

1 XAVIER BECERRA
 Attorney General of California
 2 MONICA N. ANDERSON
 Senior Assistant Attorney General
 3 DAMON MCCLAIN - 209508
 Supervising Deputy Attorney General
 4 RYAN GILLE - 262105
 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
 8 Ryan.Gille@doj.ca.gov

PRISON LAW OFFICE
 DONALD SPECTER - 83925
 STEVEN FAMA - 99641
 ALISON HARDY - 135966
 SARA NORMAN - 189536
 RANA ANABTAWI - 267073
 SOPHIE HART - 321663
 1917 Fifth Street
 Berkeley, California 94710
 Telephone: (510) 280-2621
 Facsimile: (510) 280-2704
 dspecter@prisonlaw.com

Attorneys for Plaintiffs

10 HANSON BRIDGETT LLP
 PAUL B. MELLO - 179755
 11 SAMANTHA D. WOLFF - 240280
 LAUREL O'CONNOR - 305478
 12 DAVID CASARRUBIAS - 321994
 425 Market Street, 26th Floor
 13 San Francisco, California 94105
 Telephone: (415) 777-3200
 14 Facsimile: (415) 541-9366
 15 pmello@hansonbridgett.com

Attorneys for Defendants

18 **UNITED STATES DISTRICT COURT**
 19 **NORTHERN DISTRICT OF CALIFORNIA**
 20 **OAKLAND DIVISION**

22 MARCIANO PLATA, et al.,

23 Plaintiffs,

24 v.

25 GAVIN NEWSOM, et al.,

26 Defendants.
 27

CASE NO. 01-1351 JST

**JOINT CASE MANAGEMENT
 CONFERENCE STATEMENT**

Judge: Hon. Jon S. Tigar

Date: March 4, 2021

Time: 10:00 a.m.

Crtrm.: 6, 2nd Floor

1 The parties submit the following joint statement in advance of the March 4, 2021
2 Case Management Conference.

3 **I. VACCINES**

4 As of February 25, 2021, 78% of all incarcerated people in CDCR institutions have
5 either received at least one dose of the vaccine or have had COVID-19. Sixty-two percent
6 of all incarcerated people have been offered at least one dose of the vaccine, and 65% of
7 all people offered have accepted the vaccine. Forty percent of the incarcerated population
8 has received at least one dose of the vaccine. Of those offered, medically high-risk
9 patients accepted the vaccine as follows: COVID-19 naïve patients aged 65 or older
10 accepted the vaccine at a rate of 87%; COVID-19 naïve patients with a COVID-19
11 weighted risk score of 6 or higher accepted the vaccine at a rate of 88%; and COVID-19
12 naïve patients with a COVID-19 weighted risk score of 3 or higher accepted dose 1 of the
13 vaccine at a rate of 81%. And as of February 25, 2021, 41% of staff who work in CDCR's
14 institutions have been given at least one dose of the COVID-19 vaccine. Employees and
15 incarcerated people are still required to wear PPE and practice physical distancing even
16 after receiving the vaccine.

17 *Plaintiffs' Position:* We continue to be pleased with the pace of vaccination of
18 people incarcerated in California's prisons, and believe it is appropriate given the very
19 serious danger faced by incarcerated people in this pandemic. We are grateful for the open
20 communication from CCHCS and fully support their prioritization of vulnerable
21 populations. Given this ongoing progress, and in anticipation of the Receiver's updated
22 guidance on the use of quarantine (see Section III, below), we ask that the Court defer
23 ruling on the pending motion regarding quarantine space, in which Plaintiffs sought
24 vaccination as relief.

25 We anticipate that once the initial vaccination process is largely complete, the
26 energy and attention of many of us will turn to education and encouragement of those who
27 were initially hesitant to accept vaccination, especially at prisons and specific prison yards
28 where the refusal rates are consistently high. We look forward to working collaboratively

1 with Defendants and CCHCS toward that end.

2 Regarding staff vaccinations, we remain concerned by the low numbers of staff who
3 have agreed to get vaccinated, which has the potential to interfere significantly with the re-
4 opening of the programs and services that our clients require. We are eager to hear what
5 CDCR and CCHCS plan to do to address this issue.

6 *Defendants' Position:* As Plaintiffs acknowledge, Defendants and CCHCS have
7 made good progress with vaccine distribution to the incarcerated population. Currently,
8 78% of the incarcerated population has protection against COVID-19 as a result of either
9 receiving the vaccine or recovering from the virus, and the majority of medically high-risk
10 incarcerated people, including those who are 65 or older, have been vaccinated. The State
11 is committed to vaccinating the remaining population as quickly as possible, consistent
12 with public health guidelines, and based on supplies received from the federal government.
13 To assist with vaccination efforts, CDCR's statewide Dental Director, Dr. Rosenberg, was
14 instrumental in obtaining approval for California dentists to administer vaccines, in
15 addition to doctors and other healthcare staff authorized to vaccinate patients. Dr.
16 Rosenberg's discussion of these efforts can be viewed at
17 [https://www.cdcr.ca.gov/insidecdcr/2021/02/18/cdcr-dentists-join-covid-19-vaccination-](https://www.cdcr.ca.gov/insidecdcr/2021/02/18/cdcr-dentists-join-covid-19-vaccination-efforts/)
18 [efforts/](https://www.cdcr.ca.gov/insidecdcr/2021/02/18/cdcr-dentists-join-covid-19-vaccination-efforts/). Consistent with Centers for Disease Control and Prevention guidelines, CDCR
19 continues to require staff and incarcerated people to wear masks, practice social distancing,
20 and participate in regular COVID-19 testing as frequently as twice per week, regardless of
21 whether they have been vaccinated.

22 To keep the staff and patient populations informed and to continue to encourage
23 acceptance of the COVID-19 vaccine, the State continues to focus on educating its staff
24 and incarcerated population on the benefits of taking the vaccine to encourage higher
25 acceptance rates. Among other educational efforts, incarcerated people receive one-on-one
26 counseling from medical professionals. Staff and incarcerated people can request the
27 vaccine later if they do not accept it when first offered.

