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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

MARCIANO PLATA, et al.,

Plaintiffs,

v.

GAVIN NEWSOM, et al.,

Defendants.

CASE NO. 01-1351 JST

JOINT CASE MANAGEMENT CONFERENCE STATEMENT

Judge: Hon. Jon S. Tigar
Date: May 27, 2021
Time: 2:00 p.m.
Crtrm.: 6, 2nd Floor

The parties submit the following joint statement in advance of the May 27, 2021 Case Management Conference.

Plaintiffs' introductory statement: There has been a marked reduction in active COVID cases in the prisons, a result of about one-half the population having previously been infected, a relatively high vaccination rate among residents, and relatively low community transmission rates in most of California. As of May 25, there are 11 known cases of COVID among the incarcerated people in CDCR,[1] and the vaccination rate is just over 70%. Unfortunately, the situation among prison staff is far more troubling: there are 134 staff cases currently, and despite repeated and highly-coordinated efforts by CCHCS, CDCR, and others to encourage voluntary vaccination for those who work inside the prisons, only about half of staff have accepted a vaccine. As set forth below, infected and unvaccinated staff members continue to pose a significant threat to incarcerated communities. Accordingly, continued employment inside CDCR prisons should be conditioned on receiving the vaccine, and those who are unable to take the vaccine for religious or medical reasons should be tested for COVID daily.

Defendants' introductory statement: After over a year since the onset of the pandemic, CDCR is pleased to report that there are currently only 11 cases of COVID-19 among incarcerated people in the past 14 days (as of May 25, 2021), with no single institution having more than 6 cases. Only four institutions currently have any active cases of COVID-19 among the incarcerated population, and only two of those four institutions have more than one case. This is an astounding improvement since December 22, 2020, when CDCR peaked with 10,617 active cases of COVID-19 that were new in the past 14 days. Relatedly, CDCR's vaccination efforts, which began in late December 2020, have yielded significant positive results. Currently, 68% of the incarcerated population is *fully* vaccinated, and vaccinations are ongoing.

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[1] According to the CDCR COVID tracker website, six of these cases are at California State Prison, Solano.

In light of these positive and hopeful improvements in CDCR's response to the COVID-19 pandemic, CDCR and CCHCS have commenced a reopening process grounded in healthcare and public health guidance. The Roadmap to Reopening provides a flexible approach to ensuring the safety and wellbeing of inmates and staff as the institutions work towards returning to pre-pandemic operations.

I. VACCINES

As of May 21, 2021, 97% of the California Department of Corrections and Rehabilitation's (CDCR) incarcerated population has been offered at least one dose of the vaccine, and 72% of those offered have accepted the vaccine. This amounts to 71% percent of the incarcerated population having received at least one dose of the vaccine. Vaccination rates of medically high-risk incarcerated people are as follows: over 99% of all COVID-19-naïve patients aged 65 or older have been offered the vaccine, and 90% of patients in this category are fully vaccinated, with another 8 patients awaiting the second dose of the vaccine; over 99% of all COVID-19-naïve patients with a COVID-19 weighted risk score of 6 or higher have been offered the vaccine, and 91% of patients in this category are fully vaccinated, with another 10 patients awaiting the second dose of the vaccine; and 99% of COVID-19-naïve patients with a COVID-19 weighted risk score of 3 or higher have been offered the vaccine, and 83% of patients in this category are fully vaccinated, with another 88 patients awaiting the second dose of the vaccine. Additionally, as of May 21, 2021, at least[2] 49% of staff who work in CDCR's institutions have been given at least one dose of the COVID-19 vaccine. Employees and incarcerated people are still required to wear personal protective equipment and practice physical

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[2] CDCR and CCHCS are working with the Department of Public Health to determine the number of staff who have been vaccinated outside CDCR's system to maintain accurate data. Because individuals may decline to share their medical information, it may not be possible to reflect every vaccinated staff member in this percentage.

distancing even after receiving the vaccine.[3]

Plaintiffs' Position:

Patients

We continue to be pleased with CCHCS's efforts to vaccinate incarcerated people against COVID-19. CCHCS data as of May 21 shows that 98% of the approximately 97,000 people in CDCR custody have been offered a vaccine.[4] It also shows that 69% of the population is fully vaccinated, and another 3% have received one dose of a two-dose regimen, so will be fully vaccinated in no more than 30 days. As previously reported (see ECF No. 3579 at 3:14-17), approximately 90% of those age 65 or older are fully vaccinated, according to the data.

The data also shows that the COVID vaccine refusal rate among the CDCR population in the last approximately 30 days dropped slightly from approximately 30% to 27%.[5] We appreciate that CCHCS has re-offered, and continues to re-offer, vaccine to those who have hesitated or refused to be vaccinated, and that they are planning an outreach event at Salinas Valley State Prison to promote the vaccine to people who have thus far refused it. (Two of that prison's four main yards have relatively high refusal rates among residents). We also appreciate that CCHCS on May 20 said it was working on guidance or directives for medical providers regarding identifying at each clinical

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[3] As discussed below, the Receiver's office and CDCR have lifted the mask-wearing requirement for those who are outdoors and at least six feet away from others. However, individuals are still required to keep a mask on their person, and must wear it if they come within six feet of another person outdoors.

[4] Almost all who have not been offered vaccine are either out-to-court and thus not physically present in a CDCR prison, or are Reception Center new arrivals pending a vaccine offer. There are approximately 150 listed as not having been offered vaccine who are not in either of those two groups. On May 20, CCHCS said it would direct prisons to determine if those people are mistakenly listed, or need to be offered vaccine.

[5] As of May 11, there were a dozen CDCR "yards" (as sub-facilities within each prison are commonly called) with a population of greater than 500 at which nearly or just over 50% of the residents had refused a vaccine offer.

encounter whether a patient is vaccinated, and discussing and offering the vaccine if the patient is not; ultimately, the hope is that this information will be auto-generated into each primary care note so that the provider does not have to remember to look for this information elsewhere.

The number of active COVID cases, and transmission rates among incarcerated people, remain low. CCHCS reports that 43 fully vaccinated patients have tested positive (i.e., are considered "breakthrough" cases). As of May 20, there were four active breakthrough cases in the prisons statewide, according to CCHCS; two of those had been hospitalized due to COVID-related conditions.

Staff

Even with open (no appointment necessary) availability of COVID-19 vaccine for staff at all prisons in May, and CCHCS's receipt of data regarding vaccinations received in the community, CCHCS reports that only about 50% of prison staff are vaccinated or partially vaccinated (not yet completed their two-dose regimen) against the disease. This is a major concern because, among other things, (1) staff are the primary vector for introducing COVID-19 into the prisons, (2) staff are continuing to contract the virus (with 88 new cases reported in the last 14 days[6]), some of whom are being diagnosed with new, potentially more transmissible, variants of the virus, (3) increased rates of COVID-19 may occur among unvaccinated staff in the future, and (4) COVID cases among staff even now can result in an outbreak among residents, and always result in large numbers of residents being quarantined for exposure, thus greatly limiting their programs and access to healthcare services. It takes just a few active staff cases to put a stop to programming for a large number of patients, including long awaited offsite encounters, which are ultimately postponed due to quarantine.

