Sixth Report of the Agreement Monitoring Panel

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

March 22, 2022

Judge Daniel Foley (ret.), Chair

Tommy Johnson

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Overview of activities since fifth AMP report

On March 9, 2022, the panel met by Zoom video conference with facility leadership from OCCC, WCCC, HCF, and WCF. A similar meeting with HCCC, MCCC, KCF, and KCCC leadership was held on March 11. During the meetings, facility leadership debriefed their experiences with the surge, which, at the time of the meetings, had subsided. All facilities except KCF had many staff and inmate infections during the surge. KCF was able to contain inmate infections to two. HCCC reported that one inmate was transported to the emergency room with COVID-19 but not hospitalized. The greatest challenge was managing housing by infection and exposure status, especially in facilities that were operating with populations well over the caps. The teamwork between health care and security in dealing with housing was emphasized. Inmate cooperation with testing and housing moves improved over previous surges and the facilities attributed it to a better understanding of the routine and efforts to provide out-of-cell time.

The panel reviewed the updated Pandemic Response Plan (PRP) that incorporated CDC-recommended shortened periods (10 days) of medical isolation and quarantine; more information about mask and respirator use; and monitoring and care of high-risk patients.

The records of the newly determined COVID-19 death from June 2021 were reviewed.

The full panel met by Zoom on March 22, 2022.

This final AMP report will provide details about PSD and facility responses to the recommendations from previous reports.

Current status of COVID-19 in PSD facilities

At the submission of the 6th AMP report, facility operations were returning to normal following the COVID-19 pandemic surge that began in early winter. The department is working with the department of health (DOH) to prepare for in-person visiting as community COVID-19 restrictions are removed. Inmates still in isolation or quarantine were awaiting repeat testing results and new within-facility exposures were not being seen. Staffing shortages due to absences from infections were improving.

The panel received information on 35 inmate hospitalizations and 120 emergency room transfers from December 1, 2021 to February 28, 2022. The panel requested the information to understand whether COVID-19 infection contributed to hospitalizations or emergency room visits during the recent surge. The data included date of transfer (and discharge for admissions), facility in which the patient was housed at the time of transfer, reason for admission/visit, results of all COVID-19 tests done on each patient from 90 days before the visit to the completion of the spreadsheet, and notes that included pertinent medical history or final diagnosis on some patients and also, concluded "not COVID related." Dr. Mee provided the test results and notes after reviewing the individual records. There were no hospital admissions for COVID-19. Six emergency room visits were patients with positive SARS CoV2 tests at the time of the visit. The panel undertook its own analysis

of the information, but the PSD CHSA requested that the analysis not be included in this report for patient privacy protection. We will honor the request, but Drs. Thorburn and Venters dispute the claim that the analysis violates protected information, especially since all parties are bound by confidentiality agreements, and more important, the claim seems to be a smokescreen to prohibit external review of health care delivered to PSD inmates. As we note below, Drs. Thorburn and Venters have concerns about the adequacy of internal quality review and urge serious attention to PSD health care oversight.

Area of Disagreement

Panel member Dr. Takenaka requested deletion of the "analysis" involving the six emergency room visits, which included identifiable and medical information. There was no claim that the release of protected health information violates HIPAA rules. The addition of identifiable and medical information did not appear necessary, as the six emergency room visits were identified as having a positive SARS-CoV-2 test and the reason for review of the data (i.e., "to understand whether COVID-19 infection contributed to hospitalizations or emergency room visits during the recent surge"), had been addressed by the panel's presentation of aggregate data. Further, after the panel mistakenly claimed that PSD does not systematically collect data on ER visits and hospitalizations, Dr. Takenaka reported that Dr. Mee added in the results of SARS-CoV-2 testing and additional notes (including pertinent medical history and additional medical information involving the reason for the ER visit) into the portion of the database requested to assist in responding to the specific questions that AMP panel members had or might have about the data. Dr. Takenaka notes that the Medical Director provided supplemental healthcare information beyond the AMP request to allow for the external review of healthcare provided to PSD inmates.

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 report compliance with this recommendation. OCCC is evaluating the need for more thermometers.

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

According to the January 21, 2022, memorandum, all sick charges that were suspended on January 24 are scheduled to resume on March 26, 2022. Drs. Venters and Thorburn requested sick visit data after WCCC claimed that sick visits increased following the co-payment suspension, leading to concerns about medication hoarding. (See 5th AMP report.) These data are collected by each facility by tabulating sick call request forms or in the case of OCCC and WCCC, sick call sign-ups. When questioned how the data have been used in the past, Dr. Takenaka described specific examples, including identification of a systemic operational issue that resulted in increased sick call requests and led to a corrective action, and the recent increase in sick-call requests at specific facilities when the vaccination

incentive program was initiated. The AMP received sick visit numbers by facility for all of 2020 and 2021 and January and February 2022. The data showed no systematic pattern of variances over time and there was no evidence of increase in sick-call requests following the suspension of co-pays, including at WCCC. Dr. Takenaka said he believed the recent data could not be reliably interpreted due to confounding factors.

