

August 20, 2021

The Honorable Marty Walsh
Secretary
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Re: Occupational Exposure to COVID-19; Emergency Temporary Standard

Dear Secretary Walsh:

On behalf of the physician and medical student members of the American Medical Association (AMA), I am writing in response to the U.S. Department of Labor's Occupational Safety and Health Administration (OSHA) Occupational Exposure to COVID-19; Emergency Temporary Standard (ETS) interim final rule with request for comments that was published in the Federal Register on June 21, 2021. While the AMA shares OSHA's commitment to protecting health care workers from COVID-19, we have serious concerns about the imposition of the ETS requirements, after little to no notice or warning. Moreover, while many of the interim final rule's provisions appear duplicative of existing infection control standards that physician practices have already implemented, and we believe are therefore unnecessary, others will impose additional requirements and costs that constitute unfunded mandates on practices that most can ill afford after a year-and-a-half of struggling to maintain their practice amid the COVID-19 pandemic.

The AMA is also concerned that OSHA has in many instances applied a broad brush, one-size-fits-all approach across the spectrum of health care employers that is more designed for facilities and does not address their differences and unique characteristics: what may be appropriate for hospitals or long-term care facilities is not appropriate for physician practices and other ambulatory clinics. Accordingly, **the AMA urges that the ETS not be made permanent due to the repetitive, burdensome, and unclear nature of the requirements; and, in the event that OSHA does make the ETS permanent, the AMA urges that physician practices and other non-hospital ambulatory settings be completely exempt from the requirements.**

Since the beginning of the pandemic, physicians have consistently met the ongoing and evolving challenges related to running a practice and serving patients with COVID-19. Physicians have been on the frontlines of this pandemic caring for patients and identifying ways to protect themselves and colleagues. The AMA has partnered with the Centers for Disease Control and Prevention (CDC) and other public and private stakeholders to share the best available evidence for physicians on how to prevent and treat COVID-19. Throughout the pandemic, the AMA has continued to update and circulate the newest information. Physician practices took numerous steps to stem the transmission of COVID-19. Early in the pandemic, physician practices invested in technology and rapidly adopted telehealth, and they totally revamped their scheduling. They also purchased significant amounts of personal protective equipment and additional cleaning supplies and disinfectants (often at inflated prices) while redesigning their offices and protocols to meet infection control standards.

Physicians are deeply committed to protecting the health of their patients, colleagues, and themselves against COVID-19, and the AMA recognizes OSHA's important role in protecting health care workers. Yet, physicians have more than a year-and-a-half of on the ground experience in fighting the transmission of COVID-19. According to OSHA's own information in Table VI.B.3 of the preamble, at 32488, this regulation will affect 161,977 physician offices and 10,568 mental health physician-specialty offices. Given all the experience and the steps physician practices have already undertaken to address infection control issues with COVID-19, **the AMA urges OSHA to immediately exempt physician practices from the ETS and not move forward with making the ETS interim final rule permanent.** At the very least, OSHA must provide a real opportunity to engage in a meaningful dialogue with physicians and the health care community about the scope and need for the COVID-19 health care ETS for physician practices.

We appreciate that OSHA attempted to provide an exemption for physician practices and other non-hospital ambulatory care providers. In the interim final rule, non-hospital ambulatory care settings where all non-employees are screened prior to entry and people with suspected or confirmed COVID-19 are not permitted to enter those setting are excluded from the ETS. However, COVID-19 symptoms are defined broadly to include fever or chills, cough, shortness of breath or difficulty breathing, fatigue, muscle or body aches, headache, new loss of taste or smell, sore throat, congestion or runny nose, nausea or vomiting, and diarrhea. In reality, physician practices are placed in an untenable position by having to choose between seeing patients who may have those common symptoms—but not actually have COVID-19—or refusing to provide services in order to be able to take advantage of the exemption. **The exemption, while well-intended, is unworkable and could result in less access to care for patients and disrupt continuity in care.**

In addition to the ETS requirements on infection control and other protocols, the interim final rule requires paid leave and medical removal benefits for employers with more than 11 employees. Employers must provide the medical protection benefits when an employee is removed for being COVID-19 positive, has been told by a licensed health care provider that they are suspected to have COVID-19, is experiencing recent loss of taste and/or smell with no other explanations, or is experiencing both a fever and new unexplained cough associated with shortness of breath. In addition, employers must provide medical protection benefits for employees who were in close contact with employees who tested positive for COVID-19 in certain situations. While the ETS notes that employers can offset this pay with employer benefits, such as paid leave, the tax credits available from the American Rescue Plan expire after September 30, 2021, unless Congress extends them. Moreover, the ETS undermines Congress' acknowledgement of the importance of health care employers having the ability to maintain staff and therefore provided for an exemption for health care providers from the paid leave rule in the Families First Coronavirus Response Act.

The ETS also imposes ventilation requirements on employers who own or control buildings or structures with existing heating, ventilation, and air conditioning (HVAC) systems. However, it is unclear what having "control" means, particularly in the context of a practice owning or leasing part of a building, such as several floors or an office suite with a shared HVAC system. These requirements are confusing and could be burdensome to practices, imposing unfunded mandates.

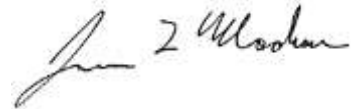
In conclusion, while the AMA agrees with the intent behind the ETS to protect health care employees against COVID-19, we disagree with how it was developed and how it is being implemented. Physicians continue to care for their patients and follow existing infection control standards; however, as a result of the pandemic, many practices are still struggling financially. Many of the requirements in the ETS are burdensome, duplicative of CDC and other state mandates and guidelines, and therefore unnecessary, and

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impose additional unfunded mandates. **The AMA urges OSHA to immediately exempt physician practices from the ETS and recommends that it not be made permanent.**

Thank you for considering our views. If you have any questions, please contact the AMA's Vice President of Federal Affairs, Margaret Garikes at margaret.garikes@ama-assn.org or call 202-789-7409.

Sincerely,

A handwritten signature in cursive script, appearing to read "James L. Madara".

James L. Madara, MD