Fact Sheet: The COVID-19 Workers First Protection Act of 2020

The Issue


The Proposal

The bill would require that the Occupational Safety and Health Administration (OSHA) issue an Emergency Temporary Standard (ETS) within seven days requiring employers to develop and implement a comprehensive infectious disease exposure control plan. The ETS may not be less protective than the any OSHA state plan; meaning every state would need a standard at least as restrictive as California OSHA rules. The bill also would require a permanent standard be issued within two years. The version of the legislation (H.R. 6559, introduced April 21, 2020) included in the HEROES Act had been updated from previous bills by including a requirement for recording and reporting infections and deaths and an anti-retaliation provision.

Key Points to Make

- Hospitals are working every day to protect their health care workers and to be good stewards of scarce resources such as PPE.
- This initiative would add a new layer of conflicting and unnecessary regulatory burden at precisely the wrong time.
- The legislation is intended to address protections for health care workers, including setting new standards for personal protective equipment (PPE), but fails to accept the clear shortages in PPE right now. Enacting these new standards would force hospitals and their staffs into a nearly impossible decision – not comply with the standards to treat all of the patients who need help or comply with the standards and stop treating patients when the OSHA required equipment is gone.
- Hospitals already adhere to science-based guidance from the Centers for Disease Control (CDC) and Centers for Medicare & Medicaid Services (CMS). CDC closely tracks any developments and updates its standards accordingly as more becomes known about emerging pathogens.
- Hospitals already establish and support robust infection control programs and invest significant resources to assess and improve those programs. In order to participate in the Medicare and Medicaid programs hospitals must meet specific infection control requirements as set by the conditions of participation (CoP).
- No one disputes the lack of supplies such as N95s and surgical masks. At the current time N95s must be reserved for only those procedures in which they are absolutely needed, such as aerosol generating procedures. For other care tasks, CDC and the World Health Organization (WHO) recommend the use of facemasks.
- The legislation allows OSHA to exercise discretion in enforcement if it is not feasible for an employer to comply and the employer makes a good-faith effort to implement alternative measures to protect employees. This provision would add another layer of decision-making when timely government action is critical. It would produce dangerous conflicts as hospitals work to adhere to appropriate CDC guidance. Yet, unions have reported filing numerous OSHA complaints against hospitals and such actions could force hospitals to dramatically reduced hospital inpatient capacity or potentially be subject to very large fines.
- The comparison to SARS is off target. Both the CDC and WHO hold that COVID-19 is droplet spread except possibly when doing certain aerosolizing procedures. Hospitals continue to follow the standards established by CDC, which are science-based.