

*Via Federal Register*

July 5, 2022

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

**RE: Comments in Support of “Arizona State Plan for Occupational Safety and Health; Proposed Reconsideration and Revocation,” 87 Fed. Reg. 23,783 (April 21, 2022) (Docket No. OSHA-2021-0012).**

Dear Assistant Secretary Parker:

National Nurses Organizing Committee/National Nurses United (NNOC/NNU) submits these comments to the Occupational Safety and Health Administration (OSHA) in response to and support of “Arizona State Plan for Occupational Safety and Health; Proposed Reconsideration and Revocation,” 87 Fed. Reg. 23,783 (April 21, 2022) (Docket No. OSHA-2021-0012). NNU is the largest labor union and professional association for registered nurses in the United States, with over 175,000 members nationwide and 750 members in Arizona who are represented by our affiliate, NNOC. These comments are not a substantial objection to OSHA’s reconsideration and proposed revocation of the Arizona State Plan for Occupational Safety and Health (hereinafter “Arizona State Plan”) nor are these comments a request for an informal hearing.

NNOC/NNU agrees that OSHA’s reconsideration and proposed revocation of the Arizona State Plan as currently administered by the Arizona Division of Occupational Safety and Health (ADOSH) is appropriate because ADOSH has failed to meet the legal requirements to be “at least as effective” as Federal OSHA’s program. Specifically, the Arizona State Plan is not as effective as Federal OSHA’s program, among other reasons, because ADOSH has failed to adopt a similar or higher standard than Federal OSHA’s Covid-19 Healthcare Emergency Temporary Standard (hereinafter “Covid-19 Healthcare ETS”).<sup>1</sup> For all the reasons described below, NNOC/NNU urges OSHA to exercise concurrent federal enforcement and standards authority as described in the Proposed Reconsideration and Revocation until ADOSH restores the Arizona State Plan to be as effective as Federal OSHA’s program.

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<sup>1</sup> “Occupational Exposure to COVID-19; Emergency Temporary Standard,” 86 Fed. Reg. 32,376 (Jun. 21, 2021) (Docket No. OSHA-2020-0004).

**I. ADOSH failed to maintain a State Plan that is “as effective as” Federal OSHA when it did not adopt Federal OSHA’s Covid-19 Healthcare ETS.**

OSHA’s reconsideration and proposed revocation of the Arizona State Plan, the Arizona Division of Occupational Safety and Health (ADOSH), is appropriate because ADOSH has failed to maintain a State Plan that meets the legal requirements of Section 8(c) of the Occupational Safety and Health Act of 1980, 29 U.S.C. 651 *et seq.* (“OSH Act”), and that is “at least as effective” as Federal OSHA’s program.<sup>2</sup> Specifically, ADOSH has failed to adopt a similar or higher standard than Federal OSHA’s Covid-19 Healthcare ETS. In October 2021, NNOC/NU submitted a Complaint Against a State Plan Administration (CASPA) to OSHA’s Acting Regional Administrator for Region 9, James Wulff, regarding such failures of ADOSH. NNOC/NU’s October 2021 CASPA regarding ADOSH is attached here as Attachment 1.

In 1970, the U.S. Congress passed the OSH Act, requiring that “each employer shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or likely to cause death or serious physical harm to his employees.”<sup>3</sup> Congress afforded states the ability to administer their own occupational safety and health enforcement programs so long as they “are at least as effective in providing safe and healthful employment and places of employment” as the Federal OSHA program.<sup>4</sup> Since 1974, Arizona has enforced workers’ right to safe and healthful work through a State OSHA Plan, ADOSH.

OSHA regulation further provides specific criteria to by which OSHA determines whether State Plans are “at least as effective as” Federal OSHA, including criteria on standards, administrative procedures, and staffing and personnel.<sup>5</sup> Specifically, State Plans are required to promulgate standards on the same issues and provide for protections at least as effective as those promulgated by Federal OSHA, including providing for “prompt and effective standards setting actions for the protection of employees against new and unforeseen hazards, by such means as the authority to promulgate emergency temporary standards.”<sup>6</sup>

However, Arizona’s State Plan no longer meets the requirements for State Plans to be “at least as effective” as Federal OSHA’s program because it failed to adopt the Covid-19 Healthcare ETS. On June 21, 2021, Federal OSHA recognized the grave danger posed to health care workers by the Covid-19 pandemic and promulgated the Covid-19 Healthcare Emergency Temporary Standard (Covid-19 Healthcare ETS) requiring health care employers to implement comprehensive infection control plans.<sup>7</sup> Consistent with federal regulation on changes to federal standards, State Plans were required to adopt an emergency temporary standard that is “the same

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<sup>2</sup> See 29 U.S.C. § 667(c); 29 C.F.R. § 1902.32(e); 29 C.F.R. § 1902.44(a).

<sup>3</sup> 29 U.S.C. § 654 (a)(1).

<sup>4</sup> 29 U.S.C. § 667.

<sup>5</sup> 29 C.F.R. § 1902.3.

<sup>6</sup> 29 C.F.R. § 1902.3(c)(1); 29 C.F.R. §§ 1902.4(b)(2)(i), (b)(2)(v).

<sup>7</sup> 86 Fed. Reg. 32376-32628 (June 21, 2021).

or at least as effective as” Federal OSHA’s Covid-19 Healthcare ETS within 30 days, which was July 21, 2021.<sup>8</sup> It is now nearly one year past that deadline for State Plans to adopt their own emergency temporary standard and ADOSH has failed to take any public action to adopt a similar or higher standard as the Covid-19 Healthcare ETS, and no other occupational safety and health standards in Arizona provide similar protections to ensure healthcare workers are protected from the occupational hazards posed by Covid-19 under the Arizona State Plan.<sup>9</sup>

ADOSH is thus violating legal requirements established for OSHA State Plans and knowingly placing nurses and other health care workers in Arizona at significant risk from the workplace hazards from Covid-19 infection and exposure.

## **II. Because of ADOSH’s failure to adopt Federal OSHA standards, Arizona health care employers continue to put nurses and other workers at risk of Covid-19 and other workplace hazards.**

Each day of ADOSH’s inaction puts the lives of Arizona’s nurses and other health care workers at risk of occupational infection and exposure to Covid-19. Despite the essential and critical care work that nurses and other health care workers have provided and continue to provide during the Covid-19 pandemic, their health and safety are not being treated as essential. Health care employers in Arizona continue to fail to implement Covid-19 plans and other requirements of the Covid-19 Healthcare ETS. As a result of ADOSH’s failure to adopt a similar or higher standard than the Covid-19 Healthcare ETS, workplace safety and health hazards and persistent infection control issues continue in Arizona hospitals. Until a standard as effective as the Covid-19 Healthcare ETS is adopted by ADOSH, it is appropriate for Federal OSHA to exercise concurrent enforcement and standards authority in Arizona.

NNOC/NU is the collective bargaining representative for registered nurses at Carondelet St. Mary’s Hospital and St. Joseph’s Hospital Medical Center in Tucson, Arizona. While some critical improvements have been made at these facilities since the beginning of the Covid-19 pandemic in 2020, it continues to be a struggle with these employers to ensure that nurses have the protections they need to care for their patients safely during the Covid-19 pandemic. It is important to note that many of the gains that have been made on Covid-19 infection and exposure control in these facilities would not have happened had union nurses not fought for them throughout 2020 and early 2021. Infection control issues persist in these hospitals, as reported to NNOC/NU by bargaining unit members.

Some of the Covid-19 infection control issues at Carondelet St. Mary’s Hospital and St. Joseph’s Hospital Medical Center are listed here.

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<sup>8</sup> See 29 C.F.R. § 1953.5(b)(1).

<sup>9</sup> Arizona’s Administrative Code incorporates by reference all Federal OSHA General Industry Standards (29 CFR 1910) as of July 6, 2018 (A.A.C. R20-5-602). The most recent amendment was effective February 11, 2020, and did not include standards addressing Covid-related hazards (26 A.A.R. 373).

- Carondelet St. Mary’s Hospital and St. Joseph’s Hospital Medical Center failed to provide the union with a written plan when requested, even after Federal OSHA promulgated the Covid-19 Healthcare ETS. It was not until September 14, 2021, that the union received a written plan—more than two months after the federal implementation deadline. Even with the delay, the written plan is deficient in multiple ways:
  - Written plan contains very little detail. Most of the language is written in the future tense, e.g., “the employer will,” and does not provide required information regarding current policies and procedures for Covid-19 infection control.
  - Required hazard assessments were not attached to the plan.
  - Insufficient information is provided regarding PPE policies and procedures for Covid-19.
  - The employer’s definition of aerosol-generating procedures is more limited than the Covid-19 Healthcare ETS requires.
  - The medical removal and medical removal protection benefits sections of the plan do not meet the Covid-19 Healthcare ETS requirements.
- While nurses do receive N95 filtering facepiece respirators (FFR) for single-use with patients with suspected and confirmed Covid-19, this was only possible because nurses took collective action and fought for single-use.
- Issues with personal protective equipment (PPE) remain.
  - Nurses who are not able to find an available N95 FFR model that passes a fit test are provided powered air-purifying respirators (PAPRs). However, nine nurses are expected to share one single PAPR hood.
  - When new N95 FFR models are introduced, there is no additional fit testing being performed despite the union repeatedly notifying management that this is a requirement.
- Ventilation in patient rooms is frequently lacking because the air-conditioning system is consistently broken and lacks sufficient fans to provide air circulation.
- Not all patients are screened or tested for Covid-19 prior to admission due to short staffing, including in the Emergency Department.
- Patients who are under investigation for Covid-19, who have not been tested for Covid-19, and Covid-positive patients on respiratory therapy are still receiving visitors.
- The employers continue to fail to notify employees of exposures. Often, nurses find out that they had a recent close contact exposure with a Covid-positive individual only by word of mouth from colleagues.
- The union’s requests for the employer’s log of employee Covid-19 cases took more than two months to provide and the information provided is limited.

