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Oversight Hearing Senate Special Committee on Pandemic Emergency Response *“Workplace Health and Safety Issues during the COVID-19 Pandemic”*

Wednesday, October 7th, 2020 at 1:00 p.m.
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BACKGROUND PAPER

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Coronavirus Disease 2019 (COVID-19)

COVID-19 is a respiratory illness that can spread from person to person and began impacting countries around the world, starting as early as December 2019. According to the Centers for Disease Control and Prevention (CDC), symptoms of the coronavirus include fever, chills, cough, shortness of breath or difficulty breathing, fatigue, muscle or body aches, headache, loss of taste or smell, sore throat, congestion or runny nose, nausea or vomiting and diarrhea. Those who contract COVID-19 are able to transmit the virus to others, even if they are asymptomatic themselves. Older adults and people who have severe underlying medical conditions like heart or lung disease or diabetes are at higher risk for developing more serious complications or dying from COVID-19.

COVID-19 Pandemic

The World Health Organization (WHO) declared COVID-19 a pandemic on March 11, 2020. On March 13, 2020, President Trump proclaimed that the COVID-19 outbreak in the United States constitutes a national emergency. Due to the severity of the COVID-19 crisis, on March 4, 2020, Governor Newsom issued an Executive Order declaring a state of emergency. On March 19, 2020, the Governor issued a statewide stay-at-home order.

According to tracking by the *New York Times*, as of October 3, 2020, more than 34.7 million people worldwide have contracted COVID-19. More than 1 million people have died in this global outbreak so far. The United States has far more COVID-19 cases than any other country, with more than 7,384,300 people infected so far. India has the second highest number of cases with almost 6.5 million, but the case rate per 100,000 residents in India is 479 per 100,000 residents, while in the U.S. it is much higher, with 2,225 case per 100,000 residents. At least 209,000 people have died in the United States from COVID-19, a far higher number than in any

other country. Though case rates vary dramatically from country to country, the number of new cases is currently growing faster than ever worldwide, with more than 200,000 new cases reported each day on average. During the week of September 27, 2020, there were 302,921 new cases in the United States, for a daily average of 43,274 new cases. The United States has 4% of the world population, but approximately 22% of new cases almost seven months after first declaring the COVID-19 pandemic a national emergency.

Using data from October 3, 2020, the California Department of Public Health (CDPH) reported 819,436 total cases of COVID-19 in California to date. The 7-day positivity rate is 2.6% and the 14-day positivity rate is 2.7%, much lower than in previous months. As of October 3rd, more than 15 million COVID-19 tests had been administered in California. At the beginning of the outbreak, even people who were symptomatic did not necessarily have access to testing, but there has been a steady increase in testing in California since then, and in the last two months a decrease in testing turnaround time as well. For the week of September 20-26th, the average turnaround time was 1.3 days, with 92% of test results being available within 48 hours.

As of October 3rd, there have been 16,074 COVID-19 deaths reported in California. As of October 3rd, there were 2,287 patients who tested positive for COVID-19 who were currently hospitalized in California and another 792 in the hospital who were suspected to have COVID-19. The state intensive care unit (ICU) figures as of October 3rd were 673 patients who have tested positive in ICUs and another 114 patients in ICUs who are suspected to have COVID-19, figures that have declined significantly over the last two months. As of October 3rd, local health departments reported 39,792 confirmed positive cases in health care workers and 191 deaths statewide.

For those age 18 and over, 61.1% of COVID-19 cases in California and 48% of deaths have occurred with those who are Latino, though Latinos make up 36.3% of the population age 18 and over. Similarly, Black people make up 6.1% of California's adult population, but 7.7% of the COVID-19 deaths. It should be noted that 30% of the data about positive test results lacks race or ethnicity information, but an examination of surnames indicates that a significant proportion of those from whom race or ethnicity was not recorded are likely Latino.

As flu season begins, and cooler weather will result in people needing to spend more time indoors, health care professionals and the Governor have been urging people to get their flu shots, both to keep themselves and their families healthy and prevent a "twindemic" of COVID-19 coupled with influenza, which would drain the state's health care resources.

