

PUBLICATION

OSHA Issues COVID-19 Priority Inspection Initiative for Hospitals and Skilled Nursing Care Facilities

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As many state and local agencies continue to pull back on mask mandates and COVID-19 restrictions, the Occupational Safety and Health Administration (OSHA) is doubling down. On March 2, 2022, OSHA announced its three-month COVID-19 focused inspection initiative for certain employers in the health care industry. The initiative began on March 9, 2022, and will continue through June 9, 2022. OSHA's stated goal for this initiative is to increase its presence and visibility in "high-hazard health care facilities" and to encourage employers in these sectors to take the necessary precautions to protect their employees from the potential hazards of COVID-19. According to OSHA's memorandum announcing the initiative, the short-term inspection initiative is directed at hospitals and skilled nursing care facilities that treat or handle COVID-19 patients. As part of this initiative, OSHA issued guidance to its inspectors, supplementing the COVID-19 National Emphasis Program, providing that OSHA will assess employer compliance efforts, including their readiness to address any ongoing or future COVID-19 surges.

Selection of Facilities Subject to Inspection

Facilities in any of the following North American Industry Classification System (NAICS) codes that treat or handle known COVID-19 patients may be selected for onsite inspections:

- 622110 (General Medical and Surgical Hospitals)
- 622210 (Psychiatric and Substance Abuse Hospitals)
- 623110 (Nursing Care Facilities) (Skilled Nursing Facilities)
- 623312 (Assisted Living Facilities for the Elderly)

In addition to facilities falling under one of the NAICS codes listed above, an inspection under this initiative may take place at a facility for any of the following three reasons:

1. Follow-up of any prior inspection where a COVID-19-related citation or hazard alert letter (HAL) was issued;
2. Follow-up or monitoring for randomly selected closed COVID-19 unprogrammed activity (UPA), including COVID-19 complaints and Rapid Response Investigations (RRIs); or
3. Monitoring inspections for randomly selected, remote-only COVID-19 inspections where COVID-19-related citations were previously issued.

Scope and Process of Inspections

Each COVID-19 focused health care inspection shall be limited to the following:

- Determine whether previously cited COVID-19-related violations have been corrected.
- Determine whether the employer has implemented an adequate COVID-19 plan that includes preparedness, response, and control measures.

- Verify the existence and effectiveness of all control measures, including procedures for determining vaccination status. Note: OSHA will refer any vaccination-related deficiencies to the Centers for Medicare and Medicaid Services (CMS).
- Request and evaluate the establishment's COVID-19 log, OSHA 300 Logs, OSHA 300A Summaries, and any applicable OSHA 301 Incident Reports for calendar years 2020, 2021, and 2022 to identify work-related cases of COVID-19.
- Review the facility's procedures for conducting hazard assessments and protocols for personal protective equipment (PPE) use.
- Conduct a records review of the employer's respiratory protection program, which is limited to the written respiratory protection program and fit tests, medical evaluations, and training records for the interviewed employees.
- Perform a limited, focused walkaround of areas designated for COVID-19 patient treatment or handling, including conducting employee interviews to determine compliance with the respiratory protection standard; reviewing procedures for screening employees and implementing physical distancing; and evaluating the use of face coverings in accordance with the Centers for Disease Control and Prevention's (CDC) guidance.

Applicable OSHA Standards

For COVID-19-related hazards, the guidance provides that the following specific OSHA standards may apply, depending on the evidence establishing worker exposure to COVID-19-related hazards:

- 29 CFR Part § 1904, Recording and Reporting Occupational Injuries and Illness.
- 29 CFR § 1910.132, General Requirements-Personal Protective Equipment.
- 29 CFR § 1910.134, Respiratory Protection.
- 29 CFR § 1910.1020, Access to Employee Exposure and Medical Records.
- 29 CFR § 1910.502(q)(2)(ii) and (q)(3)(ii)-(iv), Healthcare Emergency Temporary Standard (ETS) COVID-19 log and Availability of records.
- 29 CFR § 1910.502(r), Healthcare ETS Reporting COVID-19 fatalities and hospitalizations to OSHA.
- Section 5(a)(1), General Duty Clause of the OSH Act.

Key Takeaway

While OSHA has not renewed the Healthcare ETS, it did note in its guidance that it will accept compliance with the terms of the Healthcare ETS as satisfying employers' related obligations under the general duty clause, respiratory protection, and PPE standards listed above. Employers that fall into any of the NAICS codes listed above should be hyper vigilant in ensuring that all COVID-19 policies and procedures are being followed and have a plan in place to prepare for an OSHA inspection over the next few months, as you never know when OSHA will come knocking.

For further information on this guidance or OSHA compliance in general, please reach out to [Ashley Strittmatter](#) or [Reba Letsa](#).