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1 **II. POPULATION REDUCTION**

2 *Plaintiffs' Position:* Population reduction remains necessary. CDCR's prisons are
3 still the ideal home for the coronavirus, and stopping its spread has proven to be almost
4 impossible. Experts say a fourth wave of infections, fueled by variants, resulting in a
5 staggering additional death toll, is possible.¹ Staff, the primary vector for patient
6 infections, will continue to put patients at risk by bringing infections into the facilities,
7 particularly given the low percentage who have accepted the vaccine to date, and because
8 the impact of immunity from vaccines and previous infection is not yet known.

9 Especially concerning is CDCR's failure to grant additional credits to incarcerated
10 people despite the fact that tens of thousands of people are serving more time due to
11 modified programs and quarantines that greatly limit opportunities to earn Milestone,
12 Educational Merit, and Rehabilitation Achievement Credits. To quantify the additional
13 time served, we on February 12 asked Defendants to provide the total amount of such
14 credit granted in 2019 and 2020. On February 19, we asked for this data again after
15 Defendants appeared to provide the number of people who received credits, but not the
16 amount of credits granted. We have not yet received a response to our February 19
17 inquiry; on March 1, Defendants said they intend to respond by close of business on March
18 3.²

19
20
21 ¹ See Karen Weintraub, *'It's like we're trying our best to help the virus': A fourth*
22 *wave is looming if US fails to contain COVID-19 variants, experts say*, USA Today, (Feb.
23 16, 2021), <https://www.usatoday.com/story/news/health/2021/02/16/covid-19-us-fourth-wave-variants-coronavirus/4460958001/>.

24 ² Below, Defendants state that the report they provided "shows the number of credits
25 earned in each category of credits." We emailed Defendants after receiving this Statement
26 today to seek clarification. Defendants responded that the report we received shows the
27 number of credits earned, but that each credit type may be valued differently (in other
28 words, may result in a different number of days being awarded). We believe there has been
a miscommunication: we wanted to know the total number of days granted under these
programs in 2019 and in 2020, so that we can compare the amount of time awarded in

1 *Defendants' Position:* CDCR's population has decreased by 26,032, or over 22%
2 since the start of the COVID-19 public health crisis.³ Between July 1, 2020 and February
3 24, 2021, 7,724 people were released from institutions and camps through the COVID-19
4 early-release programs Defendants announced on July 10, 2020.⁴ This represents 150
5 more early releases than those reported in the case management conference statement filed
6 on February 12, 2021.⁵ An additional 14,018 people were released in accordance with
7 their natural release dates. CDCR's institutions currently house 89,947 people.⁶

8 Incarcerated people continue to be released through the 180-day early-release
9 program announced on July 10, 2020. Defendants implemented these early release
10 programs in response to the COVID-19 pandemic at a time when other protections were
11 still being developed in accordance with public health guidelines that were changing
12 rapidly. Even with existing protections, described in this and previous statements,
13 Defendants and CCHCS continue to improve and add to their COVID-19 safety measures
14 as the science develops. Foremost in CDCR's priorities is to keep its incarcerated and staff
15 population safe.

16 Defendants continue to receive and respond to Plaintiffs' regular requests for
17

18 _____
19 those two years. We have asked CDCR to provide this information.

20 ³ This figure is calculated by taking the difference between the total population in
21 institutions and camps on February 26, 2020 and February 24, 2021. Weekly population
22 reports can be found at [https://www.cdcr.ca.gov/research/weekly-total-population-report-
archive-2/](https://www.cdcr.ca.gov/research/weekly-total-population-report-archive-2/).

23 ⁴ See ECF No. 3389 at 2:4-5:4 and [https://www.cdcr.ca.gov/covid19/expedited-
releases/](https://www.cdcr.ca.gov/covid19/expedited-releases/) for details regarding CDCR's COVID-19 early-release program announced on
24 July 10, 2020.

25 ⁵ See ECF No. 3548 at 9:1-3.

26 ⁶ See February 24, 2021 population report at [https://www.cdcr.ca.gov/research/wp-
content/uploads/sites/174/2021/02/Tpop1d210224.pdf](https://www.cdcr.ca.gov/research/wp-content/uploads/sites/174/2021/02/Tpop1d210224.pdf).

1 information. On February 12, 2021, Plaintiffs requested “the total, respectively, of
2 Milestone Completion, Rehabilitation Achievement, and Educational Merit Credits granted
3 in 2019, and the totals granted in 2020[.]” On February 18, CDCR provided Plaintiffs with
4 a document titled “Credit Awards Earned by Credit Type and Month Earned Between
5 January 1, 2019 and December 31, 2019.” This document shows the number of credits
6 earned in each category of credits, including the Milestone Completion, Rehabilitation
7 Achievement, and Educational Merit Credits Plaintiffs requested. On February 19,
8 Plaintiffs responded that this was not the information they requested, and that instead they
9 request “the total number of credits granted.” In response to Plaintiffs’ footnote 2,
10 Defendants agree that there has been a miscommunication. Defendants are evaluating
11 Plaintiffs’ clarified request, will work with Plaintiffs to the extent any further clarification
12 is needed, and will provide Plaintiffs with a response.

13 **III. QUARANTINE AND ISOLATION**

14 *Plaintiffs’ Position:* We understand that the Receiver has planned for several weeks
15 to issue updated guidance on use of quarantine set-aside space and solid-door cells. We
16 eagerly await this updated guidance, which we believe is urgent, given the very high
17 numbers of people who remain on quarantine in CDCR. According to CCHCS, more than
18 9,000 people remained on quarantine as of February 25, despite active case numbers of
19 fewer than 500.

20 While we fully support the use of safe quarantine space for those exposed to the
21 coronavirus and for precautionary placements following transfer in accordance with public
22 health guidelines, we also recognize that placement in quarantine imposes serious
23 restrictions on movement and programming that can be very difficult for patients to
24 tolerate, especially over long periods. We are concerned that some institutions may be
25 over-using quarantine. We were glad to hear that CCHCS custody staff are undertaking a
26 prison-by-prison review of the use of quarantine status and the set-aside space. We look
27 forward to hearing the results of that review. Similarly, we welcome the news, heard on
28 February 25, that CCHCS will review the use of 30-day, as opposed to the standard 14-

1 day, quarantine orders; we agree that 30-day orders should be used rarely if ever outside of
2 very serious outbreaks.

3 In coming days, as movement through transfers and intake continues to increase in
4 CDCR, we will seek information regarding the use of precautionary quarantine space, used
5 to house people during post-transfer quarantines. We believe that CCHCS's review of the
6 use of quarantine space will help to determine whether the current set-aside space is
7 adequate for this purpose.

