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COMMITTEE ON EDUCATION AND LABOR
U.S. HOUSE OF REPRESENTATIVES
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January 30, 2020

The Honorable Eugene Scalia
Secretary
U.S. Department of Labor
200 Constitution Ave., NW
Washington DC 20210

Dear Secretary Scalia:

The sudden emergence of the 2019 Novel Corona Virus (2019-nCoV) has prompted us to write to urge you to prioritize the Occupational Safety and Health Administration's (OSHA) work on its Infectious Diseases standard. We welcome OSHA's continuing collaboration with the Centers for Disease Control and Prevention (CDC) and other federal health authorities concerning this possible pandemic, as well as the materials recently released on OSHA's website.

However, we are very concerned that OSHA's Infectious Diseases standard continues to languish on the agency's "Long-Term Actions" since being placed on its regulatory agenda almost ten years ago (May 2010). This standard would make compliance with CDC infection control guidelines mandatory for health care facilities.

The Small Business Regulatory Enforcement Fairness Act (SBREFA) panel and report were completed in 2014. The next step would be a Proposed Rule; however, the Administration's Spring 2017 regulatory agenda relegated the Infectious Diseases standard to "Long Term Actions," where it has languished with no scheduled date for the issuance of a Proposed Rule.

The potential danger to health care workers is real. Similar to the Severe Acute Respiratory Syndrome (SARS) virus pandemic of 2003-2004, front-line health care workers are at high risk of infection with the 2019-nCoV. As of January 29, 2020, 15 health care workers in China were confirmed to have contracted the virus from caring for infected patients, although most experts think that figure is significantly understated. During the SARS epidemic, 8,098 cases occurred during the SARS outbreak, and 774 (9.6%) persons died, according to the World Health

Organization. Healthcare workers accounted for 1,707 (21%) of the cases overall[1], and in Canada, 43 percent of all SARS cases were health care workers.

OSHA currently has only one standard that addresses protection of workers from infectious diseases: the bloodborne pathogens standard. This standard has been one of the most successful standards in OSHA's history, changing the way health care was practiced and saving the lives of hundreds of health care workers every year. CDC infection control guidelines can effectively protect healthcare workers, but OSHA has no mechanism to enforce compliance with these precautions, aside from use of the legally burdensome General Duty Clause. Health care workers whose employers are not in compliance with CDC guidance are thus left vulnerable to infection with such diseases as Tuberculosis, pandemic influenza, Methicillin-resistant Staphylococcus Aureus (MRSA), SARS, Middle East Respiratory Syndrome (MERS), and now 2019-nCoV.

While health care institutions in the United States have made significant advances in infection control since the bloodborne pathogens standard was issued 30 years ago and from lessons learned from experience with H1N1, SARS and Ebola, there is evidence that significant risk to health care workers still exists in health care institutions.

- Recent literature reviews have shown inconsistent compliance with basic infection control procedures in emergency rooms and other areas of the hospital, particularly in the areas of respiratory and contact precautions.2
- In 2016, CDC conducted "mystery patient" drills in the emergency departments (EDs) of 49 New York City hospitals, sending in 95 patients pretending to have symptoms of measles and MERS. Almost 40% of the hospitals failed one of the drills, and only 36% of health care staff washed their hands. The study did not consider the effect of overcrowding on the EDs' ability to apply proper infection control measures.[3]

Our nation's hospitals are not the only workplaces where health care workers are at risk. Health care workers may also face increased risk of exposure to potentially infectious people in emergency response, ambulatory care facilities, correctional facilities, homeless shelters, drug treatment programs, schools, and other occupational settings. Finally, it is not just workers who are at risk in health care institutions. The general public is also at risk. As the experience with SARS in Canada showed, infected health care workers can spread disease to the wider community.[4]

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1 Kent A. Sepkowitz and Leon Eisenberg, Occupational Deaths among Healthcare Workers, Emerg Infect Dis. 2005 Jul; 11(7): 1003–1008.

