Needlestick Safety and Prevention Act

(Senate - October 26, 2000)

Mr. Jeffords

This bipartisan success resulted from a shared concern about this health hazard, and a shared belief of how to resolve it, among myself, and Senators Enzi, Kennedy and Reid. I must also thank our dedicated staffs, and also Representatives Cass Ballenger, and Major Owens, and their staffs. Senators Enzi, Kennedy, Reid, and I have also worked together on a Joint Statement of Legislative Intent. I ask unanimous consent that it be printed in the Congressional Record. I also ask unanimous consent that a letter from Charles N. Jeffress, Assistant Secretary for Occupational Safety and Health, to Senator Jim Bunning, and a letter from Representatives Ballenger and Owens, addressed to me, be made a part of the Record.

I thank all my colleagues who have joined in helping to adopt this important legislation. It is a vital step in ensuring worker safety in health care settings.

There being no objection, the material was ordered to be printed in the Record, as follows:

Joint Statement of Legislative Intent on HR 5178

The legislation derives from the convergence of two critical circumstances which have a profound effect on the safety of health care workers in the United States. The first circumstance is the increased concern over accidental needlestick injuries in health care settings. 'Needlesticks' is a term used broadly, as health care workers can suffer injuries from a broad array of 'sharps' used in health care settings, from needles to IV catheters to lancets. The second circumstance is the technological advancements made over the past decade in the many types of engineering controls that can be used in the workplace to help protect health care workers against sharps injuries. Because of the convergence of these two circumstances – and because of increasing concern over the public health issue related to the spread of hepatitis C, it is appropriate to take this action at this time.

Section 1 of the Bill provides the title the Needlestick Safety and Prevention Act.'

Section 2 of the Bill provides the Congressional findings.

Section 3 of the Bill directly modifies the Bloodborne Pathogens Standard, 29 C.F.R. 1910.1030, one of the health and safety standards promulgated by the Department of Labor's Occupational Safety and Health Administration (OSHA). The legislation builds on the most recent action taken by OSHA related to the Bloodborne Pathogens Standard – the revision in November 1999 to OSHA's Compliance Directive on Enforcement Procedures for the Occupational Exposure to Bloodborne Pathogens ('Compliance Directive').

In modifying the Bloodborne Pathogens Standard ('BBP standard') this bill makes narrowly-tailored changes to the BBP standard. It makes clear in the BBP standard the direction already provided by OSHA in its Compliance Directive: namely, that employers who have employees with occupational exposure to bloodborne pathogens must consider and, where appropriate, use effective engineering controls, including safer medical devices, in order to reduce the risk of injury from needlesticks and from other sharp medical instruments ('sharps'). This bill is not intended to change the existing application of OSHA's BBP standard to all employees who are reasonably anticipated to have occupational exposures to blood or other potentially infectious materials, including health care workers, laboratory personnel, housekeepers and waste disposal employees, among others.

The bill accomplishes this in several ways. First, the BBP standard is modified so that the definition of 'engineering controls' at 29 C.F.R.

1910.1030(b) includes as additional examples of such controls, safer medical devices, such as sharps with engineered sharps injury protections and 'needleless systems.' Following that step, the BBP standard is amended so that both 'sharps with engineered sharps injury protections' ('SESIPS') and 'needleless systems' are added to the definitions of the standard.

The citing of these examples should not be considered an endorsement or preference of a specific product or assurance of a specific product's effectiveness. Rather, it is the intent of this legislation to reflect innovation and evolving technology in the marketplace, in particular development in safer medical devices such as SESB'S and needleless systems. This legislation anticipates that hospitals and other employers, in crafting their Exposure Control Plans, will adopt procedures and use devices that have been proven to reduce the risk of needlestick injuries. Employers use their Exposure Control Plans to evaluate appropriate practices and devices for reducing occupational exposure. To focus attention on the need for employers to look at changes in technology, this legislation further modifies the BBP standard by adding to the existing requirements concerning Exposure Control Plans at 29 C.F.R. 1910.1030(c)(1)(iv). Through these modifications, employers will be required to demonstrate in the review and update of their Exposure Control Plans that their Exposure Control Plans reflect changes in technology and also that they document annually the consideration and implementation of appropriate, commercially available and effective safer medical devices.

It is through an employer's Exposure Control Plan that engineering controls, including safer medical devices, are considered and deployed in the workplace. It is not the intent of this legislation to disturb OSHA's existing determination that to the extent that specific types of devices, such as catheter securement devices or sharps destruction devices can reduce the risk of needlestick injuries, such devices could be appropriate components of an employer's comprehensive exposure control plan. OSHA expressed its understanding of and agreement with this intent in a letter to Senator Jim Bunning, dated October 13, 2000. The letter is submitted as an attachment to this joint statement.

It is also not the intent of this legislation to disturb the underlying flexible, performance- oriented nature of the Bloodborne Pathogens Standard. For example, this legislation's reference to the consideration and implementation of safer medical devices is hinged upon the 'appropriateness' and the 'commercial availability' of such devices. Finally, while this may be stating the obvious, it is not the intent of this legislation, nor for that matter of the current Bloodborne Pathogens Standard, for employers to implement use of any engineering control, including a safer medical device, in any situation where it may jeopardize a patient's safety, an employee's safety or where it may be medically contraindicated. Moreover, all of the affirmative defenses available to an employer under the current BBP standard remain intact with this legislation. It is not the intent of this legislation to alter OSHA's current enforcement of the BBP standard in these circumstances. Attached to this Joint Statement is a letter from Representatives Ballenger and Owens, the co-sponsors of H.R. 5178, expressing their full support for the views expressed in this statement.

