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

13 MARCIANO PLATA, et al.,
14 Plaintiffs,
15 v.
16 GAVIN NEWSOM, et al.,
17 Defendants.
18

CASE NO. 01-1351 JST

**DEFENDANTS' RESPONSE TO
COURT'S AUGUST 12, 2020 QUESTION
ABOUT CDCR'S STAFF TESTING PLAN**

Judge: Hon. Jon S. Tigar

19
20 **INTRODUCTION**

21 At the August 12 case management conference, the Court asked Defendants to explain to
22 what extent CDCR's current staff testing-processes differ from the processes set forth in the
23 current iteration of CDCR's staff testing plan (*see* ECF No. 3413-3; also attached hereto as
24 **Exhibit A**).

25 **I. SURVEILLANCE TESTING AT INSTITUTIONS WITHOUT COVID-19 CASES**

26 CDCR is currently not performing any surveillance testing at any institutions because there
27 have been newly confirmed COVID-19 cases at all institutions. Instead, CDCR is currently
28 performing serial re-testing of all staff members as set forth under the next heading.

1 **II. SERIAL TESTING AT INSTITUTIONS WITH COVID-19 CASES**

2 The current iteration of CDCR's staff testing plan provides that, with certain exceptions,
 3 serial re-testing of all staff should be performed every 14 days until no new cases are identified in
 4 two sequential rounds of testing. The plan also provides that, for institutions that are organized by
 5 yard, initial testing can be limited to the yard where the positive inmate is housed or where a
 6 positive staff member is assigned. But CDCR does not currently follow these procedures.
 7 Instead, CDCR is currently performing bi-weekly serial re-testing of all staff members at almost
 8 all institutions (except for the California Medical Facility (CMF), Central California Women's
 9 Facility (CCWF), and California Health Care Facility (CHCF) and¹ San Quentin) without limiting
 10 re-testing to specific institutions or yards. At San Quentin, serial re-testing of staff members
 11 occurs every seven days. CDCR plans to implement a weekly re-testing schedule for staff
 12 members at other institutions with significant COVID-19 outbreaks.

13 **III. CONTACT TRACING**

14 While not mentioned in the current iteration of CDCR's staff testing plan, CDCR is also
 15 performing contact tracing. Currently, contact tracing is being performed by a team of public
 16 health nurses who are working at CDCR headquarters in Sacramento. Anyone who was in contact
 17 with a COVID-19 positive inmate or staff member within less than 6 feet for at least 15 minutes
 18 and without appropriate personal protective equipment will be considered a close contact.

19 Institutions or Hiring Authorities who receive notification that a staff member is COVID-
 20 19 positive provide the information and notice to an Employee Referral mailbox set up for this
 21 purpose. A COVID-19 administrative staff member assigns each case to a nurse employed by
 22 CDCR's Office of Employee Health. The nurse performs contract tracing by contacting the
 23 affected employee to determine the locations where the employee worked, and whether the
 24 employee worked during the infectious period. The nurse asks the employee if they came in close
 25 contact with either staff or inmates and if they were using personal protective equipment.

26
 27 ¹ As set forth in the first paragraph of the plan, staff testing at CMF, CCWF, and CHCF follow the
 28 Skilled Nursing Facility (SNF) testing guidance issued by the California Department of Public
 Health (CDPH).

During the course of the discussion with the affected employee, if the nurse determines that another staff member has come in close contact, the nurse will contact the hiring authority at the institution to obtain contact information. The nurse will attempt to reach the close contacts, either via email or telephone, to notify them they have been in close contact with a positive staff member. The nurse will also send a notification to the hiring authority to place a sign in the workplace to notify the institutional facility that someone in the unit tested positive for COVID-19. The close contacts are encouraged to get tested for COVID-19 by their healthcare providers.² Additionally, the nurse notifies the warden and institutional chief executive officer of the case summary, including infectious period, last day of work, and symptom onset.

Except for the above referenced processes, CDCR follows the remaining provisions of the current iteration of the staff testing-plan.

DATED: August 13, 2020

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² As a point of clarification regarding testing of close contacts, the current practice is to ask close contacts to get medically evaluated and/or tested by their healthcare providers. CDCR does not currently test close contacts. This point may have been inadvertently misstated at yesterday's case management conference. Regardless, serial re-testing of staff is currently occurring frequently as discussed above in section II.