CCHCS, CDCR, and the CCPOA say they continue to try to convince staff to get

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[6] *See* Cal. Dep't of Corr. & Rehab., *CDCR/CCHCS COVID-19 Employee Status*, https://www.cdcr.ca.gov/covid19/cdcr-cchcs-covid-19-status/ (last updated May 21, 2021).

vaccinated; unfortunately, they have not been particularly successful. We have recently talked with CCHCS, the Receiver, and Mr. Adams of the CCPOA about these efforts, as well as our position that vaccinations should be mandated for staff. On May 21, the Receiver reiterated that he takes seriously the question of whether vaccination should be mandatory for staff and discusses the matter frequently with his own staff. He also stated he would not make a decision regarding mandatory vaccination by the date of the Case Management Conference, and expressed a hope that the parties in this Statement would detail legal arguments, evidence and the pros and cons of mandatory vaccinations for prison staff.

Plaintiffs appreciate the continuing consideration of a vaccination requirement by the Receiver and his staff. The Receiver is best positioned to make a decision regarding this matter, and we understand that additional time is needed to do so, including to consider whether and when other healthcare organizations adopt mandates. We continue to research vaccination requirements, and will provide that information to the Receiver and Defendants as appropriate. At this time, we support the University of California and California State University systems' decision to require vaccination for all faculty, staff, and students, though we do not believe it is necessary to condition the requirement on full approval by the FDA.[7] Hundreds of other colleges and universities have also adopted some level of vaccine mandate.[8] We note that in *Kiel v. Regents of the University of California*, No. HG20-072843, a California superior court recently upheld the UC system's mandatory flu vaccination requirement. Colleges and universities are taking steps necessary to protect their communities, where many people live in congregate settings. People living in California's overcrowded prisons are, in many cases, at much higher risk

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[7] *See, e.g.*, https://ucnet.universityofcalifornia.edu/coronavirus/ student-faqs-covid-19-vaccine-5-4-21.pdf.

[8] *See* https://www.chronicle.com/blogs/live-coronavirus-updates/heres-a-list-of-colleges-that-will-require-students-to-be-vaccinated-against-covid-19.

of harm from the virus than those in college communities, due to their living conditions, advanced age and poor health. If a vaccine mandate is appropriate for university workers, it is even more so for prison workers.

We have great concerns about the plan, which we just heard about this week and is apparently endorsed by Defendants and CCPOA, for a program for one-on-one medical consultation with staff who have refused vaccine. While individual engagement on the benefits of vaccinations is a reasonable strategy, its effectiveness is unknown and there are several problems with its implementation. First, unless medical staff is diverted from patient care duties – which we would oppose for obvious reasons – it is likely to take weeks to hire licensed medical staff to meet with staff at all 35 prisons. It then would presumably take months to meet individually with the tens of thousands of unvaccinated staff. All the while, risks of harm from another surge remain.

Regardless of what further efforts are undertaken to increase staff vaccinations, we believe unvaccinated staff should be COVID-19 tested each day they enter a prison. CCHCS last week indicated they had not yet operationalized or focused on this risk reduction measure.

Defendants' Position:[9] Defendants and the California Correctional Health Care Services (CCHCS) remain committed to vaccinating CDCR's incarcerated population and staff as quickly as possible consistent with public health guidelines. CDCR and CCHCS continue to encourage people who initially declined the vaccine to consider accepting it. Staff and incarcerated people can still request the vaccine even if they initially opted not to accept it.

As reported in the last case management conference statement, CCHCS is conducting open COVID-19 vaccine clinics at each institution for a minimum of five days this month. These clinics will operate during all shifts and will be open to all staff.

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[9] Defendants have not had an opportunity to review and respond to Plaintiffs revisions located at p. 7:4-16.

CCHCS is also considering incentive programs to further encourage vaccine acceptance by staff.

To further incentivize COVID-19 vaccine acceptance, the Receiver announced that fully vaccinated incarcerated people and staff members are excused from routine COVID-19 surveillance testing during the month of May, unless they are symptomatic, a close contact of an active case, subject to Movement Matrix protocols, or will have a dental encounter. CCHCS and CDCR have also resumed use of the one-dose Johnson & Johnson vaccine, which may incentivize incarcerated people and staff who prefer one injection to accept the vaccine.

At the April 29, 2021 case management conference, the Court suggested that a mandatory vaccine policy for CDCR and CCHCS staff should be given a hard look. Defendants continue to consider the advisability of such a policy and monitor state and national trends on this issue. Specifically, an internal workgroup that is led by the Receiver's Office and that includes CDCR and CCHCS officials is continuously evaluating the mandatory-vaccine issue. No decision to mandate vaccinations for CCHCS and CDCR employees has yet been reached, and a number of considerations indicate it would be premature to mandate staff vaccinations at this time. Some of these considerations are addressed below.

The Food and Drug Administration has only given available COVID-19 vaccines emergency use authorization. Individuals must be informed that they may refuse a vaccine made available under an emergency use authorization. 21 U.S.C. § 360bbb-3(e)(1)(A)(ii)(III). And the World Health Organization recently identified certain ethical considerations involved in mandating a vaccination that has not yet been formally approved for use by the FDA.[10]

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[10] "COVID-19 and mandatory vaccination: Ethical considerations and caveats," World Health Organization, April 13, 2021, available at: https://www.who.int/publications/i/item/WHO-2019-nCoV-Policy-brief-Mandatory-

Moreover, staff continue to accept the vaccine through ongoing incentive programs. Defendants agree with the California Correctional Peace Officers Association's comments at the last conference that recently implemented and ongoing incentives for voluntary vaccine acceptance should be given some time to take effect. Defendants are hopeful these initiatives, along with other previously-reported incentives,[11] will increase acceptance rates among staff. Indeed, since the last case management conference, 2,574 more staff have accepted at least one dose of the vaccine, increasing the percentage of staff at the institutions with at least one dose of the vaccine from 44% to 49%, and vaccine clinics will continue through the end of the month at some institutions. Defendants and the Receiver's office will consider additional measures depending on the success of these programs.

The Receiver's office and CDCR believe it is important to do everything reasonably possible to educate and encourage voluntary vaccine acceptance before mandating a vaccine as a condition of employment. To this end, CDCR and the Receiver's office are developing a program for one-on-one medical consultations with staff who have not yet been vaccinated, based on evidence that such consultations have a significant influence on vaccine acceptance. This program will be implemented in the near future and is supported by CCPOA. (See ECF No. 3591.)

Additionally, the number of active COVID-19 cases among the incarcerated population has been very low for the past two months (11 as of May 25, 2021). These low numbers make a mandatory vaccine policy difficult to justify from a public health standpoint, though Defendants and the Receiver's office remain alert to the possibility of future outbreaks.

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vaccination-2021.1.

[11] Recent incentives include a supplemental-paid-sick-leave program through which full time employees may receive up to 80 hours of leave at their regular rate of pay in addition to any other paid leave to which employees may be entitled, and the creation of the COVID Mitigation Advocate Program. *See* ECF No. 3579 at 7-8.

In a call with the parties on May 20, 2021, the Receiver pointed out that healthcare systems across the country have not universally adopted mandatory vaccine policies—a trend of interest as the discussion on this topic continues within CDCR and CCHCS. The Receiver also explained that unintended consequences of a vaccine mandate, for example, staff attrition, are another major consideration in the decision-making process. Defendants are not aware of any other state prison system that has mandated staff vaccinations.

