Fourth Report of the Agreement Monitoring Panel

(Chatman, et al. v. Otani, USDC Hawaii Civil No. 21-00268 JAO-KJM)

January 24, 2022

Judge Daniel Foley (ret.), Chair

Tommy Johnson

Gavin Takenaka

Kim Thorburn

Homer Venters

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Overview of activities since third AMP report

On January 5, 2022, the panel met by Zoom video conference with facility leadership from OCCC, WCCC, and WCF. A similar meeting with HCF, MCCC, and KCCC leadership was held on January 10 and a third meeting with HCCC and KCF leadership was on the following day. Panel members discussed facility status with the panel recommendations, and accomplishments and challenges with current COVID-19 management during the (at the time) oncoming surge. As in previous reports, the AMP received and reviewed publicly available staff and inmate COVID-19 cumulative total-tested numbers and results by facility and inmate vaccination numbers. On January 14, 2022, the panel received Drs. Venters' and Thorburn's request for data on the number of inmates with active COVID-19 infection and the number of inmates with active COVID-19 infection who experienced symptoms by facility. Also as requested, HCD said the facilities reported completion of daily symptom checks in the quarantine areas. The panel also received and reviewed each facility's updated PRP. The full panel met by Zoom on January 21, 2022.

While PSD does not track and report the number of high-risk or symptomatic patients as a discrete subset of people exposed to or infected with COVID-19, at its January 10, 2022 meeting, the Drs. Venters and Thorburn discussed the utility of these and other data and, as noted, PSD did subsequently provide a point-in-time report on the number of symptomatic patients in the current series of outbreaks and that no housing areas were missed in the daily symptom checks for people under quarantine. More about these panel discussions are elaborated below in recommendation 6.

This report will discuss the PSD and facility responses to the AMP recommendations from the 2nd and 3rd reports. The emphases reflect the overall recommendation of the 3rd AMP report: Broad testing with a focus on engaging inmate cooperation will continue to be important as community infections surge.

Area of Disagreement

Panel member Dr. Takenaka reported that infected high-risk and symptomatic patients are tracked by facility providers and the medical director, who have been directing intervention at the facilities.

Current status of COVID-19 in PSD facilities

At the submission of the 4th AMP report, the Corrections Division was experiencing the COVID-19 pandemic surge faced by the entire state. All facilities reported staff shortages; HCCC noted there were times when it was necessary to hold some staff members back for 24- and even 36-hour shifts in order to maintain minimal coverage. All facilities reported inmate infections with active clusters at OCCC, HCF, WCCC, MCCC, and HCCC.

In anticipation of the surge in cases, PSD administration worked with facilities to ensure adequate stocks of protective equipment and sanitation supplies. During the meetings with

the panel, all facilities reported adequate stores. All facilities reported good compliance with mitigation measures, such as proper mask wearing. Some wardens joked that they were the "mask cops." Facilities noted that there were ample masks on hand and they were freely available to staff and inmates.

Inmate COVID-19 vaccination efforts were ongoing. A primary driver of the effort continued to be cash incentives-$50 for completing full vaccination while in the facilities and $25 for receiving a booster. The latter program began in December 2021. The fully vaccinated incentives have been provided since October 2021. A cumulative total on December 28, 2021, showed 3,255 fully vaccinated inmates currently in all island facilities (not including those on the mainland or released since completion) and 249 had received boosters.

Response to recommendations

1. Conduct daily temperature and symptom checks for inmate workers who move both outside and inside of facilities. Purchase required equipment and conduct staff training.

All facilities reported various strategies for daily temperature and symptom checks of inmate workers who move inside and outside of facilities. Facilities have logs at temperature check stations, as evidenced at HCCC and reported by others. HCD reported that inmates detected with elevated temperature or symptoms are referred to health services for SARS CoV2 PCR testing.

2. Suspend sick call charges at least as long as COVID-19 is underway, without qualification as to the nature of the medical problem.

On January 21, 2022, PSD suspended all sick call charges until March 26, 2022.

AMP discussion about this recommendation has centered around barriers that deter inmates from seeking or cooperating with care for COVID-19. In the 3rd AMP report, PSD asserted that the greatest obstacle to seeking care for COVID-19 is inmates' unwillingness to disclose symptoms and cooperate with SARS CoV2 testing due to required medical isolation or quarantine should someone test positive. Since that report, Drs. Thorburn and Venters received information from HCF inmates that there is resistance to testing for this reason, including by symptomatic inmates. In our meeting with HCF leadership, the panel learned that an entire unit refused testing after a potential exposure and was placed in 28-day quarantine. The medical provider met with refusing HCF inmates to solicit cooperation and was reportedly resisted as inmates argued misinformation about CDC isolation and quarantine guidelines. At OCCC, it was reported by HCD that refusing inmates stated they did not want to test because they did not want to move housing.

In contrast, the panel heard from WCCC administration that there was little resistance to testing among the women who understood it as an opportunity to be relieved of the potential restriction of medical isolation or quarantine. HCD reported WCCC inmates have been cooperative with past broad-based testing efforts. The HCCC warden noted that

testing cooperation depended on the jail "coconut wireless" message-of-the-day among the population.

COVID-19 and vaccination information, symptom identification, and testing are essential to infection control within the facilities. The panel will continue to try to more systematically understand the barriers to these activities to provide further recommendations for potential mitigation. Drs. Venters and Thorburn have put forward ideas of persuasive communication strategies that they have seen or used effectively in other correctional settings, such as use of an inmate counsel or peer counselors.

Area of Disagreement

Panel member Dr. Takenaka disagrees with the omission of the experience of the medical provider when attempts to educate and elicit refusing inmates' cooperation with testing resulted in the physician being cursed and threatened. Even under harsh and unsafe riotous conditions, PSD staff continues to provide inmates with in-person healthcare education.

3. Identify offices near/on housing areas wherever possible for clinical encounters with computers that have electronic medical record access.

PSD administration worked with the facilities to assess space and electronic access as reported in the panel's 3rd report. HCF and MCCC may be able to create office access in housing units that could be hard wired. Most facilities will use tablets on WiFi. Due to crowding at HCCC Punahele and Makai, there will be a capital request for portable offices. The next steps involve development of an implementation plan, including acquisition of equipment and working through security concerns.

4. Institute monthly town halls in housing areas to discuss vaccination and consider structured vaccine education encounters for all high-risk patients who remain unvaccinated.

During the meeting, facility administrators reported on their information efforts to encourage vaccination using department-generated printed materials about the cash incentive program along with video education in intake at the jails and the cafeteria at KCF. Both WCF and KCF reported more than 90% vaccination among their populations.

The 3rd AMP report noted that the health care division administrator would work with staff to regularly encourage vaccination of eligible unvaccinated high-risk patients during non-urgent/emergent provider encounters. For this report, HCD reported that medical providers regularly encourage vaccination of eligible unvaccinated high-risk patients during non-urgent/emergent clinical encounters. Drs. Venters and Thorburn advise that continuous monitoring of progress with the list of unvaccinated high-risk patients would be a strategy for supervising this concern.

5. Adopt a uniform policy regarding screening, quarantine and testing of people who have outside court and medical appointments that follows CDC guidelines and limits possible and/or perceived disincentives to receiving care.

The panel's concern following our facility inspections was that inconsistent approaches to post-transport quarantine presented potential barriers to needed medical care when resultant prolonged quarantine seemed onerous. As noted in the 3rd report, the PSD PRP, revised August 3, 2021, provides revised guidance on screening, quarantine, and testing of vaccinated inmates who are transported outside of the facility for court and medical appointments. During the period since the 3rd report, the panel had the opportunity to review each facility's updated PRP, which do not speak to facility-specific approaches to post-transport quarantine. The correctional health care administrator (CHCA) reported that he monitors this concern by reports that about a problem and he has received none. He also noted that anticipated CDC guidelines about lengthening post-transport quarantine may exacerbate this obstacle. Drs. Venters and Thorburn suggested that additional information, such as querying inmates, could provide a clearer understanding about whether needed care is avoided and possible ideas about work-arounds. In addition, including each facility's description of post-transportation screening, quarantine, and testing would assist in overseeing this recommendation.

