

Congress of the United States

Washington, DC 20515

May 25, 2006

The Honorable Michael O. Leavitt
Secretary of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

The Honorable Elaine Chao
Secretary of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Dear Secretary Leavitt and Secretary Chao:

We write to express serious concerns that planning and preparations related to pandemic influenza fail to address the occupational threat of pandemic flu faced by nurses and other health care workers who will play a critical role in the public health response to an outbreak.

As we have learned from other emergencies, most recently from the 9/11 attacks and Hurricane Katrina, it is imperative that the health and safety of responders be an integral part of any national preparations. We should not wait until nurses experience a high rate of illness before we act to protect them from the risk of pandemic flu. Unfortunately, preparation thus far by both Departments fails to properly account for the risks of infection and implement a plan to minimize them.

Specifically, the *HHS Pandemic Influenza Plan* released in November 2005 recommends that health care workers and emergency responders wear surgical masks for personal respiratory protection. However, surgical masks are not designed to protect the wearer from contaminants, but rather to prevent the wearer from spreading contaminants when sneezing or coughing. Surgical masks will not protect wearers from exposure to respirable airborne droplets that contain pandemic flu virus. In addition, surgical masks do not provide a seal against a wearer's face to prevent leakage of contaminated air into the breathing zone as respirators do.

The plan's recommendation for surgical masks directly contradicts the requirements of the Occupational Safety and Health Administration's (OSHA) respiratory protection standard, 1910.134, which requires employers to take steps to protect workers at risk of exposure to airborne hazards. This standard requires that respirators be issued to at-risk workers, that the respirators be certified by the National Institute of Occupational Safety and Health (NIOSH) and that they be used within a complete respiratory program that includes fit-testing, training, and other requirements.

The plan also contradicts the Centers for Disease Control and Prevention's *Interim Recommendations for Infection Control in Health Care Facilities Caring for Patients with Known or Suspected Avian Influenza*. This guidance calls for, among other things, the use of a fit-tested respirator, at least as protective as a NIOSH-approved N-95 disposable respirator. Likewise, the World Health Organization's (WHO) most recent draft in February 2006 of its guidance document, *Avian Influenza, Including Influenza A (H5N1) in Humans: WHO Interim Infection Control Guidance for Health Care Facilities*, recommends that health care workers be provided with respiratory protection that is at least as protective as a NIOSH N-95 certified respirator.

While we note that both the CDC and WHO guidance documents are specifically for avian flu, we are mindful that the most likely and closely monitored pandemic flu threat on the horizon – and the threat for which a vaccine is being developed - is avian influenza. It only makes sense that other countermeasures and infection controls are sufficient to address this potential threat.

With respect to the Department of Labor, we are concerned that the Occupational Safety and Health Administration (OSHA) is not meeting its responsibility to protect health care workers from occupational exposure to an infectious agent in the event of a pandemic. The *Pandemic Influenza Implementation Plan*, issued by President Bush on May 3, 2006, indicates that HHS will be responsible for establishing infection control measures in the workplace, with the Department of Labor playing only a consultative role. This arrangement contradicts the Department of Labor's statutory responsibility for workplace safety.

We are mindful of the experience of Canada during the SARS outbreak, when hospitals were forced to scramble to obtain appropriate respiratory protection for nurses and other health care workers. Forced to react to an immediate crisis without planning, nurses were issued respirators that were not fitted and that they were not properly trained to wear. The consequence was a high rate of infection among nurses treating SARS patients and a large role in spreading the disease. Fortunately, we have the opportunity to plan ahead and prepare for rigorous infection control and respiratory protection during pandemic flu. We urge you to revise the HHS plan and OSHA standards to provide effective protection of workers from pandemic influenza and to increase the procurement of respirators for the national stockpile.

If asked to answer the call of duty, nurses and other responders must have confidence that their government has taken necessary steps to protect their health and that of their patients and families.

Sincerely,

Spis Capps

J. C. [Signature]

Dennis J. Kucinski

Devin [Signature]

Hilda [Signature]

Thaddeus [Signature]

Jim McDerm

Jack Potts

Red Strickland

Hyd Dosselt

Mike Row

Pete Stark

John LoBue

Tom Ryan

Michael Fitzpatrick

Seamus E. Beane

Henry A. Wayman

Donald W. Payne

Rosa L. DeLana

Lynn Woolsey

Bill E. Hall

Barney Frank

Ed Conway

Ed Howard

James

Jim McDermott

Jerry Lewis

Kevin Kelly

George Miller

John

Eddie Brian John

Rahm Emanuel

Rush Holt

Ed Markey

Pat Reilly

EMIL Egan

Neil Abernethy

Tom

Ann T Soloman

Raul M. Frijalva

Phil Tschit

Cheryl Sayer

Jan Schokosky

Carolee McCaskey

Jo Schum M.D.

Michael H. Michael

Frank Pallone, Jr

Nick Lopez

Ray Skood

Tim

Tammy Baldwin

Betty McCallum

Debbie Wasserman Schultz

Paul Coughlin

John E. Sweeney

Allison J. Schwartz

Elyah E. Tunings

Shan Jackson Lee

Margaret Owens

John Hingell

Nita M. Smy

John W. Walsh

Carolyn B. Maloney

Chef Edwards

Eul Blumenau

Robby Wood

Doris O. Matsui

Joseph Radley

Lucille Roybal-Allard

Shan Brown

James T. Walsh

Thomas W. Walsh

Rubin Hinajosa

F. Weldon

Robert And

Dan Sygal

Amiy Melman

Chh W

Stephanie Joseph

James B. Bangorin

Alan B.

Manuel S. S. S.

T. Holden

Chris Smith

Mike Dough

Robert R. Allyn

Jo Ann Emerson

Lus Simmons

Signatories to May 25, 2006 letter:

Abercrombie
Andrews
Baldwin
Becerra
Blumenauer
Boswell
Brown (OH)
Capps
Capuano
Cardoza
Cooper
Cummings
DeFazio
DeLauro
Dent
Dingell
Doggett
Doyle
Edwards
Emanuel
Emerson
Engel
English
Etheridge
Fitzpatrick
Frank
Gerlach
Grijalva
Herseth
Hinchey
Hinojosa
Holden
Holt
Jackson-Lee
Johnson (IL)
Johnson (TX)
Kelly
Kucinich
LaHood
Langevin
LaTourette
Lewis (CA)
LoBiondo
Lowey
Maloney

Markey
Matsui
McCarthy
McCollum
McCotter
McDermott
McGovern
McHugh
McNulty
Melancon
Michaud
Miller, George
Moore (KS)
Nadler
Neal
Owens
Pallone
Payne
Pomeroy
Porter
Reyes
Ross
Roybal-Allard
Rush
Ryan (OH)
Salazar
Schakowsky
Schwartz (PA)
Schwarz (MI)
Shays
Simmons
Smith (NJ)
Solis
Stark
Strickland
Stupak
Sweeney
Walsh
Wasserman-
Schultz
Waxman
Weldon (PA)
Woolsey
Wynn