

1 XAVIER BECERRA
Attorney General of California
2 MONICA N. ANDERSON
Senior Assistant Attorney General
3 DAMON MCCLAIN (209508)
Supervising Deputy Attorney General
4 NASSTARAN RUHPARWAR (263293)
IRAM HASAN (320802)
5 Deputy Attorneys General
455 Golden Gate Avenue, Suite 11000
6 San Francisco, CA 94102-7004
Telephone: (415) 703-5500
7 Facsimile: (415) 703-58443
Email: Nasstaran.Ruhparwar@doj.ca.gov

HANSON BRIDGETT LLP
PAUL B. MELLO - 179755
SAMANTHA D. WOLFF - 240280
KAYLEN KADOTANI - 294114
425 Market Street, 26th Floor
San Francisco, California 94105
Telephone: (415) 777--3200
Facsimile: (415) 541-9366
pmello@hansonbridgett.com

8 Attorneys for Defendants
9

10 **UNITED STATES DISTRICT COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION**
12

13 MARCIANO PLATA, et al.,

14 Plaintiffs,

15 v.

16 GAVIN NEWSOM, et al.,

17 Defendants.
18

CASE NO. 01-1351 JST

**DEFENDANTS' ADDENDUM TO
OPPOSITION TO PLAINTIFFS'
MOTION FOR ORDER MODIFYING
CDCR'S COVID-19 STAFF TESTING
PLAN**

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20 At the August 12, 2020 hearing on Plaintiffs' Motion for Order Modifying CDCR's
21 COVID-19 Staff Testing Plan, counsel for the State indicated that CDCR's staff testing plan was
22 in the process of being revised and that a new and updated plan would be imminently released.
23 Defendants now submit to this Court¹ the State's most current COVID-19 Staff Testing Guidance,
24 which is dated August 12, 2020. (*See* Exhibit A.)
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26 _____
27 ¹ Defendants also provided Plaintiffs' counsel with a copy of the Staff Testing Plan on August 17,
28 2020, prior to this filing.

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This updated policy was developed under guidance from the California Department of Public Health (CDPH). The State is working collaboratively with California Correctional Health Care Services to implement the updated timeframes outlined in the policy. CDCR expects to have plans in place to begin implementation of the more aggressive testing turnaround times set forth in the policy within 30 days and full implementation of the policy in 12 weeks. However, as noted in the policy, timeframes will be dependent upon laboratory capacity and the policy will be subject to further change based on Centers for Disease Control and CDPH guidance or guidelines.

DATED: August 17, 2020

HANSON BRIDGETT LLP

By: /s/ Samantha Wolff
PAUL B. MELLO
SAMANTHA D. WOLFF
KAYLEN KADOTANI
Attorneys for Defendants

DATED: August 17, 2020

XAVIER BECERRA
Attorney General of California

By: /s/ Damon McClain
DAMON MCCLAIN
NASSTARAN RUHPARWAR
Supervising Deputy Attorney General
Attorneys for Defendants

Exhibit A

California Department of Corrections and Rehabilitation COVID-19 Staff Testing Guidance

August 12, 2020

The following applies to all California Department of Corrections and Rehabilitation (CDCR) institutions, except for the California Medical Facility (CMF), Central California Women's Facility (CCWF), and California Health Care Facility (CHCF), identified by the Receiver, which provide skilled nursing level of care. These three institutions should follow the Skilled Nursing Facility (SNF) [testing guidance](#) issued by the California Department of Public Health (CDPH). The SNF protocols are currently as follows:

Regular surveillance testing requires testing 25 percent of staff every 7 days so that 100 percent of staff are tested each month. As soon as possible after one (or more) COVID-19 positive individuals (resident or staff) is identified in a facility, serial retesting of all staff should be performed every 7 days until no new cases are identified in two sequential rounds of testing; the facility may then resume their regular surveillance testing schedule.

Testing does not replace or preclude other infection prevention and control interventions, including monitoring all staff and inmates for signs and symptoms of COVID-19, universal masking by staff and inmates for source control, use of recommended personal protective equipment, maintaining appropriate physical distancing, and environmental cleaning and disinfection. When testing is performed, a negative test only indicates an individual did not have detectable infection at the time of testing; individuals might have SARS-CoV-2 infection that is still in the incubation period or could have ongoing or future exposures that lead to infection.

