

United States Senate

WASHINGTON, DC 20510

July 25, 2022

Michael Carvajal
Director
Federal Bureau of Prisons
320 First Street, N.W.
Washington D.C. 20534

Dear Director Carvajal,

Significant progress has been made to mitigate the effects of the COVID-19 pandemic under President Biden's leadership, particularly through recent advances in therapeutics. Yet the experience of the pandemic for the federally incarcerated population remains starkly worse than for non-incarcerated individuals. This discrepancy can only be addressed through affirmative, comprehensive changes from the Bureau of Prisons (BOP) to improve the availability of COVID-19 vaccines, testing, and therapeutics. We write to urge you to make those improvements as soon as possible.

As the Department of Justice (DOJ) Office of Inspector General (OIG) notes, individuals in congregate settings, like prisons, are widely recognized to be at higher risk of contracting COVID-19.¹ As of July 21, more than 50,000 inmates in BOP custody have tested positive and over 300 people have died due to COVID-19.^{2,3} Approximately 13,422 staff have also tested positive, and seven have died, with implications for community transmission as well as staffing shortages. Expert analysis indicates that these numbers likely underrepresent the full effects of the pandemic due to factors including the omission of positive tests from the cumulative numbers once individuals have been released from incarceration.⁴ The death rate in BOP custody was 50 percent higher in 2020 than in the five prior years and 20 percent higher in 2021 as compared to the pre-pandemic average. Though comparison data is difficult to obtain, it is clear that case and death rates are higher for those in BOP custody than for the general population. This disparity is driven by the nature of congregate care and population characteristics and by the difference in usage and availability of public health tools, including social distancing, masking, vaccines, testing, and therapeutic treatments.

¹ U.S. Department of Justice, Office of Inspector General, *Remote Inspection of Metropolitan Correctional Center Chicago*, March 2021, <https://oig.justice.gov/sites/default/files/reports/21-053.pdf>

² Federal Bureau of Prisons, *COVID-19*, <https://www.bop.gov/coronavirus/>

³ The COVID-19 Prison Project, *National COVID-19 Statistics*, <https://covidprisonproject.com/data/national-overview/>

⁴ Joshua Manson & Liz DeWolf, *The Federal Bureau of Prisons is Even Less Transparent Than We'd Thought*, UCLA Law COVID Behind Bars Data Project, April 2, 2021, <https://uclacovidbehindbars.org/blog/bopdata>

Under the Eighth Amendment, BOP is responsible for ensuring adequate medical care for incarcerated individuals. Laws protecting individuals with disabilities also require full access to therapeutics for individuals with many of the conditions that qualify as risk factors for complications from COVID-19.⁵ Despite the third-party contractor administration of many BOP facilities, the responsibility for providing adequate medical treatment rests with BOP as a federal agency, in addition to the contractors who administer individual BOP facilities.⁶

While continued efforts to vaccinate and boost federally incarcerated individuals remain critical, testing and therapeutics are also an essential part of the strategy to combat COVID-19. Currently, BOP can order COVID-19 therapeutics through the Department of Health and Human Services (HHS) Office of the Assistant Secretary for Preparedness & Response (ASPR). Based on records reviewed by STAT News, BOP has been allocated than 1,500 courses of COVID-19 therapeutics since November 2020.⁷ According to correspondence from HHS on May 4 and correspondence from BOP on May 11, BOP has not made any requests for therapeutics to ASPR that have gone unfulfilled. We appreciate that BOP and HHS have been in close contact with regard to therapeutic allocation requests.

However, while BOP maintains that they have a sufficient supply of COVID-19 therapeutics, documents recently released by BOP due to a Freedom of Information Act (FOIA) request indicate that only a small number of therapeutics are actually being prescribed and dispensed to individuals in BOP custody. From March 31, 2020 through March 24, 2022, only 363 prescriptions were written for therapeutics, including just three for Paxlovid, which is one of the preferred COVID-19 therapeutics because of its efficacy and ease of use as an oral medication. Further, there are a number of facilities with zero or very few prescriptions, including Butner in North Carolina, which houses some of the most medically vulnerable men in the federal prison system and has had many deaths as a result of COVID-19; the Oakdale facility in Louisiana; and the Danbury women's prison in Connecticut where there have been multiple COVID-19 outbreaks, including this year.⁸

We appreciate that BOP has developed clinical guidance for health care staff serving BOP inmates.⁹ In May 11 correspondence, BOP noted that inmates may receive COVID-19 therapeutics based on their clinical condition as evaluated by the provider or in the community, if they are hospitalized and the provider prescribes the medication. While remdesivir prescriptions may occur in the hospital setting and thus not show up in BOP prescribing data, this does not explain the low volume of prescriptions for other therapies that are used in the outpatient setting. Finally, your correspondence stated that “[BOP] testing capabilities meet the needs for detection, prevention, and treatment.”

