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April 30, 2021

Via Electronic Mail

Jessie Rossman
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American Civil Liberties Union Foundation of Massachusetts
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RE: CPCS v. Barnstable et al. SJC-2020-757 - DPH Questions

Dear Attorney Rossman:

This letter responds to your request that the Department of Public Health (DPH or the Department) respond to certain questions provided by you to DPH on April 7, 2021 (Plaintiffs' Questions). Based on your explanation, the Department understands that the Special Master in the above-captioned matter, Hon. Robert C. Rufo (ret.), has requested that the Department provide information to assist the Court's factfinding.

As you know, the Department is not a party to the above-captioned case. The Department reserves any rights it may have in law and in equity including but not limited to revise, supplement or clarify the responses below.

The Department responds to each of your enumerated questions below. In a paragraph preceding Plaintiffs' Questions was the statement, "For the purposes of the following questions, plaintiffs use the term "surveillance testing" to describe widespread COVID-19 testing of people without symptoms and who have not been identified of [sic] close contacts of infected individuals." The Department notes that the federal Centers for Disease Control and Prevention (CDC) uses the term "expanded screening testing," in its COVID-19 guidance for correctional settings, and does not employ the term "surveillance testing." To be consistent with applicable CDC guidance and as the Department considers surveillance testing for COVID-19 to refer to systematic, serialized testing of asymptomatic people who are not known to be close contacts of confirmed cases, where applicable, the responses in this letter will use the term expanded screening testing.

Plaintiffs' Question No. 1:

Has DPH created rules, guidance, or recommendations, formal or informal, regarding COVID-19 testing in Massachusetts Houses of Correction? If so, what are they? If not, why not?

DPH Response:

Department epidemiologists utilize and refer Houses of Correction (HOCs) to CDC COVID-19 guidance for correctional settings, which is publicly available on the CDC website. Each HOC in the Commonwealth has been assigned a DPH epidemiologist who is available to provide information and recommendations regarding infectious disease prevention and control with regard to COVID-19.

Plaintiffs' Question No. 2:

Did the Massachusetts Houses of Correction or Dr. Alysse Wurcel provide any information that informed DPH's rules, guidelines or recommendations regarding COVID-19 testing in the Houses of Correction, or alternatively, that informed DPH's decision not to issue any rules, guidelines or recommendations regarding COVID-19 testing in the Houses of Correction? If so, please describe.

DPH Response:

As indicated above, DPH utilizes and refers to the appropriate CDC guidance for correctional settings.

Plaintiffs' Question No. 3:

Does DPH believe it has the legal authority to issue rules, guidelines, or recommendations regarding COVID-19 testing in the Massachusetts Houses of Correction?

DPH Response:

The Department has authority, including throughout Chapter 111 of the General Laws, for example to investigate "the causes of disease, and especially of epidemics" and to "disseminate such information relating thereto as it considers proper." G.L. c. 111, s. 5.

Plaintiffs' Question No. 4:

Did DPH representatives discuss COVID-19 testing policies and practices at the Houses of Correction with Dr. Alysse Wurcel during the spring of 2020? If so, please describe the contents of those communications, including but not limited to any discussion of surveillance testing.

DPH Response:

For the purpose of responding to this question, the Department will consider "Spring 2020" to refer to the time period from March 1, 2020 to May 31, 2020. During that time period, the availability of COVID-19 testing was based on the testing criteria CDC established and as such was limited. Prior to and during this period of time, the Department consulted with Dr. Wurcel regarding infectious disease control practices in correctional settings, including as to testing.

In instances where COVID-19 transmission increased at a given HOC, DPH staff arranged conference calls with facility staff and Dr. Wurcel to discuss circumstances and recommend steps to mitigate spread of the virus. Topics of those discussions included, for example, isolation and quarantine, environmental cleaning, PPE supplies/use including masking, return-to-work criteria, symptom screening, and testing indications and testing supplies.

Plaintiffs Question No. 5:

Have DPH representatives discussed COVID-19 testing policies and practices at the Houses of Correction with Dr. Alysse Wurcel since the spring of 2020? If so, please describe the timing and the contents of those communications, including but not limited to any discussion of surveillance testing.

DPH Response:

The Department has had ongoing discussions regarding COVID-19 prevention and control with Dr. Wurcel and representatives from the Houses of Correction from the Spring of 2020 through the present.

As in the spring of 2020, conference calls continued to be utilized as a way to coordinate the various involved parties at a given facility simultaneously, including DPH staff, Dr. Wurcel, representatives from both the security and medical components of the HOCs, and staff from local boards of health of the municipality where the HOCs are located. Based on the particular situation testing practices were discussed at times. For example:

- Regular conference calls have been held throughout the pandemic between the Department, Dr. Wurcel, and Middlesex County HOC staff. At three separate times, facility-wide testing at the Middlesex HOC was recommended due to a rise in identified cases in multiple housing areas.
- At least three conference calls were held with Norfolk County HOC which included Dr. Wurcel, at which recommendations for broad testing, with repeat testing was advised,
- At least two conference calls were held with Plymouth County HOC which included Dr. Wurcel at which broad testing was advised.
- At least four conference calls were held regarding the Bristol County Jail between July 2020 and March 2021. Following one such call on July 14, 2020 during which DPH and Dr. Wurcel recommended broad testing in a unit where a case had been identified. During a March 10, 2021 conference call regarding Bristol County a recommendation was made to test an entire barracks-style unit where multiple cases had been identified.

In March 2021 a conference call was held with Dr. Wurcel and the Massachusetts Sheriffs' Association during which the CDC's March 17, 2021 update to its COVID-19 correctional guidance was discussed. Dr. Wurcel was notified by the Department on April 28, 2021 that its guidance is utilizing the CDC update.

Plaintiffs' Question No. 6:

Has a DPH representative ever recommended that the Houses of Correction decline to adopt surveillance testing for COVID-19?

If so:

- a. When did DPH made that recommendation?
- b. What was the reason for this recommendation?
- c. Does that recommendation remain in effect?

DPH Response:

No, the Department has not recommended that the Houses of Correction decline to adopt surveillance testing for COVID-19.

Plaintiffs' Question No. 7:

Is DPH reconsidering any rules, guidance, or recommendations, formal or informal, regarding COVID-19 testing in Massachusetts Houses of Correction in light of the CDC's new "Interim Guidance for SARS-CoV-2 Testing in Correctional and Detention Facilities," updated March 17, 2021? If so, what are the contents of these revisions, or alternatively, does DPH have a timetable for when it will determine the contents of these revisions?

DPH Response:

As noted above, the Department utilizes and refers to the CDC's guidance for responding to COVID-19 in correctional settings.

Please do not hesitate to contact me with any further questions.

Very truly yours,

/s/ Elizabeth Scurria Morgan

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