8 To the extent that bed moves for quarantine and isolation remain necessary at some
9 prisons, we have encouraged Defendants to use positive measures to promote compliance.
10 As discussed in the previous CMC Statement, we suggested several measures, including
11 the offer of an additional video visiting session with loved ones for those who comply with
12 bed moves. As a result, Defendants issued a memo on February 12 directing the prisons to
13 offer, among other things, an additional video visit to people after quarantine or isolation
14 "based on availability." ECF No. 3584 at 15. Unfortunately, preliminary information
15 provided by Defendants strongly suggests that at virtually every prison, there is no
16 availability for additional visits, as there appear to be far more requests for video visits in
17 any given time period than there are actual visiting slots. At California Rehabilitation
18 Center, for example, during the period from February 5-15, 386 people requested video
19 visits, but just 47 were completed in that time, and at Wasco State Prison, 202 people
20 requested the visits during that period, and only 26 were completed. We are concerned
21 that the offer of an additional video visit for those who comply in good faith with the bed
22 move order may be illusory. We have asked for additional information and will report to
23 the Court when we receive a further response.

24 Below, Defendants suggest that the initial data that they provided us regarding the
25 number of people who requested video visits and the number of visits actually completed
26 may be misleading because some people who requested the visits were not eligible, and
27 others may not have completed the application correctly. Additionally, there have
28 apparently been technical challenges and space limitations that have limited the number of

1 successful video visits, and Defendants report they are working to address them. Once we
2 receive the additional information we requested about the calls and the number of visiting
3 slots available, we intend to meet and confer with Defendants to review access to the video
4 visiting program, and the viability of offering an extra video visiting session to people who
5 comply with orders to move for quarantine or isolation.

6 Plaintiffs remain concerned about the use of punitive measures against people who
7 have refused to comply with health-related bed moves. The concerns are especially
8 compelling when patients received inadequate education and inconsistent messaging
9 regarding the necessity to move for isolation or quarantine, or raised reasonable safety
10 concerns about moving between SNYs and GP yards. *See* ECF No. 3548 at 12-13. On
11 February 11, we requested that Defendants provide a list of all people who had been issued
12 a Rules Violation Report (RVR) in the prior 90 days for failure to comply with a COVID-
13 related housing move, and to dismiss those RVRs. We have not yet received a substantive
14 response to that request, but Defendants report below that they issued 83 RVRs to people
15 at California State Prison, Los Angeles County (LAC) during that period. They also state
16 that no RVRs were issued at RJ Donovan, Pleasant Valley State Prison, or Calipatria State
17 Prison. Defendants are silent as to whether RVRs were issued at any other prison for
18 failure to comply with quarantine or isolation bed move orders. Plaintiffs await the list of
19 the 83 people who received RVRs, as well as any other people who received RVRs for
20 resisting bed moves at any other prison, and a response to our request that the RVRs be
21 voided.

22 As Defendants write below, on February 24, the CDCR issued a memo “to
23 standardize a process to address inmates who refuse to comply with direction to move” to
24 housing as recommended by health care staff based on COVID-19 protocols. That memo
25 directs health care staff to explain the medical reasons for the move to ensure the person
26 understands them. If the person still refuses to move, the refusal shall be documented by a
27 counseling chrono and recorded on a Non-compliance Tracking Log. Finally, it states that
28 “progressive discipline will be in accordance with” California regulations for disciplinary

1 methods. After receiving this new directive, we have requested that Defendants also
2 provide information on whether people who received RVRs in the last 90 days for bed
3 move refusals were first provided 128Bs demonstrating that they had been counseled about
4 the bed moves. Depending upon the response, we may report further to the Court.

5 *Defendants' Position:* Defendants continue making efforts to ensure that prisons
6 comply with the Receiver's isolation and quarantine guidance provided on December 4
7 and 18, 2020, by closely monitoring the prisons' use of reserved quarantine space.

8 Additionally, the parties are awaiting CCHCS' anticipated "reset" of the Quarantine
9 and Isolation set-aside space. The reset is being considered based on the progress made in
10 vaccinating COVID-naive incarcerated persons, coupled with the number of incarcerated
11 persons who developed immunity after recovering from COVID.

12 CDCR issued guidance on discipline for incarcerated persons who refuse to relocate
13 for quarantine or isolation purposes. (See February 24, 2021 Memorandum attached as
14 Exhibit A.) The guidance directs staff to document the refusal on a General Chrono
15 (CDCR Form 128b) and scan it into the Electronic Records Managements System. The
16 incarcerated person will then be subject to progressive discipline in accordance with
17 Section 3312 of Title 15 of the California Code of Regulations.

18 There has been some discipline in the institutions identified by Plaintiffs for
19 incarcerated persons' refusals to move to quarantine or isolation. In LAC, over 500
20 inmates refused to move from December 1, 2020, through March 1, 2021, and 83 were
21 issued RVRs for refusing to move. At CAL, informational chronos were issued in some
22 cases for failure to accept housing, but no RVRs were issued. At RJD no inmate was
23 issued progressive discipline for refusing to move into designated spaces. Finally, at
24 PVSP inmates who refused to move were issued 128B chronos, but they were not issued
25 RVRs.

26 Further, contrary to Plaintiffs' claims that the staff provided inadequate education
27 and inconsistent messaging, institutions statewide made considerable efforts to educate
28 incarcerated persons before any discipline was issued. Specifically, officials met directly

1 with incarcerated persons who refused to move to educate them on the reasons why
2 moving to quarantine or isolation was medically necessary for everyone's safety. In some
3 instances, medical staff met on a daily basis with incarcerated persons who refused to
4 move in an effort to encourage them to re-house for the safety of the entire population and
5 to assist the institution in complying with public-health guidance.

6 CDCR continues to work on improving video visiting for the incarcerated
7 population, and video visits are being offered as an incentive for inmates to cooperate with
8 quarantine and isolation moves. CDCR is currently in the second phase of implementing
9 the Visitation Scheduling Application (VSA) system, which allows approved visitors to
10 schedule their own video visits. Defendants are hopeful that this new process will enable
11 the completion of more visits. This week twelve institutions will be utilizing the VSA. All
12 other institutions will continue utilizing the email process to request a video visit.

