



**CALIFORNIA
HOSPITAL
ASSOCIATION**

*Providing Leadership in
Health Policy and Advocacy*

May 10, 2019

Eric Berg
Deputy Chief of Health
DOSH Research and Standards Health Unit
Cal/OSHA
Elihu Harris State Building
1515 Clay Street
Oakland, CA 94612

Dear Mr. Berg:

California hospitals take very seriously their duty to provide a safe, healthy environment for their patients and staff. As the front line of disaster response when a wildfire rages through a community, our members have a substantial interest in minimizing employees' exposure to wildfire smoke and its adverse effects. However, Cal/OSHA's proposed regulation governing outdoor employee exposure to wildfire smoke, as currently written, would impede hospitals' ability to care for patients in these disaster situations. **We ask that the regulation be revised to clarify that health care workers who may work outdoors during an emergency are not "outdoor workers," and instead qualify as emergency response personnel.**

The issue of exposure to wildfire smoke is both a public health and occupational concern. The California Hospital Association (CHA) and our members support efforts to address occupational exposure to wildfire smoke for outdoor workers, defined as those whose regular job duties require working outdoors for substantial periods. This would include agriculture, construction, landscaping, outdoor maintenance, and commercial delivery industries.

Our comments, with respect to the proposed regulation, focus on its potential application to health care workers. Typically, health care workers would not be subject to the proposed regulation, as they work in "enclosed buildings or structures where the air is filtered by a mechanical ventilation system and employee exposure to outdoor or unfiltered air is effectively limited." However, when evacuating patients from a facility impacted during a wildfire — often with little warning, if any — or dealing with a surge in patients, hospital staff who work indoors during daily operations may be outside for several hours **due to the emergency.**

The proposed regulation exempts "emergency response personnel performing lifesaving emergency rescue and evacuation." Presumably, this would include firefighters, state and local law enforcement, and the National Guard. When a health facility operating under its emergency operations plan must be evacuated or handle patient surge, health care workers would also fall within this definition. However, the petition and Occupational Safety and Health Standards Board's decision suggest that health care workers evacuating patients are "outdoor workers," who do not qualify as emergency response personnel and thus fall within the scope of the proposed regulation. **This premise is flawed and must be corrected.**

When a wildfire impacts a community, the hospital initiates its emergency operations plan — but like any emergency, the situation is dynamic and unpredictable. Hospitals may be flooded by local residents who require emergency care or need to flee their homes. Skilled-nursing facilities may need to evacuate their residents and move some into available hospital space. Employees may be asked to do different tasks according to incident command protocols; some may volunteer for these roles. In extreme circumstances, the health facility may need to be evacuated. It is simply unreasonable and unnecessary to require the hospital to monitor air quality or consider engineering and administrative controls during this period. During these critical moments, all possible resources should be directed to saving lives.

In evaluating this issue, it is also important to note that — unlike most other employers — hospitals have existing respiratory protection plans and are required to have N95 respirators available and fit test at least a subset of employees. Employees who may be required to work outdoors for a period of time are offered appropriate respiratory protection. Other elements of the proposed regulation — engineering controls, etc. — are simply not feasible. Even assuming that health care workers working outdoors for several hours qualify as “outdoor workers,” the justification for exempting “emergency response personnel” equally applies to these workers.

CHA is aware that AB 1124 (Maienschein, D-San Diego) is currently pending in the Legislature and could impact any future regulations. However, it would not require health care workers performing work outdoors during a wildfire be included in the definition of “outdoor worker.” The bill does not define “outdoor workers.” While the bill properly exempts firefighters from the scope, that is due to separate and specific regulations that apply to their work during a wildfire. At no point does the bill mandate health care workers engaged in evacuation activity be included in any resulting regulation.

California’s hospitals stand at the ready to support their communities whenever — and wherever — disasters occur. Critical to that work is a regulatory system that recognizes the dynamic, unpredictable environment that follows a disaster.

CHA, on behalf of our more than 400 member hospitals and health systems, urges you to revise this proposed regulation to recognize that health care workers who may be working outdoors during a wildfire to evacuate patients or provide emergency medical care are emergency response personnel, and therefore exempt from this regulation’s requirements.

We welcome the opportunity to participate in the rulemaking process, and thank you for considering our comments. If you have any questions or wish to discuss further, please contact me at gblanchardsaiger@calhospital.org or (916) 552-7620.

Sincerely,


Gail Blanchard Saiger

Vice President and Counsel, Labor & Employment