An important consideration for removing disincentives is minimizing transport, which has been accomplished with telehealth, and video court and parole visits. Nonetheless, court-ordered visits remain a challenge for the jails. During the facility meetings, the HCCC warden explained that they are cohorting housing based on court transportation needs to minimize mixing inmates with different exposure risks. The facility is burdened with many court transports, including frequent time- and distance-consuming trips between Hilo and Kona. In accordance with the panel recommendations, PSD administration is supporting the facility in its work with other entities, such as courts, prosecutors, and defense attorneys, to minimize the need for court transport, including video visit access. Since the AMP meeting with the HCCC warden, PSD and HCCC administration had an encouraging meeting with the Big Island chief judge and all district and circuit court judges in which the transport concerns were discussed.

Area of Disagreement

Panel member Dr. Takenaka disagrees with the above conceptualization of the issue involving routine transport quarantine for outside medical appointments, as the panel has created a double-bind. The panel describes the CDC recommendation on routine transport quarantine requirements as "prolonged" and "onerous," while simultaneously maintaining that CDC guidance should be followed for infection prevention and control purposes. PSD adheres to CDC guidance on routine transport quarantine, where possible, and has taken steps to attempt to mitigate potential exposure events as a result of inmate transports. Early on during the pandemic, HCD implemented telehealth opportunities with community Providers, when available, as a measure to reduce inmate movements and the potential for SARS CoV2 exposure. PSD also received American Rescue Plan Act funds to provide support for vulnerable populations, which has resulted in the provision of in-reach physical therapy services. HCD has been working to contract in-reach hemodialysis and telehealth wound care services to further minimize the need for routine transport quarantine for affected inmates.

6. Take a broad approach to both testing and contact tracing, so that individual quads or subparts of housing areas are considered part of the same potential exposure and include

roving staff, inmate workers, and supervisors as well as individuals identified by inmate movement records in contact tracing and testing after new cases are identified.

Panel discussions about this recommendation have centered around the value of systematic COVID-19 testing and disease tracking for management and control. During panel discussions since the last report, Dr. Venters and particularly, Dr. Thorburn indicated that stratified testing reporting would assist our advisory responsibilities and more important, likely contribute to COVID-19 management and control by the HCD. To date during the current surge, the AMP has reviewed publicly available testing information. We have no data about type of tests (e.g., intake, facility surveillance); proportion of positivity by date, type of test, etc.; site of surveillance tests (e.g., full modules, entire facility); number and site of refusals during surveillance testing; and other information that could be used to assess the effectiveness of testing strategies in case finding, containment, and control.

In the 3rd report, Dr. Takenaka noted disagreement with the panel's discussion about how to approach and assess this recommendation stating that detection of SARS CoV2 in PSD facilities has shown that the maintenance of a surveillance system of testing trends with stratification by test type would have limited utility during non-outbreak periods. In our interim discussions, Dr. Takenaka continued to weigh the value of such efforts against resource availability.

As noted above, in response to these discussions about systematic monitoring, the panel received a table indicating the number of inmates with active COVID-19 infection and the number of inmates with active COVID-19 infection who experienced symptoms by facility on January 14, 2022. In subsequent discussions, PSD said no guidance or recommendations to aid PSD in its continuing effort to implement the PRP have been provided based on the symptomatic patient data and the request in fact resulted in diversion of clinical resources when physician and nurse time was diverted to data gathering rather than clinical care during a critical period at the facilities, in effect creating a barrier to care. HCD requested that AMP members carefully consider requests for data and attempt to request information that has immediate utility and is actionable during this crisis, while balancing staff resources due to the pandemic. The panel then learned at its January 21 meeting that these data about symptomatic SARS CoV2-infected patients must be manually pulled from paper sick call slips.

