Rift over when to use N95s puts health workers at risk again

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Three years after more than 3,600 health workers died of COVID-19, occupational safety experts warn that those on the front lines may once again be at risk if the Centers for Disease Control and Prevention takes

its committee's advice on infection control guidelines in health care settings, including hospitals, nursing homes, and jails.

In early November, the committee released a controversial set of recommendations the CDC is considering, which would update those established some 16 years ago.

The pandemic illustrated how a rift between the CDC and workplace safety officials can have serious repercussions. Most recently, the giant hospital system Sutter Health in California appealed a citation from the state's Division of Occupational Safety and Health, known as Cal/OSHA, by pointing to the CDC's shifting advice on when and whether N95 masks were needed at the start of the pandemic. By contrast, Cal/OSHA requires employers in high-risk settings like hospitals to improve ventilation, use air filtration, and provide N95s to all staff exposed to diseases that are—or may be—airborne.

The agencies are once again at odds. The CDC's advisory committee prescribes varying degrees of protection based on ill-defined categories, such as whether a virus or bacteria is considered common or how far it seems to travel in the air.

As a result, occupational safety experts warn that choices on how to categorize COVID, influenza, and other airborne diseases—and the corresponding levels of protection—may once again be left to administrators at hospitals, nursing homes, and jails or prisons.

Eric Berg, deputy chief of health at Cal/OSHA, warned the CDC in November that, if it accepted its committee's recommendations, the guidelines would "create confusion and result in workers being not adequately protected."

Also called respirators, N95 masks filter out far more particles than

looser-fitting surgical masks but cost roughly 10 times as much, and were in short supply in 2020. Black, Hispanic, and Asian health workers more often went without N95 masks than white staffers, which helped explain why members of racial and ethnic minorities tested positive for COVID nearly five times as often as the general population in the early months of the pandemic. (Hispanic people can be of any race or combination of races.)

Cal/OSHA issued dozens of citations to health care facilities that failed to provide N95 masks and take other measures to protect workers in 2020 and 2021. Many appealed, and some cases are ongoing.

In October, the agency declined Sutter's appeal against a $6,750 citation for not giving its medical assistants N95 masks in 2020 when they accompanied patients who appeared to have COVID through clinics. Sutter pointed to the CDC's advice early in the pandemic, according to court testimony. It noted that the CDC called surgical masks an "acceptable alternative" in March 2020, "seemed to recommend droplet precautions rather than airborne precautions," and suggested that individuals were unlikely to be infected if they were farther than 6 feet away from a person with COVID.

This is a loose interpretation of the CDC's 2020 advice, which was partly made for reasons of practicality. Respirators were in short supply, for example, and physical distancing beyond 6 feet is complicated in places where people must congregate.

Scientifically, there were clear indications that the coronavirus SARS-CoV-2 spread through the air, leading Cal/OSHA to enact its straightforward rules created after the 2009 swine flu pandemic. Workers need stiffer protection than the general population, said Jordan Barab, a former official at the federal Occupational Safety and Health Administration: "Health workers are exposed for eight, 10, 12 hours a

day."

The CDC's advisory committee offers a weaker approach in certain cases, suggesting that health workers wear surgical masks for "common, often endemic respiratory pathogens" that "spread predominantly over short distances." The draft guidance pays little attention to ventilation and air filtration, and advises N95 masks only for "new or emerging" diseases and those that spread "efficiently over long distances." Viruses, bacteria, and other pathogens that spread through the air don't neatly fit into such categories.

"Guidelines that are incomplete, weak, and without scientific basis will greatly undermine CDC's credibility," said a former OSHA director, David Michaels, in minutes from an October meeting where he and others urged CDC Director Mandy Cohen to reconsider advice from the committee before it issues final guidance next year.

Although occupational safety agencies—not the CDC—have the power to make rules, enforcement often occurs long after the damage is done, if ever. Cal/OSHA began to investigate Sutter only after a nurse at its main Oakland hospital died from COVID and health workers complained they weren't allowed to wear N95 masks in hallways shared with COVID patients. And more than a dozen citations from Cal/OSHA against Kaiser Permanente, Sharp HealthCare, and other health systems lagged months and years behind health worker complaints and protests.

Outside California, OSHA faces higher enforcement obstacles. A dwindling budget left the agency with fewer workplace inspectors than it had in 45 years, at the peak of the pandemic. Plus, the Trump and Biden administrations stalled the agency's ongoing efforts to pass regulations specific to airborne infections.

As a result, the agency followed up on only about one in five COVID-

related complaints that employees and labor representatives officially filed with the group from January 2020 to February 2022—and just 4% of those made informally through media reports, phone calls, and emails. Many deaths among health care workers weren't reported to the agency in the first place.

Michaels, who is now on the faculty at the George Washington University School of Public Health, said the CDC would further curtail OSHA's authority to punish employers who expose staff members to airborne diseases, if its final guidelines follow the committee's recommendations. Such advice would leave many hospitals, correctional facilities, and nursing homes as unprepared as they were before the pandemic, said Deborah Gold, a former deputy chief of health at Cal/OSHA.

Strict standards prompt employers to stockpile N95 masks and improve air filtration and ventilation to avoid citations. But if the CDC's guidance leaves room for interpretation, she said, they can justify cutting corners on costly preparation.

Although the CDC committee and OSHA both claim to follow the science, researchers arrived at contradictory conclusions because the committee relied on explicitly flawed trials comparing health workers who wore surgical masks with those using N95s. Cal/OSHA based its standards on a variety of studies, including reviews of hospital infections and engineering research on how airborne particles spread.

In decades past, the CDC's process for developing guidelines included labor representatives and experts focused on hazards at work. Barab was a health researcher at a trade union for public sector employees when he helped the CDC develop HIV-related recommendations in the 1980s.

"I remember asking about how to protect health care workers and

correction officers who get urine or feces thrown at them," Barab said. Infectious disease researchers on the CDC's committee initially scoffed at the idea, he recalled, but still considered his input as someone who understood the conditions employees faced. "A lot of these folks hadn't been on hospital floors in years, if not decades."

The largest organization for nurses in the United States, National Nurses United, made the same observation. It's now collecting signatures for an online petition urging the CDC to scrap the committee's guidelines and develop new recommendations that include insights from health care workers, many of whom risked their lives in the pandemic.

Barab attributed the lack of labor representation in the CDC's current process to the growing corporate influence of large health systems. Hospital administrators prefer not to be told what to do, particularly when it requires spending money, he said.

In an email, CDC communications officer Dave Daigle stressed that before the guidelines are finalized, the CDC will "review the makeup of the workgroups and solicit participation to ensure that the appropriate expertise is included."