⁵ 29 U.S.C. § 794 (1973)

⁶ *West v. Atkins*, 487 U.S. 42, 56 (1988)

⁷ Florko, Nicholas, *Prisons didn't prescribe much Paxlovid or other Covid-19 treatments, even when they got the drugs*, May 5, 2022, <https://www.statnews.com/2022/05/05/prisons-paxlovid-incarcerated-people-covid-19/>

⁸ *Id.*

⁹ Federal Bureau of Prisons, *Health Management Resources*, https://www.bop.gov/resources/health_care_mngmt.jsp

Given this context, we strongly urge BOP to take steps to improve testing protocols across its facilities and to ensure access to the medically-appropriate therapies for those high-risk inmates that are COVID-19 positive. We also request, either in writing or through a briefing, your responses to a series of questions by September 9, 2022:

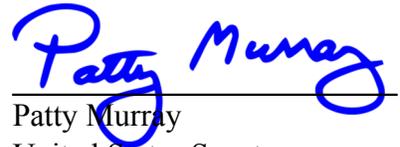
1. Please produce BOP's current guidance regarding COVID-19 testing.
 - a. What is the guidance for determining whether to administer an antigen test or a polymerase chain reaction (PCR) test for COVID in BOP facilities?
 - b. From December 2021 to June 2022, for people who requested a PCR test, what is the average length of time that elapsed between the request for the test, performance of the test, the facility receiving results, and the facility notifying the inmate? How does this timeline differ for people who requested a test after reporting symptoms and/or a potential exposure?
 - c. Are inmates permitted to obtain a COVID-19 antigen or PCR test without going through a health care provider?
 - d. Are all individuals in a unit offered an antigen or PCR test once one individual tests positive?
2. Please comment on the low number of Paxlovid prescriptions in BOP facilities. Have additional doses of Paxlovid and other COVID-19 therapeutics been prescribed since March 24, 2022? What steps will BOP take to increase access and uptake of this critical medication for eligible individuals in its care?
3. What is BOP's guidance to prison health care staff to screen inmates for eligibility and administer pre-exposure monoclonal antibody COVID-19 treatments, like Evusheld?
4. While there is publicly available BOP clinical guidance on COVID-19 vaccinations and therapeutics, there is no public clinical guidance on testing. What is BOP's protocol for updating its clinical guidance for testing, vaccinations, and therapeutics, in order to remain current with changing public health guidance?
5. How does BOP ensure that medical contractors are meeting requirements to provide adequate COVID-19 vaccine, testing, and therapeutics?
6. What process or procedures do BOP's Central Fill and Distribution Pharmacy (CFDP) staff follow with regard to requesting therapeutics or pre-exposure monoclonal antibody COVID-19 treatments, like Evusheld, from HHS ASPR? What guidance or instructions do health care staff at individual facilities follow in requesting these medications from CFDP?
7. What is the average amount of time between a request for a COVID-19 therapeutic from BOP's Central Fill and Distribution Pharmacy (CFDP) and when the prison receives them?
 - a. How long did it take prisons requesting a COVID-19 therapeutic from BOP's Central Fill and Distribution Pharmacy (CFDP) to receive them in December 2021, January 2022, and May 2022?

Thank you for your attention to this matter, and we look forward to your response.

Sincerely,



Benjamin L. Cardin
United States Senator



Patty Murray
United States Senator



Cory A. Booker
United States Senator



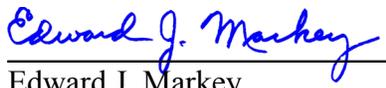
Sherrod Brown
United States Senator



Tammy Duckworth
United States Senator



Dianne Feinstein
United States Senator



Edward J. Markey
United States Senator



Robert Menendez
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Jon Ossoff
United States Senator



Alex Padilla
United States Senator



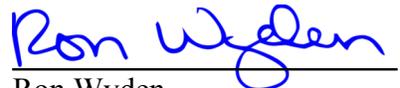
Bernard Sanders
United States Senator



Chris Van Hollen
United States Senator



Elizabeth Warren
United States Senator



Ron Wyden
United States Senator

CC: Attorney General Merrick Garland, Department of Justice