



Respirator Protection for H1N1 Influenza

By Kathleen Henderson, King & Ballow Partner & Healthcare Practice Chair

khenderson@kingballow.com

Providers should confirm now that they have a sufficient supply of N95 disposable respirators, established protocols on priority of use to ensure sufficient supply, and completed medical evaluations, fit testing, and training for all employees who may need to use respirators for protection against the 2009 H1N1 virus.

The Occupational Safety and Health Administration issued a statement on October 14, 2009 addressing H1N1 related inspections and the possible shortage of N95 respirators. OSHA states employees performing high hazard aerosol-generating procedures on patients suspected or confirmed to have the 2009 H1N1 virus must always use respirators at least as protective as a fit-tested N95. Both OSHA and the Centers for Disease Control and Prevention advise providers to require respiratory protection equivalent to the disposable N95 respirator whenever employees are in close contact with such patients.

N95 respirators are certified by the National Institute of Occupational Safety and Health (NIOSH) to filter 95% or more of certain airborne particulate contaminants including dusts, fumes, mists, tuberculosis bacteria, and the flu virus. A NIOSH certified surgical N95 respirator is to be used when fluid and/or blood splash protection is needed in addition to respiratory protection. "Close contact" is defined to mean within 6 feet.

Examples of aerosol-generating procedures for patients suspected or confirmed with the H1N1 virus which OSHA considers to be high hazard include bronchoscopy and open suctioning of airways. OSHA requires use of the N95 or equivalent whenever such procedures are performed on a patient suspected or confirmed to have the H1N1 virus even where a respirator shortage exists. Additionally, these respirators must also be available for close contact with patients who have aerosol-transmitted diseases such as tuberculosis.

The CDC has predicted a shortage of the N95 respirators. Providers are advised to take action now to prevent a shortage at their facility and to be able to adequately respond if a shortage occurs. Jordan Barab, Acting Assistant Secretary of Labor said in the October 14 statement that "where respirators are not commercially available, an employer will be



considered to be in compliance if the employer can show that a good faith effort has been made to acquire respirators.” The CDC has issued guidelines (provided via the link at the end of this post) for personal protective measures against the virus.

Below are steps providers should take now to address respirator protection for employees who may be providing care within close contact of patients suspected or confirmed to have the virus:

1. Ensure there is an adequate supply of N95 respirators and monitor the rate of usage and supply on a regular basis to determine when it is necessary to reorder. Do not allow the supply of on-hand respirators to fall below the amounts projected over the following 30-day period. Replenish supplies regularly and maintain records to document efforts to monitor and reorder respirators.

2. Establish a priority of use to ensure that employees performing high hazard aerosol-generating procedures always use N95 respirators when required.

3. Ensure your facility has a written respiratory protection program which is administered by a trained administrator and complies with 29 C.F.R. 1910.134. OSHA has provided a sample copy of a program as a guide in Appendix IV of its Small Entity Compliance Guide. See the links provided at the end of this post for the OSHA respirator standard and the Guide.

4. Train employees who may need to use the respirators prior to their first use and annually thereafter on the proper use and limitations of the respirator. Employees must also be trained on the factors which affect the adequacy of protection for the N95 including proper fit, interference posed by facial hair, performing a seal-check before each use, how to inspect for damage, and the requirement to report problems with use. See 29 C.F.R. 1910.134(k).

5. Ensure medical evaluations are completed prior to fit testing and use of respirators, 29 C.F.R. 1910.134(e).

6. Ensure employees are fit tested with the same make and model of respirator to be used, 29 C.F.R. 1910.134(f). Additional fit testing will be necessary if a different N95 make and/or model is supplied.

7. Maintain a written record of the respiratory protection program, fit testing and medical evaluations, per 29 C.F.R. 1910.234(m).

All providers who anticipate having patients who may have the H1N1 virus should take steps now to protect employees and ensure for compliance.



References:

- **OSHA Small Entity Compliance Guide**
http://www.osha.gov/Publications/SECG_RPS/secgrev-current.pdf
- **OSHA Respiratory Protection Standard, 29 C.F.R. 1910.134**
http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=STANDARDS&p_id=12716
- **OSHA Fit Testing Protocols, Appendix A, 29 C.F.R. 1910.134**
http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=STANDARDS&p_id=9780
- **OSHA User Seal Check Procedures, Appendix B-1, 29 C.F.R. 1910.134**
http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=STANDARDS&p_id=9781
- **OSHA Respirator Cleaning Procedures, Appendix B-2, 29 C.F.R. 1910.134**
(Note: the non-surgical N95 is a disposable, one time use only respirator)
http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=STANDARDS&p_id=9782
- **OSHA Respirator Medical Evaluation Questionnaire, Appendix C, 29 C.F.R. 1910.134**
http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=STANDARDS&p_id=9783
- **OSHA Statement re: H1N1-related Inspections, October 14, 2009**
http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=NEWS_RELEASES&p_id=16602
- **CDC Interim Recommendations for Facemask and Respirator Use to Reduce 2009 Influenza A (H1N1) Virus Transmission**
<http://www.cdc.gov/h1n1flu/masks.htm>

For more information contact: Kathleen Henderson, Partner & Health Care Practice Chair at King & Ballow, khenderson@kingballow.com, phone (615) 726-5489.

For more posts of interest to health care professionals go to:
www.kingballow.com/healthcare.php

These opinions and comments are intended only for the purpose of providing recent updates and general information and are not intended, and should not be used, as a recommendation for any specific situation or entity or as a substitute for legal counsel. Always consult with an attorney for specific legal counsel concerning your particular situation.