

UPDATE: NCPA Member Summary of OSHA COVID-19 Health Care Emergency Temporary Standard Record Keeping Requirements

This is a summary of the relevant provisions in the [Health Care Emergency Temporary Standard](#) (Health Care ETS) for the small business community and long-term care (LTC) pharmacists contained released on June 21, 2021 by the Occupational Safety and Health Administration (OSHA) to reduce the risk that workers may contract COVID-19 in the workplace.

On December 27, 2021, [OSHA](#) announced that it withdrew the non-recordkeeping portions of the Health Care ETS.¹ The COVID-19 record keeping “log and reporting provisions” remain in effect. The Health Care ETS applies to pharmacies only if a pharmacy offers additional health care services, like COVID-19 testing, mAbs, or vaccinations. **Note that the Health Care ETS requirements only apply to settings in which health care is provided. If your pharmacy provides COVID-19 testing and/or vaccines within the larger retail setting, the Health Care ETS requirements apply only to the setting in which COVID-19 testing is performed, not to the pharmacy as a whole.** However, if a pharmacist purely dispenses prescriptions in retail settings, then the Health Care ETS does not apply. Most of the health care mandate has been withdrawn, but the record keeping and its general standards, including the Personal Protective Equipment (PPE) and Respiratory Protection Standards requirements, are still in effect.² However, OSHA is encouraging continued voluntary compliance with the entire [Health Care ETS](#). The relevant record keeping sections are listed in this document for your convenience.

Highlights

- Health Care ETS requirements **do not** apply to pharmacists dispensing prescriptions in **retail settings**.
- However, **if a pharmacy offers additional health care services, like COVID-19 testing, mAbs, or vaccinations, the Health Care ETS requirements are applicable.**
- LTC pharmacies are exempt from the Health Care ETS requirements **unless they are situated within an LTC facility as an inpatient pharmacy.**
- OSHA has withdrawn all non-recordkeeping portions of the Health Care ETS. The COVID-19 log and reporting parts remain in effect.

Please note that while the Health Care ETS may not apply to you, that the [General Duty Clause](#) from the OSHA Act of 1970 requires that, in addition to compliance with hazard-specific standards, all employers provide a work environment “free from recognized hazards that are causing or are likely to cause death or serious physical harm” in addition to any temporary or permanent state standards. NCPA recommends that you contact your [local OSHA office](#) with any questions related to COVID-19 and workplace safety.

¹ OSHA COVID-19 Healthcare ETS, Dec. 27, 2021, <https://www.osha.gov/coronavirus/ets>.

² Id.

Applicability of the HC ETS

The Health Care ETS applies to pharmacies only if a pharmacy offers additional health care services, like COVID-19 testing, mAbs, or vaccinations. However, if a pharmacist purely dispenses prescriptions in retail settings, then the Health Care ETS does not apply. The Health Care ETS is aimed at protecting workers facing the highest COVID-19 hazards—those working in **health care settings where suspected or confirmed COVID-19 patients are treated**.

Key Health Care ETS Record Keeping Requirements

1. Health Care ETS Record Keeping Requirements Still In Effect -

A. Employers with more than 10 employees must^{3 4}:

- Establish and maintain a COVID–19 log to record each instance identified by the employer in which an employee is COVID–19 positive, regardless of whether the instance is connected to exposure to COVID–19 at work.
- The COVID–19 log must contain, for each instance, the employee’s name, one form of contact information, occupation, location where the employee worked, the date of the employee’s last day at the workplace, the date of the positive test for, or diagnosis of, COVID–19, and the date the employee first had one or more COVID–19 symptoms, if any were experienced.
- The information in the COVID–19 log must be recorded within 24 hours of the employer learning that the employee is COVID–19 positive and must be maintained as though it is a confidential medical record and must not be disclosed except as required by this ETS or other federal law.
- The COVID–19 log must be maintained and preserved while this section remains in effect.

B. For all employers (regardless of the number of employees)⁵:

- *Availability of records.* By the end of the next business day after a request, the employer must provide, for examination and copying:
 - The individual COVID–19 log entry for a particular employee to that employee and to anyone having written authorized consent of that employee.
 - A version of the COVID–19 log that removes the names of employees, contact information, and occupation, and only includes, for each employee in the COVID–19 log, the location where the employee worked, the last day that the employee was at the workplace before removal, the date of that employee’s positive test for, or diagnosis of, COVID–19, and the date the employee first had one or more COVID–19 symptoms, if any were experienced, to all of the following: Any employees, their personal representatives, and their authorized representatives.
 - All records required to be maintained by this section to the Assistant Secretary.

³ The COVID–19 log is intended to assist employers with tracking and evaluating instances of employees who are COVID–19 positive without regard to whether those employees were infected at work. The tracking will help evaluate potential workplace exposure to other employees.

⁴ This section originally only required employers with more than 10 employees to follow this provision. However, that section has been removed. NCPA understands that to possibly mean that all employers, no matter how many employees, must adhere to this record keeping section.

⁵ Employers must continue to record all work-related confirmed cases of COVID–19 on their [OSHA Forms 300, 300A, and 301](#), or the equivalent forms, if required to do so under [29 CFR part 1904](#).

- **Reporting COVID–19 fatalities and hospitalizations to OSHA⁶**
 - The employer must report to OSHA:
 - Each work-related COVID–19 fatality within 8 hours of the employer learning about the fatality.
 - Each work-related COVID–19 inpatient hospitalization within 24 hours of the employer learning about the inpatient hospitalization.
 - Retain all versions of the COVID–19 plan implemented to comply with this section while this section remains in effect.
 - When reporting COVID–19 fatalities and in-patient hospitalizations to OSHA in accordance with paragraph (r)(1) of this section, the employer must follow the requirements in [29 CFR 1904.39](#), except for 29 CFR 1904.39(a)(1) and (2) and (b)(6).

2. Health Care ETS Record Keeping Requirements No Longer In Effect -

- **Small employer exclusion.** Employers with 10 or fewer employees on the effective date of this section are not required to comply with paragraph (q)(2) or (q)(3) of this section.
- **Availability of records.** By the end of the next business day after a request, the employer must provide, for examination and copying:
 - All versions of the written COVID–19 plan to all of the following: Any employees, their personal representatives, and their authorized representatives.

IMPORTANT NOTE: Please note that the following information provided above is up to date as of February 11, 2022. This information is subject to change.

⁶ The COVID–19 log is intended to assist employers with tracking and evaluating instances of employees who are COVID–19 positive without regard to whether those employees were infected at work. The tracking will help evaluate potential workplace exposure to other employees.