The drafters are aware that some of the newer most effective technologies are more expensive than others and may create higher costs for health care facilities. Because some entities largely dependent on Medicare and/or Medicaid, such as long term care providers, will be required to comply with this legislation, we encourage the Health Care Financing Administration to examine the costs of the new technologies and consider these costs when determining Medicare reimbursement rates. Similarly, we hope that the states will examine these costs and determine whether the costs should be reflected in the Medicaid reimbursement rates.

Section 3 of the bill amends the BBP standard in two additional ways. First, it adds a requirement that in addition to the recordkeeping requirements already found in the BBP standard, employers must record percutaneous injuries from contaminated sharps in a sharps injury log. The legislation sets out the minimum information to be included in such a log, namely the type of device used, an explanation of the incident, and where the injury occurred. Employers are free to include other information should they find it helpful. However, this legislation does require that in recording the information and maintaining the log, the confidentiality of the injured employee is to be protected.

The requirement for a sharps injury log is consistent with current OSHA recordkeeping in two specific ways. First, the sharps injury log requirement does not apply to any employer who is not already required to maintain a log of occupational injuries and illnesses under 29 C.F.R. 1904. Second, employers are not required to maintain the sharps injury logs for a period of time beyond that currently required for the OSHA 200 logs.

The sharps injury log is to be used as a tool for employers so that they may determine their high risk areas for sharps injuries and use it as a means to evaluate particular devices that may or may not be effective in reducing sharps injuries. At a House Subcommittee on Workforce Protections hearing in June, representatives of the American Hospital Association testified that many health care settings, particularly hospitals, already have in place some type of 'surveillance system' for tracking needlestick and other sharps injuries. The AHA witness noted that hospitals have found this to be an effective tool to provide necessary information to help reduce such injuries.

The second way in which Section 3 amends the BBP standard is by specifying that employers must solicit input from non-managerial employees responsible for direct patient care who are potentially exposed to injuries from contaminated sharps in the identification, evaluation and selection of effective engineering and work practice controls. Employers are also to document this in the Exposure Control Plans. The intent of this section is simple- to involve in the selection of engineering controls those workers who are potentially exposed to needlestick injuries.

Section 4 of the legislation explains that the modifications as delineated by Section 3 of the bill can be changed by a future rulemaking by OSHA on the Bloodborne Pathogens Standard.

Finally, Section 5 of the bill directs that the modifications to the BBP standard are to be made without regard to the standard OSHA rulemaking requirements or the requirements of the Administrative Procedures Act. Admittedly, preemption of the OSHA rulemaking procedures is not an action to be undertaken lightly. Indeed, the requirements of this bill are driven by the unique circumstances surrounding this narrow and particular public health issue. Although there is no such thing as binding precedent for Congress, it is not the intent of this legislation, through the process used here, to diminish the carefully constructed requirements and procedures for OSHA rulemaking.

The legislation does prescribe, however, that the changes to the BBP standard are to be made by the Secretary of Labor and published in the Federal Register within six months of enactment and that the changes will take effect 90 days after such publication.

Submitted October 25, 2000.

James M. Jeffords, Edward M. Kennedy, Michael B. Enzi, Harry Reid.

U.S. DEPARTMENT OF LABOR, ASSISTANT SECRETARY
FOR OCCUPATIONAL SAFETY AND HEALTH,
Washington, DC, October 13, 2000.

Hon. Jim Bunning, U.S. Senate, Washington, DC.

[Page: S11043] GPO's PDF

Dear Senator Bunning: Thank you for your inquiry regarding OSHA's enforcement of the bloodborne pathogens standard and the effect of OSHA's November 1999 Compliance Directive on Enforcement Procedures on Occupational Exposure to Bloodborne Pathogens.

OSHA has long required employers to protect employees from exposure to bloodborne pathogens through the use of engineering controls, which include sharps disposal devices such as sharps destruction devices. To the extent that specific types of engineering controls such as sharps destruction devices can reduce the risk of needlestick injuries, such controls could be appropriate components of an employer's comprehensive exposure control plan. OSHA has allowed, and intends to continue to allow, employers to use sharps destruction devices to help reduce the risk of needlestick injuries in appropriate circumstances, as set forth in OSHA's November 1999 Compliance Directive.

It is my understanding that S. 3067, like the House companion bill, is entirely compatible with and closely tracks the language of OSHA's November 1999 Compliance Directive and will not change in any way OSHA's treatment of needle destruction devices or OSHA's enforcement of the bloodborne pathogens standard's obligation that employers use engineering controls.

I hope that this letter is responsive to your inquiry. Thank you for your interest in occupational safety and health.

Sincerely,
Charles N. Jeffress,
Assistant Secretary.

COMMITTEE ON EDUCATION AND THE WORKFORCE,
U.S. HOUSE OF REPRESENTATIVES,
Washington, DC, October 25, 2000.

Hon. Jim M. Jeffords,
U.S. Senate,
Washington, DC.

Dear Chairman Jeffords: Thank you for your sponsorship of The Needlestick Safety and Prevention Act and for your work on this important legislation. We appreciate your sharing with us the Senate Joint Statement of Legislative Intent and want to express our full support for the views expressed in the Senate statement. We want to reiterate that it is not the intent of this legislation to alter OSHA's current enforcement of the Bloodborne Pathogens Standard.

Sincerely,
CASS BALLENGER,
Chairman, Subcommittee on Workforce Protections.

MAJOR R. OWENS,
Ranking Member, Subcommittee on Workforce Protections.

Mr. JEFFORDS. Mr. President, I ask unanimous consent that the bill be read the third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be printed in the Record.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (HR 5178) was read the third time and passed.