In all institutions, all staff should be screened for COVID-19 related symptoms¹ **and/or close contact² with an individual with COVID-19 infection** each time they enter any institution. If a staff member has possible COVID-19 related symptoms and/or has had close contact with **an individual with COVID-19 infection**, the staff member should be immediately isolated and referred for medical evaluation to determine whether they should be tested for COVID-19. To the extent possible, the institution should limit staff movement to a single unit/yard to limit exposure and minimize disease spread. Additionally, staff who are sick should stay home. Personnel who develop COVID-19 related symptoms and/or have **close contact with an individual with COVID-19 infection** should be instructed not to report to work and notify their supervisor.

All Institution Baseline Staff Testing

CDCR should complete mandatory baseline staff testing (i.e., testing all staff) at all institutions. Efforts are being made to prioritize institutions with the highest numbers of laboratory-confirmed staff or inmate cases. Baseline testing was completed statewide on July 17, 2020.

¹ COVID-19 symptoms include fever, cough, shortness of breath, fatigue, muscle aches, headache, loss of taste or smell, sore throat, nausea, vomiting, or diarrhea.

² Close contact is defined as within less than 6 feet for at least 15 minutes and without appropriate personal protective equipment.

Institutions without COVID-19 Cases - Surveillance Testing

In institutions that do not have any newly diagnosed COVID-19 cases among inmates or staff within the last 14 days, CDCR will follow CDPH recommendations regarding surveillance testing. The purpose of a surveillance testing strategy is to detect new cases, prevent spread, and mitigate outbreaks. This is especially relevant with COVID-19 with the high proportion of asymptomatic cases.

CDPH recommends testing 20 percent of all staff every 14 days or 10 percent of all staff every 7 days. The institution must ensure that a different cohort of staff are tested every 14 days or 7 days in order to accomplish 100 percent of staff tested over 70 days. This should include staff from multiple shifts and various locations within the institution. Once laboratory capacity allows, and within 12 weeks from this guidance (dependent on laboratory capacity), the facility should ensure that the turnaround time between each specimen collection and receipt of the testing result for that specimen is 48 hours or less. CDCR expects surveillance testing to be in place at applicable institutions as soon as baseline testing is initiated.

In addition, specific testing is recommended for the following groups:

- 1) All employees who have not had a prior laboratory-confirmed COVID-19 infection and who are regularly assigned to work in a Correctional Treatment Center, Outpatient Housing Unit, hospice, Psychiatric Inpatient Program, or Mental Health Crisis Bed shall be tested per the SNF testing guidance issued by CDPH, which includes testing 25 percent of staff every 7 days or 50 percent of staff every 14 days, to ensure 100 percent of staff are tested each month. Staff who are assigned to these posts must wear appropriate personal protective equipment.
- 2) All regularly assigned (i.e. staff assigned five days a week) transportation and hospital custody coverage staff who have not had a prior laboratory-confirmed COVID-19 infection shall be tested at least once every month, with testing occurring throughout the month. Staff who are assigned to these posts must wear appropriate personal protective equipment.
- 4) All regularly assigned culinary area staff who have not had a prior laboratory-confirmed COVID-19 infection shall be tested once every month with testing occurring throughout the month. Staff who are assigned to these posts must wear appropriate personal protective equipment.

Employees who have previously had a laboratory-confirmed COVID-19 infection and since recovered or resolved do not need to be tested for at least three months after infection in accordance with current Centers for Disease Control and Prevention (CDC) recommendations. This three-month period shall be revised if the CDC's recommendation is modified.

NOTE: CDCR, in consultation with the Receiver's office and local health jurisdiction, may adjust the scope and frequency of staff testing for a particular facility based on community spread data and prevalence of the virus in the community.

Institutions with COVID-19 Cases - Response Testing

As soon as possible, after one (1) COVID-19 positive individual(s) (inmate or staff) is identified in an institution, contact tracing should be initiated and serial retesting of all exposed persons should be performed every 7 days until no new cases are identified in two (2) sequential rounds of testing.

