

May 27, 2020

The Honorable Bobby Scott
Chairman
House Education and Labor Committee
2176 Rayburn House Office Building
Washington, DC 20515

The Honorable Virginia Foxx
Ranking Member
House Education and Labor Committee
2176 Rayburn House Office Building
Washington, DC 20515

The Honorable Alma Adams
Chairwoman
Workforce Protections Subcommittee
House Education and Labor Committee
2176 Rayburn House Office Building
Washington, DC 20515

The Honorable Bradley Byrne
Ranking Member
Workforce Protections Subcommittee
House Education and Labor Committee
2176 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Scott, Ranking Member Foxx, Chairwoman Adams and Ranking Member Byrne:

On behalf of our nearly 5,000 member hospitals, health systems and other health care organizations, our clinical partners – including more than 270,000 affiliated physicians, 2 million nurses and other caregivers – and the 43,000 health care leaders who belong to our professional membership groups, the American Hospital Association (AHA) writes to provide you with information on actions taken by hospitals and health systems in response to the COVID-19 pandemic in conjunction with the House Education and Labor Committee’s Workforce Protections Subcommittee Hearing, “Examining the Federal Government’s Actions to Protect Workers from COVID-19.” The AHA also provided [comments](#) on provisions of the Health and Economic Recovery Omnibus Emergency Solutions (HEROES) Act (H.R. 6800), which was recently passed by the House of Representatives.

The U.S. has experienced more than 1.5 million cases and nearly 100,000 deaths due to COVID-19. The pandemic has swept across the country and entire globe at a pace so rapid that hospitals and other providers have had to make extraordinary efforts to access needed resources, such as personal protective equipment (PPE), and have worked every day to be good stewards of such scarce resources. Hospitals and other providers have, at the same time, worked with all levels of government to increase testing capacity for COVID-19.



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Hospitals and health systems have a long history of establishing and supporting infection control programs to maintain an environment safe for patients and workers. Hospitals already adhere to Centers for Medicare & Medicaid Services (CMS) rules based on science-based guidance from the Centers for Disease Control and Prevention (CDC). In order to participate in the Medicare and Medicaid programs, hospitals and health systems are required to meet specific infection control planning and training requirements as set forth by the conditions of participation (CoP). These conditions include requirements that hospitals have an active program for the prevention, control and investigation of infections and communicable diseases. CDC closely follows scientific evidence as it develops and provides critical guidance as more becomes known about emerging pathogens. Hospitals, working with CDC, other government agencies and health care stakeholders, continue to take steps to analyze and improve their infection control practices through a variety of different avenues, including new construction and renovation, quality improvement projects, technology and staff training.

The adequate supply of PPE is a monumental concern for all involved in patient care. N95 respirators and surgical masks remain in short supply as demand far exceeds available product. Due to significant shortages across the supply chain, hospitals and health systems continue to assess the availability of needed PPE and are following CDC guidelines to conserve PPE, including using Food and Drug Administration authorized methods to decontaminate and sterilize existing PPE to extend its use, cohorting patients and constructing physical barriers when appropriate to reduce the need for PPE. Because N95 masks are in significant short supply, they 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 recommend the use of medical-grade face masks.

CDC has the ability to provide timely guidance based on current scientific study and has done so throughout the pandemic. Hospitals have worked to follow several recent issuances of important guidance such as:

- Criteria for Return to Work for Healthcare Personnel with Suspected or Confirmed COVID-19 (Interim Guidance); updated April 30, 2020;
- Evaluating and Testing Persons for Coronavirus Disease 2019 (COVID-19); updated May 3, 2020;
- Discontinuation of Transmission-Based Precautions and Disposition of Patients with COVID-19 in Healthcare Settings (Interim Guidance); reviewed May 2, 2020;
- Interim Infection Prevention and Control Recommendations for Patients with Suspected or Confirmed Coronavirus Disease 2019 (COVID-19) in Healthcare Settings; updated May 18, 2020; and
- Strategies to Optimize the Supply of PPE and Equipment; reviewed May 18, 2020.

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In addition to adhering to updated CDC guidance, hospitals and health systems have taken the initiative to protect health care workers in new and different ways. The 100 Million Mask Challenge was originally launched by Providence, a health care system headquartered in Washington State, where they experienced a tremendous outpouring of support from individuals, community organizations and local manufacturers. Providence entered into an important collaboration with a local manufacturer that is now producing much needed PPE for health care workers. The AHA then expanded the 100 Million Mask Challenge nationwide and is calling on manufacturers, the business community and individuals working in their own homes to rapidly produce needed PPE on a large scale.

The AHA also has launched a call to action to increase production and distribution of PPE through an innovative effort with Point A, where leading global companies, startups and academic institutions come together to solve complex supply chain challenges. Through this unique partnership manufacturers who have been forced to close their facilities or are exploring how to reconfigure their facilities can access engineering and innovation experience to produce much needed PPE.

The AHA also leads the development of a coalition of private and non-profit organizations banded together to launch the Protecting People Everywhere initiative supporting a national exchange matching PPE donors with the hospitals in greatest need. HealthEquip™ is a smart app that tracks donations, manages shipping of donated supplies through UPS, and ensures shipping is paid for by the receiving hospital. It matches donations with the hospitals in the area based solely on demand. It also ensures that the individual or organization donating PPE will receive a donation receipt.

This long history of hospitals' support for providing a safe environment for patients and workers together with the ongoing struggles for this nation to produce sufficient supplies leads us to conclude that now is not the time to enact a new temporary and permanent worker protection standard. The provisions included in the HEROES Act would require the Secretary of Labor to promulgate an emergency temporary standard (ETS) within seven days of enactment to protect from occupational exposure to SARS-CoV-2 employees of the health care sector and emergency responder employers, as well as others with employees at occupational risk. While the legislation requires the Secretary of the Labor to consult with CDC and the National Institute for Occupational Safety and Health, there is no guarantee that forthcoming standards would align with existing guidance that can be updated regularly to keep pace with existing science. These provisions would be extremely difficult to implement in the midst of a global pandemic and could result in a confusing array of regulations and guidance.

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The legislation also requires the new standard to provide protections no less than the most restrictive state plan. Resulting federal standards then might not be based on the most appropriate national science and guidance but rather on what a particular state requires and suggests that the federal government is surrendering its responsibility to appropriately regulate the nation to a state government agency without consideration of whether that state's decisions are appropriate for implementation anywhere and everywhere. Additionally, it includes a requirement for hospitals to develop comprehensive infectious disease exposure control plans with the input and involvement of employees or representatives of employees that does not recognize hospitals' long history of establishing such plans and compliance with Medicare CoPs and The Joint Commission standards. Even with some enforcement discretion on the part of the Secretary of Labor, this provision fails to recognize the ongoing global lack of supplies, equipment and testing capability. For these reasons, and as noted in our May 14, 2020, letter on the HEROES Act, we strongly oppose these provisions.

Additionally, the AHA has proposed several important initiatives to provide support for those on the front lines of health care delivery. These include child care; housing and transportation vouchers; expanded liability protections for health care workers; ensuring coverage of any health care costs not covered otherwise; daily free testing for exposure to COVID-19; education loan pay-down; supportive services to help preserve mental health and wellbeing; and bonus pay rewarding extraordinary actions during the pandemic. We urge Congress to consider and approve these provisions as quickly as possible.

Thank you for providing the opportunity to examine this important issue and provide comments on pending legislation. America's hospitals and health systems are working constantly to meet the challenge of the COVID-19 pandemic and protect every health care hero each and every day.

Sincerely,

/s/

Thomas P. Nickels
Executive Vice President