NNU has attempted to seek enforcement by ADOSH regarding these issues, but ADOSH has thus far insisted that Covid-related protections are not required in Arizona. Specifically, in response to a complaint filed by NNOC/NNU regarding Covid-19 hazards at Carondelet St. Mary’s Hospital, ADOSH Director Jessie Atencio responded to NNOC/NNU in an email on September 23, 2021, by stating: “At this time, ADOSH has not adopted the Federal ETS for Covid, although our Commission is going through the process and much of what you provided is not required by any employer in the state of Arizona.”<sup>10</sup> A copy of this email from ADOSH Director Atencio to NNOC/NNU is attached here as Attachment 2. A copy of the complaint filed by NNOC/NNU regarding Covid-19 hazards at Carondelet St. Mary’s Hospital to which ADOSH Director Atencio was responding to is attached here as Attachment 3. ADOSH’s current enforcement related to Covid-19 under other standards, including the general duty clause and respiratory protection standard, have been persistently lacking. NNOC/NNU is not aware of ADOSH issuing any citations to any employer related to Covid-19 infection or exposure control hazards despite ongoing issues described above.

Moreover, without a standard as effective as the Covid-19 Healthcare ETS in Arizona, it will remain difficult to obtain accurate information about Covid-19 injury and illness in health care settings. Without effective reporting on Covid-19 occupational hazards, workers and their representatives will be unable to identify and advocate for effective Covid-19 protections.

Federal OSHA issued an emergency temporary standard precisely because it determined that existing enforcement tools were inadequate and that an emergency temporary standard was necessary to protect health care workers from the grave danger posed by the Covid-19 pandemic.<sup>11</sup> Immediate action is required by the Industrial Commission of Arizona and ADOSH to adopt and enforce the Covid-19 Healthcare ETS. However, as ADOSH has still not adopted a similar or higher standard than the Covid-19 Healthcare ETS, it is appropriate for OSHA to proceed with its proposed reconsideration and revocation of the Arizona State Plan and to exercise concurrent enforcement and standards authority in Arizona until ADOSH adoption’s such a standard.

### **III. Federal OSHA’s proposed reconsideration and revocation of the Arizona State Plan is appropriate to protect non-union nurses and other health care workers.**

NNOC/NNU also concerned with the health and safety of non-represented nurses and other health care workers. To this end, NNOC/NNU has conducted repeated surveys throughout the country of both union and non-union nurses regarding Covid-19 infection and exposure control practices in their workplaces. The results of our sixth survey, taken between June 1, 2021, and July 26, 2021, demonstrates that, at the time the Covid-19 Healthcare ETS first came

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<sup>10</sup> The statement by ADOSH Director Jessie Atencio was sent by electronic mail to NNOC Labor Representative, Sean Armil, on September 21, 2021.

<sup>11</sup> 86 Fed. Reg. 32,376 (June 21, 2021).

into effect, employers across the country needed to make significant improvements to comply with the OSHA Covid-19 Healthcare ETS, including in Arizona:<sup>12</sup>

- Only 30% of respondents from Arizona reported that nurses are informed of Covid-19 exposures in a timely fashion; 18% reported that nurses are informed of Covid-19 exposures but not in a timely fashion; and 21% reported that nurses are not informed of Covid-19 exposures.
- 26% of Arizona registered nurses reported that patients are not always screened for Covid-19 signs and symptoms.
- 17% of Arizona registered nurses reported that visitors are not always screened for Covid-19 signs and symptoms.
- 52% of Arizona registered nurses reported that surgical masks are used with patients who might have Covid-19 but who have not been tested or whose test results are not back yet. Only 32% reported using N95 respirator with these patients.
- Only 61% of Arizona registered nurses reported that they wear a respirator for every encounter with a Covid-positive patient, 17% reported wearing a respirator only during aerosol-generating procedures on Covid-positive patients and a surgical mask during routine care, and 11% reported wearing only a surgical mask while caring for Covid-positive patients.
- 48% of Arizona registered nurses reported that they are expected to reuse single-use N95s. 44% report reusing single-use surgical masks.

In the most recent and seventh NNOC/NNU survey of registered nurses on Covid-19 infection and exposure control practices in their workplaces taken between February 3, 2022, and March 20, 2022, registered nurses in Arizona continued to report Covid-19 infection control issues.<sup>13</sup>

- Employer reporting Covid-19 exposures to registered nurses has gotten markedly worse between NNOC/NNU’s sixth and the seventh surveys.
  - In the seventh survey, less than 18% of respondents from Arizona reported that nurses are informed of Covid-19 exposures in a timely fashion; less than 18% reported that nurses are informed of Covid-19 exposures but not in a timely

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<sup>12</sup> See National Nurses United, “National nurse survey reveals that health care employers need to do more to comply with OSHA emergency temporary standard,” Sept. 27, 2021. Available at <https://www.nationalnursesunited.org/press/national-nurse-survey-reveals-health-care-employers-need-to-do-more-to-protect-workers>.