Essential Workers

For many Californians, the Governor's shelter-in-place order in mid-March and subsequent health orders, have resulted in a move to working from home in order to reduce the spread of COVID-19. But, for most essential workers, working from home is not an option in order for their essential duties to be performed.

In March, the State Public Health Officer issued a list of "Essential Critical Infrastructure Workers" to make clear which employment sectors included workers that were not subject to the shelter-in-place order.

Those employment sectors are:

- Health and Public Health
- Emergency Services
- Food and Agriculture
- Energy
- Water and Wastewater
- Transportation and Logistics
- Communications and Information Technology
- Government Operations and Other Community-Based Essential Functions
- Critical Manufacturing
- Financial Services
- Chemical Sector
- Defense Industrial Base Sector
- Industrial, Commercial, Residential and Sheltering Facilities and Services

Both the Health and the Food and Agriculture sectors, in particular, include a number of workplaces that have had outbreaks of COVID-19. According to Public Policy Institute of California (PPIC) survey results from September 2020, approximately six in ten adults are very (28%) or somewhat (33%) concerned about getting the coronavirus and being hospitalized.

Needs of Essential Workers

Personal Protective Equipment (PPE) and other supplies

The PPE needs of workers in different employment sectors will vary from sector to sector, but an adequate supply and consistent use of PPE is critical to prevent the spread of infection. Even those who work in settings where they have direct and frequent contact with patients or residents who may have COVID-19 reported PPE shortages at the beginning of the pandemic. Those shortages have continued in some settings even today. Lack of an adequate supply of PPE in some nursing homes and hospitals at the beginning of the pandemic resulted in some health care workers resorting to using swimming goggles, rain ponchos and other protective equipment that they obtained or made themselves when they could not obtain the PPE they needed from their employer. While there are fewer complaints that health care facilities are rationing PPE or disinfecting PPE for repeat use of PPE that was manufactured for one-time use, those reports have not ceased entirely. There are also reports of inequity of availability within a facility, in which some medical personnel are able to access all the PPE they need, while others are not. Some health care facilities do not offer COVID-19 testing, or only offer it to specific categories of people (such as pre-operative patients) and often cite the lack of sufficient PPE as one reason they do not offer COVID-19 testing to a broader population.

According to the COVID-19 Farm Worker Survey completed in July by a partnership of a number of non-profit organizations including the California Institute for Rural Studies, while some agricultural employers are making efforts to protect workers, farmworkers reported that only slightly more than half (54%) of worksites provided face-coverings. A significant number (43%) of worksites did not provide face-coverings at all and a smaller number (4%) of worksites

provided face coverings on a short-term basis or the masks provided did not meet the needs of the entire workforce

Garment workers, who in some instances are currently making PPE, often report a lack of basic supplies such as hand soap and sanitizer, in addition to lacking masks, gloves or other necessary PPE.

COVID-19 Testing

Some hospital staff continue to report that patient discharge can be delayed because there is not adequate access to testing and that health care workers must find their own access to COVID-19 testing.

The results of a survey conducted through a partnership between California’s COVID-19 Testing Task Force and the California Medical Association in late August indicate that of the 800 physicians (across 45 counties) surveyed:

- 4 out of 10 physicians do not consistently receive their patients’ test results back
- 57% have had trouble obtaining test collection kits
- 40% have had trouble obtaining PPE to support administering the tests
- Physician practices in the Inland Empire and the Bay Area are disproportionately impacted by testing supply challenges. In the Inland Empire – 71% of practices report difficulty obtaining test kits, 50% report PPE difficulties. In the Bay Area – 71% of practices report difficulty obtaining test kits.

One physician surveyed observed, “We have had to place our testing on hold, as we do not have a steady or stable supply of testing materials. I work at a county hospital. The surrounding private or community hospitals have better supply access. This puts our patients of low socioeconomic status at a disadvantage and increases the degree of health disparities in our community.”

While the state has dramatically increased the availability of COVID-19 testing and has signed a contract that is expected to significantly increase the availability of testing in November 2020 and further increase testing capacity by March 2021, essential workers in most employment sectors have reported difficulty getting timely access to COVID-19 testing not only in the first months of the pandemic, but as an issue that has yet to be adequately addressed.

Staffing Levels

On March 30th, Governor Newsom issued an Executive Order authorizing the California Department of Public Health (CDPH) Director to temporarily waive licensing and staffing requirements for hospitals and other health facilities. That same day, CDPH issued an All Facilities Letter (AFL) entitled “Suspension of Regulatory Enforcement of Specified Skilled Nursing Facility Requirements”, which among other things suspended minimum staffing hours per patient. In a health care setting, patient staff ratios exist to help ensure the quality of care and improve patient safety and outcomes, as well as to help retain experienced health care workers.

In the meat packing industry, there are reports that as workers report in sick, some employers attempt to get the same production out of fewer workers by employing tactics such as speeding up machines, which can result in substantial and life-altering injury to workers.

Examples of COVID-19 Job-Related Outbreaks in California

Many essential workplaces across California have seen workplace outbreaks. Typically, counties define an outbreak as three or more COVID-positive people who were in contact in one location. Some county health departments don't collect data about workplace outbreaks, while many others collect the data, but don't report it publicly. Some counties require employers to notify the county of cases among their staff. Los Angeles County now reports every known workplace outbreak online.

Employers are required to notify the Division of Occupational Safety and Health (Cal/OSHA) about any work-related COVID-19 cases that result in severe illness, hospitalization or death. Cal/OSHA does not post information about its investigations online, but has been issuing press releases when citations are issued against employers for COVID-19 related health and safety violations, with the first such citations having been issued in early September 2020.

Starting January 1, 2021, employers will be required by AB 685 (Reyes, Chapter 84, Statutes of 2020) to report outbreaks to the local public health agency in the jurisdiction of the worksite within 48-hours. CDPH will be required to make occupation and industry information available on their website in a manner that allows the public to track outbreaks.

Public disclosure of data about the types of settings in which community spread of COVID-19 most frequently takes place can be valuable information to help prevent community spread. Whether it turns out that family and friend gatherings, workplaces, indoor retail sites, or other locations are where the virus is most commonly spread, making general information publicly available helps educate the public and policymakers about what activities are highest risk and how to reduce one's risk of being exposed to COVID-19.

Garment Workers:

Workers in garment factories often report that their job sites are not set up for with enough space either at their work stations or during their lunch hours for physical distancing of at least six feet, there are no temperature checks when they arrive and they sometimes lack soap, hand sanitizer and masks.

A Los Angeles Apparel location was shut down twice by Los Angeles County health officials, first in June when the county found multiple infection control violations and again in July. More than 375 employees were infected with the virus and four died. When inspectors visited the facility in June, they found multiple violations of infection control protocols and later shut the facility down a second time after the company failed to cooperate with the health department's investigation, in part by failing to provide a list of employees. Los Angeles Apparel failed to report the first outbreak to the County Health Department and the situation at the workplace was brought to the attention of Los Angeles County by a medical provider. After the facility reopened the second time, the Los Angeles County Department of Public Health indicated it will

monitor the garment factory with unannounced visits to make sure Los Angeles Apparel continues to comply with all health orders.

Meat Packing

Foster Farms Outbreak (Livingston, CA):

The Merced County Department of Public Health (MCDPH) declared the Foster Farms plant the site of an outbreak on June 29th. By the time the plant closed on September 1st, there had been at least 392 employees who tested positive for COVID-19 and eight deaths. Another worker died in mid-September, bringing the death count to 9. On August 27th, MCDPH issued a press release in which it said “The true spread of COVID-19 in the Foster Farms Livingston Facility remains unknown.”

Throughout the month of July, MCDPH continued to advise Foster Farms that widespread testing needed to be conducted to control the outbreak, particularly within the two Foster Farms departments at the Livingston location with the highest number of cases. According to MCDPH, in late July, Foster Farms tested less than 10 percent of the department with the largest impact within the facility (less than 100 employees total). Over 25 percent of the employees screened at this time tested positive. However, expanded testing within the department was not completed for an additional three weeks and subsequently, three fatalities were linked to that department alone.