[2]IC in Care Series: The Emergency Department," Infection Control Today, June 2, 2017 https://www.infectioncontroltoday.com/emergency-department/ic-care-series-emergency-department; Stephen Y. Liang, MD, et. al., "Infection Prevention in the Emergency Department," Annals of Emergency Medicine, Volume 64, no. 3 : September 2014, https://bit.ly/2Grtz9x; Rogers, Bonnie, et al. "Development of Competencies for Respiratory Protection for Health Care Workers." Workplace Health & Safety, vol. 67, no. 2, Feb. 2019, pp. 56–67, doi:10.1177/2165079918798857; Wizner, Kerri, et al. "Exploring respiratory protection practices for prominent hazards in healthcare settings." Journal of occupational and environmental hygiene 15.8 (2018): 588-597.

3 Mary M.K. Foote, et.al. "Assessment of Hospital Emergency Department Response to Potentially Infectious Diseases Using Unannounced Mystery Patient Drills — New York City, 2016" Morbidity and Mortality Weekly Report, Vol. 66 / No. 36 September 15, 2017, https://www.cdc.gov/mmwr/volumes/66/wr/pdfs/mm6636.pdf

4 SARS Commission. "SARS Commission Executive Summary: Volume One–Spring of Fear." (2006).

OSHA must take swift action to protect health care workers, and by extension, the American public. Even if the 2019-nCoV is controlled without a major impact in the United States, the outbreak has illustrated the urgent need for an OSHA Infectious Diseases standard. Recent worldwide and American outbreaks of novel infectious diseases have shown that we can expect more nation-wide threats to the nation's health and our front-line health care workers. The Infectious Diseases standard should immediately be put on the active regulatory agenda and all available resources should be dedicated to moving it to the proposal stage and then final promulgation.

Unfortunately, even if OSHA prioritizes this standard, it will be years before it is issued. While it is currently too early to determine the virulence of 2019-nCoV or the rate of transmission, there is a high potential for it to become a grave danger to health care workers. If 2019-nCoV proves to be highly communicable, virulent, and easily transmissible in a health care setting, OSHA will need to take immediate and decisive action by:

1. Issuing an Emergency Temporary Standard (ETS).

   Section 6(c)(1) of the Occupational Safety and Health Act provides only two conditions for issuing an ETS:

   > (A) that employees are exposed to grave danger from exposure to substances or agents determined to be toxic or physically harmful or from new hazards, and
   >
   > (B) that such emergency standard is necessary to protect employees from such danger.

   While it is still too early to issue an ETS, a widespread epidemic of a virulent novel airborne virus would clearly satisfy those conditions and OSHA should be prepared to issue an ETS.

2. Issuing a Compliance Directive.

   Although OSHA has standards covering respirators and personal protective equipment, until a final Infectious Diseases standard (or an ETS) are issued, OSHA's primary enforcement tool to ensure appropriate protections for health care workers is the General Duty Clause[5]. Because application of the General Duty Clause is a lengthy and legally burdensome process, a compliance directive would provide important guidance for OSHA's Compliance Safety and Health Officers in enforcing safe working conditions in the nation's health care workplaces. OSHA has issued compliance directives for previous infectious disease outbreaks, including Bloodborne Pathogens[6] (prior to issuance of the Bloodborne Pathogens Standard), Tuberculosis[7] and H1N1[8].

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[5] Occupational Safety and Health Act, Section 5(a)(1)
[6] OSHA Instruction CPL 2-2.44, January 19, 1988.
[7] Enforcement Procedures and Scheduling for Occupational Exposure to Tuberculosis, CPL 02-02-078, 2015, https://www.osha.gov/sites/default/files/enforcement/directives/CPL_02-02-078.pdf
[8] Enforcement Procedures for High to Very High Occupational Exposure Risk to 2009 H1N1 Influenza CPL-02-02-075, 2009, https://www.osha.gov/OshDoc/Directive_pdf/CPL_02_02-075.pdf

The safety of America's front-line health care workers and, by extension, the health of the entire nation will depend on OSHA's ability to ensure the safety of the nation's health care infrastructure. Absent timely action, OSHA will be failing frontline health care workers, its mission, and the nation.

Please provide the Committee with OSHA's response to our requests and plan to address this problem by February 15, 2020.

Thank you for your attention to this matter. Contact Jordan Barab with the House Committee on Education and Labor at jordan.barab@mail.house.gov with any questions. Please send all official correspondence relating to this request to tylease.alli@mail.house.gov.

Sincerely,

ROBERT C. "BOBBY" SCOTT
Chairman

ALMA S. ADAMS
Chairwoman
Subcommittee on Workforce Protections

cc: Loren Sweatt, Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor