NATIONAL ASSOCIATION OF Community Health Centers®

OSHA's COVID-19 Emergency Temporary Standard: Clinical, Operational, and Compliance Impact for Health Centers

Hosted By:

National Association of Community Health Centers & Feldesman Tucker Leifer Fidell, LLP

THE NACHC MISSION

America's Voice for Community Health Care

The National Association of Community Health Centers (NACHC) was founded in 1971 to promote efficient, high quality, comprehensive health care that is accessible, culturally and linguistically competent, community directed, and patient centered for all.

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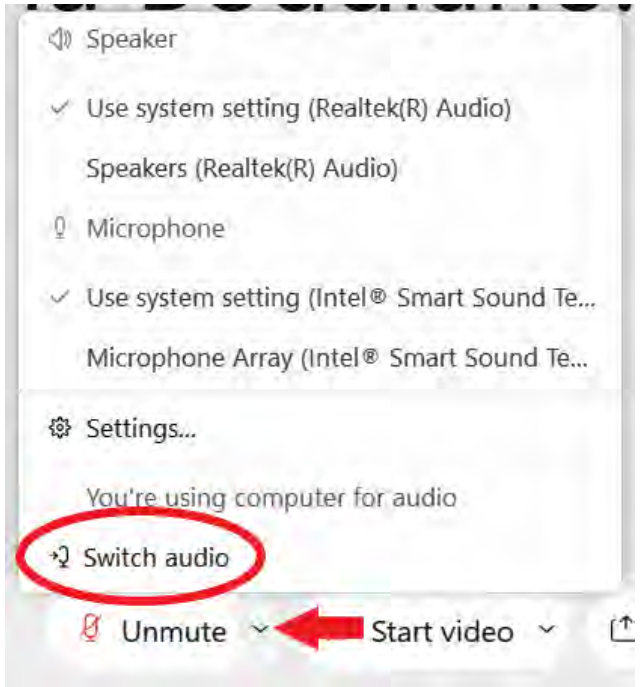

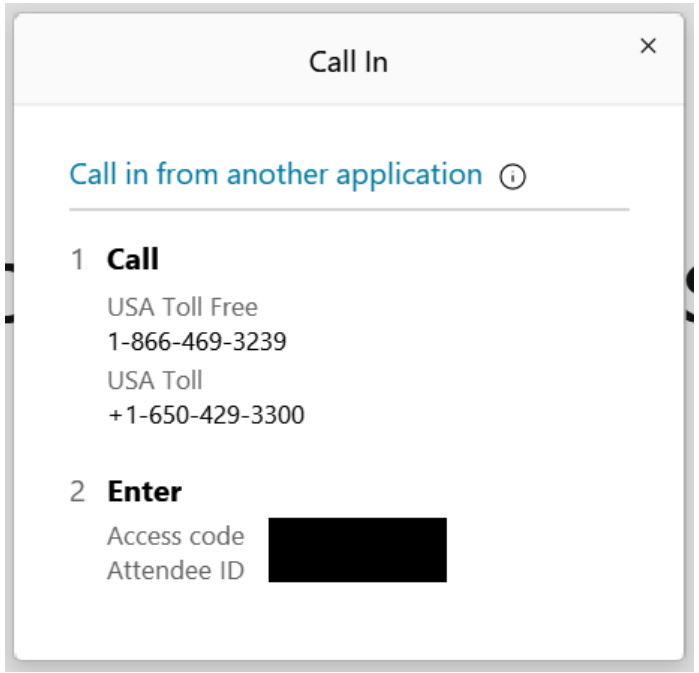

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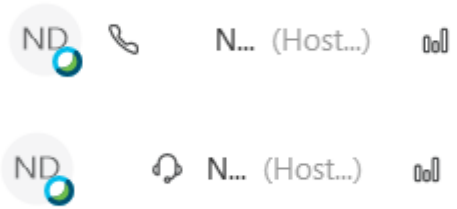

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3. **Select ASK ALL PANELISTS**

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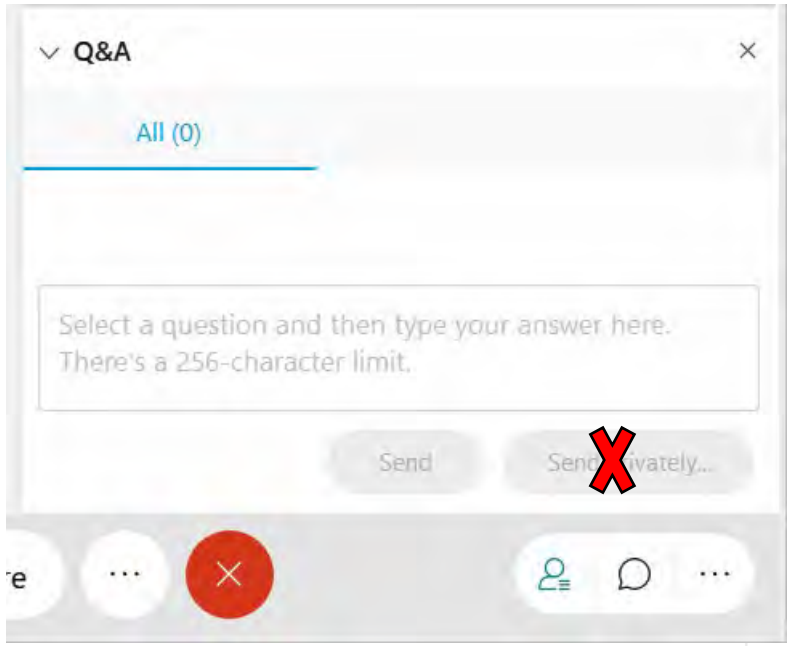

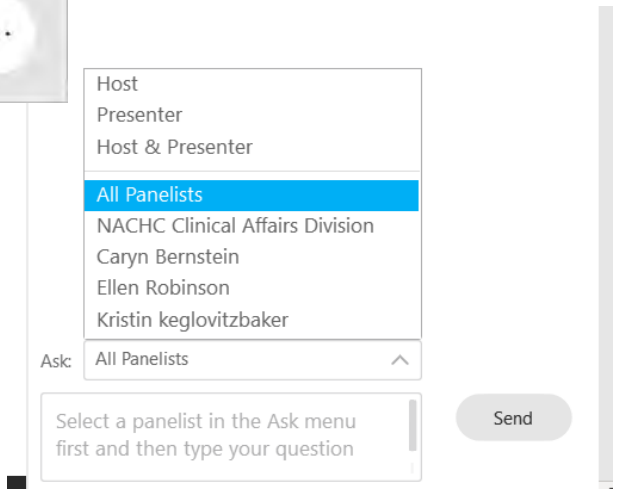

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Webinar Agenda

- Welcome and COVID-19 Update: Dr. Ron Yee
- OSHA Emergency Temporary Standard Overview
  - Training for employees
  - Hazard assessment & COVID-19 plan
  - PTO for vaccinations
  - Related CDC guidelines
  - Patient and employee COVID-19 screening
- Potential exposure and liability for Health Centers
- Q&A

Dr. Ron Yee

NACHC, Chief Medical Officer

Overview of COVID-19 ETS

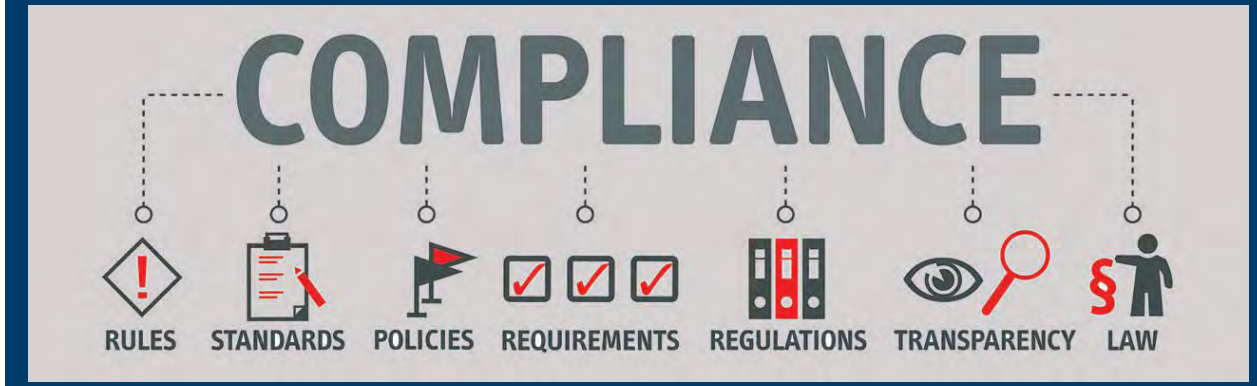
- Publication Date: June 21, 2021.
- Effective Date: July 6, 2021.
- Purpose: Establish requirements to protect workers from exposure to COVID-19 in all settings, with some exceptions, where any employee provides healthcare or healthcare support services.
- OSHA's acting director confirmed the Emergency Temporary Standard does apply to health centers.
- Compliance deadline for provisions related to physical barriers, facility ventilation and training: July 21, 2021.
- OSHA will use "discretionary enforcement" to avoid citing employers who miss a compliance deadline but are making a good faith effort to comply with the ETS.