On August 3rd, Cal/OSHA and MCDPH performed a site visit; this was the second visit by MCDPH. On August 5, 2020 and August 11, 2020, the Merced County Health Officer issued directives to Foster Farms providing specific direction on testing requirements and other safety measures to control the spread of COVID-19 within the Livingston facility. MCDPH ordered the Foster Farms facility to shut down on August 26th. Foster Farm failed to comply with county and Cal/OSHA orders. The shutdown required by MCDPH was delayed twice after intervention from the U.S. Department of Agriculture (USDA), at least in part to address the handling of hundreds of thousands of live birds. A number of health and safety and worker advocates complained that the federal government placed the interests of one company above those of the workers and the entire community. Ultimately, the plant was shut down from the evening of September 1st – September 7th to provide time for a third-party deep cleaning and testing of the 1400 employees.

In conjunction with the reopening of the plant, safety training and educational materials were required to be provided to employees. Changes to the jobsite required by the county include frequent employee testing provided by Foster Farms, as well as adherence to COVID-19 safety guidelines, including social distancing, expanded break rooms, employee screening, proper PPE and other hygienic measures. To date, the company has not yet been cited or fined.

Farmer John (Vernon, CA)

According to data from the Los Angeles County Public Health Department, the outbreak at the Farmer John plant, a division of Smithfield Foods, is by far the largest in Los Angeles County to occur outside of a nursing home, prison or other residential setting. Workers from Farmer John complained publicly that the company did not begin providing masks and face shields until

workers got sick and a delegation of workers went repeatedly to management. In May, after at least 153 workers came down with COVID-19, the United Food and Commercial Workers (UFCW), the union representing the workers at the plant, called for the immediate closure of the facility.

In September, the U.S. Labor Department cited Smithfield Foods for failing to protect employees from the coronavirus, making it the first major U.S. meatpacker to face a fine from the federal government after outbreaks across the country.

According to a running tally kept by the Food and Environment Reporting Network, COVID-19 has infected at least 44,588 meat packing workers and killed 2013 of them nationwide as of October 4, 2020.

Skilled Nursing Facilities (SNFs)

The COVID-19 pandemic has had a significant nationwide impact on residents and workers at SNFs. One of the first major outbreaks reported in the U.S. occurred in a Washington State nursing home in February 2020. As of October 2nd, 26,209 residents of SNFs have tested positive for COVID-19, and 4,493 of them died. There are 19,735 healthcare workers in SNFs who have tested positive for COVID-19 as of October 2nd, with 150 of them having died. COVID-19 outbreaks in SNFs caused a significant percentage of the early cases of COVID-19, as well as a significant percentage of deaths, with so many SNF residents being elderly or having underlying health conditions that made them more susceptible to the most serious health consequences from the virus.

It was not until May 11th that CDPH issued AFL 20-52, which required all SNFs to develop a plan in conjunction with CDPH and their local health department to expand their existing infection control policies to include the development and implementation of a CDPH approved COVID-19 mitigation plan. The number of SNF-related COVID-19 cases and deaths has been decreasing significantly since August.

Farm Workers

A month-long investigation by *CalMatters* and *The Salinas Californian* uncovered and detailed six outbreaks at seven companies that employ guest workers in four counties (Santa Barbara, Monterey, Ventura and Fresno) across the state, sickening more than 350. The companies didn't always notify local health departments of these outbreaks. Many of those who became ill work for three of the largest guest worker employers in California, and the produce they harvest is sold at some of the largest retailers in California. After the reporting on this issue, Santa Barbara County issued a public health order that requires agricultural guest workers to be screened daily for COVID-19 symptoms and isolated immediately if they exhibit symptoms. Additionally, the housing operator must notify the county as soon as a positive case is detected — or face a \$1,000 penalty. The order also “strongly recommends” that residents of H-2A housing be separated into stable groups of no more than 14 people who do all of their activities together — such as transportation, meals, work, and personal shopping — to prevent mixing of too many people among whom the virus could spread.

Data compiled by the California Institute for Rural Studies show that as of June 30, 2020, California's Monterey County agricultural workers were three times more likely to become infected by the virus than persons employed in the county's non-agricultural industries.

To a greater degree than may be the case for workers in some other sectors, according to the COVID-19 FarmWorker survey of 900 farmworkers completed in July, slightly more than half (54%) of respondents reported costs, lack of insurance, and/or lack of sick leave as significant barriers that would prevent them from accessing healthcare, even if they were ill.