13 CDCR provided Plaintiffs with a link on CDCR Visitor's website that provides a
14 step-by-step process on how to schedule video visits using the VSA and using email.
15 Sunday morning, CDCR updated the initial message that visitors receive when requesting
16 their visit that more clearly differentiates a requested visit versus a scheduled visit.

17 A number of requested visits have not gone forward because one of the following
18 factors or steps was not satisfied or completed:

- 19 • The person requesting the video visit must be an approved visitor;
- 20 • The approved visitor must include all required information in their request
21 and that information must be correct;
- 22 • The approved visitor must email the correct institution (it has been reported
23 that visitors have sometimes sent video-visiting requests to the wrong institution);
- 24 • The incarcerated individual must not have had a video visit within the past
25 30 days.

26 Furthermore, institutions have varying numbers of video-visiting stations because of
27 their different layouts, which effects their ability to complete requested video visits. There
28 are institutions that have ten stations per facility, and others that have only four because of

1 space limitations. Additionally, available bandwidth affects the number of visits that can
2 occur at the same time. When piloting the program, five institutions utilized 50 stations all
3 at once, which exceeded the available bandwidth and caused connection failures, freezing,
4 and lagging at all stations, and sometimes caused an immediate and complete shutdown.
5 As CDCR works to address these issues, more video visits will be successfully completed.

6 In response to concerns regarding the discrepancy between the number of visits
7 requested, versus those completed, it appears this is due to the way the data was collected.
8 If the visitor who has requested an appointment for video visitation via email did not
9 include all of the required information, or emailed the wrong institution, that request is
10 counted in the data, regardless of whether the person requesting the visit is eligible.
11 Therefore, the number does not reflect the difference between eligible visitors and eligible
12 incarcerated persons, but also the requests from ineligible visitors, visitors providing
13 incomplete information, and request to the wrong institutions. In order to minimize the
14 ineligible requests, CDCR provides updated information on-line at
15 <https://www.cdcr.ca.gov/visitors/>.

16 **IV. STAFF SCREENING AND TESTING**

17 *Plaintiffs' Position:* Staff testing remains a critical component of preventing the
18 introduction and spread of COVID-19 in the prisons. As reported in prior Case
19 Management Conferences, Plaintiffs previously raised the concern that CDCR and
20 CCHCS lacked a process to timely identify staff who have failed to comply with
21 mandatory COVID-19 testing. See ECF No. 3548 at 16. Although CDCR and CCHCS
22 issued a joint memorandum on December 21 stating that “any employee who refuses to
23 comply with mandatory COVID-19 testing shall not be permitted to enter the institution or
24 facility and shall be placed on approved dock (without pay) until they comply with
25 mandatory testing,” ECF No. 3520-1 (December 21 memorandum), they lacked a
26 mechanism to meaningfully enforce this policy. We also raised the concern that staff who
27 call in sick or whose symptoms are discovered during entrance screening are sent home for
28 the day, but are not required to be tested for COVID-19 or isolate at home for any period

1 of time before returning to work. *See* ECF No. 2548 at 17-18.

2 CCHCS has made substantial progress in addressing these issues since the last Case
3 Management Conference. On February 22, CCHCS reported that by March 1, all staff will
4 be asked whether they have been tested within the prison's current required timeframe (for
5 most prisons, this is currently within the previous seven days) during the entrance
6 screening process. If staff report that they have not been tested, they will be immediately
7 tested onsite via a rapid test. Similarly, in addition to asking about current symptoms of
8 COVID-19 during entrance screening, screeners will ask each employee whether they have
9 experienced such symptoms within the previous 10 days. If the employee reports current
10 or recent symptoms, they will immediately be tested onsite via a rapid test.

11 We appreciate these changes and believe they will improve compliance with the
12 testing policies. We are concerned, however, that this process relies entirely on staff self-
13 reporting compliance with the testing policies during entrance screening. We have
14 suggested CCHCS also develop systems to independently verify compliance. For
15 example, to ensure compliance with routine testing, CCHCS could (1) require staff to
16 provide proof that they were tested, or (2) produce daily lists of all employees who were
17 tested within the past 7 days and cross-reference that list during entrance screening.
18 CCHCS has said they are working to address this concern.

19 Finally, regarding reporting, we recently received reports of staff testing completed
20 in January and the first two weeks of February. Like the report we received in December,
21 *see* ECF No. 3530 at 19-20, the reports showed significant noncompliance with the testing
22 policies. According to the data provided, 4,000 to 6,000 staff members who apparently
23 should have been tested were not tested each week. In other words, only approximately
24 75% to 80% of staff who should have been tested were tested each week. However, also
25 like the report we received in December, CCHCS has said that there are significant
26 problems with the data that at least partially account for the low compliance ratings. Given
27 these ongoing problems with developing an accurate reporting system for staff testing, we
28 believe the additional measures described above are critical to ensure staff are being tested

1 as required.

2 *Defendants' Position:* CCHCS, which oversees staff testing and screening for
3 CDCR employees, is evaluating its current guidelines and processes to determine the
4 feasibility of changes that may identify and resolve instances of noncompliance faster. For
5 example, effective March 1, 2021, CCHCS and CDCR issued revised guidance to all
6 CCHCS and CDCR staff outlining updated institution entrance screening procedures. A
7 copy of this guidance is attached as Exhibit B. When entering an institution, each person
8 must submit to a series of questions and have their temperature taken. In addition to the
9 questions already asked of those entering CDCR's institutions, the screening process will
10 now include questions asking each person entering CDCR's institutions if they have been
11 tested within the last seven days. If they have not, if they appear to have COVID-19
12 symptoms, or if they have a temperature of 100.4 degrees or more, they will immediately
13 receive a rapid test. Staff who have tested within the past seven days will be asked if they
14 have experienced any symptoms of COVID-19 in the past ten days or if they have been in
15 close contact with someone with lab-confirmed COVID-19 or COVID-19-like symptoms
16 without appropriate personal protective equipment. If they have, they will similarly
17 receive a rapid test. Even if a person receives a negative COVID-19 test, they may be sent
18 home if the nurse administering the test observes symptoms or makes a clinical judgment
19 that it is appropriate to send that person home. People who receive a positive test or have
20 symptoms will be denied entrance to the institutions for ten days.