COVID-19 Hazards in the Workplace

- Under the ETS, employers must conduct a workplace-specific hazard assessment to identify potential workplace hazards related to COVID-19.
- The COVID-19 plan must address the hazards identified by the hazard assessment and include policies and procedures to minimize the risk of transmission of COVID-19 for each employee.
- Under the ETS, employers must develop and implement a COVID-19 plan for each workplace; the plan must be written if there are more than 10 employees.
- Employers must designate one or more workplace safety coordinators to implement and monitor the plan and ensure compliance with all aspects of the COVID-19 plan.

COVID-19 Plan Safety Coordinator(s)

- The ETS requires the designation of a COVID-19 Plan Safety Coordinator, who must:
  - Implement the COVID-19 plan
  - Monitor the effectiveness of COVID-19 plan
  - Be knowledgeable in infection control principles and practices as they apply to the workplace and employee job operations
  - Ensure compliance with all aspects of the COVID-19 plan



COVID-19 Plan

- These policies and procedures include, but are not limited to:
  - Patient screening and management
  - Standard and Transmission-Based Precautions
  - Personal Protective Equipment (PPE)
  - Aerosol-generating procedures on a person with suspected or confirmed COVID-19
  - Physical distancing
  - Physical barriers
  - Cleaning and disinfection
  - Ventilation
  - Health screening and medical management
  - Vaccination
  - Training

Personal Protective Equipment

- Employers must provide protective clothing and equipment (e.g., respirators, gloves, gowns, goggles, face shields) to each employee in accordance with Standard and Transmission-Based Precautions in healthcare settings in accordance with CDC's "Guidelines for Isolation Precautions" and ensure that the protective clothing and equipment is used in accordance with OSHA's PPE Standards (29 CFR 1910 subpart I).
- Employers must provide, and ensure that employees wear, facemasks. Exceptions include when an employee:
  - Is alone in a room
  - Is eating and drinking (provided each employee is at least 6 feet away from any other person or separated from other people by a physical barrier)
  - Is wearing respiratory protection
  - Cannot wear facemasks due to a medical necessity, medical condition, disability or religious belief.

Personal Protective Equipment

- For employees with exposure to people with suspected or confirmed COVID-19, employers must provide a respirator and other PPE, including gloves, an isolation gown or protective clothing, and eye protection, and ensure that respirators are used in accordance with the OSHA Respiratory Protection Standard (29 CFR 1910.134) and other PPE is used in accordance with OSHA's PPE Standards (29 CFR 1910 subpart I).
- Employers may provide a respirator to employees instead of a required facemask, and, in such cases, must comply with the ETS mini respiratory protection program (29 CFR 1910.504).
- Employers must permit employees to wear their own respirator instead of a required facemask and, in such cases, must comply with the ETS mini respiratory protection program (29 CFR 1910.504).
- Respirators and other PPE are also required during aerosol-generating procedures.

For Fully Vaccinated Employees

- The ETS exempts fully vaccinated employees from the requirements for PPE, physical distancing, and physical barriers in well-defined areas where there is no reasonable expectation that any person with suspected or confirmed COVID-19 will be present.

- In order for an employer to be exempt from providing these controls in a well-defined area based on employees' fully vaccinated status, the COVID-19 plan must include policies and procedures to determine employees' vaccination status.

