



**CALIFORNIA  
HOSPITAL  
ASSOCIATION**

*Providing Leadership in  
Health Policy and Advocacy*

November 19, 2020

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**RE: Draft COVID-19 Emergency Standard, Released November 12, 2020**

Dear board members, Ms. Shupe, and Mr. Parker:

California hospital workers are on the front lines of COVID-19 response, work that is deeply impacted by the actions of state and federal agencies. Hospitals' ability to care for patients effectively and efficiently amid a pandemic hinges on a regulatory framework that supports both patient care and worker safety. To that end, the California Hospital Association (CHA) — on behalf of its more than 400 member hospitals and health systems across the state — offers the following comments on the Standards Board's proposed General Industry Safety Orders Chapter 4, Subchapter 7, new sections 3205, 3205.1, 3205.2, 3205.3 and 3205.4—COVID-19 Prevention Emergency Temporary Standard (ETS).

CHA's primary concern with the ETS is simple: its scope is ambiguous. California hospitals and other health facilities are subject to California's Aerosol Transmissible Diseases (ATD) Standard. In its current form, the scope of the ETS is likely to cause confusion and could lead some to believe that some hospital employees are covered by the ATD Standard while others are covered by the ETS. Such a conclusion is not supported by the plain language of the ATD Standard; thus, we request clarification to prevent any confusion.

California is the only OSH plan in the country that has promulgated ATD Standards (8 CCR § 5199 and 5199.1). The ATD Standard is a comprehensive, complex, and unique standard that universally "applies to **work** in ... facilities, service categories, or operations" including hospitals. The scope section explicitly

covers all work done at the listed facilities, **without exception**. There is no exemption for any employees at facilities listed in subsection (a)(1), including hospitals. In addition, the standard broadly defines health care worker as any “person who works in a health care facility, service or operation.” This definition is not limited to employees working in certain job roles or departments. Thus, by the plain language of the ATD Standard, **all employees** working at hospitals and other listed health facilities are covered by the ATD Standard.

However, the current language of ETS Section 3205 does not clearly exempt facilities covered by the ATD Standard. Instead, it defines the relevant exemption by reference to “employees when covered by section 5199.” This exemption is ambiguous and departs from the plain language of the ATD Standard, which covers facilities as a whole, rather than certain employees.

Sections 3205.1 and 3205.2 of the proposed order add to this confusion by using language inconsistent with Section 3205. Sections 3205.1 and 3205.2 apply “to a place of employment” as a whole and not certain “employees.” These sections, as well as sections 3205.3 and 3205.4, make no reference to Section 3205’s exemption, further compounding the confusion. All sections should be covered by the same exemptions.

**This inconsistency and confusion can be avoided by simply tracking the language in 5199(a)(1) and revising the current exemption in Section 3205 to exclude “work in the facilities, service categories, or operations covered by section 5199.” This straightforward change will align the proposed ETS sections and the ATD Standard.**

Furthermore, the above approach would eliminate any conflict between Section 5199 and the proposed ETS, as well as California Department of Public Health regulatory requirements pertaining to hospital infection control and patient and employee safety.

For these reasons, CHA respectfully requests clarification that the ETS would not apply to hospitals and other facilities already covered by the ATD Standard. To the extent CHA member hospitals and health systems include workplaces that do not fall within the scope of the ATD Standard, those workplaces would be covered by the ETS. With respect to member entities that are not covered by the ATD Standard, CHA joins in the comments submitted by the California Chamber of Commerce.

We share your commitment to worker safety and believe that the proposed changes are consistent with both patient care and employee safety.

Sincerely,

Gail Blanchard-Saiger  
Vice President and Counsel, Labor & Employment