21 Entrance screening staff, who must receive training for the position, will be
22 provided with the screening decision tree on page five of Exhibit B to assist with this
23 process and promote consistent entrance screening. Each of CDCR's institutions is
24 equipped with rapid COVID-19 test machines. CCHCS is also in the process of obtaining
25 a rapid test called BinaxNOW, which does not require a machine and can be administered
26 more easily onsite at the institutions. CDCR will implement and comply with any updated
27 policies and work with CCHCS to seek solutions to improve compliance.

28 CDCR and CCHCS continue to test their employees one to two times per week as

1 one of their precautionary efforts to detect and respond to instances of COVID-19 early.
2 And CCHCS continues to review and improve its methods for tracking compliance data.
3 Plaintiffs receive reports on progress in this and other topics related to the State's COVID-
4 19 response at least once a week. Among a myriad of Plaintiffs' inquiries that CDCR and
5 CCHCS respond to on an almost daily basis, on February 25, 2021, CCHCS staff provided
6 Plaintiffs with a detailed description of their internal data tracking and affirmation process
7 as it relates to staff testing data, and the status of their investigation into possible
8 discrepancies in data. CCHCS staff informed Plaintiffs that they are analyzing the data to
9 determine how many of the 4,000-6,000 staff members who appear to have not received a
10 COVID-19 test each week in January are reflected in this category due to data-related
11 issues. For example, CCHCS staff are working to differentiate active staff from staff not
12 physically onsite at the institution at the time testing occurred, or staff who recently
13 recovered from COVID-19, who may be among the numbers of staff who appear, on
14 paper, to have not received a COVID-19 test as scheduled. Defendants and CCHCS are
15 hopeful that the results of this investigation will provide further clarity to the data being
16 collected and reported.

17 Defendants are committed to working with their healthcare partners at CCHCS to
18 implement and improve programs designed to ensure the safest possible conditions in
19 CDCR's institutions.

20 **V. FACE COVERINGS AT CALIFORNIA STATE PRISON, SOLANO**

21 *Plaintiffs' Position:* We appreciate many of the efforts described by Defendants
22 below regarding face-coverings at Solano. However, Defendants describe an asymmetrical
23 approach with regard to staff versus residents' noncompliance that is deeply concerning.
24 Defendants say that "employees, contractors, and visitors" who fail to comply with mask-
25 wearing protocols are "subject to progressive discipline." The many logs produced by
26 Defendants regarding staff compliance with face-coverings show that almost all who fail to
27 comply with face-covering mandates, both at Solano and statewide, receive verbal
28 counseling or a letter of instruction. These are forms of corrective action as opposed to

1 formal adverse action. We do not argue with the prioritization of lower levels of coercive
2 action.

3 In contrast, Defendants report that staff at Solano “have been directed to issue rules
4 violation reports to residents who refuse to comply with current mask-wearing mandates.”
5 The immediate issuance of RVRs is punitive and will result in people serving more time,
6 because RVRs can result in loss of time credits or, for those serving an indeterminate term,
7 can be used by the parole board to support a finding that a person is unsuitable for release.
8 As is the practice for responding to staff noncompliance, CDCR should first provide verbal
9 counseling and written warnings (128-B informational or general chronos) and then begin
10 the progressive discipline process. On March 2, we requested that Defendants provide
11 copies of all RVRs issued in the past 90 days for failure to comply with mask-wearing
12 mandates, so that we can assess whether RVRs are being issued in appropriate
13 circumstances.

14 More broadly, we continue to believe CDCR should focus on educating and
15 encouraging compliance, not just punishing noncompliance. In this regard, we support the
16 newsletter and meeting with the Men’s Advisory Council described below. CDCR should
17 continue to develop creative methods to encourage and incentivize compliance with mask
18 wearing mandates. *See, e.g.*, ECF No. 3356 at 15-16 (June 18, 2020 Joint Case
19 Management Conference Statement) (recommending CDCR encourage compliance with
20 social distancing requirements by “talking to incarcerated people, including by consulting
21 the Inmate Advisory Councils, conducting (distanced) town hall style meetings, and using
22 the closed circuit television to solicit their input on these issues” and “providing
23 ‘substantial value’ benefits to mark measurable compliance success, including . . . tablets,
24 magazines/books, additional free phone calls, and (properly distanced) group
25 celebrations”).

26 *Defendants’ Position:* CDCR continues to reinforce its state-wide mandate that all
27 staff wear face masks in compliance with prior directives. At the last case management
28 conference, the Court inquired about the CSP-Solano’s efforts to improve mask

1 compliance. Following the OIG visit, Solano issued a directive on February 8, 2021,
2 reiterating that employees, contractors, and visitors must comply with mask-wearing
3 protocols, or be subject to progressive discipline. On January 20, 2021, a memorandum
4 titled, "Clarification for Offenders Wearing Facial Coverings" was released to incarcerated
5 persons. This directive reiterated expectations and illustrated the proper way to wear
6 masks. Additionally, it reiterated that incarcerated persons who fail to adhere to these
7 mandates will be disciplined and restricted to their housing units until they comply. The
8 Food Services Department, which was one of the problematic areas cited by the OIG,
9 provided additional training on mask requirements to staff on January 14, 2021, and
10 January 20, 2021. Additionally, the Food Services Department placed posters throughout
11 the kitchen to remind incarcerated persons and staff of how to appropriately wear masks.

12 Solano included COVID-19 education topics in its February 2021 edition of the
13 Solano Chronicle, which is written by incarcerated persons for the residents at Solano.
14 This edition provided information related to stopping the spread of COVID-19 along with
15 information regarding the COVID-19 vaccines.

16 Solano Managers and Supervisors have personally met with the Men's Advisory
17 Council to educate them on the importance of correct mask wearing and have walked the
18 yards to talk with and educate the residents and provide them an opportunity to ask
19 questions. Staff have been directed to issue rules violation reports to residents who refuse
20 to comply with current mask-wearing mandates.

21 **VI. INTAKE**

22 *Plaintiffs' Position:* After pausing intake from county jails for six weeks, CDCR
23 started receiving new people the week of January 11. For the past month, CDCR has
24 received approximately 500 new people each week. On February 8, CDCR Secretary
25 Kathy Allison reported that 10,700 people were incarcerated in county jails pending
26 transport to CDCR.

27 As discussed at the last Case Management Conference, on February 15, the
28 Receiver paused the large scale movements out of the Reception Centers that would be

1 necessary to make additional space available to expand intake. Since then, CCHCS has
2 approved the transfer of recently COVID-19 resolved patients (diagnosed not more than 80
3 days ago) from the Reception Centers to other prisons. CCHCS issued a policy outlining
4 testing and other safety precautions for these transfers on February 19.