Because there are significant and myriad challenges to imposing a mandatory vaccination policy, and because Defendants are still exploring incentivizing vaccinations and are now starting to see the positive results of those efforts, Defendants believe it would be premature to implement a mandatory vaccination policy at this time. Instead, like the Receiver, Defendants prefer to focus efforts on implementing measures designed to increase voluntary vaccine acceptance, while continuing to discuss the possibility that the COVID-19 vaccine should be required as a condition of employment. This is consistent with the approach recommended by the World Health Organization in a policy brief on April 13, 2021, which stated that "Governments and/or institutional policy-makers should use arguments to encourage voluntary vaccination against COVID-19 before contemplating mandatory vaccination."[12]

Finally, to the extent this Court may be contemplating an order mandating staff vaccinations, the Prison Litigation Reform Act requires that these forms of less-intrusive and more narrowly-tailored relief be explored before such relief could issue. Indeed, given the Defendants' efforts to date to encourage staff acceptance of the vaccine, Defendants' future plans and ongoing efforts to increase acceptance, the recent successes of these new incentive programs, and in light of the current low number of positive cases of COVID-19 among the incarcerated population, Defendants do not believe that a court order could

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[12] "COVID-19 and mandatory vaccination: Ethical considerations and caveats," World Health Organization, April 13, 2021, available at: https://www.who.int/publications/i/item/WHO-2019-nCoV-Policy-brief-Mandatory-vaccination-2021.1.

properly issue at this time.

II. POPULATION REDUCTION

Plaintiffs' Position: CDCR's population continues to slowly increase. As of May 21, per the CCHCS Vaccine Registry, nearly 97,000 were incarcerated. We acknowledge that this total is approximately 25,000 fewer than pre-pandemic levels in March, 2020.

Also on May 21, CDCR reported that as of May 17, 7,663 people in county jail were pending transfer to CDCR. During the first full week of May, nearly 1,000 people were received in the CDCR Reception Centers.

CDCR continues the early release program, begun approximately a year ago, applicable to some who have 180 days or less to serve. Data provided by CDCR appears to show that this program has recently resulted in approximately 100 people per week paroling or being release to community supervision earlier than they otherwise would have been. We continue to believe that efforts to reduce population remain necessary (see ECF No. 3579 at 9:21-11:1).

Defendants below describe revised time credit rules implemented May 1 which permit some incarcerated persons to receive increased good conduct and other credits. We strongly support these revised rules.

Defendants' Position: As Plaintiffs acknowledge, CDCR's population is approximately 21% lower now than it was when the COVID-19 pandemic began in March 2020. Since July 2020 when CDCR announced its COVID-19 early-release programs,[13] 9,013 people have been released early. The vast majority of these people have been released through the 180-day early-release program, which, as Plaintiffs discuss above, is ongoing.

III. CREDIT EARNING

Plaintiffs' Position: As stated above, we strongly support the revised time credit

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[13] *See* https://www.cdcr.ca.gov/covid19/expedited-releases/ for a description of CDCR's COVID-19 early-release programs.

rules described by Defendants below.

Defendants' Position: CDCR passed new credit-earning regulations effective May 1, 2021. Significant credit-earning changes include:

- an increase in the rate at which people serving sentences for violent crimes earn credits for good conduct from 20% (one day of credit for every four days served) to 33.3% (one day of credit for every 2 days served);
- an increase in the rate at which people serving sentences for nonviolent crimes with second- or third-strike enhancements earn credits for good conduct from 33.3% (one day of credit for ever two days served) to 50% (one day of credit for each day served);
- the creation of Minimum Security Credit, through which people assigned to minimum custody workgroups, firefighting camps, or non-firefighting camps will be awarded 30 days of credit after 30 consecutive days of custody; and
- a change in disciplinary practices that previously implemented zero-credit-earning days in response to a rules violation. Under the new regulations, incarcerated people will no longer be disciplined with zero-credit-earning days. Instead, where appropriate, discipline will include limiting incarcerated people from certain privileges for a limited amount of time, but they will continue earning Good Conduct Credits during that time. Loss of privileges could, however, limit a person's ability to earn additional credits through certain programs.

CDCR anticipates that, in addition to incentivizing positive behavior, these new changes will allow more people to reduce the amount of time spent in prison.

Contrary to recent news reports, these new regulations will not result in the early release of 76,000 individuals. Complex and unpredictable variables make reliable projections of the impact difficult. For example, it is impossible to predict when or how many people might be found guilty of a rules violation, how many days of credit may be forfeited as a result, how many days may ultimately be reinstated, and how each person's

release or parole eligibility date may be impacted as a result, if at all. Nonetheless, CDCR's Office of Research continues to study how the new credit-earning regulations might impact CDCR's population. As the regulations are applied and data regarding the actual impact is collected, reliable projections will become more possible.

The most accurate way to determine how these regulations will impact the population will be to track for some period of time the number of people whose release and parole eligibility dates are actually advanced. This will give CDCR evidence on which to base projections of the future impact on the population. CDCR will do this and will provide such data in future Three Judge Panel status reports when it becomes available.

IV. QUARANTINE AND ISOLATION

Plaintiffs' Position: According to CCHCS, quarantine space in CDCR is now used primarily for those who have transferred into or within the prisons. Still, during the week of May 17, CCHCS reports that approximately 650 people were on quarantine to exposure. We believe almost all of these had been exposed to active cases among staff. Quarantine, when appropriate, is a necessary public health risk reduction measure. However, it carries certain costs: those on whom it is imposed generally cannot receive routine medical services, participate in most prison programs, go to visiting, or mix with the non-quarantined, even if socially distanced. The fully vaccinated have a greatly reduced risk of contracting or spreading the virus. Accordingly, the Receiver recently proposed to exempt fully vaccinated people from the 14-day precautionary quarantine when transferring between prisons (those people would continue to be tested for COVID-19 before and after transferring). We support this change, because of the reduced risk of transmission from the vaccinated, and because limits on medical care and programming should occur only when necessary. The exemption also might be an incentive for some to get vaccinated. We understand CCHCS is also considering whether exempting the fully vaccinated from other quarantine requirements, such as when returning from a hospital or when exposed to an active case, can be done safely.

Defendants' Position: Defendants continue efforts to ensure that prisons comply

with the Receiver's isolation and quarantine guidance provided on December 4 and 18, 2020, by closely monitoring the prisons' use of reserved quarantine space. Defendants are also cognizant of the number of people on quarantine and make efforts to avoid placing people on quarantine, except when necessary, to minimize disruption to programming. In a meeting with the parties on May 20, 2021, the Receiver's office stated that healthcare staff is examining each patient currently on quarantine to determine if any of these patients can be removed from quarantine. Additionally, the Receiver's office advised that an alert has been built into the Electronic Health Record System to identify fully vaccinated patients, so that staff can appropriately decide whether to quarantine those patients. The Receiver's office and healthcare staff are currently considering the necessity of quarantining fully vaccinated people, taking into consideration public health guidance and conditions particular to the prison setting.

The first version of the Matrix included pre- and post-transfer quarantine, COVID screening, and COVID testing for all movement, which was "highly successful in minimizing the risk of transfer related COVID transmission." A subsequent revision to the Movement Matrix eliminated pre-transfer quarantine except in certain select situations in which post transfer quarantine was impossible. CCHCS reported that this strategy was "equally successful in preventing transfer related transmission."

Defendants now know that fully vaccinated individuals are less likely to become infected and less likely to transmit infection to others if they do in fact become infected. With that information, and the understanding of the disruption to programming that is a natural result of quarantine, CCHCS provided an updated draft to the Movement Matrix on May 19, 2021, which continues pre- and post-transfer COVID testing and screening but eliminates precautionary transfer-related quarantine for fully vaccinated persons

V. HOUSING UNIT VENTILATION

Plaintiffs' Position: On March 24, Defendants described various measures underway or planned to evaluate and improve housing unit ventilation with regard to minimizing COVID-19 transmission. *See* ECF No. 3566 at 19:5-20:12. Defendants must

complete ventilation system repairs and upgrades as soon as possible, and no later than the start of the next cold weather season, when greater amounts of recirculated air will again be used in housing units.

We continue to ask for specific information regarding these efforts. CDCR counsel recently reported that CDCR headquarters had requested that each prison complete and report on an inspection of its housing unit ventilation systems by the end of this month. Counsel stated that once summary information is prepared and shared with the Receiver and CDCR Secretary, which probably will not occur until July, it can be shared with Plaintiffs. This information, counsel stated, will be used to identify and prioritize ventilation system repairs on a statewide basis. We plan to check in early June whether inspections have been completed and, if so, to request copies of individual reports.

CDCR counsel on May 21 reported on the installation of MERV-13 filters in the prisons. MERV-13 filters may decrease circulation of aerosolized microbes associated with coronavirus; as Defendants state, "[t]he MERV-13 filter is intended to minimize COVID-19 spread within housing units where the [Air Handling Units] recirculate air from within the housing units during months with colder outside air temperatures." ECF no. 3548 at 19:28-20:2.

According to the CDCR, only eight of its 35 prisons have installed MERV-13 filters in all housing units. An additional 13 are scheduled to complete installation of the filters in June, and two others are scheduled to do so later this summer. At nine prisons, a schedule for installation is to be determined; CDCR says its Headquarters is "coordinating" with these prisons "to identify and resolve delivery issues . . . impacting filter installation." At two prisons, MERV-13 filters cannot be installed, and apparently installation will not be attempted at one prison (DVI), due to the plan to close it in September.

We believe this review should also include an assessment of the appropriate population density in CDCR's dormitory-style housing units. On April 27, the Receiver issued a memorandum revoking the directive he issued in April 2020, requiring CDCR to

house those in dormitories in cohorts of no more than eight people, separated by six feet from all other cohorts. When we asked why the Receiver decided to revoke this rule, CCHCS on May 24 explained: "This direction has become outdated by subsequent developments and updates released by the CDC." We agree. As was made clear by the massive COVID-19 outbreaks in CDCR's dormitories in 2020, placing those in dorms into cohorts separated by six feet does not prevent COVID-19 transmission. It is now well understood that COVID-19 can spread via inhalation of very fine respiratory droplets and aerosol particles, at distances greater than six feet from an infectious source. The risk of such transmission is greater in enclosed spaces with inadequate ventilation or air handling, where the concentration of exhaled respiratory fluids can build-up.[14]

But, the fact that the cohorts were unsuccessful does not mean there should be *no* rules regarding distancing and population density in the dorms. We have suggested that as CDCR conducts its review of each prison's ventilation system, CDCR also review the ventilation of the dorms, to determine how many people can safely be housed in each dormitory in the event of another COVID-19 surge. The review conducted by experts of the Substance Abuse Treatment Facility and State Prison, Corcoran (SATF) in December 2020 (*see* ECF No. 3566 at 17-19) included such an assessment for SATF's dormitories. Unfortunately, on May 24, CCHCS informed us "[t]here is no plan to have the Ventilation Workgroup recommend population densities for dorm housing."

We are concerned by this response. Now that the Receiver has rescinded the 8-person cohort rule, we believe CDCR will increase the population density in the dorms. Indeed, it seems this is already happening: when we asked about the dorms at California Rehabilitation Center (CRC), on May 5, CCHCS explained that because CRC is no longer "required to maintain the 'COVID Capacity' in each dorm that was established at the

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[14] *See* CDC, *Scientific Brief: SARS-CoV-2 Transmission*, https://www.cdc.gov/coronavirus/2019-ncov/science/science-briefs/sars-cov-2-transmission.html (last updated May 7, 2021).

beginning of the pandemic," CRC was "in the process of compacting housing units." We do not think CDCR should increase the population density in the dormitories before determining what population can safely be housed in each dormitory in the event of another COVID-19 surge.

Defendants' Position: [15] CDCR's efforts to inspect prison ventilation systems are underway and Defendants are providing Plaintiffs with updates as the information becomes available. Presently, over a third of the housing units use MERV-13, or higher, ventilation filters. Thirteen institutions are scheduled to receive upgrades to MERV-13 filters in June 2021, two more institutions by August 2021, and nine more at a future date to be determined.

VI. RESUMPTION OF SERVICES

Plaintiffs' Position: Now that active cases among incarcerated people have decreased, and prisons have or soon will enter the least restrictive phase of CDCR's and CCHCS's "RoadMap to Reopening," CCHCS has turned more attention to the necessary task of ramping up medical services that have been limited for months. CCHCS has directed the prisons to continue social distancing in medical clinic waiting areas, and to clean holding cells and exam rooms between each appointment. Those measures may necessarily reduce the number of appointments that can be provided. More than 6,600 Primary Care Provider (PCP) appointments were overdue as March 15, 2021, the date for which CCHCS most recently provided such information. In comparison, on January 31, 2020, there were approximately 2,700 overdue appointments, with a significantly larger total patient population.

There are also substantial backlogs of specialty and diagnostic service appointments. CCHCS recently said there are more than 9,000 overdue specialty service appointments, which is nearly 20% of the total pending. It also reports more than 1,000

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[15] Defendants have not had an opportunity to review and respond to Plaintiffs revisions located at p. 15:26-17:4.

overdue cancer-screening ultrasounds for end stage liver patients. CCHCS says it has directed prisons to focus on the highest priority overdue services, and then those for patients who have been waiting the longest. We believe other necessary specialty services have been deferred during the pandemic, and will now need to be ordered.

Defendants' below state "[p]rison administrators anticipate full implementation of all aspects of" the Integrated Substance Use Disorder Treatment (ISUDT) program "in the summer of 2021." We hope this means both the group therapy and clustered housing elements of the program (see ECF No. 3579 at 17:26-18:3). As of April 28 (the most recent date for which full data has been provided), CCHCS said nearly 9,900 incarcerated people were receiving medication assisted treatment (MAT) for a substance abuse disorder. There were 4,500 pending an initial addiction medicine PCP appointment to be considered for MAT, with nearly 3,900 of those appointments overdue, with approximately 1,250 of those pending for more than six months. We continue to strongly support the ISUDT program, which is necessary to save lives, and continue to monitor CCHCS's efforts to reduce the initial appointment backlog and restart the non-MAT elements of the program.

To observe how medical services are being provided as clinics reopen, we have requested to visit San Quentin, a delegated prison, in June, and also plan to visit California State Prison – Solano next month.

Defendants' Position:

Healthcare Services for the Incarcerated Population

CDCR continues to partner with the Receiver's office to safely return healthcare services to their pre-pandemic frequency. This is now possible because the number of active COVID-19 cases has remained quite low for about two months.

Integrated Substance Abuse Treatment Program

In 2019, CDCR completely restructured its approach to substance use treatment through its Integrated Substance Use Disorder Treatment (ISUDT) program consistent with the most current evidence-based treatment strategies. The ISUDT program offers

services like cognitive behavioral interventions, medication-assisted treatment, supportive housing, and enhanced support for incarcerated people transitioning back into the community.

Concerned about the increased risk of overdose during the pandemic, CDCR continued a phased implementation of ISUDT program elements while also combatting COVID-19 in 2020. Prison administrators anticipate full implementation of all aspects of ISUDT in the summer of 2021.

As part of CDCR's commitment to increasing transparency and evidence-based decision making, members of the public interested in tracking the progress of the ISUDT program can now access program information in a series of reports available on an online Dashboard at https://cchcs.ca.gov/isudt/dashboard/. The Dashboard provides program performance and outcome measurements and draws from a group of large databases each day to provide near-real-time information. More report views and program metrics will be added to the Dashboard as ISUDT implementation continues.

Adjustment to COVID-19 Personal Protective Equipment Protocols

CDCR and CCHCS recently adjusted personal protective equipment protocols for incarcerated people and staff. Stringent mask-wearing and physical-distancing remain in place, with the exception that incarcerated people, staff, and visitors, regardless of whether they have been vaccinated, are no longer required to wear masks outdoors as long as they maintain at least six feet of physical distance from all other people. They must, however, keep a mask on their person and wear it if within six feet of another person. Detailed, updated personal protective equipment and physical distancing requirements for incarcerated people and staff are set forth in a May 10, 2021 memorandum attached as **Exhibit A** to this statement.

VII. OIG REPORTS REGARDING FACE COVERING AND PHYSICAL DISTANCING MONITORING

The parties received the Office of Inspector General's report on Face Covering and Physical Distancing Follow-Up Monitoring after 10:00 a.m. on May 25, 2021. The parties

are in the process of reviewing this document. It is attached as **Exhibits B** at the OIG's request.

DATED: May 25, 2021

HANSON BRIDGETT LLP

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EXHIBIT A

CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION

CALIFORNIA CORRECTIONAL HEALTH CARE SERVICES

MEMORANDUM

Date	:	May 10, 2021
To	:	CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION - ALL STAFF CALIFORNIA CORRECTIONAL HEALTH CARE SERVICES - ALL STAFF DIVISION OF JUVENILE JUSTICE - ALL STAFF
From	:	DocuSigned by: Connie Gipson 60F75B6E86804F7... CONNIE GIPSON, Director Division of Adult Institutions California Department of Corrections and Rehabilitation
		DocuSigned by: Joseph Bick 347167202A8A404... JOSEPH BICK, M.D., Director Health Care Services California Correctional Health Care Services and California Department of Corrections and Rehabilitation
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		DocuSigned by: 81BB38397B8F4F4... GUILLERMO VIERA ROSA, Director Division of Adult Parole Operations California Department of Corrections and Rehabilitation
Subject	:	**RECOMMENDED COVID-19 PERSONAL PROTECTIVE EQUIPMENT AND PHYSICAL DISTANCING REQUIREMENTS FOR STAFF AND INMATE-PATIENTS UPDATE (5.7.21)**

This memorandum provides updated guidance on the Novel Coronavirus Disease 2019 (COVID-19) types of Personal Protective Equipment (PPE) and physical distancing requirements at California Department of Corrections and Rehabilitation (CDCR), California Correctional Health Care Services (CCHCS), and Division of Juvenile Justice (DJJ) institutions, headquarters, regional and field offices, fire camps, and youth facilities.

This memorandum supersedes expectations and guidance provided in previous memoranda including:

- "Staff Wearing Facial Coverings and Physical Distancing Requirements in Institutions and Facilities," dated October 27, 2020.
- "Authorized Facial Coverings for All Employees, Contractors, and Visitors Entering CDCR Institutions and DJJ Youth Facilities – Procedure Mask Distribution and Use," dated November 19, 2020,
- "Staff Wearing Facial Coverings and Physical Distancing Requirements at Headquarters, Regional, and Field Office Locations," dated December 4, 2020.
- "Clarification for Offenders Wearing Face Covering," dated December 11, 2020.
- "Recommended Covid-19 Personal Protective Equipment for Staff and Inmate-Patients Update," dated March 18, 2021.

To protect all staff and inmate-patients from transmission of the COVID-19 pathogen, staff and all inmate-patients shall adhere to required proper infection control practices, including frequent hand hygiene, six-foot physical distancing, and adherence to the universal use of face masks.

The PPE recommended for staff and inmate-patient varies to include, but not limited to, masks, gloves, face shields, eye protection, and gowns. The type of PPE that is required also varies depending on location and circumstances to include, but not limited to whether six-foot physical distancing is feasible, the level of contact they have with symptomatic inmate-patients, COVID-19 cases, contaminated/aerosolized material and/or whether activities are indoors or outdoors. This guidance may include PPE recommendations and requirements exceeding Center for Disease Control and Prevention and California Department of Public Health guidelines. Properly worn face coverings shall cover the nose, mouth, and chin. This should be in concert with the practice of maintaining at least six feet of physical distance from others at all times.

STAFF AND VISITORS

All employees, contractors, and visitors working, visiting, or performing duties at CDCR institutions or DJJ facilities must wear either a polypropylene procedure mask (also referred to as a surgical mask), N95, or KN95 mask at all times while, except while:

1) Eating or drinking, if a minimum of six feet of physical distance is maintained from all others.
2) Alone in an office with the door closed.
3) Alone in a tower or enclosed control booth with no others present.
4) Outdoors, if a minimum of six feet of physical distance is maintained from all others. An appropriate mask must be kept on person at all times and must be worn if within six feet of others.

Under no circumstances shall a procedure or KN95 mask be worn as a substitute for an N95 respirator, which is required in specific areas of institutions and facilities.

HEADQUARTERS, REGIONAL, AND FIELD OFFICE STAFF

All staff working or performing duties at any CDCR, CCHCS, or DJJ headquarters, regional, and field office location shall practice physical distancing and properly wear facial coverings at all times, except as noted above. Staff may wear a cloth mask, N95, KN95 or polypropylene procedure mask (also referred to as a surgical mask) at these locations. Sleeve-style facial coverings (gaiter masks), bandanas, and facial coverings with exhalation valves or vents shall not be worn. These staff shall adhere to institutional face covering mandates when visiting any of the CDCR institutions or DJJ facilities.

INMATE-PATIENTS

Inmate-patients shall continue to use approved facial coverings made according to California Prison Industry Authority standards. Additionally, they may be provided procedure or KN95 masks. All inmate-patients on institutional grounds shall wear the approved facial coverings at all times, except while:

1) In assigned cell or in their immediate assigned bunk area.
2) Eating or drinking, if a minimum of six feet of physical distance is maintained from all others.
3) Showering, bathing, shaving, or performing oral hygiene in common areas, if a minimum of six feet of physical distance is maintained from all others.
4) Outdoors, if a minimum of six feet of physical distance is maintained from all others. An appropriate facial covering must be kept on person at all times and must be worn if within six feet of others.
5) Participating in outdoor firefighter training, such as the Forestry Training Program.