EXHIBIT A

CDCR COVID-19 Staff Testing Guidance

California Department of Corrections and Rehabilitation COVID-19 Staff Testing Guidance-July 7, 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 fever, respiratory symptoms, or other COVID-related symptoms each time they enter any institution. If a staff member has possible COVID-related symptoms, the staff member shall be directed to obtain a medical evaluation to determine whether he or she should be tested for COVID-19. To the extent possible, the institution should limit staff movement among multiple yards to limit exposure. Additionally, staff who are sick should stay home. Personnel who develop fever, respiratory symptoms, or other COVID-related symptoms should be instructed not to report to work and notify their supervisor.

All Institution Baseline Staff Testing

CDCR is attempting to complete mandatory baseline staff testing (i.e., testing all staff) at all institutions by July 16, 2020. Efforts are being made to prioritize institutions with the highest numbers of laboratory-confirmed staff or inmate cases.

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 monitor the spread of the virus in order to isolate the virus and mitigate outbreaks.

CDCR COVID-19 Staff Testing Guidance

Testing of 10 percent of all staff every 14 days including staff from multiple shifts and various locations within the institution will occur. The institution must ensure that a different cohort of staff are tested every 14 days. CDCR expects surveillance testing to be in place at applicable institutions by the July 30, 2020.

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

- 1) All employees who have not had a prior confirmed case of COVID-19 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% of staff every 7 days, to ensure 100% of staff are tested each month.
- 2) Employees who have previously tested positive for COVID-19 and since recovered or resolved need only be tested in accordance with Centers for Disease Control's (CDC) recommendations for testing such individuals. Currently, the CDC recommends that individuals who have previously tested positive need not be tested again for at least three months, but that CDC guidance may change.
- 3) All regularly assigned (i.e. staff assigned five days a week) transportation staff who have not had a prior confirmed case of COVID-19 shall be tested at least once every month, with testing occurring throughout the month.
- 3) All staff who are regularly assigned to hospital custody coverage and who have not had a prior confirmed case of COVID-19, shall be tested at least once every month, with testing occurring throughout the month.
- 4) All regularly assigned culinary area staff who have not had a prior confirmed case of COVID-19 shall be tested once every month with testing occurring throughout the month.

NOTE: State may adjust the scope and frequency of staff testing based on community spread data and prevalence of the virus in the community.

Institutions with COVID-19 Cases (Serial Testing)
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As soon as possible, after one (or more) COVID-19 positive individual(s) (inmate or staff) is identified in an institution, serial retesting of all staff should be performed every 14 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. CDCR expects to be able to implement serial testing at applicable institutions by July 30, 2020.

For institutions that are organized by yard, initial testing can be limited to the yard where the positive inmate is housed or staff is assigned. If there are multiple yards at an institution, and those who have tested positive are clustered in one yard, serial testing should only occur among

CDCR COVID-19 Staff Testing Guidance

staff regularly assigned to that yard. It is not necessary to test staff across multiple yards as long as staff are not moving among buildings to provide services.

If there are positive cases across multiple yards at any given institution, all staff across all yards should be tested every 14 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.

Staff Testing Results

Staff who are pending a COVID test result:

Staff who are pending a COVID test result and are asymptomatic can continue to work while wearing face coverings and utilizing appropriate PPE. The exception to this is staff returning to their home institution after being redirected to an institution with a COVID outbreak, which is described below. All staff should be screened for fever, respiratory symptoms, or other COVID-related symptoms each time they enter any Institution.

Staff who test positive:

Staff who test positive for COVID-19 and who have had 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 molecular assay) test.

Staff who test positive for COVID-19, initially have no symptoms, but then develop 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 3 days (72 hours) have passed since recovery, defined as resolution of fever without the use of fever-reducing medications; **AND**
- Improvement in respiratory symptoms¹ (e.g., cough and shortness of breath)

Staff should be provided information about how to appropriately isolate within their home. (See Attachment A).

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

¹ 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.

CDCR COVID-19 Staff Testing Guidance

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

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

All staff redirected to assist an institution that has of COVID-19 outbreak (staff or inmate), must be retested with a negative test result before returning to work in their home institution. As of 7/13/2020, this applies to staff redirected to San Quentin State Prison.

Next Steps

CDCR and CCHCS are working to hire a permanent Occupational Health Physician to advise and guide the Department's response to the pandemic, including any adjustments to the staff testing plan. In the interim, CDCR and CCHCS will be securing the services of a Licensed Occupational Medicine Specialist to fill this advisory role until the permanent position is filled. Based on these efforts, CDCR and CCHCS expect updates to this plan in the near future.

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