank you for considering these recommendations. I would be pleased to discuss this request further and can be reached directly by phone at (202) 885-5560 or email at [david@ashaliving.org](mailto:david@ashaliving.org).

Sincerely,

A handwritten signature in blue ink, appearing to read "David Schless".

David Schless  
President & CEO