When staff observe inmate-patients failing to adhere to facial covering or physical distancing directives, the inmate-patient will be directed to return to their assigned housing. Further violations will result in corrective action and progressive discipline, including the following:

- Verbal Counseling
- Counseling Only Rules Violation Report
- Rules Violation Report

REASONABLE ACCOMMODATIONS AND RELIGIOUS ACCOMMODATIONS

Staff unable to wear an approved face covering due to a medical, mental health, or developmental disability shall notify their supervisor and Return-to-Work Coordinator to engage in the interactive process. Staff requesting a religious accommodation shall contact their local Equal Employment Opportunity Coordinator. Staff who have submitted a request for reasonable or religious accommodation due to the inability to comply with CDCR/CCHCS face covering or Personal Protective Equipment guidelines may request permission to remain off work using leave credits or an unpaid leave of absence pending a determination on their request. The Department shall engage in the interactive process with staff to ensure that a timely reasonable or religious accommodation determination is made.

REQUIREMENTS FOR NON-COMPLIANCE

All departmental supervisors and managers are responsible for ensuring subordinate staff consistently wear approved facial coverings correctly and practice physical distancing. When managers or supervisors observe a subordinate employee failing to adhere to facial covering or physical distancing directives, corrective action shall be taken in accordance with Department Operations Manual, Article 22, Employee Discipline, section 33030.8, Causes for Corrective Action. Progressive discipline includes the following:

- Verbal Counseling
- Employee Counseling Record (CDC Form 1123)
- Letter of Instruction
- Adverse Action or Rejection During Probation, dependent on the employee's tenure.

Additionally, supervisors and managers shall document each instance of non-compliance with any directives contained within this memorandum on facial coverings and physical distancing to track repeat offenses and take corrective and adverse actions, as appropriate.

For each instance of staff non-compliance, supervisors and managers shall immediately notify the respective Employee Discipline Unit, Employee Advocacy and Prosecution Team, Office of Legal Affairs, CDCR, or Performance Management Unit (PMU), CCHCS. The Non-Compliance Tracking Log shall be completed with information provided by each supervisor or manager and maintained by the respective Employee Discipline Unit, Employee Advocacy and Prosecution Team, Office of Legal Affairs, CDCR, or PMU, CCHCS. The Non-Compliance Tracking Log shall be retained until further notice and will be requested for, unannounced as well as regularly scheduled, audits or reviews.

Supervisors and managers who fail to enforce these directives shall also be subject to progressive discipline.

As a reminder, the Employee Discipline Unit or your area's assigned Health Care Employee Relations Officer in PMU are available to provide assistance throughout the progressive discipline process.

DISTRIBUTION AND STORAGE

Each institution and youth facility shall maintain an inventory of no less than two days' supply at each entrance gate at all times. Additional distribution locations throughout the institution or facility where staff may obtain extra masks throughout their shift or when working a double shift shall be established by the institution's Warden and Chief Executive Officer (CEO) or Superintendent for DJJ facilities.

Each institution's Chief Support Executive and Associate Warden, Business Services, or Chief Financial Officer for DJJ, shall develop a local operational procedure to ensure a ready supply of procedure masks are available and replenished at entry points and the additional distribution locations throughout the day.

Institutions and DJJ facilities shall ensure warehouse staff accept all procedure mask inventory delivered to their location and identify local processes for managing and anticipating needed inventory for staff. Institutions that exceed typical storage capacity may need to consider non-typical storage locations (e.g., gymnasiums, vocational education areas) for procedure masks, while adhering to standard storage requirements.

DISPOSAL OF PROCEDURE MASKS

Procedure masks are not intended to be used for more than one shift. Additionally, if an employee's mask is damaged or soiled, or if breathing through the mask becomes difficult, the employee shall remove the mask, discard it safely, and replace it with a new one. To safely discard a mask, the employee shall take the elastic from around the ears, avoid touching the front of the mask, as it may be contaminated, and place the mask in a non-bio hazard waste bin. The employee shall then wash their hands with soap and water or use hand sanitizer as soon as possible.

SUPPLY AND SUSTAINABILITY

PPE shall be ordered using established processes by submitting either a Purchase Requisition for CCHCS or Resource Request Message (ICS 213 RR) for CDCR. All transactions shall be recorded in Systems, Applications and Products (SAP) in a timely manner.

PPE USE IN SPECIFIC LOCATIONS

Please be aware that eye protective face shields do not constitute a facial covering. Eye protection, gowns, surgical masks, and N95 respirators should be worn within the attached appendix, "PPE Utilization Guidance in Specific Locations." Gowns can be assessed for their requirement, based on part with the activities listed above and the guidance below.

Staff, inmate-workers, or volunteers should wear the recommended PPE for that assignment, in addition to the minimum required facial covering (N95 respirator, surgical mask, cloth mask). N95 respirator and eye protection (goggles, safety glasses that cover the entire eye and sides of the face or face shields with side coverage) are indicated when engaged in activities with a high-risk area of transmission or high likelihood of infection (e.g. Health Facility Maintenance Worker).

N95 RESPIRATOR LENGTH OF TIME FOR USE

The length of time an individual could safely wear the N95 respirator may be different from person to person. The N95 respirator should only be worn for a **maximum of eight hours**. Should an employee work in excess of eight hours, a new N95 should be donned. However, if at anytime the respirator becomes damp/wet, visually dirty, or if an individual has difficulty breathing through the respirator after a short time (e.g. half an hour), he/she should remove and discard the respirator.

ATTACHMENTS:

Appendix 1: PPE Utilization Guidance in Specific Locations

The following guide refers to the staff, inmate workers, and residents in and around these locations. The PPE recommendations do NOT apply to the inmate/patients who are the population in question.

Population in the location	Staff, Residents, and Inmate work protection needed from the populations in the locations				
	N95 Respirator	Surgical or Procedure Mask	Eye Protection	Gloves[2]	Gowns [2,4]
The Receiving and Release Processing (RRP) Areas and/or Reception Centers (RC)					
Symptomatic or asymptomatic Inmate/Patient (I/P) or confirmed/suspected COVID-19 I/P or in quarantine (Always wear an N95 in RRP and RC areas)	√	N/A	√	√	√
Areas where I/Ps are incoming from institutions/jail[3]	√	N/A	√	√	√
Custody Escort					
Escorting symptomatic or asymptomatic confirmed/suspected COVID-19 I/P or quarantined I/P	√	N/A	√	√	√
Escorting asymptomatic I/P[3] who is not quarantined or a suspect or confirmed case	N/A	√	√[2]	√	N/A
Transportation Vehicle					
All persons involved in vehicular transfers	√	N/A	√	√	N/A
All Those Working in the Correctional Treatment Center (CTC)					
If the CTC houses patients who have either influenza-like illness or suspected/confirmed COVID	√	N/A	√*	√*	√*
If the CTC has NO patients who have either influenza-like illness or suspected/confirmed COVID	N/A	√	√*	√*	√*
**If involved in close contact with patient*					
Outpatient Housing Unit (OHU)					
Symptomatic or asymptomatic confirmed/suspected COVID-19 I/P or quarantined I/Ps	√	NA	√	√	√
Asymptomatic I/P[3] who is not quarantined or a suspect or confirmed case and who is not sharing OHU airspace/ventilation with symptomatic, quarantined, or confirmed/suspected I/Ps	NA	√	√[2]	√	√
Quarantine/Precautionary Quarantine/Isolated Areas					
Symptomatic or asymptomatic I/P, symptomatic or asymptomatic confirmed/suspected COVID-19 I/P or quarantined I/P (Always wear an N95 in Quarantine and Isolation areas)	√	N/A	√	√	√
Pre/Post transfer Quarantine (no known exposure)	√	N/A	√	√	N/A
Control Booth					
Symptomatic or asymptomatic confirmed/suspected COVID-19 I/P or quarantined patient	√	N/A	√	√[2]	√[2]
Asymptomatic I/P[3] who is not in quarantine or a suspect or confirmed case	N/A	√	√[2]	√	N/A
Anyone Present During					
Procedure on a confirmed/suspected COVID-19 case that may generate respiratory aerosols	√	N/A	√	√	√
Collection of diagnostic respiratory specimens	√	N/A	√	√	√