Cal/OSHA Workplace Health and Safety Guidance:

Cal/OSHA works to protect and improve the health and safety of workers in California through developing and enforcing health and safety standards; providing outreach, education, and assistance; and issuing permits, licenses, certifications, registrations, and approvals. Cal/OSHA has jurisdiction over most workplaces in California, though not federal government worksites. This means Cal/OSHA is the main government agency authorized to inspect California workplaces for occupational safety and health violations.

Cal/OSHA has created specific guidance documents related to COVID-19 workplace health and safety protections for a number of employment sectors such as [Agriculture](#), [Food Packing and Processing](#), [Grocery and other Retail](#), [Hospitals](#), [Skilled Nursing Facilities](#), [Manufacturing](#) and [Warehousing](#). The guidance documents are available in multiple languages and often include videos, daily checklists and detailed guidelines on how to protect workers from the virus. Within the Newsom Administration, there has been a multi-agency effort to develop and post reopening guidance for employers. To date, there have been over 80 individual state guidance resources posted online and available to employers and workers.

Enforcement:

The Cal/OSHA Enforcement Branch inspects workplaces in California to identify and evaluate health and safety hazards, and to verify employers' compliance with the applicable regulations and standards. There are over a million workplaces in the state, and Cal/OSHA conducts between 7,000 and 8,000 inspections each year. The inspections are conducted in response to complaints and referrals alleging hazardous conditions, in response to reports of worker injuries, illnesses and deaths, or proactively target high hazard industries, workplaces or operations. Generally, these inspections are conducted from 17 district offices throughout California or specific statewide units. Inspectors visit the worksites, observe, and interview employer and employee representatives.

If violations are found as result of inspections, Cal/OSHA may issue citations, which in most of the cases carry administrative penalties (fines). The law was amended in 2016 to incentivize employers to abate serious hazards, by granting a 50% abatement credit when assessing the fine associated with the citation for the respective hazard, if the hazard is corrected during the inspection.

The Cal/OSHA Consultation Services Branch provides consultative assistance, free of charge, to employers to provide education on implementing best practices in accordance with health and safety regulations and prevent occupational injuries and illnesses. These services include: onsite

visits with a walk-around inspection to help identify potential hazards, offsite consultations over phone or email, comprehensive educational materials and resources available in several languages, as well as outreach assistance.

Complaints to Cal/OSHA and Enforcement Activities

Before the pandemic, Cal/OSHA received between 10,000 and 13,000 complaints each year; 2,000 to 2,500 of them were responded to by onsite inspections, while 4,000 to over 7,000 were investigated by a letter process, which requires employers to look into the complaint items, and correct the hazards identified. Last year, Cal/OSHA cited 18,896 hazards to help improve the safety of working conditions for at least 8.4 million employees.

Cal/OSHA has seen a significant increase in the demand for enforcement as a result of the COVID-19 pandemic. From February 1 to late September, Cal/OSHA received close to 11,467 complaints: 6,937 complaints concerning COVID-19 related hazards at workplaces alone and over 4,530 complaints alleging other types of health and safety hazards.

During the first few months of the pandemic, due to several factors, including the anticipation of a surge in complaints as well as illness and fatality investigations, Cal/OSHA developed and implemented a revised complaint response procedure for COVID-19 cases. The procedure consists of an investigation by letter of the majority of the complaints, supplemented by offering, and providing to the employers, assistance in correcting the hazards. COVID-19 procedures call for onsite inspections in situations when the reports are of hazards that expose workers to most serious dangers, for cases when employers do not cooperate with Cal/OSHA to timely mitigate the hazards, and for random verifications of employers' reported corrective measures.

COVID-19 Enforcement from February 1st to September 27th:

Cal/OSHA received 6,937 COVID-related complaints (of over 11,467 total complaints)

Cal/OSHA conducted 1,102 on-site COVID-related inspections (of 3,908 total on-site inspections)

- 352 Complaint-based (of 904)
- 159 Fatality Investigations (of 280)
- 223 Illness Investigations (of 1,191 accident and illness investigations)
- 224 Referral-based inspections (of 588)
- 144 Programmed (targeted) and other COVID-19-related inspection

Cal/OSHA investigated 5,813 COVID-related complaints by letter (of 8,779 letter investigations)

COVID-19 related Citations

Despite, the frequency with which there have been COVID-19 outbreaks associated with specific workplaces, there have been a limited number of citations issued to employers by Cal/OSHA to date, with the first COVID-19 related citations having been issued in early September 2020.

