

County of Santa Clara
Public Health Department

Health Officer
976 Lenzen Avenue, 2nd Floor
San José, CA 95126
408.792.3798



**ORDER OF THE HEALTH OFFICER
OF THE COUNTY OF SANTA CLARA REQUIRING CERTAIN
HEALTHCARE FACILITIES WITHIN THE COUNTY TO PROVIDE COVID-
19 DIAGNOSTIC TESTING TO SYMPTOMATIC PERSONS, PERSONS WHO
HAVE HAD CONTACT WITH CONFIRMED COVID-19 CASES, PERSONS
WHO HAVE BEEN REFERRED FOR TESTING BY THE COUNTY PUBLIC
HEALTH DEPARTMENT, AND ESSENTIAL WORKERS**

DATE OF ORDER: September 16, 2020

Please read this Order carefully. Violation of or failure to comply with this Order is a misdemeanor punishable by fine, imprisonment, or both. (California Health and Safety Code § 120295, *et seq.*; California Penal Code §§ 69, 148(a)(1); Santa Clara County Ordinance Code § A1-28.) Violation of this Order is also actionable under Santa Clara County Urgency Ordinance No. NS-9.291, which establishes a civil enforcement program and authorizes administrative fines for violations of Health Officer Orders and other laws related to the COVID-19 pandemic.

UNDER THE AUTHORITY OF CALIFORNIA HEALTH AND SAFETY CODE SECTIONS 101040, 101085, AND 120175 AND SANTA CLARA COUNTY ORDINANCE CODE SECTIONS A18-28 TO A18-32, THE HEALTH OFFICER OF THE COUNTY OF SANTA CLARA (“HEALTH OFFICER”) ORDERS:

1. This Order supersedes the June 10, 2020 Order of the Health Officer directing Healthcare Facilities in Santa Clara County (“County”) to provide to certain categories of their Patients COVID-19 Diagnostic Testing as those initially capitalized terms are defined in Section 11 below. This Order adds or amends four key requirements to the June 10, 2020 Order. First, it amends the categories of Patients to whom Healthcare Facilities must provide COVID-19 Diagnostic Testing. Second, it amends the timeframes by which Healthcare Facilities must provide COVID-19 Diagnostic Testing as well as results to those categories of Patients. Third, it requires Healthcare Facilities to provide clear notice to Patients regarding how to access COVID-19 Diagnostic Testing through their healthcare provider. And fourth, it requires Healthcare Facilities to ensure that accessing COVID-19 Diagnostic Testing is easy and straightforward, and to cease and desist any practice that is an impediment to easy and straightforward access. As of the effective date and time of this Order set forth in Section 16 below, all Healthcare Facilities are required to follow the provisions of this Order.
2. The intent of this Order is to ensure access to COVID-19 Diagnostic Testing in order to effectively prevent and control COVID-19 in our community. Expansion of COVID-19

Diagnostic Testing is essential because it helps identify individuals who are infected with the virus that causes COVID-19 (SARS-CoV-2), ensure those individuals receive appropriate care, protect vulnerable populations, contain the spread of COVID-19, and ultimately prevent serious illness and death. In order for COVID-19 Diagnostic Testing to help effectively prevent and control COVID-19, however, individuals must understand when they are eligible for testing and must be able to access such testing, and their test results, quickly and without undue obstacles.

3. All Healthcare Facilities in the County must provide COVID-19 Diagnostic Testing to each of the following categories of Patients of the Healthcare Facility who seek care, including testing, whether in-person or remotely, such as by phone or electronic message:
 - a. All Symptomatic Persons, as defined in Section 11, regardless of age, hospitalization status, comorbidities, or other risk factors for COVID-19;
 - b. All persons, with or without COVID-19 Symptoms, as defined in Section 11, who report that they have been exposed to a confirmed case of COVID-19;
 - c. All persons who are referred by the County Public Health Department to their provider for COVID-19 Diagnostic Testing;
 - d. All persons, with or without COVID-19 Symptoms, who are “Essential Workers” as defined by the COVID-19 Diagnostic Testing emergency regulation of the California Department of Managed Health Care, 28 C.C.R. § 1300.67.01(b)(5), also currently available at: <https://wpsso.dmhc.ca.gov/regulations/docs/regs/50/1594998444637.pdf>.
4. Healthcare Facilities may inquire of the Patient whether the Patient falls within a category described in Section 3, but may not ask for further proof of eligibility for COVID-19 Diagnostic Testing. Healthcare Facilities also may not restrict access to COVID-19 Diagnostic Testing for any Patients in categories (a), (b), or (c) in Section 3 based on the date of a Patient’s previous COVID-19 Diagnostic Test, because new exposures or public health investigations by the County Public Health Department may necessitate frequent testing. For Patients who fall solely into category (d) in Section 3, Healthcare Facilities may choose to restrict access to COVID-19 Diagnostic Testing to once every fourteen (14) calendar days.
5. For any Patient in categories (a), (b), and (c) in Section 3, the Healthcare Facility providing care to the Patient must provide the COVID-19 Diagnostic Testing at the time the Patient presents for care. If any Patient in categories (a), (b), or (c) in Section 3 seeks care or COVID-19 Diagnostic Testing remotely, such as by phone or electronic message, the Healthcare Facility must provide the COVID-19 Diagnostic Testing no later than the end of the following calendar day. For any Patient solely in category (d) in Section 3, the Healthcare Facility providing care to the Patient must provide the COVID-19 Diagnostic Testing within three (3) business days of the time the Patient seeks COVID-19 Diagnostic Testing; provided, however,