<sup>13</sup> See National Nurses United, “National nurse survey reveals significant increases in unsafe staffing, workplace violence, and moral distress,” April 14, 2022. Available at <https://www.nationalnursesunited.org/press/survey-reveals-increases-in-unsafe-staffing-workplace-violence-moral-distress>.

fashion; and more than 37% reported that nurses are not informed of Covid-19 exposures.

- Screening of patients and visitors are also markedly worse than what registered nurses reported in the June/July 2021 survey.
  - In NNOC/NNU's seventh survey, more than 40% of Arizona registered nurses reported that patients are not always screened for Covid-19 signs and symptoms.
  - More than half of Arizona registered nurses (57.5%) reported that visitors are not always screened for Covid-19 signs and symptoms.
- In the seventh survey, more than 60% of Arizona registered nurses reported that their employer had different PPE and isolation protocols for Covid-positive patients and with patients who might have Covid-19 but who have not been tested or whose test results are not back yet.
- Only slightly improving from the June/July 2021 survey, in NNOC/NNU's seventh survey, only 76% of Arizona registered nurses reported that they wear a respirator for every encounter with a Covid-positive patient, 8.8% reported wearing a respirator only during aerosol-generating procedures on Covid-positive patients and a surgical mask during routine care, and 5.9% still reported wearing only a surgical mask while caring of Covid-positive patients.
- Similar to the June/July 2021 survey, in NNOC/NNU's seventh survey, 47% of Arizona registered nurses reported that they are expected to reuse single-use N95s.

Since OSHA issued the Covid-19 Healthcare ETS, NNOC/NNU has received and continues to receive reports of health and safety issues from non-represented nurses in Arizona, which are consonant with the most recent survey findings for Arizona.

- At least one hospital employer has no Covid-19 safety protocols.
- Patients who are under investigation for Covid-19 are no longer being isolated separately from non-Covid patients. In some units, they are placed in the same room or same area. Covid-19 precautions are NOT always in place for patients under investigation.
- In the emergency department, known Covid-positive patients are being placed in the hallway, mixed with non-Covid patients, and staff are walking past frequently and stopping to provide emergency care with no PPE on at all (beyond the facemasks that everyone wears).
- Nurses are being told that a surgical mask is sufficient when caring for Covid-positive patients and that if "the nurse feels it's necessary to upgrade" they can put an N95 FFR on.
- Not all nurses have been adequately fit-tested.

July 5, 2022

Page 8 of 9

- There are PAPRs and controlled air-purifying respirators (CAPRs) but they are stuffed in a closet and not maintained so they are not currently safe or available to use.
- N95 FFRs are still being reused. Nurses report getting one N95 FFR per day and having to reuse it for the entire day, with multiple patients. Those patients are often mixed Covid-positive and non-Covid as mixed assignments are common.
- Dirty and clean reusable gown storage is not clearly marked and nurses sometimes end up with a dirty gown.
- Nurses report there is no exposure notification at all.

The continued failure of ADOSH to adopt a higher or similar standard than the Covid-19 Healthcare ETS contributes to ongoing fear of retaliation for health care workers who lack union representation. Non-union health care workers currently have limited protections for speaking out about unsafe conditions related to Covid-19, in large part because the Industrial Commission of Arizona and ADOSH have failed to adopt the Covid-19 Healthcare ETS, which would afford them such protections. For this reason, non-union health care workers who are in contact with NNOC/NNU will remain anonymous.

#### **IV. Conclusion**

ADOSH's failure to adopt the Covid-19 Healthcare ETS has not only violated the State Plan's legal obligations under the OSH Act and OSHA regulation, but it places nurses and other health care workers at significant risk from Covid-19 infection and exposure. NNOC/NNU urges Federal OSHA to hold ADOSH to the requirements to be "at least as effective" as Federal OSHA. Given ADOSH's continued failure to adopt such a standard on Covid-19 in healthcare settings, Arizona's nurses and other health care workers have not been afforded the same protections as health care workers in other states. Until ADOSH adopts a standard to protect healthcare workers from the occupational hazard of Covid-19 that is similar to or higher than the Covid-19 Healthcare ETS, Federal OSHA should proceed with its proposed reconsideration of Arizona's State Plan and should exercise discretionary concurrent enforcement and standards authority as proposed.