Drs. Venters' and Thorburn's perspective is that systematic data are important for implementing the PRP. For example, they advise that there should be a system to ensure that symptomatic infected individuals are consistently known to the facilities' health care units to ensure adequate monitoring and care, as required by the PRP. In addition to symptomatic patient tracking and test data discussed in earlier paragraphs, other monitoring data examples that could assist in implementing the PRP include identification of gaps in symptom screening during quarantine for high-risk patients, testing and symptom screening of work crews, as well as testing among asymptomatic people when community transmission is elevated.

Drs. Venters and Thorburn offered these as examples of useful information for implementing the control and care aspects of the PRP. Given the resource concerns, Dr.

Takenaka requested clearer guidance on systematic monitoring. Dr. Venters will provide instruments that have been developed by the CDC.

Area of Disagreement

Panel member Dr. Takenaka notes that AMP members (see 3rd Report of the Agreement Monitoring Panel) previously inquired about the maintenance of a surveillance system including specific testing information limited to test type, date of test, and location of person tested. Dr. Takenaka previously explained to AMP members that PSD provides two types of tests: antigen and PCR. Each type of test is administered for known specific situations. Facilities regularly report testing activity and results to HCD, which includes date and location of inmates tested. Refer to 3rd Report for the specific disagreement, which is not accurately described, as reported above.

On January 14, 2022, AMP members requested data on the number of active cases who experienced symptoms versus those who were asymptomatic. On January 14, 2022, HCD provided the requested data to the AMP, which showed that approximately 90% of actively infectious inmates were asymptomatic since being identified as positive cases. The January 14, 2022, data were requested by AMP members, despite the previous concern raised by Dr. Takenaka about diverting limited staff resources from clinical care to data gathering and reporting activities during the current crisis. The effect of the requested data, which had no immediate utility for the pandemic response during the current crisis, is described above. AMP members subsequently explained in draft report that they learned the requested data "must be manually pulled from paper sick call slips." Note that all data released by HCD are verified. In this case, the requested data required validation through review of individual inmate medical isolation BID monitoring forms and/or the individual inmate's electronic medical record.

Dr. Takenaka does not disagree with the value and importance of a data-driven approach. Given ideal circumstances and sufficient resources, all data, relevant or not, could be captured. However, the reality of the current crisis involves all-time high community prevalence, as continuously shared by Judge Foley, health care staffing shortages due to widespread COVID-19 transmission, health care staffing shortages being experienced nationally and locally, and several other factors that require modification to ideal circumstances in order to prioritize data gathering and reporting to information that has immediate utility and is actionable. Judge Foley shared a recent article about how DOH similarly required adjustment to result reporting, where they have temporarily suspended reporting negative results. Rather than relying on PSD to discern ambiguous and unspoken expectations, Dr. Takenaka requested that AMP members request the specific data or information desired in order to efficiently provide the data or information to AMP members and minimize the diversion of clinical care for data gathering and reporting activities.

7. Follow CDC guidance to identify and treat post-COVID symptoms and disability, including among those who initially had mild or no symptoms.

As reported in the 3rd report, the division has policies to identify post-COVID symptoms, stratified by the presence of co-morbid conditions, the highest-level of acute COVID-19 severity, and age. Such information is not tracked by HCD. Drs. Venters and Thorburn advise

that they are important data that should be monitored to manage COVID-19 morbidity in correctional facilities.

Area of Disagreement

Panel member Dr. Takenaka reports that AMP members have not requested "such information," which itself demonstrates the challenge with ambiguity. Dr. Takenaka requested when panel members require specific data or information for purposes of carrying out the duties of the AMP, panel members request the specific data or information. In the past, when specific data or information have been requested by AMP members, PSD has provided the data or information.

8. PSD needs to continue to vigorously engage at central level and support its individual facility administrators to engage with the Hawaii Paroling Authority, courts, and other local officials, agencies, and partners to attempt to reduce the influx of new detained people to ensure adequate COVID-19 response, particularly during periods of ongoing transmission.