5 We believe that CCHCS's decision to limit movement out of Reception Centers to
6 recently resolved patients is sensible, and that continued intake should be contingent upon
7 (1) CDCR's ability to safely make space available in the Reception Centers, pursuant to
8 CCHCS's guidance, and (2) CCHCS's receipt of sufficient doses of the vaccine to
9 continue vaccinations at the current pace, including for new intake.

10 *Defendants' Position:* CDCR continues to perform intake on a limited basis.
11 Incarcerated persons who meet the intake criteria are housed in reception centers, but they
12 are not currently being transferred to mainline institutions. Presently, there is no
13 requirement that persons accepted from the counties be vaccinated before transfer to
14 CDCR. But CCHCS and CDCR monitor whether new residents have received the vaccine
15 and if so, how many doses. CDCR completes the vaccination of new patients in
16 accordance with public health guidelines and based on their eligibility in appropriate
17 priority groups.

18 CDCR accepted 435 incarcerated persons for intake from county jails for the week
19 of February 22, 2021. For the Week of March 1, 2021, CDCR has authorized intake of
20 555 incarcerated persons from county jails.

21
22 DATED: March 2, 2021

HANSON BRIDGETT LLP

23
24
25 By: /s/ Samantha Wolff
26 PAUL B. MELLO
27 SAMANTHA D. WOLFF
28 LAUREL O'CONNOR
DAVID C. CASARRUBIAS
Attorneys for Defendants

1 DATED: March 2, 2021

XAVIER BECERRA
Attorney General of California

2

3

4

By: /s/ Damon McClain

5

DAMON MCCLAIN
Supervising Deputy Attorney General

6

RYAN GILLE

7

IRAM HASAN

8

Deputy Attorneys General

9

Attorneys for Defendants

10 DATED: March 2, 2021

PRISON LAW OFFICE

11

12

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By: /s/ Sophie Hart

14

STEVEN FAMA

15

ALISON HARDY

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SARA NORMAN

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SOPHIE HART

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Attorneys for Plaintiffs

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Exhibit A

Memorandum

Date: February 24, 2021

To: Associate Directors, Division of Adult Institutions
Wardens

Subject: **INMATES REFUSING TO COMPLY WITH HOUSING PROTOCOLS IN REGARDS TO COVID-19 ISOLATION AND QUARANTINE**

The purpose of this memorandum is to standardize a process to address inmates who refuse to comply with direction to move to an appropriate isolation or quarantine cell, housing unit, or alternate housing site as recommended by health care staff and COVID-19 protocols. Bed moves are an essential step the Department is taking to lower the risk of COVID-19 transmission within the institutions. Movement from one location to another shall be limited to that which is necessary for clinical care, medical isolation or quarantine, reduction of overcrowding, and/or serious custody concerns.

This memorandum further provides guidance and direction for the documentation, tracking, and use of progressive discipline for inmates refusing to move from one bed, cell, housing unit, or alternate housing location, to another. All institutions shall implement and abide by the procedures outlined in this memorandum to improve the consistency and effectiveness of monitoring, tracking, and compliance of inmates refusing to comply with housing protocols.

In order for institutions to be consistent in the monitoring and tracking of the inmate non-compliance related to COVID-19 housing, Wardens are directed to have their designated staff implement the following steps when documenting and disciplining an inmate's refusal to move to a designated isolation or quarantine cell, housing unit, or alternate housing location. The steps shall be completed as follows:

- Health care shall conduct rounds in the housing units documenting vitals, collecting medical information, and looking for inmates with symptoms consistent with COVID-19. Based on this information, healthcare may test for COVID-19.
- Health care will inform the inmate of their COVID-19 results and provide education.
- Custody staff will instruct the inmate to move to a designated cell, housing unit, or alternate housing location.
- If the inmate complies with the bed move, the inmate will be permitted to take their property at the time of the move.
- If the inmate refuses, Health care staff shall explain the circumstances and medical reasons pertaining to the move, ensuring the inmate understands why they are required to move. Health Care and Custody staff will ensure effective communication is established and achieved.

Associate Directors, Division of Adult Institutions
Wardens
Page 2

- If the inmate refuses to move, Custody staff shall document the inmate's refusal on a General Chrono (CDCR Form 128B), also documenting effective communication was established and how.
- If the inmate refuses to sign the CDCR Form 128B, Custody staff will indicate the inmate refusal on the CDCR Form 128B.
- Custody shall scan the CDCR Form 128B and email a copy of the CDCR Form 128B to the Incident Command Post (ICP) to track.
- The ICP staff shall add the inmate refusals to the Quarantine/Isolation Bed Move, Inmate Non-Compliance Tracking Log.
- After emailing the CDCR Form 128B to the ICP, facility Custody shall forward the original CDCR Form 128B to the Case Records Department for inclusion into the inmate's Electronic Records Management Systems file.
- Copies of the CDCR Form 128B will also be forwarded to the Facility Captain, Facility Lieutenant, Correctional Counselor I, and the inmate by Custody.
- Progressive discipline will be in accordance with California Code of Regulations, Title 15, Section 3312 Disciplinary Methods.

All institutions will forward their completed Quarantine/Isolation Bed Move, Inmate Non-Compliance Tracking Log to their respective Associate Director by the 5th of the following month for the preceding month. If you have any questions, please contact W. Anthony Dobie III, Special Assistant to Deputy Director, Facility Operations, Division of Adult Institutions, at (916) 323-1029 or Willie.Dobie@cdcr.ca.gov.