Sincerely,



Michelle Grisat  
Director of Health and Regulatory Policy  
National Nurses United

### **List of Attachments**

- Attachment 1:** NNOC/NNU Complaint Against a State Plan Administration (CASPA) to OSHA on ADOSH (October 1, 2021)
- Attachment 2:** Email from ADOSH Director Jessie Atencio to NNOC/NNU Labor Representative Sean Armil (September 23, 2021)
- Attachment 3:** NNOC/NNU OSHA Complaint on Covid-19 Hazards at Carondelet St. Mary’s Hospital (September 21, 2021)

# **Attachment 1**

NNOC/NNU Complaint Against a State Plan Administration (CASPA) to OSHA  
on ADOSH (October 1, 2021)

**NNU Comments,**

**“Arizona State Plan for Occupational Safety and Health; Proposed  
Reconsideration and Revocation” (April 21, 2022) (Docket No. OSHA-2021-  
0012)**



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October 1, 2021

*Sent via electronic mail and U.S. mail*

Mr. James Wulff  
Acting Regional Administrator  
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[Wulff.james@dol.gov](mailto:Wulff.james@dol.gov)

**RE: CASPA regarding the failure of Arizona's State Plan to be "as effective as" Federal OSHA**

Dear Acting Regional Administrator Wulff:

National Nurses United (NNU) is the largest labor union and professional association for registered nurses in the United States, with over 175,000 members nationwide and 750 members in Arizona who are represented by our affiliate, National Nurses Organizing Committee (NNOC). On behalf of NNU's members and nurses in Arizona, I am writing to submit a Complaint Against a State Plan Administration (CASPA) regarding the failure of Arizona's Division of Occupational Safety and Health (ADOSH) to meet the legal requirements to be "at least as effective" as the Federal Occupational Safety and Health Administration (Federal OSHA).

On June 21, 2021, Federal OSHA recognized the grave danger posed to health care workers by the Covid-19 pandemic and promulgated the Covid-19 Healthcare Emergency Temporary Standard (Covid-19 Healthcare ETS) requiring health care employers to implement comprehensive infection control plans.<sup>1</sup> State Plans were given 30 days to adopt an emergency temporary standard at least as effective as Federal OSHA's Covid-19 Healthcare ETS.<sup>2</sup> It is now 72 days past that deadline and Arizona's OSHA State Plan, ADOSH, has failed to adopt a similar or higher standard. ADOSH is thus violating legal requirements established for OSHA State Plans and knowingly placing nurses and other health care workers in Arizona in grave danger.

As the Acting Regional Administrator, you and your staff have the authority and responsibility to accept, investigate, and respond to CASPAs regarding State Plans in your

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<sup>1</sup> 86 Fed. Reg. 32376-32628 (June 21, 2021)

<sup>2</sup> 29 CFR §1953.5(b)(1)

region.<sup>3</sup> I urge you to take prompt action to investigate this CASPA and to hold ADOSH to the minimum legal requirements for State Plans.

## **Grounds for the CASPA Regarding ADOSH’s Failure to be “At Least As Effective” as Federal OSHA**

### *ADOSH Has Not Provided for “Prompt and Effective” Standard-Setting and Has Failed to Meet the Deadline to Adopt the Covid-19 Healthcare ETS*

In 1970, the U.S. Congress passed the Occupational Safety and Health Act, requiring that “each employer shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or likely to cause death or serious physical harm to his employees.”<sup>4</sup> Congress afforded states the ability to administer their own occupational safety and health enforcement programs so long as they “are at least as effective in providing safe and healthful employment and places of employment” as the Federal OSHA program.<sup>5</sup> Since 1974, Arizona has enforced workers’ right to safe and healthful work through a State OSHA Plan, ADOSH.

Arizona’s State Plan no longer meets the requirements for State Plans to be “at least as effective” as Federal OSHA. The U.S. Code of Federal Regulations provides specific criteria to judge whether State Plans are “at least as effective as” Federal OSHA, including criteria on standards, administrative procedures, and staffing and personnel.<sup>6</sup> Specifically, State Plans are required to promulgate standards on the same issues and provide for protections at least as effective as those promulgated by Federal OSHA, including providing for “prompt and effective standards setting actions for the protection of employees against new and unforeseen hazards, by such means as the authority to promulgate emergency temporary standards.”<sup>7,8</sup>

ADOSH has failed to take any public action to adopt a standard at least as effective as the Covid-19 Healthcare ETS, and no other occupational safety and health standards in Arizona provide similar protections to the Covid-19 Healthcare ETS.<sup>9</sup> It is now 72 days past the deadline provided by Federal OSHA’s Covid-19 Healthcare ETS. Each day of ADOSH’s inaction puts the lives of Arizona’s nurses and other health care workers at risk as the Covid-19 pandemic continues.

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<sup>3</sup> 29 CFR §1954.20

<sup>4</sup> 29 U.S.C. §654 (a)(1)

<sup>5</sup> 29 U.S.C. §667

<sup>6</sup> 29 CFR §1902.3

<sup>7</sup> 29 CFR §1902.3(c)(1)

<sup>8</sup> 29 CFR §1902.4(b)(2)(i) and (b)(2)(v)

<sup>9</sup> Arizona’s Administrative Code incorporates by reference all Federal OSHA General Industry Standards (29 CFR 1910) as of July 6, 2018 (A.A.C. R20-5-602). The most recent amendment was effective February 11, 2020 and did not include standards addressing Covid-related hazards (26 A.A.R. 373).

