

# **BOP Guidance for Managing Inmates Refusing Testing for COVID-19**

**May 27, 2020**

One of the most important tools in the identification of and mitigation against the spread of COVID-19 is testing. As resources become more available, the BOP is moving forward with more expanded testing strategies. Inmate refusal of testing may be a concern that requires management not just for the individual, but as a public health issue for the institution, the agency and beyond. Although not every potential scenario can be individually addressed, this document provides some guidance and principles for the management of inmates who refuse COVID-19 testing.

## **General Principles**

- In most cases, testing of an inmate with COVID-19 is not just for the sake of the inmate's individual healthcare, but also to aid in management decisions that could involve the healthcare of others. As such, it is considered not just a refusal for medical treatment, but also an act that affects the safe and orderly running of the institution. Program Statement 6190.04, Infectious Disease Management, states, "The Bureau tests an inmate for an infectious or communicable disease when the test is necessary to verify transmission following exposure to bloodborne pathogens or to infectious body fluid. An inmate who refuses diagnostic testing is subject to an incident report for refusing to obey an order."
- If an inmate refuses testing, the first action is to educate the inmate on the importance of testing, why it is being conducted and the potential risks and benefits of testing vs refusal.
- A distinction should be made between those who simply refuse testing from those who are willing to be tested, but are unable to tolerate the preferred nasopharyngeal swab. For the latter, alternate sampling sites should be considered. Alternate sample sites include: oropharyngeal, nasal mid-turbinate and anterior nares. Follow CDC instructions on proper sample collection and handling: <https://www.cdc.gov/coronavirus/2019-ncov/lab/guidelines-clinical-specimens.html#specimen> Alternate site sampling should not be attempted until a good faith effort has been made for a nasopharyngeal sample.
- In most instances where refusal to test may have effects beyond the individual, if an inmate continues to refuse COVID testing, they should be given a direct order to submit to testing. Specific circumstances where a direct order would not be indicated are noted below.
- If an inmate refuses the direct order, an Incident Report should be generated. A sample Incident Report summary is provided in **Appendix A**. A Medical Treatment Refusal Form should also be completed.
- Due to the risk of exposure for staff, a use of force to involuntarily obtain a sample is generally not recommended

## **Clinical Management**

As stated previously, it is not possible to address every possible scenario of inmate testing refusal. Local management should be based on the individual circumstances, an understanding of general infection prevention and control principles and evidence based knowledge unique to COVID infection and its transmission properties.

- For inmates refusing COVID testing under the following circumstances:
  - **Symptomatic patient:** place in single cell isolation until they clear CDC symptom-based criteria for release from isolation. Ideally, this isolation should be separated from both suspected COVID isolation cases and from known positive COVID isolation cases
  - **Asymptomatic Close Contact:** place in single cell quarantine for 14 days.
    - If the inmate becomes symptomatic at any time during the quarantine, follow guideline for symptomatic patient.
    - If inmate remains asymptomatic, testing should be available throughout the 14-day quarantine. If inmate submits to testing prior to the full 14 day quarantine and testing is:
      - Negative- they may be placed in regular intake quarantine for remainder of the 14-day quarantine period.
      - Positive- they should be placed in isolation and follow time-based criteria for release from isolation.
      - If inmate continues to refuse testing they should remain in single-cell quarantine for full 14 days
    - On Day 14 of the initial quarantine, testing to release from quarantine should be offered. If inmate submits to testing and testing is:
      - Negative- they may release from quarantine
      - Positive- they should be placed in isolation and follow time-based criteria for release from isolation
      - If inmate continues to refuse testing, they should be placed in continued quarantine for another 14 days. They may submit to testing at any time during this 14 day period. If they test positive, they go to isolation. If they test negative, they may be released. If they continue to refuse, they may be released at the end of 14 days if they remain asymptomatic.
  - **Asymptomatic New BOP Intake:** follow guidelines for Asymptomatic Close Contact
  - **Asymptomatic prior to release from intake or COVID exposure quarantine:** see guidelines for Asymptomatic Close Contact after the first 14 day quarantine period
  - **Asymptomatic in open/ medical unit with widespread transmission:** follow guidelines for Asymptomatic Close Contact
  - **Asymptomatic inmates required to be tested in order to be seen at a civilian health care system:** educate inmate on specific need for testing in order to be seen at civilian health care system. If inmate continues to refuse, have inmate sign refusal for testing and for the medical trip. Document in BEMR that inmate was educated on requirements of outside facility for inmate to be tested and that inmate refused. Educate inmate to notify Health Services if they change their mind about testing in order to be able to go on medical trip. In this instance, since testing would not otherwise be indicated, no direct order or Incident Report should be given for refusal. It is also important to note that even if an inmate has previously refused COVID testing, if experiencing a medical emergency, they should still be taken to a community hospital.
  - **Asymptomatic inmates transferring to / arriving at a BOP Medical Referral Center:** Ideally, inmates designated to an MRC should be cleared prior to transfer to an MRC to

minimize the risk to the vulnerable medical populations at the MRC. When necessary and feasible, follow guidelines for Asymptomatic Close Contact. In some instances, the medical condition may preclude prolonged quarantine period at the sending facility. In these instances, MRCs may need to take the patient and perform quarantine on arrival. With these cases, it is imperative that the sending and receiving institutions are in direct communication to ensure a smooth, timely and appropriate transfer.

- **Retesting of asymptomatic inmates seven days after initially testing negative in the context of a contact investigation or mass surveillance testing:** advanced planning of space and movement requirements should be performed prior to this course of testing. For inmates refusing the 7-day follow up testing, separate them and follow the Asymptomatic Close Contact procedure with only 7 more days of the initial quarantine to complete a total of 14 days. At the end of the initial 14 days, follow the same procedures to test out or for another 14 day quarantine, if necessary.
- **Asymptomatic inmates departing a BOP facility for home confinement, regional reentry center, or full term / good conduct time release, especially if there are any cases of COVID at the institution:** follow guidelines for Asymptomatic Close Contact prior to release. Note that this may delay an inmate's release and inmate should be educated as such. If circumstances require immediate release or is mandated without enough time to fulfill quarantine requirements, the receiving facility, home and/ or local health department must be notified of the patient's COVID status. Direct order and Incident Report for refusal of testing in this situation does not apply.
- **Asymptomatic inmates departing a BOP facility as a transfer to another BOP facility or other correctional jurisdiction:** follow guidelines for Asymptomatic Close Contact
- **As a test-based strategy for release from isolation (asymptomatic or symptomatic):** follow symptom or time-based strategy for release from isolation as appropriate. Direct order and Incident Report for refusal of testing in this situation does not apply.
- **Testing all inmates at an institution without any known COVID-19 cases as part of an institution-wide surveillance program:** advanced planning of space and movement requirements should be performed prior to this course of testing. For inmates refusing this testing, follow the Asymptomatic Close Contact procedure.

## **Appendix A**

On   (DATE)  , inmate   (name)  , Reg. No.   (number)  , refused a direct order to submit to testing for the COVID-19 virus as part of the surveillance testing initiative to prevent the transmission of a life threatening disease to other staff and inmates.

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