In first citing employers on September 4, 2020 for violations of state health and safety laws, Cal/OSHA identified food processing, meatpacking, health care, agriculture and retail as priorities in their enforcement efforts related to COVID-19 infection prevention due to an elevated risk of exposure. Cal/OSHA cited 11 employers at that time for not protecting employees from COVID-19 exposure and cited them for various violations including some classified as serious, with proposed penalties ranging from \$2,025 to \$51,190.

In September 2020, Cal/OSHA also issued citations to frozen food manufacturer Overhill Farms Inc. and its temporary employment agency Jobsource North America Inc., with over \$200,000 in proposed penalties to each employer for failing to protect hundreds of employees from COVID-19 at two plants in Vernon. On April 28th, Cal/OSHA opened inspections of Overhill Farms and Jobsource after receiving complaints of hazards related to COVID-19. The inspections included visits to two facilities in Vernon where Overhill Farms employees and workers from Jobsource manufacture a variety of frozen foods. Cal/OSHA found hundreds of employees were exposed to serious illness from COVID-19 due to the lack of physical distancing procedures among workers, including where they clock in and out of their shift, at the cart where they put on gloves and coats, in the break room, on the conveyor line and during packing operations. At the larger of the two facilities, Cal/OSHA determined that 330 employees of Overhill Farms and 60 employees of Jobsource were exposed to the virus from the lack of physical distancing. At the smaller facility, Cal/OSHA found 80 Overhill Farms workers and 40 employees of Jobsource did packing operations, worked in the marinating area and processed raw poultry without any distancing procedures or protective barriers in place.

Cal/OSHA also issued citations to both Overhill Farms and Jobsource in September related to inspections of two accidents in February 2020, after one worker at each of the two facilities was injured when their hands got caught in unguarded conveyor parts. These accident inspections resulted in citations with \$103,780 in proposed penalties to Overhill Farms, including for repeat violations due to a [similar accident in 2016](#), and \$29,700 in proposed penalties to Jobsource.

Also in September, Cal/OSHA cited six Bay Area employers including hospitals, SNFs and a police department for failing to protect their employees from COVID-19. The employers were cited for various health and safety violations including some classified as serious, with proposed penalties ranging from \$2,060 to \$32,000. In the case of the Santa Rosa Police Department, the department failed to implement required screening and referral procedures for persons exhibiting COVID-19 symptoms during the month of March 2020, and failed to report to Cal/OSHA multiple serious illnesses suffered by employees who contracted COVID-19. An employee died from COVID-19 after being exposed by another employee who had exhibited signs and symptoms of COVID-19. Cal/OSHA did not learn of the fatality until two weeks after the death. A SNF in Hayward was cited for exposing nurses and housekeeping workers to COVID-19 when it failed to follow requirements for providing necessary PPE. One of the hospitals was cited after a patient suspected to have COVID-19 underwent a medical procedure in the operating room while medical staff did not have N-95 masks or other proper protection.

Also, in September, Cal/OSHA cited five grocery stores in Los Angeles County for failing to protect their employees from COVID-19. The retailers were cited for various health and safety violations including some classified as serious, with proposed penalties ranging from \$13,500 to

\$25,560. These Kroger Company owned and operated grocery stores (doing business as Ralphs or Food 4 Less) did not update their workplace safety plans to properly address hazards related to the virus. Two of the grocery stores cited failed to report a worker's fatal COVID-19 illness. Some of the locations failed to provide adequate training for the employees about COVID-19 related safety measures to prevent spread of the virus, and some put their workers at risk for serious illness by allowing too many customers in the store, which prevented workers from maintaining at least 6 feet of physical distance in one store.

