Maryland
Hospital Association

August 20, 2021

James Frederick
Acting Assistant Secretary of Labor for
Occupational Safety and Health
Occupational Safety and Health Administration
200 Constitution Ave NW
Washington, DC 20210

Re: Comments on OSHA-2020-0004, Occupational Exposure to COVID-19; Emergency Temporary Standard

On behalf of the Maryland Hospital Association's (MHA) 60 member hospitals and health systems, we write to share concerns with the Occupational Safety and Health Administration's interim final rule, docket number 2020-0004. We appreciate the opportunity to present our member hospitals' experience, which has been uniquely compounded by the ongoing fight against the COVID-19 pandemic.

Over the past 18 months, Maryland hospitals have heroically responded to the COVID-19 pandemic to care for their communities and for their workforce. Not only have our hospitals navigated federal, state and local COVID-19 requirements for patient and workforce safety, they also have led efforts to vaccinate our communities. Most notably, our hospitals and health systems joined together in June, through MHA, to call for all employees and clinical team members to be vaccinated against COVID-19. The Maryland Hospital Association was the first state association to reach a consensus regarding mandatory vaccinations of our hospital workers. As a state, 79.5% of all Marylanders aged 18 and older have been vaccinated.

Our leadership, as a state and a hospital field, demonstrate our steadfast commitment to the safety and well-being of our employees, patients, and the communities we serve.

Although the OSHA interim final rule reinforces the importance of COVID-19 regulations, the announcement presents challenges for our hospitals' ability to effectively administer quality health care services. These concerns are outlined below.

OSHA's interim final rule is misaligned with CDC guidance and is inconsistent with current recommended practices.

Hospitals are required to educate staff, patients, and visitors on the appropriate governing regulations to ensure consistency across departments and units. The OSHA interim final rule conflicts with CDC guidance, hindering hospitals' ability to disseminate accurate information.

With these inconsistencies across federal agencies, hospitals are ill-equipped to ensure proper compliance with these mandates.

One example of misalignment is the contradictory definition of exposure. The CDC, as well as infectious disease experts, adopted a widely accepted definition of exposure. As written, the OSHA interim final rule defines exposure too broadly and fails to address the vaccination status of health care personnel and the highly effective forms of PPE and other safety measures hospitals use. Additionally, in determining patient and hospital staff exposure, the interim final rule does not account for length of time one may be exposed to COVID-19. The vagueness of this definition may result in the leave and removal of hospital employees due to an improper assessment of COVID-19 exposure.

To that end, hospitals noted it is difficult to expect employee buy-in when the guidelines are inconsistent with other federal recommendations. We ask OSHA and any other federal agency issuing guidance or guidelines related to COVID-19 to make your guidance consistent.

OSHA's interim final rule is overly rigid and does not afford hospitals flexibility to respond to a novel virus that is changing.

Hospitals responded quickly to the novel challenges of the COVID-19 pandemic. Our hospitals educated staff on new and effective workflow processes that have be in effect for more than a year. The new OSHA requirements, although well-intended, jeopardize delivery of care. In some instances, these mandates duplicate current processes, in others they run the risk of conflicting.

Seeing the significant impact of the COVID-19 Delta variant, scientists expect future mutations of COVID-19. As science evolves CDC will more than likely revise its guidance. As it stands, the OSHA interim final rule fits only with today's CDC standards and is limited in scope. The OSHA interim final rule must be malleable enough to adapt as scientific knowledge grows.

We urge more flexibility. For example, in the recently enacted Maryland Essential Workers Protection Act, our hospitals are required to have written protocols regarding safety standards that align with those of another federal or state agency. This framework acknowledges that science and situations on the ground are changing.

OSHA's interim final rule is vague in specifying requirements for remote employees and hospital staff who work in multiple settings within the hospital.

The OSHA rule lacks clarity regarding restrictions for employees. Hospital staff often serve in more than one unit within the hospital system. The OSHA interim final rule is unclear about the requirements of these employees who work in more than one capacity and for those employees who work both on-site and remotely.

Our hospitals need unambiguous direction regarding the restrictions placed on employees and the potential ramifications of those restrictions. Hospitals ask that OSHA make clear the applicability of worker-specific provisions in certain scenarios.

OSHA's interim final rule requires hospitals to utilize additional resources and workforce unnecessarily.

The OSHA standards require hospitals to allocate additional resources at a time when they are facing unprecedented workforce constraints. The OSHA rule mandates health screening of patients, visitors and staff; that is not always necessary or practicable. For example, the standard requiring entrance screenings for employees, visitors and patients demands that hospitals place staff at all available entrances. One mid-size Maryland hospital estimated the cost of meeting this requirement at $650,000 annually.

These screenings were implemented previously in our state and not only were they found to be extremely time consuming but also ineffective in identifying individuals who should be denied entrance to hospitals. Maryland eliminated this requirement and instead gave hospitals the latitude to follow long-established infection control regulations.

For all these reasons, we urge OSHA to withdraw this interim final rule. If, however, OSHA declines to do so, we urge you to let it expire at the end of the six months and not be published as a final rule.

Sincerely,

Brian Frazee
Vice President, Government Affairs