

From: NACHC's Regulatory Affairs Team  
To: PCAs & Community Health Centers  
Date: June 29, 2021  
Re: OSHA COVID-19 Emergency Temporary Standard Highlights

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On Thursday, June 10, Occupational Safety and Health Administration (OSHA) published an [Emergency Temporary Standard \(ETS\)](#) after President Biden's Executive Order which declared that ensuring the health and safety of workers is a national priority. OSHA determined that existing regulations and the OSH Act's General Duty Clause were inadequate to address the COVID-19 hazard for health care workers, like community health center employees. The ETS was created to address the grave dangers that exist due to the spread of COVID-19 virus, the elevated risk for front line healthcare workers in Community Health Centers (CHCs), and the lethality of the virus. This memorandum summarizes how the ETS can apply to CHCs, when the ETS applies to CHCs, and identifies variables that may change applicability of the ETS.

### **What *must* CHCs do?**

The Emergency Temporary Standard provides numerous new requirements community health centers must follow. Effective since June 21, 2021, health centers will be required to implement and comply with the ETS within 14 or 30 days depending on the specific provision (the provision standards can be found between pages 826 – 864 of the [Rule](#)). The *most* critical steps that CHCs must adopt are:

- Develop and maintain a comprehensive COVID-19 Plan which identifies potential COVID hazards and makes steps towards addressing those identified hazards.
- Screen and triage all clients, patients, visitors, delivery persons, and other non-employees entering the worksite. Screening can effectively be accomplished by limiting entry points to facilities, assigning employees to each entrance to perform health screenings, and also contacting patients or other visitors prior to their arrival at the facility to conduct preemptive screening.
- Provide personal protective equipment (“PPE”) (including facemasks, face shields, or respirators) for employees to wear at the health center.
- Conduct daily screening of their employees, and must also notify employees of COVID-19 exposures in the workplace. Any employee(s) suspected or diagnosed with COVID-19 must be removed from the workplace until they are determined to no longer be a risk. Additionally, if removed employees are allowed to work remotely or in isolation, CHCs must still pay them at the normal rate as if they were not removed.
- Ensure that HVAC systems meet certain standards, and must also sufficiently maintain those systems (note, however, that it does not require health centers acquiring entirely new ventilation systems).

- Report work-related COVID-19 fatalities (within 8 hours of learning of death) and hospitalizations (within 24 hours of learning of hospitalization) to OSHA.

Please be advised that sub-conditions of these and other terms do apply (for example, there are conditions attached to the use of respirators when employees conduct aerosol-generating procedures, such as dentistry procedures). CHCs are *strongly* encouraged to review the complete list for details.

The OSHA ETS is the minimum standard, and does not replace state or local guidelines that require more safety precautions, like a local requirement that customers wear a facemask in hospitals or other health care facilities would remain in effect. Additionally, the ETS requires that States and U.S. Territories with their own OSHA-approved occupational safety and health plans (State Plans) to either (1) amend their standards to be identical or “at least as effective as” the new standard, or (2) show that existing standards covering these areas are “at least as effective as” the new Federal standard. Adoption of the ETS must be done within 30 days of the promulgation of the final Federal rule, and State Plans must notify OSHA of the action that they will take within 15 days. This means that OSHA’s ETS standard is the minimum standard and State Plans will incorporate this standard if their current standards do not at least equate with the Federal standard. CHCs would need to comply with both the Federal and State standards.

### **What Does This Mean for *Our* Health Center?**

The ETS is applicable to health centers for the following reasons:

1. The nature of business conducted involves interaction with patient populations which are at high-risk of COVID-19 infections
2. A health center will only qualify for the exemption if there is a 100% staff COVID-19 vaccination rate

In order for CHCs to quickly comply with OSHA’s new standard, there are several steps worth consideration. Health centers should consider how to merge existing human resources policies and procedures into these new requirements so that they can establish a record of compliance with the new standard. Health centers should also set up training opportunities for their senior leaders and staff to effectively educate both groups on new requirements and changes in procedure needed to accommodate the requirements. Health centers should consider how to implement telehealth in an effort to further the ETS’ goal of minimizing COVID-19 risk to the health care workforce. Health centers also may want to consider how to leverage recently acquired funding resources such as American Rescue Plan [H8F](#) and [C8E](#) Funding to secure equipment or facility changes that are needed to comply with the ETS.