*Arizona Health Care Employers Continue to Put Nurses and Other Health Care Workers at Risk of Covid-19 and ADOSH Fails to Protect Those Workers*

Despite the essential and critical care work that nurses and other health care workers have and continue to provide during the Covid-19 pandemic, their health and safety are not being treated as essential. Health care employers in Arizona continue to fail to implement Covid-19 plans and other requirements of the Covid-19 Healthcare ETS.

National Nurses Organizing Committee/NNU (NNOC/NNU) is the collective bargaining representative for registered nurses at Carondelet St. Mary's Hospital and St. Joseph's Hospital Medical Center in Tucson. While some critical improvements have been made at these facilities, it continues to be a struggle with these employers to ensure that nurses have the protections they need to care for their patients safely during the Covid-19 pandemic. It is important to note that many of the gains that have been made on Covid-19 infection control in these facilities would not have happened had the nurses not fought for them throughout 2020 and early 2021. Infection control issues persist in these hospitals, as reported to NNOC/NNU by bargaining unit members:

- The health care employers failed to provide the union with a written plan when requested, even after Federal OSHA promulgated the Covid-19 Healthcare ETS. It was not until September 14, 2021, that the union received a written plan—more than two months after the federal implementation deadline. Even with the delay, the written plan is deficient in multiple ways:
  - Written plan contains very little detail. Most of the language is written in the future tense, e.g., “the employer will,” and does not provide required information regarding current policies and procedures for Covid-19 infection control.
  - Required hazard assessments were not attached to the plan.
  - Insufficient information is provided regarding PPE policies and procedures for Covid-19.
  - The employer's definition of aerosol-generating procedures is more limited than the Covid-19 Healthcare ETS requires.
  - The medical removal and medical removal protection benefits sections of the plan do not meet the Covid-19 Healthcare ETS requirements.
- While nurses do receive N95 filtering facepiece respirators (FFR) for single-use with patients with suspected and confirmed Covid-19, this was only possible because nurses took collective action and fought for single-use.
- Issues with personal protective equipment (PPE) remain.
  - Nurses who are not able to find an available N95 FFR model that passes a fit test are provided powered air-purifying respirators (PAPRs). However, nine nurses are expected to share one single PAPR hood.
  - When new N95 FFR models are introduced, there is no additional fit testing being performed despite the union repeatedly notifying management that this is a requirement.
- Ventilation in patient rooms is frequently lacking because the air-conditioning system is consistently broken and lacks sufficient fans to provide air circulation.

- Not all patients are screened or tested for Covid-19 prior to admission due to short staffing, including in the Emergency Department.
- Patients who are under investigation for Covid-19, who have not been tested for Covid-19, and Covid-positive patients on respiratory therapy are still receiving visitors.
- The employers continue to fail to notify employees of exposures. Often, nurses find out that they had a recent close contact exposure with a Covid-positive individual only by word of mouth from colleagues.
- The union's requests for the employer's log of employee Covid-19 cases took more than two months to provide and the information provided is limited.

NNU has attempted to seek enforcement by ADOSH regarding these issues, but ADOSH has thus far insisted that Covid-related protections are not required in Arizona. Specifically, in response to a complaint filed by NNOC/NNU regarding Covid-19 hazards at Carondelet St. Mary's Hospital, ADOSH Director Jessie Atencio responded in an email by stating: "At this time, ADOSH has not adopted the Federal ETS for Covid, although our Commission is going through the process and much of what you provided is not required by any employer in the state of Arizona."<sup>10</sup> ADOSH's current enforcement related to Covid-19 is lacking.

Federal OSHA issued an emergency temporary standard exactly because it determined that existing enforcement tools were inadequate and that an emergency temporary standard was necessary to protect health care workers from the grave danger posed by the Covid-19 pandemic.<sup>11</sup> Immediate action is required by the Industrial Commission of Arizona and ADOSH to adopt and enforce the Covid-19 Healthcare ETS.

#### *ADOSH Must Take Immediate Action to Protect Non-Union Nurses and Other Health Care Workers*

Further, NNOC/NNU, as the largest union and professional association for registered nurses in the U.S., is also concerned with the health and safety of non-represented nurses and other health care workers. To this end, NNOC/NNU has conducted repeated surveys of both union and non-union nurses regarding Covid-19 infection control practices in their workplaces. NNU's most recent Covid-19 survey from June and July 2021 shows that employers needed to make significant improvements to comply with the OSHA Covid-19 Healthcare ETS, including in Arizona:<sup>12</sup>

- Only 30% of respondents from Arizona report that nurses are informed of exposures in a timely fashion; 18% report that nurses are informed of exposures but not in a timely fashion and 21% report that nurses are not informed of exposures.