During the meetings with the facilities' leadership, the AMP heard about population health and safety management concerns exacerbating in the outer island jails, particularly HCCC and KCCC, due to court-ordered intake of detainees charged with low-level offenses. The deputy director noted that he would be joining HCCC administration in meetings with the courts to discuss alternatives that are especially important during periods of COVID surge. KCCC reported that after initial population relief due to multidisciplinary intake management early in the pandemic, the population has steadily crept upward. The panel agreed that similar efforts from the PSD administration are needed on Kauai. Several points for discussion were identified during the meetings with the facilities.

As noted in recommendation 5, PSD and HCCC administration had an encouraging meeting with the Big Island courts after our warden meetings. Discussion included low-bail and harassment commitments and court orders for late-afternoon attorney visits in Kona as they related to facility crowding and staffing concerns.

9. Continue to remove departmental administrative barriers to inmate placements and intra-facility transfers. House inmates based on health and custodial safety.

Previous AMP reports noted several actions the PSD administration has taken to remove administrative barriers to inmate placement to assist facilities with housing flexibility to ensure health protection and custodial safety. During our facility meetings, we learned that populations of both WCF and KCF increased, representing some population relief at other facilities. Also, priority is being given to screening and preparing inmates for release programs as well as ensuring that parole hearings are ongoing.

HCCC faces some of the most severe crowding. As with all the jails and as noted above, the crowding is the result of the jail population over which the department has little control. The facility is exploring in-house adjustments for the felon population (that cannot be mixed with the pre-trial population) that could provide more housing space to the latter.

Also, under the department directive to, whenever possible, move inmates to the lowest level security where there is less crowding, the panel learned that 27 inmates at HCCC have been screened to move to Oahu facilities and several at both MCCC and KCCC have been cleared for transfer to WCF and KCF.

10. Prioritize completion of installation of the isolation containers that have been purchased for all facilities.

At HCCC and MCCC, the containers are fully operational with quadruple bunking due to the medical isolation needs resulting from the current surge. OCCC and HCF are awaiting post, fire, and access clearances. Work continues in different stages at the other facilities.

It did not appear to the panel that the medical isolation sections of the facility specific PRPs have all been updated to include the availability of the containers.

11. Consider requiring that inmates who transfer to Waiawa and Kulani Correctional Facilities be vaccinated.

This matter is still under consideration.

12. Because of increased risk for death, ensure high-risk patients are identified at the outset of any outbreak or large-scale health event and receive a higher level of attention during population symptom monitoring with the goal of intervening when early warning symptoms present.

The panel received assurances from the HCD that inmates with high-risk conditions are identified using the VACO Index for hospitalized patients that was provided by Dr. Venters and are being closely monitored during the current surge. During the January 11, 2022, meeting, Drs. Venters and Thorburn expressed their views about the value of central monitoring of inmates with high-risk conditions by the HCD. This approach was seen by Drs. Venters and Thorburn as an essential part of risk reduction in outbreak management but as quality assurance by PSD, which while important, was not possible with current staffing.

Area of Disagreement

Panel member Dr. Takenaka reports that the January 11, 2022, matter was tabled by Judge Foley for discussion at a later time due to the primary issue of diverting limited staff resources from clinical care to data gathering and reporting activities during the current crises at the facilities. The purpose of the data at the time of the meeting was understood as quality assurance at the central office. Panel members also appear to have confused the CHCA role with the role of the medical director; stating, if they were the medical directors of PSD (like the CHCA), they would want the information. However, the CHCA is not the medical director. Day-to-day outbreak health care management is directed by on-site medical providers and/or medical director, clinical services administrators, mental health administrators, and nursing supervisors, which is the level at which identification and monitoring of high-risk patients occur. Dr. Takenaka also reported that while the panel recommendation on the use of the VACO Index has been useful, the VACO Index is weighted

heavily on age so that anyone under age 50 cannot score high risk. HCD Medical Providers have been using the VACO Index but will also continue to supplement the use of the VACO Index with clinical judgment for those inmates who might be viewed as high risk by providers, but would not score high risk on the VACO Index.