Order of the County Health Officer
for Certain Healthcare Facilities
to Offer COVID-19 Diagnostic Testing
(Rev. 9/16/2020)

that a Healthcare Facility may ask the Patient to wait up to fourteen (14) calendar days since that Patient's last COVID-19 Diagnostic Test, consistent with the frequency requirements set forth in Section 4. Patients who seek care remotely may be referred for COVID-19 Diagnostic Testing to a specified clinic or testing center operated by the Healthcare Facility so long as the Patient is provided with COVID-19 Diagnostic Testing within the time requirements of this Section 5.

6. Healthcare Facilities must provide to Patients in Section 3 the results of any COVID-19 Diagnostic Testing within a reasonable time period not to exceed three (3) calendar days from the date the Patient's specimen was collected for COVID-19 Diagnostic Testing. Healthcare Facilities must make all reasonable efforts to meet the time requirements set forth in this Section 6. To the extent a Healthcare Facility is not able to provide COVID-19 Diagnostic Testing results to Patients within the time requirements of this Section 6, the Healthcare Facility must immediately notify the County via www.scccovidconcerns.org of the reasons for the delay and the steps the Healthcare Facility is taking to resolve the delay.
7. Where applicable, Healthcare Facilities should seek payment from Patients' group health plans or health insurance providers for any fees, costs, or charges incurred in ordering or completing COVID-19 Diagnostic Testing under this Order. Healthcare Facilities must comply with all state and/or federal laws and regulations regarding reimbursement for testing, including any laws and regulations prohibiting Patients from being billed for fees, costs, or charges related to COVID-19 Diagnostic Testing.
8. Nothing in this Order prohibits a Healthcare Facility from also offering COVID-19 Diagnostic Testing to other categories of persons at its own discretion. Healthcare Facilities are strongly urged to expand COVID-19 Diagnostic Testing to the greatest extent possible, and to implement the recommendations and guidance from the Health Officer regarding broader testing of persons for COVID-19. However, Healthcare Facilities cannot choose to prioritize COVID-19 Diagnostic Testing for persons not listed in Section 3 over COVID-19 Diagnostic Testing for Patients listed in Section 3.
9. Healthcare Facilities in the County must, as applicable, continue to comply with the reporting requirements regarding testing results set forth in the March 24, 2020 Health Officer Order or any subsequent Health Officer order, as well as any additional reporting required or requested by the County Public Health Department.
10. Healthcare Facilities must update any information they provide to Patients regarding COVID-19 Diagnostic Testing, including Patient eligibility, posted on the Healthcare Facilities' public- or patient-facing websites, including FAQs, to be consistent with the requirements set forth in this Order. They must also provide notice to all healthcare providers and other staff who have contact with Patients regarding the requirements of this Order and how the Healthcare Facility is ensuring access to testing in accordance with this Order. To the extent a Healthcare Facility has a region-specific public- or patient-facing website (such as for Northern California, the Bay

Area, or the Peninsula), the Healthcare Facility must specifically note that Patients who receive care in the County are eligible to receive COVID-19 Diagnostic Testing consistent with this Order if they are a Patient described in Section 3. In addition, starting seven (7) calendar days from the effective date of this Order as set forth in Section 16, Healthcare Facilities must publicize information to Patients in order to ensure Patients understand how to access COVID-19 Diagnostic Testing through their healthcare provider. This publicity must be in the form of the Patient Testing Notice available at www.sccgov.org/covidtestingnotice. Healthcare Facilities must publicize this information through their standard communication channels and methods, including but not limited to:

- a. Conspicuously posting the Patient Testing Notice in patient waiting areas and exam or treatment rooms.
- b. Posting the Patient Testing Notice on the Healthcare Facilities' public- or patient-facing websites.
- c. Including the Patient Testing Notice (or all material information within it) in all promotional, informational, or other similar materials related to COVID-19 that the Healthcare Facility distributes to Patients.
- d. Sending an electronic message or e-mail to all Patients who receive primary care through the Healthcare Facility that includes all of the information in the Patient Testing Notice.