CONNIE GIPSON
Director
Division of Adult Institutions

DocuSigned by:

Barbara Barney-Knox

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BARBARA BARNEY-KNOX
Deputy Director, Nursing Services
Statewide Chief Nurse Executive

Attachments

cc: Kimberly Seibel
Charles W. Callahan
Patrice Davis
W. Anthony Dobie III

Exhibit B



CALIFORNIA CORRECTIONAL HEALTH CARE SERVICES



MEMORANDUM

Date: February 26, 2021

To: California Department of Corrections and Rehabilitation All Staff
California Correctional Health Care Services All Staff

From:

DocuSigned by:

Connie Gipson

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Connie Gipson
Director
Division of Adult Institutions

DocuSigned by:

Joseph Bick

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Joseph Bick, M.D., CCHP
Director
Health Care Services

Subject: **NOVEL CORONAVIRUS DISEASE 2019 (COVID-19) INSTITUTION ENTRANCE SCREENING, TESTING PROCEDURES AND eLEARNING COURSE REVISED**

Effective March 1, 2021, this memorandum updates expectations related to Novel Coronavirus Disease 2019 (COVID-19) entrance screening and rapid testing procedures at California Department of Corrections and Rehabilitation (CDCR) institutions. Symptom screening and testing are essential steps the Department has taken to lower the chance of COVID-19 transmission in the workplace. In light of voluntary vaccinations and mandatory testing for COVID-19, the entrance screening process has been modified. All institutions shall implement and abide by the procedures outlined in this memorandum to improve the consistency and effectiveness of the entrance screening and rapid testing process.

Guidance for Employees Who are Sick

In an effort to prevent and reduce transmission of illness, the Centers for Disease Control and Prevention recommends that employees stay home when sick with influenza-like illness including COVID-19. Employees shall self-screen prior to reporting for work and if experiencing any COVID-19 or flu-like symptoms the employee shall:

- Not report to work,
- Immediately follow existing procedures for calling in sick, and
- Consult with their personal health care provider for additional guidance.

Training for Entrance Screeners

The COVID-19 Entrance Screening eLearning Course is training designed for all staff assigned to conduct entrance screenings. All entrance screeners, including those newly appointed to perform entrance screening or those who completed the previous version of entrance screener training, prior to March 1, 2021, shall complete the revised eLearning Course entitled "COVID-19 Entrance Screening," in the Learning Management System (LMS). Please note, if you are assigned to conduct entrance screening you will **not** automatically be enrolled for this eLearning course. The COVID-19 Entrance Screening eLearning

MEMORANDUM

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course is available for self-enrollment on the LMS by searching the course name “COVID-19 Entrance Screening” or BET Code 11062470.

The Chief Executive Officer (CEO) for California Correctional Health Care Services (CCHCS), and Warden for CDCR are responsible for ensuring all staff assigned to conduct entrance screening are trained as follows:

- New screeners shall complete training prior to conducting entrance screening.
- Current screeners shall complete revised training within 14 business days from the date of this memorandum.

A compliance report entitled “COVID-19 Entrance Screening” is available in LMS that lists employees who complete the training. The CDCR In-Service Training Offices and CCHCS Institution Training Coordinators have been provisioned access to the compliance report.

Institution entrance screening is an equally shared responsibility and as such, screening staff shall be comprised of trained non-health care or health care staff. Institution CEOs and Wardens shall coordinate and ensure appropriate coverage is available on each watch to conduct entrance screening for all staff, vendors, volunteers, contractors and visitors.

Entrance Screening Process

COVID-19 entrance screening consists of the following two-step process:

Step 1: Symptom and Exposure Risk Screening

All individuals including institution, headquarters and regional staff; contractors; vendors; volunteers and visitors shall verbally answer screening questions prior to being permitted to enter an institution. See the revised [Symptom and Exposure Risk Screening](#) decision tree.

Step 2: Temperature Measurement

Temperature measurements shall be taken for each individual with a non-contact, infrared, digital thermometer by screening staff.

The screening shall take place at either the parking lot entrance gate, while individuals are in their vehicles or at a designated screening location (e.g., the institution’s first pedestrian access point) per the institution’s entrance screening plan as approved by the Regional Health Care Executive (RHCE), CCHCS, and Associate Director (AD), CDCR. Screening locations shall be placed in an area as to catch every person coming onto grounds thus preventing any circumvention of the screening process.

Determining Entrance into the Institution

Entrance screeners shall refer to the revised [Symptom and Exposure Risk Screening](#) decision tree to determine who shall be granted entrance to an institution or sent for testing to determine entrance into the institution. All individuals referred for COVID-19 testing will be required to sign the [Referrals for COVID-19 Rapid Testing Log](#).

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- Individuals will be sent for COVID-19 testing if any of the following occur:
 - Answers to screening questions indicate testing is necessary
 - Have a temperature measured equal to or greater than 100.4° Fahrenheit
 - Observed to have COVID-19 or flu-like symptoms by screening staff
 - Become symptomatic for COVID-19 while at the institution

- Individuals who respond “yes” to any screening questions, which may be related to underlying health care conditions, shall have further triage with a licensed nurse. Based on the clinical judgment of the nurse, the individual may be allowed entry into the institution. Employees providing medical substantiation of an underlying health care condition consistent with COVID-19 symptoms will not need additional triage. Medical substantiation shall be kept by the employee and shown to screening staff each day and shall include the specific COVID-19 like symptom(s) and a date the symptom(s) are expected to resolve or if the symptom(s) are permanent.

- Individuals sent for COVID-19 testing shall be provided an N95 mask, which shall be donned prior to entering the institution. Individuals shall immediately report to the designated testing location within the institution. Point of Care (POC) rapid testing will be administered by an Employee Health Program (EHP) licensed nurse or trained staff. Results of the test can take up to 30-minutes and individuals will be required to wait at the testing location until the results are received. Employees awaiting test results shall call their immediate supervisor and advise them of their location in the event they will be late to their post. In the event POC rapid test results are unavailable, individuals will be provided a PCR test and sent home until results are available. Individuals shall follow the EHP nurse’s directions regarding testing and subsequent protocol based on test results and clinical judgement.
 - Individuals who receive a negative POC rapid test result and are asymptomatic will be allowed to report for duty or conduct business within the institution.
 - Individuals who receive a negative POC rapid test result and are symptomatic will be assessed by the EHP nurse including a review of symptoms and may be sent home based on the EHP nurse’s clinical judgement.
 - Individuals who receive a positive POC rapid test result shall be sent home.

Individuals Denied Entrance to an Institution

- All individuals testing positive for COVID-19 (with or without symptoms) shall be denied entrance to the institution and immediately sent home to self-isolate. Individuals shall not return to the institution until:
 - ✓ At least 10 calendar days have passed *since symptoms first appeared or first positive diagnostic viral test result* **and**
 - ✓ At least 24 hours have passed *since last fever of 100.4 or greater without the use of fever-reducing medications* **and**
 - ✓ Symptoms (e.g., cough, shortness of breath) have improved.