13. Create a more robust mortality review process that focuses on potential system improvements by noting deficiencies in care as well as areas for improvement after each death, with an additional pooled or joint review for deaths from outbreaks and other large-scale health events.

There have been no inmate deaths during the current surge. The AMP has not seen a revised mortality review process.

Area of Disagreement

Panel member Dr. Takenaka reports that he had not received a request for information from AMP members on the mortality review process. Dr. Takenaka notes that the clinical mortality review process meets the accreditation standard, as reviewed by the National Commission on Correctional Health Care. Pre-pandemic in-person quarterly provider meetings, which includes clinical mortality review as a quality assurance measure, are scheduled to resume under modified conditions.

Areas of concern

Drs. Thorburn and Venters continue to be concerned about the lack of systematic public health and health care data to be used by the AMP to advise and by the department to assure and improve monitoring, containment, and control.

Area of Disagreement

With active clusters at correctional facilities, the all-time high prevalence rates throughout the State, and the impact on healthcare staffing locally and nationally, Dr. Takenaka requested that AMP members request the specific data or information desired in order to efficiently provide the data or information to the AMP while minimizing the diversion of clinical care for data gathering and reporting activities.

Response to Areas of Disagreement

At our January 21, 2022, meeting, the panel discussed our role as an advisory monitoring panel, i.e., to provide our expert **advice** to PSD and to **monitor** our recommendations as well as COVID-19 care and control in PSD facilities. Dr. Takenaka continues to be ambivalent about Drs. Venters' and Thorburn's suggestions to accomplish monitoring of the recommendations. Drs. Venters and Thorburn advise, for example, that, based on our knowledge and experience, such practices as tracking symptomatic SARS CoV2-infected people, vaccination rates among high-risk individuals, people with post-COVID symptoms, and other data covered in our reports, are important for care and control. Our requests for information to accomplish monitoring of such advice are not intended to require some special output but instead, to receive some verification (or not), based on routine practices, about progress on or implementation of recommendations.

Area of Disagreement: Response to Area of Disagreement

In an effort to maximize limited staffing resources and to provide AMP members the data or information needed to monitor the panel's advice, panel member Dr. Takenaka requests that AMP members request the specific data or information desired. For example, "vaccination rates among high-risk" inmates is a request for specific data that can be deduced from the request, but the request has been modified since an earlier draft of this report from the original request for vaccination rates among high risk and others. In contrast, "tracking symptomatic" SARS-CoV-2 infected inmates and "people with post-COVID symptoms" are not requests for specific data. The lack of clarity in the request for specific data may lead to diversion of limited staffing from clinical care to data gathering and reporting that may be unnecessary and avoidable. It would assist PSD and the people under our care and custody if the AMP is clear and specific about the data or information needed.

Extension

By this written agreement of a majority of this panel, pursuant to Paragraph 27 of the Settlement Agreement, the Settlement Agreement is extended from January 31, 2022, to March 31, 2022.

Next steps

The panel will continue to monitor all recommendations and prepare a fifth report by February 21, 2022. Its next meeting is scheduled for the same date.

Appendices

January 21, 2022, memorandum suspending sick call charges until March 26, 2022.

Signed on behalf of the AMP members

Kim Marie Thorburn, MD, MPH
January 24, 2022

Inter-Office
MEMORANDUM

DEPARTMENT OF PUBLIC SAFETY

No. _____

Suspense: _____

January 21, 2022

TO: ALL CONCERNED

FROM: Dr. Gavin Takenaka, CHCA GT

SUBJECT: COVID-19: SUSPENSION OF CO-PAY REVISION

Effective January 24, 2022 through March 26, 2022, all healthcare services shall be exempt from the medical co-payment fee.

c: Medical Director, CNO, CSBA, CSAs

PSD 1005 (3/88)