

January 4, 2023

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

Dear Mr. Parker,

The American Health Care Association and National Center for Assisted Living (AHCA/NCAL) represent more than 14,500 non-profit and proprietary skilled nursing facilities, assisted living communities, sub-acute centers, and homes for individuals with intellectual and developmental disabilities (ID/DD). AHCA/NCAL aims to improve the lives of the millions of frail, elderly, and individuals with disabilities who receive long term or post-acute care in our member facilities each day.

AHCA/NCAL is writing to you today to express concern about OSHA's pending Final Healthcare Standard on COVID-19 (86 FR 32376). We appreciate the important role OSHA has in making workplaces safer for all employees and we share in that commitment. The COVID-19 pandemic placed an immense burden and strain on our healthcare system, and healthcare workers all over the country have risen to the challenge. We must come together to support health care facilities recovery from the pandemic.

Many of the controls that OSHA is considering in their healthcare standard already exist. The Centers for Disease Prevention and Control (CDC) has strict standards to protect residents and staff alike from the spread of COVID-19. These standards are frequently updated to address new science and have evolved with the state of the pandemic. In fact, since OSHA last partially reopened for comment on these standards CDC's guidance was revised in many areas to address the same concerns. Skilled nursing centers are required to follow CDC standards by the Centers for Medicare and Medicaid (CMS). For OSHA to develop standards that contradict or go beyond any existing standards would exacerbate the morass of federal and state regulatory confusion currently faced by our members and pull staff time away from residents.

Many controls were put in place early in the pandemic that were necessary to protect residents and staff from infection, but negatively impacted their quality of life and working conditions. Interventions such as physical distancing, source control masks and lack of visitation all saved lives in the early days of the pandemic, but also came at a significant cost to mental well-being.

The current strain of COVID-19 has also been shown to be less severe than previous strains¹², making the risk of severe illness and death, particularly for staff, much lower than early in the pandemic.

At this stage, we must focus on interventions, such as vaccines, treatments, and testing, that reduce spread and protect lives while allowing long term care residents to live in safe, happy and homelike environment. All these areas are already addressed in CDC guidance. All health care settings, including skilled nursing facilities, are required by CMS to ensure their staff are fully vaccinated.

Further, the federal government cannot responsibly implement any new standards that would have a monetary impact without providing additional Medicare and Medicaid funding for implementation. The long-term care profession continues to face historic workforce challenges exacerbated by the COVID-19 pandemic. Labor shortages and financial strain have forced many nursing homes nationwide to limit the number of residents they can accept or permanently close their doors³. This is exacerbating access issues for those seeking care, causing backlogs in hospitals and further straining the nation's healthcare system. This is particularly true for rural areas. Adding any unfunded mandates at this time of crisis would have a detrimental impact on both residents and staff.

Thank you in advance for your consideration of the issues we raise and the recommendations we have provided. Please feel free to contact Courtney Bishnoi, Vice President of Quality and Programs at cbishnoi@ahca.org with any questions or if we can provide further information.

Sincerely,

//s//

Mark Parkinson
President & CEO

CC: James Frederick, Deputy Assistant Secretary

¹ Adeel A Butt, Soha R Dargham, Peter Coyle, Hadi M Yassine, Abdullatif Al-Khal, Abdul-Badi Abou-Samra, Laith J Abu-Raddad (2022) 'COVID-19 Disease Severity in Persons Infected With Omicron BA.1 and BA.2 Sublineages and Association With Vaccination Status', Journal of the American Medical Association, article number e223351.

² Yu Wu, Liangyu Kang, Zirui Guo, Jue Liu, Min Liu, Wannian Liang (2022) 'Incubation Period of COVID-19 Caused by Unique SARS-CoV-2 Strains: A Systematic Review and Meta-analysis', Journal of the American Medical Association, article number e2228008.

³ <https://www.ahcancal.org/News-and-Communications/Press-Releases/Pages/ICYMI-Nursing-Home-Staffing-Shortages-Cause-Ripple-Effects-in-Rural-Communities.-Throughout-Health-Care-Industry.aspx>