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<sup>10</sup> The statement by ADOSH Director Jessie Atencio was sent by electronic mail to NNOC Labor Representative, Sean Armil, on September 21, 2021. A copy of this email can be provided upon request.

<sup>11</sup> 86 Fed. Reg. 32,376 (June 21, 2021)

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- 26% of Arizona registered nurses report that patients are not always screened for Covid-19 signs and symptoms.
- 17% of Arizona registered nurses report that visitors are not always screened for Covid-19 signs and symptoms.
- 52% of Arizona registered nurses report that surgical masks are used with patients who might have Covid-19 but who have not been tested or whose test results are not back yet. Only 32% report using N95 respirator with these patients.
- Only 61% of Arizona registered nurses report that they wear a respirator for every encounter with a Covid-positive patient, 17% report wearing a respirator only during aerosol-generating procedures on Covid-positive patients and a surgical mask during routine care, and 11% report surgical mask during routine care of Covid-positive patients.
- 48% of Arizona registered nurses report that they are expected to reuse single-use N95s. 44% report reusing single-use surgical masks.

Additionally, NNOC/NNU has received reports of health and safety issues from non-represented nurses in Arizona, which are consonant with the most recent survey findings for Arizona:

- Patients who are under investigation for Covid-19 are no longer being isolated separately from non-Covid patients. In some units, they are placed in the same room or same area. Covid-19 precautions are NOT always in place for patients under investigation.
- In the emergency department, known Covid-positive patients are being placed in the hallway, mixed with non-Covid patients, and staff are walking past frequently and stopping to provide emergency care with no PPE on at all (beyond the facemasks that everyone wears).
- Nurses are being told that a surgical mask is sufficient when caring for Covid-positive patients and that if “the nurse feels it’s necessary to upgrade” they can put an N95 FFR on.
- Not all nurses have been adequately fit-tested.
- There are PAPRs and controlled air-purifying respirators (CAPRs) but they are stuffed in a closet and not maintained so they are not currently safe or available to use.
- N95 FFRs are still being reused. Nurses report getting one N95 FFR per day and having to reuse it for the entire day, with multiple patients. Those patients are often mixed Covid-positive and non-Covid as mixed assignments are common.
- Dirty and clean reusable gown storage is not clearly marked and nurses sometimes end up with a dirty gown.
- Nurses report there is no exposure notification at all.

Note that the non-union health care workers who are in contact with NNOC/NNU will remain anonymous. They currently have limited protections for speaking out about unsafe conditions related to Covid-19, in large part because the Industrial Commission of Arizona and ADOSH have failed to adopt the Covid-19 Healthcare ETS, which would afford them such protections.

## **In Conclusion**

ADOSH's failure to adopt the Covid-19 Healthcare ETS has not only violated the State Plan's legal obligations, but it places nurses and other health care workers in grave danger from the Covid-19 pandemic. I urge you to promptly and fully investigate this CASPA and to hold ADOSH to the requirements to be "at least as effective" as Federal OSHA. ADOSH must immediately adopt the Covid-19 Healthcare ETS in order to afford Arizona's nurses and other health care workers the same protections as health care workers in other states. If you have questions regarding this complaint, please do not hesitate to reach out.

Sincerely,

Phuong Tran  
Tenet Division Director, Collective Bargaining  
National Nurses Organizing Committee/National Nurses United

cc: Representative Ann Kirkpatrick  
Representative Raúl Grijalva  
Representative Ruben Gallego  
Representative Bobby Scott, Chairman, House Committee on Education and Labor  
Representative Alma Adams, Chairwoman, House Workforce Protections Subcommittee  
Senator Kyrsten Sinema  
Senator Mark Kelly  
Senator Patty Murray, Chairwoman, Senate Committee on Health, Education, Labor and Pensions  
Senator John Hickenlooper, Chairman, Senate Subcommittee on Employment and Workplace Safety  
Jim Frederick, Acting Assistant Secretary, Occupational Safety and Health Administration  
Doug Kalinowski, Directorate of Cooperative and State Programs, Occupational Safety and Health Administration  
Dale L. Schultz, Chairman, Industrial Commission of Arizona  
Joseph M. Hennelly, Jr., Vice Chairman, Industrial Commission of Arizona  
Alan Everett, Member, Industrial Commission of Arizona  
Scott LeMarr, Member, Industrial Commission of Arizona  
James Ashley, Director, Industrial Commission of Arizona  
Jason Porter, Deputy Director/General Counsel, Industrial Commission of Arizona  
Kara Dimas, Secretary, Industrial Commission of Arizona  
Jessie Atencio, Director, Arizona Division of Occupational Safety and Health  
Liz Shuler, President, AFL-CIO  
Fred Yamashita, Executive Director, Arizona AFL-CIO

## **Attachment 2**

Email from ADOSH Director Jessie Atencio to NNOC/NNU Labor Representative  
Sean Armil (September 23, 2021)

**NNU Comments,**

**“Arizona State Plan for Occupational Safety and Health; Proposed  
Reconsideration and Revocation” (April 21, 2022) (Docket No. OSHA-2021-  
0012)**

