

116TH CONGRESS
2D SESSION

S. 3475

To direct the Secretary of Labor to issue an emergency temporary standard that requires certain employers to develop and implement a comprehensive infectious disease exposure control plan to protect employees in the health care sectors and other employees at elevated risk from exposure to SARS-CoV-2, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 12, 2020

Ms. DUCKWORTH (for herself, Mrs. FEINSTEIN, Mr. BROWN, Mr. SANDERS, Mr. DURBIN, Mr. BLUMENTHAL, Mr. BOOKER, Mr. REED, Mr. MENENDEZ, and Ms. WARREN) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To direct the Secretary of Labor to issue an emergency temporary standard that requires certain employers to develop and implement a comprehensive infectious disease exposure control plan to protect employees in the health care sectors and other employees at elevated risk from exposure to SARS-CoV-2, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “COVID–19 Health
3 Care Worker Protection Act of 2020”.

4 **SEC. 2. FINDINGS.**

5 Congress finds the following:

6 (1) The infectious disease COVID–19 presents
7 a grave danger to health care workers who are on
8 the first line of defense of the United States against
9 this epidemic.

10 (2) Hundreds of health care workers in the
11 United States have been infected or quarantined due
12 to exposure to patients with COVID–19. Surveys
13 conducted by health care worker unions and others
14 have found that many healthcare facilities are inad-
15 equately prepared to safely protect health care work-
16 ers who are exposed to the virus.

17 (3) Inadequate infection control precautions
18 have a detrimental impact on health care workers,
19 patients, and the public, and if there is breakdown
20 in health care worker protections, the Nation’s pub-
21 lic health system is placed at risk.

22 (4) The severe acute respiratory syndrome (re-
23 ferred to in this section as “SARS”) epidemic of
24 2003 and 2004 in Canada, which involved a
25 coronavirus, resulted in a disproportionately large
26 number of infections of both health care workers and

1 patients in Ontario, Canada hospitals due to insuffi-
2 cient infection control procedures involving SARS.

3 (5) The Occupational Safety and Health Ad-
4 ministration began rulemaking on a standard to pro-
5 tect health care workers from airborne and other in-
6 fectious diseases in 2009. In 2017, the Trump Ad-
7 ministration suspended work on this rulemaking, re-
8 moving it from the active Regulatory Agenda.

9 (6) The Centers for Disease Control and Pre-
10 vention issued a document entitled “2007 Guideline
11 for Isolation Precautions: Preventing Transmission
12 of Infectious Agents in Healthcare Settings” in July,
13 2007. However, the guideline in such document is
14 not binding.

15 (7) Absent an enforceable standard, employers
16 lack mandatory requirements to implement an effec-
17 tive and ongoing infection and exposure control pro-
18 gram that provides protection to health care workers
19 from COVID–19.

20 (8) Section 6(c)(1) of the Occupational Safety
21 and Health Act of 1970 (29 U.S.C. 655(c)(1)) au-
22 thorizes the Occupational Safety and Health Admin-
23 istration to issue an emergency temporary standard
24 if employees are exposed to grave danger from
25 harmful agents or new hazards and if an emergency

1 standard is necessary to protect employees from
 2 such danger. The widespread outbreak of COVID–
 3 19 clearly satisfies these two conditions.

4 (9) The Occupational Safety and Health Ad-
 5 ministration has received 2 petitions in March 2020
 6 calling on the Occupational Safety and Health Ad-
 7 ministration to issue an emergency temporary stand-
 8 ard to protect workers from COVID–19.

9 (10) An emergency temporary standard is nec-
 10 essary to ensure the immediate protection of workers
 11 in health care workplaces and other high-risk work-
 12 places identified by the Centers for Disease Control
 13 and Prevention and the Occupational Safety and
 14 Health Administration from infection related to
 15 COVID–19.

16 **TITLE I—COVID–19 EMERGENCY**
 17 **TEMPORARY STANDARD**

18 **SEC. 101. COVID–19 EMERGENCY TEMPORARY STANDARD.**

19 (a) EMERGENCY TEMPORARY STANDARD.—Pursuant
 20 to section 6(e)(1) of the Occupational Safety and Health
 21 Act of 1970 (29 U.S.C. 655(e)(1)), not later than 1 month
 22 after the date of enactment of this Act, the Secretary of
 23 Labor shall promulgate an emergency temporary standard
 24 to protect from occupational exposure to SARS–CoV–2—

1 (1) employees of health care sector employers;
2 and

3 (2) employees in other sectors whom the Cen-
4 ters for Disease Control and Prevention or the Occu-
5 pational Safety and Health Administration identifies
6 as having elevated risk.