Employee Training

- Employers should conduct trainings for employees on:
  - Policies and procedures developed as part of the ETS and any changes to those policies and procedures
  - Implementation of your written COVID-19 plan
  - How your health center assesses workplace hazards
  - Changes occur that affect the employee's risk of contracting COVID-19 at work (e.g., new job tasks, etc.)
  - There is an indication that the employee has not retained the necessary understanding or skill
  - Mini respiratory protection program, if applicable

Patient Screening and Management

- In settings where direct patient care is provided, employers must:
  - Limit and monitor points of entry to the setting
  - Screen and triage all clients, patients, residents, delivery people and other visitors, and other non-employees entering the setting
  - Implement other applicable patient management strategies in accordance with CDC's "COVID-19 Infection Prevention and Control Recommendations"

Health Screening and Medical Management

- Under the ETS, an employer must screen each employee before each work day and each shift for COVID-19 symptoms. If testing is required by the employer for screening purposes, it must be provided by the employer, at no charge to the employee.
- Employees must notify their employer when they:
  - Have tested positive for COVID-19 or been diagnosed with COVID-19 by a licensed healthcare provider;
  - Have been told by a licensed healthcare provider they are suspected to have COVID-19;
  - Are experiencing recent loss of taste and/or smell with no other explanation; or
  - Are experiencing a fever (≥100.4°F) and new unexplained cough associated with shortness of breath.

Health Screening and Medical Management

- When an employer is notified that a person who has been in the workplace(s) (including employees, clients, patients, residents, vendors, contractors, customers, delivery people and other visitors, or other non-employees) is COVID-19 positive, an employer must, within 24 hours:
  - Notify each employee who was not wearing a respirator and any other required PPE and has been in close contact with that person in the workplace (within 6 feet of that person for a cumulative total of 15 minutes or more over a 24-hour period during that person's potential period of transmission).
  - Notify all other employees who were not wearing a respirator and any other required PPE and worked in a well-defined portion of a workplace (e.g., a particular floor) in which that person was present during the potential transmission period.
  - The potential transmission period runs from 2 days before the person felt sick (or, for asymptomatic people, 2 days prior to test specimen collection) until the time the person is isolated.
- This notification is not triggered by the presence of a patient with confirmed COVID-19 in a workplace where services are normally provided to suspected or confirmed COVID-19 patients (e.g., emergency rooms, urgent care facilities, COVID-19 testing sites, COVID-19 wards in hospitals).

Health Screening and Medical Management

- Under the ETS, an employer must immediately remove employees from the workplace when the employee:
  - Is COVID-19 positive (confirmed positive test for, or has been diagnosed by a licensed healthcare provider with, COVID-19);
  - Has been told by a licensed healthcare provider that they are suspected to have COVID-19;
  - Is experiencing recent loss of taste and/or smell with no other explanation; or
  - Is experiencing both a fever of at least 100.4°F and new unexplained cough associated with shortness of breath.
- Moreover, if an employer is required by the ETS to notify an employee of close contact in the workplace to a person who is COVID-19 positive, the employer must immediately remove the employee from the workplace unless the employee:
  - Is not experiencing either recent loss of taste and/or smell with no other explanation or both fever (≥100.4° F) and new unexplained cough associated with shortness of breath; AND
  - Either has been fully vaccinated against COVID-19 (i.e., 2 weeks or more following the final dose) or had COVID-19 and recovered within the past 3 months.
- Employers must keep employees removed until they are eligible to return to work

Medical Removal Protection Benefits

- If remote work is available, employers may require the removed employee to perform remote work and must continue to pay them the same regular pay and benefits until they meet the return to work criteria.
- Under the ETS, employers with more than 10 employees on the date the ETS became effective must provide medical removal protection benefits to removed employees.
  - Employers must continue to provide the benefits to which the employee is normally entitled and must also pay the employee the same regular pay the employee would have received had the employee not been absent from work, up to $1,400 per week, until the employee meets the return to work criteria (see previous slide).
  - Employers with fewer than 500 employees, must pay the employee up to the $1,400 per week cap but, beginning in the third week of an employee's removal, the amount is reduced to only two-thirds of the same regular pay the employee would have received had the employee not been absent from work, up to $200 per day ($1,000 per week in most cases).
  - Employers' payment obligation is reduced by the amount of compensation that the employee receives from any other source, such as a publicly or employer-funded compensation program (e.g., paid sick leave, administrative leave) for earnings lost during the period of removal or any additional source of income the employee receives that is made possible by virtue of the employee's removal.