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**From:** [jessie.atencio@azdosh.gov](mailto:jessie.atencio@azdosh.gov) <[jessie.atencio@azdosh.gov](mailto:jessie.atencio@azdosh.gov)> on behalf of ADOSH Comments - INDUSTRIAL COMMISSION <[comments@azica.gov](mailto:comments@azica.gov)>  
**Sent:** Tuesday, September 21, 2021 11:34:12 AM  
**To:** Sean Armil <[SArmil@NationalNursesUnited.Org](mailto:SArmil@NationalNursesUnited.Org)>  
**Subject:** ADOSH Anonymous Complaint

Good morning Mr. Armil,

I would like to thank you for your complaint filed with our office. Although, in order to process it, I am going to need a few questions answered:

1. What employees are not provided with N95 respirators?
2. What type of work are the employees conducting that requires an N95 respirator?
3. Where or what floor are these employees not provided N95 respirators?
4. What type of respirators does the hospital provide that are not N95s?
5. Where is the poor ventilation system in the hospital?
6. How do you know the ventilation system is poor? Please explain.
7. If the A/C breaks regularly, do employees have access to water, rest and shade (the building is considered a shaded structure)?
8. Who provides the fans for ventilation? Please explain.

At this time, ADOSH has not adopted the Federal ETS for COVID, although our Commission is going through the process and much of what you provided is not required by any employer in the state of Arizona.

Sincerely,

Jessie Atencio  
ADOSH Director

## **Attachment 3**

NNOC/NNU OSHA Complaint on Covid-19 Hazards at Carondelet St. Mary's  
Hospital (September 21, 2021)

**NNU Comments,**

**“Arizona State Plan for Occupational Safety and Health; Proposed  
Reconsideration and Revocation” (April 21, 2022) (Docket No. OSHA-2021-  
0012)**

UNITED STATES  
DEPARTMENT OF LABOR

OSHA

Menu

OSHA ▾ STANDARDS ▾ ENFORCEMENT TOPICS ▾ HELP AND RESOURCES ▾

Contact Us

FAQ

A to Z Index

English

Español

## Thank You!

Your Safety and Health Hazard Notice has been forwarded to the OSHA Federal Area Office listed below.

**Your complaint may be forwarded to the State of Arizona, which operates its own OSHA approved State Plan. Click here for more information on State Plans or if you would like to contact the state directly.**

**If you identified yourself, you will be contacted by OSHA.**

**Please call the OSHA Federal Area Office below if you are not contacted.**

Complaint Number: 42934322

### Arizona

Arizona Division of Occupational Safety and Health (ADOSH)  
800 W. Washington Street, 2nd floor  
Phoenix, AZ 85007  
(602) 542-5795  
(602) 542-1614 (FAX)

Establishment Name:	Carondelet St. Mary's
Site Street:	1601 W St Mary's Road
Site City:	Tucson
Site State:	Arizona
Site Zip:	85745

Telephone Number:	520-872-3000
Type of Business:	Hopsital

### Hazard Description:

Not following the Covid-19 Healthcare Emergency Temporary Standard, including: -Incomplete Covid-19 Log -Covid-19 plan and Covid-19 log not timely provided  
-Not all employees are provided with respiratory protection at least as protective as an N-95 -Insufficient respirators for nurses who are unable to wear N-95s  
-Insufficient screening of patients for Covid-19, insufficient isolation precautions for patients under investigation and Covid positive patients -Denial of medical removal protection benefits for qualified nurses -Poor ventilation, including an air conditioning system that breaks regularly -Fans for ventilation are often unavailable when nurses need them -Unsafe reduction in the number of times per week environmental services clean rooms

### Hazard Location:

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Emergency Department, ICU, Tele/PCU, Observation, Perioperative units

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This condition has previously been brought to the attention of:

\* The employer

I am a representative of employees.

Do NOT reveal my name to my employer.

Complainant Name: Sean Armil  
[SIGNED]  
(Complainant checked the electronic signature checkbox to indicate this submission shall be considered as having an authorized written signature.)

Complainant Telephone Number: 7472154124

Complainant Mailing Address:

---

385 S Stone Ave #1202  
Tucson  
Arizona  
85701

---

Complainant Email: sarmil@nnoc.net

Complainant Organization Name: National Nurses United

Complainant Title: Labor Representative

## UNITED STATES DEPARTMENT OF LABOR

Occupational Safety and Health Administration  
200 Constitution Ave NW  
Washington, DC 20210  
☎ 800-321-6742 (OSHA)  
TTY  
www.OSHA.gov

### FEDERAL GOVERNMENT

White House  
Severe Storm and Flood Recovery Assistance  
Disaster Recovery Assistance  
DisasterAssistance.gov  
USA.gov  
No Fear Act Data  
U.S. Office of Special Counsel

### OCCUPATIONAL SAFETY AND HEALTH

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A - Z Index  
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