7 (b) PERMANENT STANDARD.—Upon publication of
8 the emergency standard under subsection (a), the Sec-
9 retary of Labor shall commence a proceeding to promul-
10 gate a standard under section 6(c)(3) of the Occupational
11 Safety and Health Act of 1970 (29 U.S.C. 655(c)(3)) with
12 respect to such emergency temporary standard.

13 (c) REQUIREMENTS.—Each standard promulgated
14 under this section shall—

15 (1) require the employers of the employees de-
16 scribed in subsection (a) to develop and implement
17 a comprehensive infectious disease exposure control
18 plan; and

19 (2) at a minimum, be based on the precautions
20 for severe acute respiratory syndrome in the “2007
21 Guideline for Isolation Precautions: Preventing
22 Transmission of Infectious Agents in Healthcare
23 Settings” of the Centers for Disease Control and
24 Prevention and any subsequent updates; and

1 (3) provide no less protection for novel patho-
 2 gens than precautions mandated by standards
 3 adopted by a State plan that has been approved by
 4 the Secretary of Labor under section 18 of the Oc-
 5 cupational Safety and Health Act of 1970 (29
 6 U.S.C. 667).

7 (d) APPLICABILITY TO STATES AND POLITICAL SUB-
 8 DIVISIONS.—For the purposes of this title, a State or po-
 9 litical subdivision of a State shall be considered an em-
 10 ployer under section 3(5) of the Occupational Safety and
 11 Health Act of 1970 (29 U.S.C. 652(5)), and the emer-
 12 gency temporary standard and permanent standard re-
 13 quired under this section shall be applicable to such em-
 14 ployers and enforceable under the Occupational Safety
 15 and Health Act of 1970 (29 U.S.C. 651 et seq.).

16 **TITLE II—AMENDMENTS TO THE**
 17 **SOCIAL SECURITY ACT**

18 **SEC. 201. APPLICATION OF COVID-19 EMERGENCY TEM-**
 19 **PORARY STANDARD TO CERTAIN FACILITIES**
 20 **RECEIVING MEDICARE FUNDS.**

21 (a) IN GENERAL.—Section 1866 of the Social Secu-
 22 rity Act (42 U.S.C. 1395cc) is amended—

23 (1) in subsection (a)(1)—

24 (A) in subparagraph (X), by striking
 25 “and” at the end;

1 (B) in subparagraph (Y), by striking the
2 period at the end and inserting “; and”; and

3 (C) by inserting after subparagraph (Y)
4 the following new subparagraph:

5 “(Z) in the case of hospitals that are not other-
6 wise subject to the Occupational Safety and Health
7 Act of 1970 (or a State occupational safety and
8 health plan that is approved under 18(b) of such
9 Act) and skilled nursing facilities that are not other-
10 wise subject to such Act (or such a State occupa-
11 tional safety and health plan), to comply with the
12 standards promulgated under section 101 of the
13 COVID–19 Health Care Worker Protection Act of
14 2020.”; and

15 (2) in subsection (b)(4)—

16 (A) in subparagraph (A), by inserting
17 “and a hospital or skilled nursing facility that
18 fails to comply with the requirement of sub-
19 section (a)(1)(Z) (relating to the standards pro-
20 mulgated under section 101 of the COVID–19
21 Health Care Worker Protection Act of 2020)”
22 after “Bloodborne Pathogens Standard”); and

23 (B) in subparagraph (B)—

24 (i) by striking “(a)(1)(U)” and insert-
25 ing “(a)(1)(V)”; and

1 (ii) by inserting “(or, in the case of a
2 failure to comply with the requirement of
3 subsection (a)(1)(Z), for a violation of the
4 standards referred to in such subsection by
5 a hospital or skilled nursing facility, as ap-
6 plicable, that is subject to the provisions of
7 such Act)” before the period at the end.

8 (b) **EFFECTIVE DATE.**—The amendments made by
9 subsection (a) shall apply beginning on the date that is
10 1 month after the date of promulgation of the emergency
11 temporary standard under section 101 of the COVID–19
12 Health Care Worker Protection Act of 2020.

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