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June 30, 2008

OSHA Docket Office  
Docket No. OSHA-2008-005  
U.S. Department of Labor  
Room N-2625  
200 Constitution Ave, N.W.  
Washington, D.C. 20210

**Re: Request for Comments on *Proposed Guidance for Workplace Stockpiling of Respirators and Facemasks for Pandemic Influenza*,  
Docket No. OSHA-2008-0005  
73 Federal Register, May 9, 2008**

Dear Assistant Secretary Edwin Foulke, Jr.:

The American Health Care Association (AHCA) and the National Center for Assisted Living (NCAL) welcome the opportunity to provide comments to the Occupational Safety and Health Administration (OSHA) on this proposed guidance concerning workplace stockpiling of respirators and facemasks for pandemic influenza. AHCA and NCAL represent more than 10,000 non-profit and for-profit providers dedicated to continuous improvement in the delivery of professional and compassionate care for our nation's frail, elderly and disabled citizens who live in long term care (LTC) facilities, including nursing facilities, assisted living residences, sub-acute centers and homes for individuals with developmental disabilities. Our member facilities employ nearly one million workers, the majority of whom are front-line caregivers. AHCA/NCAL also represents LTC to the Department of Homeland Security; the Centers for Disease Control and Prevention; the Department of Health and Human Services Centers for Medicare & Medicaid Services; the Office of the Assistant Secretary for Preparedness and Response; the Institute of Medicine; and other agencies and organizations in various disaster preparedness initiatives. On behalf of our more than 10,000 LTC employers, their employees and the patients that they serve, we submit the following comments on this draft guidance.

This draft guidance has been well thought out and is comprehensive, but we do have some concerns and recommendations relating to LTC facilities as follows:

- On the pyramid illustration on page 3 of the guidance, health care employees who are exposed to pandemic patients are listed in the very high and high risk exposure groups to pandemic influenza. In general, LTC health care employees do not fit into these categories because they would not be exposed to a high concentration of known or suspected pandemic patients, and they do not regularly perform aerosol generating procedures that are noted in the pyramid as placing employees at high exposure risk. It is our hope that we can keep our patients safe from an influenza pandemic, possibly by limiting admissions and visitors. Though we anticipate that nursing facilities may be a surge site for hospitals, we would expect to only admit non-contagious hospital patients that do not pose an infection risk to our very vulnerable LTC residents or our employees. While, as the guidelines suggest, individual facilities should assess their employees' level of risk depending on individual circumstances, we do not see a risk category on the pyramid that is appropriate for LTC health care workers.
- As LTC facilities are largely funded by Medicaid, financial reserves are limited. Facilities would have to weigh the benefit of stockpiling respirators and facemasks against other important pandemic influenza resources such as anti-viral medications and vaccines to treat suspected pandemic exposure or illness, as well as against using the resources to meet immediate needs. The limited shelf life of respirators and facemasks, which requires facilities to intermittently dispose of them, would further complicate this funding issue due to restocking costs.
- Any enforcement of this guidance would constitute an unfunded mandate which, as previously stated, is not feasible for LTC facilities. This guidance should ultimately be considered a voluntary tool for pandemic flu preparedness, and not serve as a future basis for regulation. Accordingly, we are pleased that the current draft clearly states that “this guidance is advisory in nature [and].... is not a standard or a regulation, and neither creates new legal obligations nor alters existing obligations created by OSHA standards....” We request that OSHA retain this language in the final guidance.
- Most LTC facilities currently do not use respirators and thus have no respiratory program in place. If a LTC facility would like to stockpile respirators for use during a pandemic, the LTC facility should not be obligated to put a respiratory program in place before the influenza pandemic and before the respirators are utilized. There is significant employee turnover in LTC facilities, and employees that would receive respiratory protection training may not even be employed at the facility during a future pandemic outbreak. In addition, if volunteer services are needed during a pandemic, future volunteers would not receive training until the imminent pandemic outbreak. Therefore, AHCA/NCAL recommends that OSHA clarify that respiratory program regulations do not take effect if the respirators are merely stockpiled for future use.
- Storage of stockpiled materials is very difficult for LTC facilities as they do not have on-site central supply rooms and some facility types, such as intermediate care facilities for individuals with mental retardation (ICFs/MR) in certain states have statutory bans on locked storage areas due to resident rights issues.

Therefore, security of stockpiled face masks and respirators would be very challenging.

- Although AHCA/NCAL asserts that admission of pandemic patients into LTC facilities is inappropriate, we recognize that admissions could occur during times of extreme emergency. For those cases, the illustration on p. 8 of the guidance does not appropriately estimate the number of N95 respirators needed for each high/very high risk LTC health care employee per work shift. The number should be increased to 4 respirators per employee per shift to align with outpatient office/clinic settings. This number of N95 respirators is more realistic to assist LTC providers in caring for, or discharging infected patients to more appropriate settings should a pandemic occur.
- It is appropriate to mention social distancing and cough etiquette in the guidance as two methods to decrease transmission of pandemic influenza. The Centers for Disease Control and Prevention’s *Guideline for Isolation Precautions: Preventing Transmission of Infectious Agents in Healthcare Settings 2007* contains information on these precautions. Specifically, on page 68 of the CDC’s guidelines, it states that “physical proximity of less than three feet has been associated with an increased risk for transmission of infections....” Therefore, AHCA/NCAL recommends that OSHA revise the first bullet on page 10 of its guidance to align with the CDC: Staff “working closely” with patients should be defined as “either in direct contact or within **3 feet** [of the patient.]”

AHCA/NCAL appreciates this opportunity to submit comments on the *Proposed Guidance on Workplace Stockpiling of Respirators and Facemasks for a Pandemic Influenza* and how it affects LTC providers. We encourage OSHA to contact us at any time for additional information.

Sincerely,

A handwritten signature in black ink, appearing to read 'Bruce Yarwood', with a large, stylized flourish extending from the end of the signature.

Bruce Yarwood  
President & CEO