Testing Guidance and its Impact on Essential Workers:

Many countries, including New Zealand, South Korea and Taiwan, have shown that widespread access to COVID-19 diagnostic testing with rapid turnaround times, coupled with contact tracing, are critical in limiting the spread of the virus and saving lives. In April, Governor Newsom announced six indicators that would drive California's decision to gradually modify portions of the state's stay-at-home order. The first of those indicators was expanding testing and contact tracing to be able to identify and isolate those with the virus.

The CDC Guidelines related to testing have, at times, contradicted the scientific community's recommendations. For example, under the August 24th updates to the CDC guidance on testing, the CDC recommended that individuals exposed to the virus for up to 15 minutes "do not necessarily need a test" if they are not experiencing symptoms, with exceptions for those who are especially vulnerable to severe infection or recommended for testing by a physician or local guidelines. Given that COVID-19 is often spread by someone who is asymptomatic at the time, the failure to recommend testing for those with close exposure to someone with COVID-19 can result in greater spread of the virus. After outcry from the scientific community, the CDC updated the guidance on testing again on September 18th to state that individuals exposed to the virus who are asymptomatic should be tested.

With the increase in testing capacity in California and the decrease in testing turnaround time, as of September 22nd, the CDPH Testing Prioritization Guidance originally dated July 14, 2020 now provides that all four testing Tier levels have priority for testing. This means that individuals who are asymptomatic, but believe they have been exposed should have access to testing, and routine testing by employers should also be prioritized.

Even before this expansion to those on Tier 4 for testing prioritization, Tier 2 provided for testing of asymptomatic individuals in a number of locations where essential workers have been doing their jobs, including those who:

- Work in the health care sector who have frequent interactions with the public or with people who may have COVID-19 or have been exposed to SARS-CoV-2. The health care sector includes: hospitals; SNF; long-term care facilities; ambulatory surgery centers; health care providers' offices; health care clinics; pharmacies; blood banks; dialysis centers; hospices; and, home health providers.
- Work in a congregate care facility, including shelters for people experience homelessness and residential care facilities for the elderly.

- Provide care to an elderly person or a person with a disability in the home, including a person providing care through California's In-Home Supportive Services Program.
- Work in the emergency services sector who have frequent interactions with the public or with people who may have COVID-19 or have been exposed to SARS-CoV-2. The emergency services sector includes police and other public safety departments (including, for example, child protective services and adult protective services departments), fire departments, and emergency service response operations.
- Work in a correctional facility.

Similarly, the Testing Guidelines prioritized on Tier 3 asymptomatic individuals who work in:

- The retail or manufacturing sectors who have frequent interactions with the public or who works in an environment where it is not practical to maintain at least six feet of space from other workers on a consistent basis.
- The food services sector who have frequent interactions with the public. The food services sector includes grocery stores, convenience stores, restaurants, and grocery or meal delivery services.
- The agricultural or food manufacturing sector who have frequent interactions with the public or who works in an environment where it is not practical to maintain at least six feet of space from other workers on a consistent basis. The agricultural or food manufacturing sector includes food production and processing facilities, slaughter facilities, harvesting sites or facilities, and food packing facilities.
- The public transportation sector who have frequent interactions with the public. The public transportation sector includes public transit, passenger rail service, passenger ferry service, public airports, and commercial airlines.
- In the education sector who have frequent interactions with students or the public. The education sector includes public and private childcare establishments; public and private pre-kindergarten programs; primary and secondary schools; and public and private colleges and universities.

Despite these testing guidelines, workers in these sectors often report that they do not have access to testing when they believe they have been exposed to someone with COVID-19. Access to testing has improved in California and the average testing turnaround times have improved dramatically, but many workers (even health care workers) report needing to find tests on their own and sometimes having trouble getting testing when they need it.

Testing in SNFS

In early June, when the Senate Special Committee on Pandemic Response held an informational hearing specific to SNFs during the COVID-19 Pandemic, at least 43.5% of those who had died

from COVID-19 in California were residents or health care workers at SNFs. Given the high spread of COVID-19 in SNFs and the high number of Californians in SNFs who were dying from COVID-19, CDPH required each SNF to file a new Facility Mitigation Plan. The Mitigation Plan was required to have various elements including:

- plans related to testing and cohorting;
- a full-time, dedicated Infection Preventionist (IP);
- a plan for adequate provision of PPE, including types that will be kept in stock, duration the stock is expected to last and information on established contracts or relationships with vendors for replenishing stock; and
- policies in place to address staffing shortages, including contingency and crisis capacity strategies.