Healthcare Facilities must also ensure that accessing COVID-19 Diagnostic Testing is easy and straightforward, through, for example, drive-through and walk-up testing sites. In addition, this means that a Healthcare Facility cannot require Patients in categories (b), (c) and (d) in Section 3 to first schedule an appointment with a provider in order to be pre-screened for eligibility for COVID-19 Diagnostic Testing. Upon receipt of notice from the County Public Health Department that any practice is an impediment to easy and straightforward access to COVID-19 Diagnostic Testing, the Healthcare Facility must cease and desist that practice.

11. Definitions.

For the purposes of this Order, the following terms will have the meaning given below:

- a. "Patient" means any person who (1) receives primary care from the Healthcare Facility; (2) is assigned to the Healthcare Facility (or a network that includes that facility) by an insurer or similar payor; (3) is receiving in-patient care from the Healthcare Facility; or (4) is currently receiving care from an urgent care facility, emergency department, or other similar facility serving members of the public on a walk-in basis.

- b. "COVID-19 Diagnostic Testing" means the use of PCR COVID-19 Diagnostic Testing related to SARS-CoV-2, the virus that causes COVID-19, or novel coronavirus infection.
 - c. "Healthcare Facility" means (1) any clinic, urgent care facility, emergency department, or other similar facility located in the County that is owned, directly or indirectly, by an entity that also owns or operates an acute care hospital, regardless of where that acute care hospital is located; and (2) any acute care hospital located in the County.
 - d. "COVID-19 Symptom" means a symptom consistent with COVID-19, including, but not limited to, cough, shortness of breath, difficulty breathing, fever (measured or subjective), chills, rigors, myalgia, headache, sore throat, or loss of smell or taste.
 - e. "Symptomatic Person" means any individual, regardless of age, who has any COVID-19 Symptom.
12. This Order is issued based on the need for increased timely testing to detect COVID-19 within the County. Due to the ongoing COVID-19 pandemic locally, regionally, nationally, and worldwide, there is a public health emergency throughout the County. Adequate and timely COVID-19 Diagnostic Testing is essential to detect both symptomatic and asymptomatic infections, interrupt transmission of the virus, ensure individuals with COVID-19 receive appropriate care, be able to identify cases and isolate them, identify contacts of cases and quarantine them, and thereby slow virus transmission as much as possible in order to protect the most vulnerable, to prevent infections and serious illness and death, and to prevent the healthcare system from being overwhelmed.
13. This Order is also issued in light of the existence of tens of thousands of reported cases of COVID-19 in the County, hundreds of deaths, and ongoing widespread community transmission.
14. This Order is also issued in accordance with, and incorporates by reference, the March 4, 2020 Proclamation of a State of Emergency issued by Governor Gavin Newsom, the March 12, 2020 Executive Order (Executive Order N-25-20) issued by Governor Gavin Newsom, the February 3, 2020 Declaration of a Local Health Emergency Regarding Novel Coronavirus 2019 (COVID-19) issued by the Health Officer, the February 3, 2020 Proclamation of a Local Emergency issued by the County Director of Emergency Services, the February 10, 2020 Resolution of the Board of Supervisors of the County of Santa Clara Ratifying and Extending the Declaration of a Local Health Emergency, the February 10, 2020 Resolution of the Board of Supervisors of the County of Santa Clara Ratifying and Extending the Proclamation of a Local Emergency, and guidance issued by the California Department of Public Health, as each of them have been and may be supplemented.

15. For purposes of this Order, and the civil enforcement authority established by Urgency Ordinance No. NS-9.291, each instance of a Healthcare Facility's failure to comply with any individual provision of this Order shall constitute a separate and single violation of this Order.
16. This Order shall become effective at 12:01 AM on September 25, 2020 and will continue to be in effect until it is extended, rescinded, superseded, or amended in writing by the Health Officer.
17. Copies of this Order shall promptly be: (1) made available at the County Government Center at 70 W. Hedding Street, San José, California; (2) posted on the County Public Health Department website (www.sccphd.org); and (3) provided to any member of the public requesting a copy of this Order.
18. If any provision of this Order or its application to any person or circumstance is held to be invalid by a court of competent jurisdiction, then the remainder of the Order, including the application of such part or provision to other persons or circumstances, shall not be affected and shall continue in full force and effect. To this end, the provisions of this Order are severable.

IT IS SO ORDERED:



Sara H. Cody, M.D.
Health Officer of the County of Santa Clara

Dated: 9/16/2020

Approved as to form and legality:



James R. Williams
County Counsel

Dated: 9/16/2020