Area of Disagreement

Panel member Dr. Takenaka disagrees with inclusion of the portion of the statement: "...there was no evidence of increase in sick-call requests following suspension of co-pays, including at WCCC." Dr. Takenaka previously cautioned that a review of trends in sick-call encounter data would likely result in confirmation bias, regardless of the direction of the trend in data. Data from WCCC showed an increase in sick-call requests in January 2022 and February 2022, when compared to sick-call requests from January 2021 and February 2021. However, Dr. Takenaka believes that due to confounding variables, a determination, based on the data, on whether the suspension of co-payment fees have affected sick-call requests could not be made.

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

The project is ongoing. PSD says that funds are available through federal ARPA.

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.

The revised PRP emphasizes the importance of staying up to date on COVID-19 vaccination as the most important tool for prevention of severe illness and urges formal and informal education and outreach with focus on high-risk patients. The cash incentives will be available through 2024. The prison populations are highly vaccinated and the jails continue to support and provide vaccination.

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 revised PRP discontinues quarantine following outside medical visits. It calls for 10-day quarantine for all individuals who are transported to court, new intakes, or who have been outside the facility for more than 24 hours, to the extent possible regardless of vaccination status.

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.

The revised PRP updates testing practices and distinguishes diagnostic, post exposure, and surveillance testing. It calls for broad-based testing of entire units when an infected inmate

is identified within the facility, in contrast to contact tracing. This approach was used during the recent surge. Surveillance testing by Project Vision continues weekly in each facility. The proportion of inmates tested depends on the level of community activity.

Area of Disagreement

Panel member Dr. Takenaka clarifies that the use of broad-based testing is not new CDC guidance and was included in previous versions of the PRP. The use of broad-based testing does not apply in all situations, particularly when contact tracing is possible. PSD used broad-based testing since the first identified cluster at a PSD facility in August 2020.

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

As of March 17, 2022, PSD HCD reports 22 inmate patients with persistent or long-COVID symptoms meeting the u09.9 ICD code.

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 as a means to ensure adequate COVID-19 response, particularly during periods of ongoing transmission.

As operations normalize, movement among facilities is picking up to provide some relief to the jails. There are parole releases and work release programs will be starting up. Admissions continue to strain the jails, including low-bail admissions to HCCC. KCCC has seen some improvement in court-ordered admissions and its population dropped since the 5th report. The department and facilities are concerned that population pressure will resume once the courts return to full operation and postponed admissions are sent to the facilities.

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

The department recognizes that Hale Nani in Hilo is underutilized and represents potential relief for crowding at the HCCC main campus. Capital projects are planned to make Hale Nani more secure to maximize its housing potential.

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

The containers proved essential for population management at HCCC during the surge and were also useful at MCCC. OCCC is scheduled to complete electrical work on the containers, which will soon be available for occupancy at that facility. At HCF, the containers will be ready for occupancy after procedural issues are resolved. KCCC is awaiting hardware to complete construction and WCF and WCCC are awaiting containers delivery. Department procedures are that the containers are solely for medical housing.

KCF will not obtain containers. The warden reported that the facility is revising its medical isolation plan following its experience with the two-person outbreak. Originally identified housing for a larger outbreak was deemed inappropriate because of lack of heating.

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

This recommendation remains under consideration by PSD. These facilities have greater than 90 percent vaccination among the inmate population. Vaccination is required by Hawai'i Paroling Authority before release.

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 facilities reported no issues with monitoring high-risk patients during the recent surge.

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.

Review of one additional case was undertaken in which a person's death was recently reclassified by PSD as COVID-19 related. Review of the medical records and internal mortality review conducted by PSD support the earlier recommendations made by the AMP that PSD undertake a more rigorous approach to the review of deaths, with emphasis on identification of systemic contributors to death, including potential mortality from post-COVID-19 illness.

Approval for release of repair fund

The AMP approves of the release of funds set aside to address recommendations of the panel as listed and described on the attached spread sheet (See appendix). The 11 health and safety repair and maintenance projects are needed to ensure the health and welfare of the inmates incarcerated at the facilities listed.

Areas of concern

Drs. Thorburn and Venters continue to be concerned about the lack of systematic health data collection and analysis to be applied to system monitoring and improvement.

PSD has identified 22 people with long 'COVID-19' or post-COVID-19 symptoms among the approximately 1,500 individuals who have contracted this infection one or more times in custody. While the majority of the people identified with COVID-19 infection do not remain in custody, PSD reports that approximately 38 percent of the infections occurred prison inmates, suggesting 550 to 600 people with past infection still in custody. Community rates

of 10 to 20 percent would suggest that many people with this condition in PSD have not been identified.