If three (3) or more COVID-19 positive individuals are identified serial retesting of all staff should be performed every 7 days until no new cases are identified in two (2) sequential rounds of testing. Once laboratory capacity allows, and within 12 weeks from this guidance (dependent on laboratory capacity), the facility should ensure that the turnaround time between each specimen collection and receipt of the testing result for that specimen is 48 hours or less. The institution may then resume their regular surveillance testing schedule as outlined above. CDCR expects to be able to implement serial testing at applicable institutions as soon as baseline testing is initiated.

To the extent possible, movement of staff between yards should be limited. If movement must occur, staff must wear appropriate personal protective equipment. If there are positive cases across multiple yards at any given institution, all staff across all yards should be tested every 7 days until no new cases are identified in two sequential rounds of testing. The institution may then resume their regular surveillance testing schedule as outlined above.

Prioritization of Testing

It is currently predicted that laboratory capacity will continue to expand over the next twelve weeks. While testing demand is greater than capacity, CDCR should prioritize testing to those institutions of greatest need.

Priority 1: Initial outbreak or large (>30) ongoing outbreak

Priority 2: Medium (2-29) ongoing outbreak

Priority 3: Small (1) ongoing outbreak

Priority 4: No outbreak

Staff Testing Results

Staff who are pending a COVID test result:

Staff who have a pending COVID-19 test result from close contact with a confirmed case and are asymptomatic must be quarantined at home and excluded from work until 14 days from the last exposure has elapsed and no COVID-19 symptoms develop. (An exposed person can test negative and still be infected if tested before the end of the 14 day incubation period.) Staff who have a pending COVID-19 test result from close contact with a confirmed case and are asymptomatic can continue to work while wearing face coverings and utilizing appropriate personal protective equipment (PPE), ONLY IF critical staff shortages can be documented by the CDCR facility warden to CDCR and the Receiver's office. All staff should be screened for fever, respiratory symptoms, or other COVID-19-related symptoms each time they enter any Institution.

Staff who test positive:

Staff who have laboratory-confirmed COVID-19 infection (by polymerase chain reaction or PCR), are not severely immunocompromised, and have NO symptoms shall be instructed to isolate themselves at home and shall not return to work until the following condition is met:

- At least 10 days have passed since the date of the positive COVID-19 diagnostic (federally approved Emergency Use Authorized PCR assay) test.

Staff who test positive for COVID-19 by PCR, are not severely immunocompromised, and either had mild to moderate symptoms or developed mild to moderate symptoms during their 10-day home isolation period may return to work once the following conditions are met:

- At least 10 days have passed since symptoms first appeared; **AND**
- At least 24 hours have passed since recovery, defined as resolution of fever without the use of fever-reducing medications; **AND**
- Improvement in symptoms³ (e.g., cough and shortness of breath).

Staff who test positive for COVID-19 by PCR, are severely immunocompromised or had severe symptoms initially or developed severe symptoms during their 10-day home isolation period may return to work once the following conditions are met:

- At least 20 days have passed since symptoms first appeared; **AND**
- At least 24 hours have passed since recovery, defined as resolution of fever without the use of fever-reducing medications; **AND**
- Improvement in symptoms* (e.g., cough and shortness of breath).

Staff who test positive for COVID-19 by PCR and are severely immunocompromised but who were asymptomatic throughout their infection may return to work when at least 20 days have passed since the date of their first positive viral diagnostic test. Staff should be provided information about how to appropriately quarantine and isolate within their home. (See Attachment A).

Testing of New Employees or Employees Returning from a Leave of Absence

All new institution-based employees or employees returning from a leave of absence shall be tested prior to starting or returning and should be added into the testing cycles referenced above for COVID-19.

Testing of Staff Redirected to Assist with a COVID-19 Outbreak

All staff redirected to assist an institution that has a COVID-19 outbreak (staff or inmate), must be quarantined and excluded for 14 days after working at the outbreak institution. These staff

³ It is possible that individuals may still have residual respiratory symptoms despite meeting the criteria to discontinue isolation. These individuals should continue to wear a facemask/cloth face covering when within 6 feet of others until symptoms are completely resolved or at baseline.

may be tested or retested, but a negative test result does not clear the staff to return to work in their home institution before the 14 day quarantine period.

Testing of Staff - Implementation
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In order for CDCR to properly plan and implement staff testing guidance there will be a minimum of a twelve week timeframe for full implementation of this testing guidance.

This policy is subject to change as CDC and CDPH guidelines are updated as well as PPE availability and testing resources and availability change statewide.