



June 29, 2022

Douglas L. Parker
Assistant Secretary of Labor for
Occupational Safety and Health
Occupational Safety and Health Administration
200 Constitution Ave NW
Washington, DC 20210

***Re: Docket No. OSHA-2021-0012 Arizona State Plan for Occupational Safety and Health;
Proposed Reconsideration and Revocation (Vol. 87, No. 77), April 21, 2022.***

Dear Assistant Secretary Parker:

I write to you on behalf of the Arizona Hospital and Healthcare Association (AzHHA) and our more than 80 hospital, healthcare and affiliated health system members. Thank you for the opportunity to comment on the Occupational Safety and Health Administration's (OSHA) proposal to reconsider and revoke Arizona's State Plan authorization.

As noted in the proposal of reconsideration and revocation (proposal), OSHA approved State Plan status for Arizona on June 20, 1985. The State Plan is administered by the Arizona Division of Occupational Safety and Health (ADOSH). OSHA is now proposing to revoke ADOSH's State Plan authority, citing that the *"State Plan routinely failed to maintain its commitment to provide a program that is at least as effective as the Federal OSHA program in providing employee safety and health protection at covered workplaces, as required by Section 18(c) of the Act."*

In making this determination, OSHA asserts two primary concerns: ADOSH's failure to comply with federal residential construction fall requirements in 2012 and failure to adopt requirements at least as effective as OSHA's June 21, 2021 COVID-19 Emergency Temporary Standards (ETS) for the healthcare industry (Healthcare ETS). As an association representing healthcare institutions and providers, our comments on OSHA's proposal will relate solely to ADOSH's activity to protect workers from COVID-19 and implementation of the Healthcare ETS.

On March 11, 2020, a State of Public Health Emergency was issued in Arizona, which was followed by a national declaration two days later. Within a month, ADOSH began issuing guidance and offering a series of events (webinars) to educate employers on COVID-19 mitigation strategies. A review of the ADOSH 2020 calendar shows eight such events from mid-April 2020 through June

2020, several of which were also held in Spanish. Throughout the remainder of the year and into 2021, eleven additional events offered more specific education on respiratory protection and use of personal protection equipment (PPE). These educational events demonstrate a commitment by ADOSH to protecting the health and safety of workers by ensuring employers—both healthcare and non-healthcare employers—are knowledgeable about how to mitigate the spread of COVID-19 and other infectious diseases within the workplace.

Moreover, throughout the course of the pandemic ADOSH staff were available to provide technical support on demand. Staff from the Arizona Coalition for Healthcare Emergency Response (AzCHER)—a coalition of more than 500 organizations and 900 separate facilities administered and housed at AzHHA, which works with public health to coordinate emergency planning and response efforts among healthcare providers—was in contact with ADOSH staff throughout the pandemic to ensure emergency managers and safety officers were up to date on ADOSH issued guidance. AzCHER staff have spoken highly of the technical assistance offered by ADOSH both during and before the COVID-19 pandemic.

Such technical assistance is critical to advancing a culture collaboration and safety in the workplace. Significantly, ADOSH began offering technical assistance and COVID-19 educational events before OSHA issued the Healthcare ETS in June of 2021. AzHHA believes this demonstrates ADOSH's strong commitment to ensuring healthcare worker safety. When the ETS was issued, AzHHA reached out to ADOSH for guidance on implementation since it was our belief that several provisions in the Healthcare ETS conflicted with Center for Disease Control and Prevention (CDC) guidance. In addition, our members had questions on how the ETS would intersect with a voter-approved initiative governing earned paid sick time.¹

We bring up these concerns regarding the Healthcare ETS not to criticize any of the federal standards, but to note that our members had many questions regarding the interplay between the OSHA standards, CDC recommendations and state law. Above all, our members want to comply with all regulations—especially those that advance the protection of patients and staff. But when there are conflicts, we turn to the regulators for guidance. In reviewing the materials in the docket, it appears that ADOSH staff was in fact attempting to seek clarification from OSHA on questions we had raised regarding implementation of the ETS and alignment with other regulations. **With respect to the Healthcare ETS, we do not believe ADOSH was unwilling to maintain its commitment to provide a program that meets the requirements of Section 18(c) of the OSH Act. Rather, ADOSH acted in good faith to seek clarification on the intersection of the Healthcare ETS with other laws and guidance.**

Ultimately, ADOSH posted the Healthcare ETS in the *Arizona Register* and held a hearing. It is our understanding that ADOSH intended to adopt the ETS, and AzHHA provided comments. Soon thereafter, OSHA made the decision not to finalize the ETS and then partially reopened the ETS

¹ These issues and concerns are described in more detail in our August 19, 2021 and April 19, 2022 letter to OSHA on the Healthcare ETS and our December 4, 2021 letter to ADOSH regarding state adoption of the ETS.

and Interim Final Rule in March of 2022. AzHHA also submitted comments to OSHA on this reopening.

In summary, AzHHA urges OSHA and the Department of Labor not to revoke affirmative determination granting final Approval to Arizona's State Plan. In our experience, ADOSH and its staff have shown a strong commitment to protecting employee health and safety while working collaboratively with employers to build a culture of safety in the workplace. This is a balance that builds trust, cooperation, and most importantly advances OSHA's mission of promoting occupational health and safety.

Thank you for the opportunity to submit comments on OSHA's proposal to reconsider and revoke Arizona's State Plan authorization. Please feel free to contact me if you have any questions.

Sincerely,



Debbie Johnston
Executive Vice President, Arizona Hospital and Healthcare Association