Population in the location	Staff, Residents, and Inmate work protection needed from the populations in the locations				
	N95 Respirator	Surgical or Procedure Mask	Eye Protection	Gloves[2]	Gowns [2,4]
Field Staff (e.g., DAPO)[1] or Inmate Workers					
During face-to-face interview: Symptomatic I/P, quarantined or confirmed/suspected COVID-19 I/P	√	N/A	√	√	√
During face-to-face interview: Asymptomatic I/P[3] who is not in quarantine	N/A	√	√[2]	√	N/A

[1] *A cloth mask is not PPE. A face mask includes surgical mask, procedure mask, medical mask, KN95 respirators, etc.*

[2] *Field staff should identify the risk levels and adhere to standard precautions and determine the level of transmission-based precautions.*

[3] *PPE user should determine the reliability of the "Asymptomatic patient status" when the patient claims he/she has no symptoms.*

[4] *Gowns can be assessed for their requirement. Activities involving aerosol-generating procedures, the possibility of splashes and sprays, close contact activities, such as close bedside care and bathing, or direct handling of infectious waste require gowns.*

[5] *Field staff should identify the exposure risk levels and consider the outbreak and employee and resident case rate of the institution or housing unit.*

EXHIBIT B

STATE of CALIFORNIA
OIG | OFFICE of the INSPECTOR GENERAL

Roy W. Wesley, Inspector General
Bryan B. Beyer, Chief Deputy Inspector General

Independent Prison Oversight

Regional Offices
Sacramento
Bakersfield
Rancho Cucamonga

Face Covering and Physical Distancing Follow-up Monitoring

Introduction

In October 2020, the Office of the Inspector General (the OIG) issued a public report regarding the California Department of Corrections and Rehabilitation's (the department) compliance with face covering and physical distancing requirements for staff and incarcerated persons. The report identified frequent noncompliance by both staff and incarcerated persons, lax enforcement efforts by departmental supervisors and managers, and questioned the prudence of loosening of face covering requirements in June 2020. In response to the report, United States District Court Judge Jon Tigar invited the OIG to conduct follow-up monitoring at the department's prisons to observe and report whether staff and incarcerated persons have come into compliance with the department's current requirements. Below are the results of our monitoring activities between April 7, 2021, and May 6, 2021.

Additionally, we plan for this to be our last cycle for these monitoring activities, thus this will be the OIG's final report in this series. We believe our face covering and physical distancing monitoring activities are no longer vital due to changed circumstances, specifically: (1) the department's recently relaxed face covering mandates make monitoring more difficult, especially outdoors where individuals are not always required to wear face coverings; (2) as public health guidance continues to relax face covering requirements, we anticipate that the department will also likely continue to relax its requirements; (3) the department reports significantly fewer cases of COVID-19 among its staff and incarcerated population compared to the number of cases reported at the height of the pandemic; and (4) the number of individuals the department reports as having been vaccinated for COVID-19, especially among the incarcerated population.

Unannounced Monitoring Visits and Video Review

Our staff conducted unannounced visits at 11 prisons. These visits focused on face covering and physical distancing compliance among staff and incarcerated persons. Our staff visited various locations throughout each prison visited. Although most staff and incarcerated persons adhered to the department's requirements, we still observed significant noncompliance at several prisons. Our most significant observations are detailed on the next page.

Based on our observations we assigned each prison two ratings, one for staff's compliance and one for the incarcerated population's compliance. The ratings are defined on the next page, at the end of the table. For reference, we have also included the prisons' active cases and vaccination rates for staff and the incarcerated population, as reported on the department's website.

	Staff Face Covering Compliance		**Incarcerated Population Face Covering Compliance**		**Active Cases** (according to the department's website as of May 19, 2021)		**Vaccination Rates** (according to the department's website as of May 19, 2021)	
Facility	**April 2021**	**Change from Prior Visit***	**April 2021**	**Change from Prior Visit***	**Staff**	**Incarcerated Persons**	**Staff**	**Incarcerated Persons**
California City Correctional Center	**Full Compliance**	^	**Partial Compliance**	^	1	0	37%	61%
California Health Care Facility	**Partial Compliance**	**No Change**	**Significant Noncompliance**	**No Change**	0	3	54%	84%
California Medical Facility	**Partial Compliance**	^	**Partial Compliance**	^	5	0	55%	76%

Facility	Staff Face Covering Compliance		Incarcerated Population Face Covering Compliance		Active Cases (according to the department's website as of May 19, 2021)		Vaccination Rates (according to the department's website as of May 19, 2021)	
	April 2021	Change from Prior Visit*	April 2021	Change from Prior Visit*	Staff	Incarcerated Persons	Staff	Incarcerated Persons
California Rehabilitation Center	Full Compliance	^	Significant Noncompliance	v	5	0	44%	74%
California State Prison, Los Angeles County	Partial Compliance	^	Partial Compliance	^	5	0	45%	63%
California State Prison, Solano	Substantial Compliance	^	Significant Noncompliance	No Change	3	0	46%	59%
Kern Valley State Prison	Substantial Compliance	v	Partial Compliance	v	4	0	39%	60%
Mule Creek State Prison	Full Compliance	^	Significant Noncompliance	v	6	0	42%	84%
North Kern State Prison	Full Compliance	No Change	Substantial Compliance	^	6	3	40%	47%
San Quentin State Prison	Full Compliance	No Change	Significant Noncompliance	v	1	0	53%	78%
Wasco State Prison	Substantial Compliance	v	Full Compliance	^	4	3	38%	44%

*These 11 prisons were not previously a part of the same monitoring cycles. Prior visit is from either February 2021 or March 2021.

Compliance Rating Definitions – Staff

Full Compliance	Zero non-compliant individuals observed without face coverings or improperly wearing face coverings
Substantial Compliance	Typically, three or fewer non-compliant individuals observed without face coverings or improperly wearing face coverings
Partial Compliance	Typically, 4 to 10 non-compliant individuals observed without face coverings or improperly wearing face coverings
Significant Noncompliance	Many non-compliant individuals (more than 10) observed without face coverings or improperly wearing face coverings.

Compliance Rating Definitions – Incarcerated Persons

Full Compliance	Zero non-compliant individuals observed without face coverings or improperly wearing face coverings
Substantial Compliance	Typically, five or fewer non-compliant individuals observed without face coverings or improperly wearing face coverings
Partial Compliance	Typically, 6 to 10 non-compliant individuals observed without face coverings or improperly wearing face coverings
Significant Noncompliance	More than 10 non-compliant individuals observed without face coverings or improperly wearing face coverings

Additional factors that could influence a rating other than the number of non-compliant individuals:

- Total number of individuals in the location. For example, two non-compliant individuals in a location among 150 total people was viewed more favorably than two non-compliant individuals in a location among three total people.
- If staff was observed quickly correcting the incarcerated persons who were not properly wearing face coverings.
- Physical distancing among non-compliant individuals. For example, if we observed three separate individuals not properly wearing masks outside and far away from other people, that was viewed more favorably than three individuals not properly wearing masks in close proximity to each other.