MEMORANDUM

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- CDCR/CCHCS employees who test positive shall immediately notify their supervisor pursuant to established call in procedures. All COVID-19 Administrative Time Off (ATO) and leave usage questions can be found by viewing the CDCR and CCHCS decision trees:

[Employee Health Exposure ATO Decision Tree](#)

[Essential/Non-essential Employee Decision Tree](#)

[ATO Decision Tree](#)

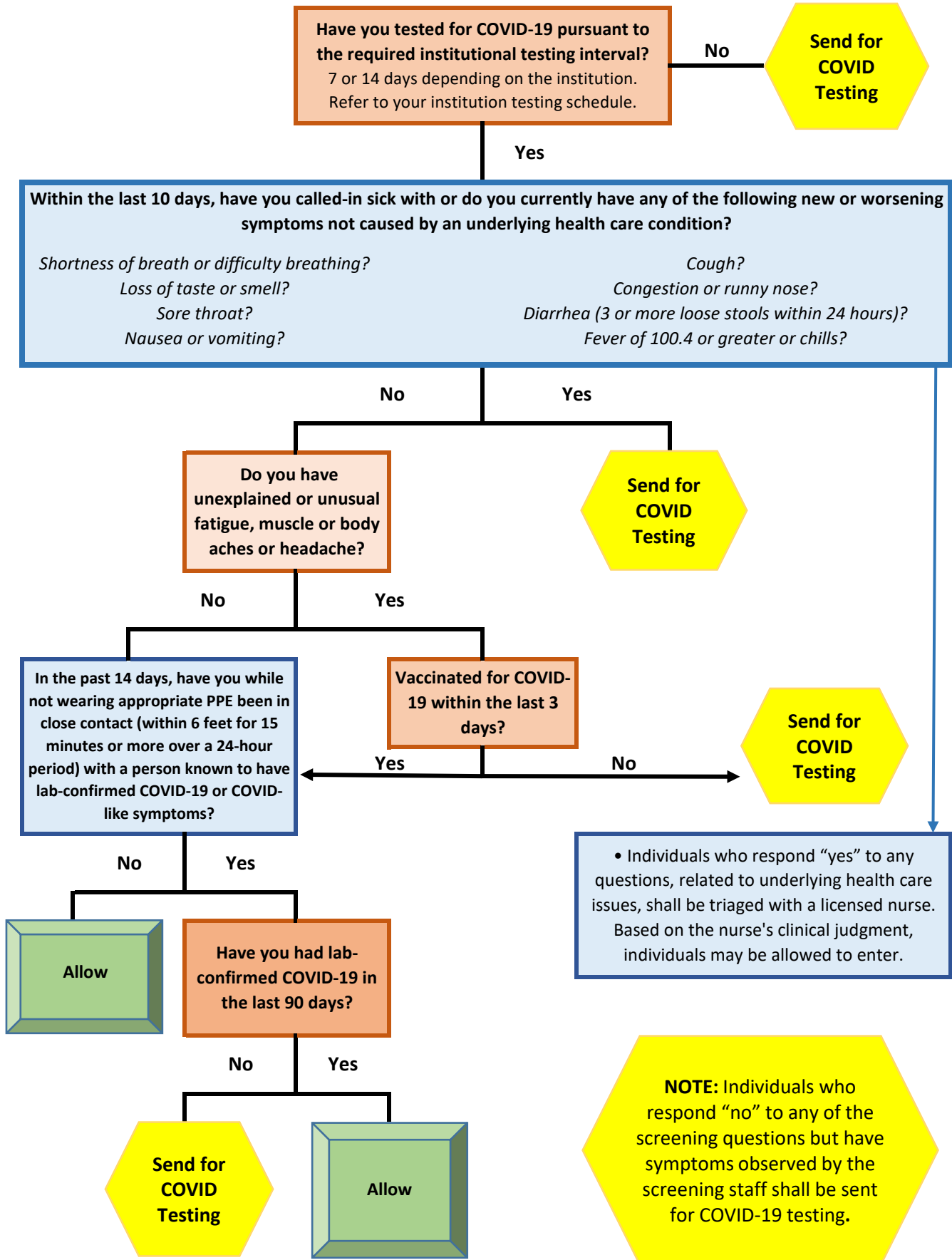
Thank you for your continued dedication and commitment to reducing the spread of COVID-19 and protecting the health and safety of our inmates, staff, and the public. If you have any questions regarding implementation of the entrance screening and rapid testing procedures, please contact the institution's RHCE for CCHCS and AD for CDCR.

For LMS related issues, CCHCS staff shall contact the Staff Development Unit at cchcsSDULMSTrainingHelp@cdcr.ca.gov and CDCR staff shall contact your In-Service Training Office.

Additional information on entrance screening, rapid testing, and other COVID-19 topics can be found on CCHCS Lifeline Coronavirus (COVID19) webpage. Click [here](#) to access these resources.

Attachments

Symptom and Exposure Risk Screening



**CDCR/CCHCS DAILY COVID-19 SCREENING
REFERRALS FOR POC TESTING LOG**

INSTITUTION:

	DATE	WATCH	LAST NAME	FIRST NAME	PERNR # OR DATE OF BIRTH	SIGNATURE
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COVID-19 SCREENING



In order to ensure the health and safety of CDCR/CCHCS employees, our population, and visitors, we have implemented a screening questionnaire that ***must be completed every time prior to entering this facility***

Have you been tested for COVID-19 pursuant to the required institutional testing interval?

In the last 10 days have you called-in sick with or are you currently experiencing any of the following new or worsening symptoms not caused by an underlying health care condition:

- Fever of 100.4 or greater or chills?
- Diarrhea (3 or more loose stools within 24 hours)?
- Cough?
- Sore throat?
- Shortness of breath or difficulty breathing?
- Congestion/runny nose?
- Nausea or vomiting?
- Loss of taste or smell?

Do you have unexplained/unusual fatigue, muscle/body aches, headache and have not been vaccinated in the last 3 days?

Within the past 14 days, have you while not wearing appropriate personal protective equipment been in close physical contact (within 6' for 15 minutes or more over 24 hours) with a person who is known to have lab-confirmed COVID-19 or COVID-like symptoms?

Have you had lab-confirmed COVID-19 within the last 90 days?

IF YOU ARE EXPERIENCING ANY OF THE ABOVE SYMPTOMS OR SITUATIONS, ALERT SCREENING STAFF IMMEDIATELY