Areas of Disagreement

Data. AMP members express concern "about the lack of systematic health data collection and analysis to be applied to system monitoring and improvement." Panel member Dr. Takenaka notes that AMP members were provided with all requested data. As cited in previous AMP reports, Dr. Takenaka identified concerns about diverting limited staff resources from clinical care to data gathering and reporting activities, particularly during crisis-level pandemic responses. AMP members stated their "concerns have not related to how the data are collected." Since the initial report, Dr. Takenaka requested AMP support in recommending the need to upgrade the current electronic medical record system to allow for efficient and effective database management and reporting. Through participation in multiple product demonstrations of various electronic medical record systems, Dr. Takenaka observed that HCD expends significant clinical staff resources on manually maintaining databases when an upgraded electronic medical records system could do the same in a few clicks or through requests to the vendor to set up auto-populated statistics and reports. Given AMP members concerns and the challenge with manually maintaining a reliable database, Dr. Takenaka notes that an up-to-date electronic medical record system is essential for the department's pandemic response and the delivery of healthcare services in general.

Post-COVID-19 conditions. Panel member Dr. Takenaka reported of those who tested positive for SARS CoV2, approximately 38 percent were from a prison setting and 62 percent from a jail setting. Approximately one-third of the jail population are released within 2 weeks and two-thirds are released in a month. Parole releases from prisons are ongoing and the Hawaii Paroling Authority reported approximately 4% of inmates have been released from prisons since January 2022. Point in time data since the initial outbreak in August 2020 show approximately eight to 10 percent of inmates who tested positive for SARS CoV2 in Hawaii's correctional facilities reported experiencing symptoms during the acute infectious phase. As a result, there would be approximately 75 to 94 inmates currently in custody who reported experiencing symptoms during the acute infectious phase. While there might be inmates who did not experience symptoms during the acute infectious phase, but report symptoms at a later time, such inmates would be initially treated as new infections, nullifying the category from identification. Of the approximately 75 to 94 inmates currently in custody who reported experiencing symptoms during the acute infectious phase, 22 inmates have been identified with persistent symptoms. The current data and estimations show that approximately 23 to 29 percent of inmates currently in custody who reported experiencing symptoms during the acute infectious phase have been identified as experiencing persistent symptoms.

Recommendations

HCD should develop data monitoring systems that focus on outcomes and system improvement in addition to process check lists. For example, systematic review of hospitalization and emergency room visit data could assist in flagging cases for quality care review. The PSD HCD should consider an external peer review process, perhaps through the

Hawai'i Medical Association peer review committee, to strengthen its quality assurance processes.

HCD should create a more structured process to check every person for post-COVID-19 illness, use the newly implemented ICD-10 code to diagnose and offer treatment to these people, and apply the newly approved HHS disability definition when appropriate.

Area of Disagreement

Panel member Dr. Takenaka reports that the department's post-COVID-19 follow-up practices and care path are consistent with CDC guidance and the UpToDate review on "COVID-19: Evaluation and management of adults following acute viral illness."

Conclusion

This is the final report of the AMP. Members of the AMP are grateful for the time and communication provided by department and facility leadership to assist us in our responsibilities. They have demonstrated commitment to improving pandemic responsiveness with a focus on protecting health and safety during extremely challenging times.

Appendix

Signed on behalf of the AMP members

Kim Marie Thorburn, MD, MPH

March 23, 2022

PSD STATEWIDE FACILIY IMPROVEMENTS 3/15/22			
FACILITY	**BUILDING**	**PROBLEM AREA/ISSUE**	**PROBABLE CONSTRUCTION COST**
OCCC	Annex 2	Phase 2 Temp stopage of leakage (80% complete) Phase 1 - Waterline repairs in basement (100% complete)	Construction in progress.
		Phase 3 - Restroom & shower improvements and upgrades (to request for proposal for construction cost)	$1,000,000
	Annex 1	Restroom & shower improvements and upgrades.	$300,000
	Laumaka Dorm 2	Restroom & shower improvements and upgrades.	$600,000
	Laumaka Dorm 3	Restroom & shower improvements and upgrades.	$300,000
	Module 2	Shower and plumbing line repairs.	$25,000
	Module 4	Shower and plumbing line repairs.	$25,000
	Module 11	Toilet Repairs	$25,000
	Module 13	Shower and plumbing line repairs.	$25,000
HCF	Special Needs Facility	Sewer leaks and plumbing line repairs.	$600,000
KCCC	Module B	Need to add restrooms and showers. PREA concerns.	$1,000,000
HCCC	Hale Nani Mauka Annex	Restrooms & showers have significant damages.	$400,000
		Total:	$4,300,000