Support for Vaccination

- Employers must support COVID-19 vaccinations for employees by providing reasonable time and paid leave to each employee for:
  - Vaccination
  - Any side effects experienced following vaccination
- Reasonable time may include, but is not limited to, time spent during work hours related to the vaccination appointment(s), time spent at the vaccination site, and time spent traveling to and from the location for vaccination.
- Paid leave provided may include paid sick leave or administrative leave in the form of an employee's accrued sick leave (if available) or in additional paid leave provided by the employer for this purpose. Employers may set a cap on the amount of time and paid leave available to employees to receive each dose of the vaccine and to recover from any side effects, but the cap must be reasonable. Generally, OSHA presumes that, if an employer makes available to its employees four hours of paid leave for each dose of the vaccine, as well as up to 16 additional hours of leave for any side effects of the dose(s) (or 8 hours per dose), the employer would be in compliance with the requirement.

https://www.osha.gov/coronavirus/ets/faqs

Enforcement

In early March 2020, OSHA believed that employee protection against COVID-19 could be provided through enforcement of:

- Existing workplace standards (including the Respiratory Protection at § 1910.134 and general PPE at § 1910.132 standards)
- General Duty Clause of the OSH Act
- Industry-specific, non-mandatory guidance

As of August 1, 2021, OSHA and its State Plan partners have received more than 68,000 COVID-related complaints

- As of January 14, 2021, initial OSHA penalties for COVID-related citations were more than $4,000,000

https://www.osha.gov/enforcement/covid-19-data#summary_data

Enforcement

- In mid-June, in comments to the ETS, OSHA stated:
  - "OSHA has determined that its existing standards and regulations are insufficient to adequately address the grave danger posted by COVID-19 to healthcare workers." (86 Fed. Reg. 32416)
  - "While the General Duty Clause can be used in many contexts, in OSHA's experience over the past year, the clause falls short of the agency's mandate to protect employees from the hazards of COVID-19 in the settings covered by the standard." (86 Fed. Reg. 32418)

Enforcement

"Consider a hospital setting where patients with suspected or confirmed COVID–19 receive treatment. The employer requires respirators for employees providing direct care to those patients but little else to protect those employees or other workers in those settings who are not directly involved in patient care. Under the ETS, OSHA can cite the employer for violating the specific requirements necessary to protect all workers in those settings, such as facemasks for workers who are not directly caring for patients, physical distancing or barriers between administrative employees and patients who have not yet been screened for suspected or confirmed COVID–19, work practice controls for employees performing aerosol-generating procedures on people with suspected or confirmed COVID–19, patient screening and management, paid leave for vaccination, and medical removal protection." (86 Fed. Reg. 32419)

Enforcement

- Penalties:
  - Under the General Duty Clause, the maximum penalty for a serious violation is $13,653, regardless of the scope of the hazard
  - Under the ETS, the maximum civil penalties are:
    - Serious and other-than-serious violations: $13,653 per violation
    - Willful or repeated violations: $136,532 per violation
  - The ETS will clarify expectations for employers, making it easier for OSHA to determine when an employer has intentionally disregarded its obligations or exhibited plain indifference to employee safety or health.

https://www.osha.gov/penalties

Enforcement

- The Occupational Safety and Health Act of 1970 gives employees and their representatives the right to file a complaint and request an OSHA inspection of their workplace if they believe there is a serious hazard or their employer is not following OSHA standards. OSHA may also conduct random inspections.

- OSHA will issue a Notification of Citation to the employer, which identifies the particular violation, with classifications ranging from willful, serious, other-than-serious, etc. The Notification of Citation also provides a deadline by which the employer must remedy or abate the violation and provides an opportunity to contest the findings.

- Inspection Procedures for COVID-19 ETS:
  - https://www.osha.gov/sites/default/files/enforcement/directives/DIR_2021-02_CPL_02.pdf

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Please visit our website **www.healthcenterinfo.org**

HEALTH CENTER
RESOURCE
CLEARINGHOUSE

- OSHA COVID-19 Healthcare Worksite Checklist and Employee Job Hazard Analysis
- COVID-19 Protocols and Procedures Resource Pack
- The Role of Health Center Boards in Business Continuity Planning
- Basic Preparations for Fluid Operations During a pandemic: A COVID-19 Operations Resource Packet
- Respiratory Protection Awareness Training for NY Community Health Centers
- COVID-19 Operation Procedure

Questions?

- Submit questions to regulatoryaffairs@nachc.org
- Attend FTLF's in-depth webinar series on August 11th and 18th

https://learning.ftlf.com/community-health-centers/content/osha%E2%80%99s-covid-19-emergency-temporary-standard-new-compliance-requirements-and-challenges.