### **Can Applicability of the Emergency Temporary Standard Change?**

Health centers should note that several variables exist that can influence when and where these standards will apply. Helpful scenarios are listed below that explain changes in applicability of the ETS standard:

- The Notice explains that the ETS does not apply in non-healthcare areas of mixed settings (sites where healthcare and non-healthcare areas are combined, such as an in-house pharmacy operating within a grocery store).. Health centers still may want to consider having employees observe the same standard to minimize risk, though.
- An administrative office that is connected to a health center may still apply the ETS standard. This is because of the heightened potential for interaction between the two facilities. Additionally, if some administrative staff double as clinical staff at the health center site, an increased level of COVID-19 risk exists for the administrative office.
- The ETS requires employers to adhere to Standard and Transmission-based precautions in accordance with the CDC’s “[Guidelines for Isolation Precautions](#)”. These precautions help to minimize infectious disease transmission risk within healthcare settings.
- Health centers must operate with the assumption that every patient, material, or human remains could be contaminated with COVID-19. Accordingly, health centers should employ prevention strategies such as vigorous hand hygiene, safe injection practices, safe management of contaminated equipment, and respiratory/cough etiquette.
- Transmission-based precautions are only implemented when an infectious agent, such as COVID-19, is suspected or confirmed. Health centers need to employ precautions based on whether the transmission happened via contact, droplets, or airborne transmission.
- Please note that Standard and Transmission-based precautions are applicable to patients, visitors, delivery persons, *and* employees of health centers.
- Health centers do not need to apply the ETS standard when emergency responders, or other licensed healthcare providers enter a non-healthcare setting to perform healthcare services. An example would be if administrative staff suffered a medical emergency at a purely administrative site – in this scenario, the health center would be under no obligation to provide responders with PPE, due to the urgent situation.
- Health centers do not need to apply standards regarding PPE, social distancing, and physical barriers for fully vaccinated employees that are within well-defined areas of the worksite. For example, an CHC may determine that fully-vaccinated employees are not required to wear PPE in a designated eating area of the health center.
- Health centers may use alternative protections when CHC employees operate in spaces where distancing six or more feet is not possible so long as employees then resume upholding the ETS PPE guidelines when employees have exited the constricted space.
- Aerosol-generating procedures (“AGPs”) are recognized by the ETS to include:
  - Open suctioning of airways
  - Cardiopulmonary resuscitation
  - Non-invasive ventilation

- Manual ventilation
  - Dental procedures involving high-speed dental hand pieces, air/water syringes, air polishing, and air abrasion.
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- AGPs performed on persons with suspected or confirmed COVID-19 present a greater potential for transmission to health center employees. Therefore, health centers must apply the ETS standards regarding AGPs when these procedures are conducted. Health centers should also note that AGP standards are more stringent than standard ETS protocols.
  - When employees are performing AGP's on patients with suspected or confirmed COVID-19, employers must provide a respirator, gloves, an isolation gown or protective clothing, and eye protection.
  - Additionally, during an AGP the health center needs to limit the number of employees present to only staff essential for patient care and procedure support and ensure that the AGP is performed in an existing airborne infection isolation room (AIIR).
  - After the AGP has been completed, health centers need to clean and disinfect surfaces and equipment in the room or area where the AGP was performed.
  - Health center HVAC ETS standards do not apply in situations where the health center does not maintain ownership of the facility (i.e. leasing) and thus has no control over the operation of the HVAC system.

Lastly, health centers should also be aware that OSHA is continuing to monitor developments with COVID-19, vaccinations, and vaccination impacts. OSHA has expressed that their evaluation of grave danger may change – this means that the agency could rescind the standard, expand the standard, or maintain the standard. One example that could influence an OSHA assessment change is the threat presented by evolving COVID variants. A spike in danger could result in stricter standards, while successful vaccine efficacy against variants could result in decreased danger and ultimately an easing of the ETS.

Please make sure to contact NACHC's Regulatory Affairs Team with any questions regarding the ETS at [regulatoryaffairs@nachc.org](mailto:regulatoryaffairs@nachc.org).