- Number of locations visited. We instructed staff to visit at least five locations, but many visited more than five. For example, if we visited 10 locations and saw five non-compliant individuals, that was viewed more favorably than visiting five locations and observing five non-compliant individuals.

Significant Observations

Below are our staff's additional significant observations from both our visits focusing on face covering and physical distancing compliance, as well as from our staff during our other routine monitoring activities:

- **California State Prison, Solano (April 22, 2021):** The OIG once again observed noncompliance with face covering requirements by incarcerated culinary workers. The OIG witnessed this ongoing issue in both the main culinary (four incarcerated workers) and a secondary culinary location (two incarcerated workers). In neither location did the OIG hear or see departmental staff instruct the incarcerated culinary workers to don their face coverings correctly.

  Additionally, of the seven locations observed by the OIG, we observed face covering noncompliance by incarcerated persons in six of those locations. Not once did we observe departmental staff instruct any of the incarcerated persons to don their face coverings in the appropriate manner.

- **Kern Valley State Prison (April 30, 2021):** The OIG observed a teacher exit a classroom with students inside. The teacher did not have a face covering on of any kind, and he proceeded down the hall with several other staff members. When asked to put his face covering on, the teacher responded that it was "in another room." The teacher then went to an office to retrieve and don his face covering, raising the question of whether he had a face covering in his possession while in the classroom with his students.

- **San Quentin State Prison (April 28, 2021):** The OIG observed more than 60 incarcerated persons not wearing face coverings correctly.

- **Multiple Prisons:** The OIG observed an improvement in staff compliance at six of eleven prisons, including rating the following five prisons as fully compliant:

  - California City Correctional Facility
  - California Rehabilitation Center
  - Mule Creek State Prison
  - North Kern State Prison
  - San Quentin State Prison

Review of Disciplinary Actions

Related to the department's face covering and physical distancing requirements, we requested and received copies of disciplinary actions taken by the department's adult prisons against staff, as well as corrective actions and rules violation reports issued by prisons to incarcerated persons, for noncompliance that occurred from April 1 through May 4, 2021. The actions are summarized below by facility and type of action:

	STAFF					INCARCERATED POPULATION	
Prison	Verbal Counseling	Written Counseling	Letters of Instruction	Referrals for Investigation or Punitive Action	Punitive Actions	Corrective Counseling	Rules Violation Reports
Avenal State Prison	15	0	0	0	0	4	0
California City Correctional Facility	2	1	2	0	0	7	0
California Correctional Center	0	0	1	0	0	0	18
California Correctional Institution	3	0	0	0	0	1	0
California Health Care Facility	0	0	4	0	0	0	0
California Institution for Men	3	0	0	0	0	2	1
California Institution for Women	0	0	0	0	0	2	4

	STAFF					INCARCERATED POPULATION	
Prison	Verbal Counseling	Written Counseling	Letters of Instruction	Referrals for Investigation or Punitive Action	Punitive Actions	Corrective Counseling	Rules Violation Reports
California Medical Facility	0	0	8	0	0	27	11
California Men's Colony	8	0	1	0	0	0	0
California Rehabilitation Center	1	0	0	0	0	62	11
California State Prison, Corcoran	6	6	8	0	0	0	3
California State Prison, Los Angeles County	1	0	0	0	0	0	2
California State Prison, Sacramento	0	1	5	0	0	107	31
California State Prison, Solano	0	0	5	0	0	0	51
California Substance Abuse Treatment Facility and State Prison, Corcoran	6	4	3	0	0	81	24
Calipatria State Prison	0	1	0	0	0	3	0
California State Prison, Centinela	0	0	0	0	0	2	4
Central California Women's Facility	0	3	0	0	0	0	4
Chuckawalla Valley State Prison	0	0	0	1	0	4	0
Correctional Training Facility	4	1	1	0	0	0	0
Deuel Vocational Institution	5	3	0	0	0	0	0
Folsom State Prison	3	0	0	0	0	0	0
High Desert State Prison	0	0	3	0	0	1	0
Ironwood State Prison	0	1	0	0	0	0	0
Kern Valley State Prison	0	4	0	0	0	0	2
Mule Creek State Prison	4	0	0	0	0	0	0
North Kern State Prison	7	0	0	0	0	34	6
Pelican Bay State Prison	4	0	12	0	0	0	0
Pleasant Valley State Prison	10	0	1	0	0	0	2
Richard J. Donovan Correctional Facility	4	0	1	0	0	0	0
Salinas Valley State Prison	1	0	0	0	0	0	0
San Quentin State Prison	0	0	1	0	0	17	4
Sierra Conservation Center	0	3	0	0	0	2	1
Valley State Prison	3	0	0	0	0	2	0
Wasco State Prison	1	5	0	0	0	8	5
Totals	**91**	**33**	**56**	**1**	**0**	**366**	**184**

Significant Observations

- **Substance Abuse Treatment Facility and State Prison, Corocoran (April 14-19, 2021):** Between April 14-19, 2021, fourteen incarcerated persons working inside Facility D's Prison Industry Authority bread and peanut butter and jelly shops received written counseling or rules violations for failing to properly wear facial coverings. Similarly, between April 16-19, 2021, twenty six incarcerated persons received written counseling or rules violations for failing to properly don facial coverings in Facility D's work change area.

- **Avenal State Prison:** Fourteen staff members, including a member of the prison's executive managment, "forgot" to wear face coverings while attending an off-grounds work event. All received verbal counseling.

Repeated Violations

According to the documentation provided by the department, 23 staff members that reoffended during this reporting period. The 23 staff members were from 13 different prisons and included both custody and non-custody staff. Penalties for repeat offenders varied among the prisons and, with one exception, ranged from verbal counseling to written letters of instruction. At Chuckawalla Valley State Prison, a staff member had four total instances of noncompliance and received a salary reduction after the third instance of noncompliance. The salary reduction was issued prior to this reporting period, and there is additional disciplinary action pending for the fourth instance of noncompliance, which occurred during this reporting period. This can be contrasted with a staff member at North Kern State Prison who had five total instances of noncompliance. This staff member received only verbal counseling for each of four documented instances of noncompliance. However, based on unclear records provided by the department, we could not determine the nature of action taken, if any, for the fifth instance of noncompliance. Thus, the nature of corrective action implemented in response to repeated violations of facial covering and physical distancing policy requirements varied among prisons, but almost all repeat offenders identified during this reporting period received corrective action in the form of verbal counseling, a written employee counseling record, or a written letter of instruction.

Self-Monitoring Documentation (Noncompliance Tracking Logs)

On October 27, 2020, the department issued directives that regional health care executives and associate directors, or their designees, must conduct visits to observe compliance with face coverings and physical distancing within 30 days, and on a 120-day interval thereafter. In our January 13, 2021, and April 27, 2021, reports we analyzed the department's compliance with these directives through the initial 30-day deadline and the first 120-day deadline. Because the department is not required to report compliance with the directives until July 2021, or 120 days from their last deadline for compliance observations, we did not analyze any additional data for this final report.