In June, SNFs were required to test all staff and residents at least once. If a facility had no positive cases, it was still required to do surveillance testing of 25% of residents and workers every seven days, in order to decrease the spread of COVID-19.

Surveillance testing rules like those do not exist in many other health care settings, not even in hospitals that are treating COVID-19 patients. There are many who argue that ongoing surveillance testing should be implemented in hospitals and other health care settings to identify and prevent facility outbreaks.

State Expansion of Worker Protections

A number of important bills to expand worker protections were passed by the State Legislature and signed into law by Governor Newsom in September 2020, among which are:

AB 685 (Reyes) contains a number of provisions including a requirement for employers to provide a notice within one business day to employees who have been exposed to COVID-19 at their worksite, and report to CDPH if an outbreak occurs; a requirement that CDPH make occupation and industry information available online in a manner that allows the public to track outbreaks; and a provision to clarify that Cal/OSHA may require the temporary closure of a place of employment that exposes workers to the risk of COVID-19 infection so as to constitute an imminent hazard to employees. Cal/OSHA will also be able to issue citations for serious violations related to COVID-19 without giving employers 15-day notice before issuance.

AB 2043 (R.Rivas) requires Cal/OSHA to disseminate, in both English and Spanish, information on best practices for COVID-19 infection prevention specific to agricultural employees. It also requires Cal/OSHA to conduct a statewide outreach campaign targeted at agricultural employees to assist with the dissemination of COVID-19 prevention information as well as information on other benefits to which the employees may be entitled. Further, it requires Cal/OSHA to routinely compile and report specified information relating to investigations by the division of agricultural workplaces relating to COVID-19 response. The bill had an urgency clause and went into effect immediately.

AB 2537 (Rodriguez) requires that beginning on April 1, 2021 employers of workers who provide direct patient care in a general acute care hospital must maintain a stockpile of new, unexpired PPE in the amount equal to 3 months of normal consumption.

SB 275 (Pan) requires CDPH and the Office of Emergency Services (OES) to establish a PPE stockpile, and requires certain health care employers, including hospitals SNFs, to maintain an inventory of PPE at least sufficient for 45 days of surge consumption, effective on January 1, 2023, or one year after regulations are adopted defining 45 days of surge consumption, whichever is later.

SB 1159 (Hill) creates a rebuttable presumption that "essential employees" who contracted COVID-19 were infected on the job. It establishes a similar presumption of compensability for employees who contract COVID-19 from any employer that experiences an "outbreak" of COVID-19 cases at a particular work location. This measure had an urgency clause and went into effect immediately.

Areas for Further Consideration or Action Going Forward

On June 30, 2020, the city of Sacramento adopted an ordinance referred to as the "Sacramento Worker Protection, Health, and Safety Act" to protect employees and help prevent the spread of COVID-19 in the workplace. Under the ordinance, an employee may refuse to work for an employer, without pay and cannot be retaliated against, if the employee reasonably believes the employer is in violation of the employer safety practices and protocols the city enacted to prevent the spread of COVID-19 and provides notice to the employer of the alleged violation. The ordinance went into effect immediately and is scheduled to sunset December 31, 2020. Would the health and safety of employees in other jurisdictions be improved if such a law were in effect elsewhere?

The state issued guidance requiring ongoing surveillance testing at SNFs. Should similar guidance be adopted and implemented in hospitals and other health care settings to identify and prevent facility outbreaks among health care workers and other staff?

As the state continues its work to make COVID-19 testing more widely available, should a mobile testing program be developed to travel to job sites and elsewhere to make sure that testing is readily available to essential workers and underserved communities to prevent the spread of COVID-19?

Los Angeles County has developed an online Dashboard with one page devoted to PPE inventory, so that one can quickly see the available supply of N-95 masks, surgical masks, face shields, goggles, isolation gowns and exam gloves. The supply is measured in categories of 30 days or more, 9-29 days or 8 days of less of each supply. Distribution by County Emergency Management Services in the last seven days and cumulatively is also measured. Should other jurisdictions use this as a model to monitor PPE inventory?