ALASKA OMBUDSMAN

Public Report - Ombudsman Investigation

Department of Corrections, Division of Institutions, and Health and Rehabilitation Services

Complaint Numbers 2020-09-1123 and 2020-10-1351

December 21, 2021

Alaska State Ombudsman J. Kate Burkhart provides this public report of the investigation of complaints 2020-09-1123 and 2020-10-1351 pursuant to AS 24.55.200. This report has been redacted to remove information made confidential by law and to protect individual privacy. Ombudsman investigations are confidential according to law, although the Ombudsman is permitted to disclose information that is necessary to carry out her statutory duties and to support recommendations (AS 24.55.160(b)).

Complaint Summary

In September 2020, the Ombudsman received a complaint about the Department of Corrections (DOC) from a woman incarcerated at Lemon Creek Correctional Center (LCCC). She had tested positive for SARS-CoV-2 (COVID-19) upon remand at LCCC, and she complained that DOC was not providing her with adequate medical treatment for COVID-19. She also complained that DOC was using a tent structure with no running water or indoor plumbing facilities to quarantine a group of female inmates with known exposure to COVID-19. The complainant expressed concern that quarantining inmates in a tent under these conditions during a pandemic was not hygienic or safe and put these inmates at increased risk of infection and illness.

In October 2020, the Ombudsman received another complaint about DOC from a man incarcerated at LCCC. He complained that the facility put him at risk of contracting COVID-19 when he was quarantined at intake. He explained that inmates were added to his quarantine cohort during the duration of his quarantine and, due to possible exposure, his quarantine lasted longer than 14 days. He complained that he did not receive appropriate medical attention during this time.

On a subsequent occasion, the male complainant was placed in medical isolation because he was showing COVID-19 symptoms. He complained that he was only allowed to shower once in a seven-day period, which he believed was insufficient.

Assistant Ombudsmen Elizabeth Jenkins and Charlsie Huhndorf-Arend investigated these complaints. Ombudsman Kate Burkhart and Assistant Ombudsman Jenkins met with DOC Director of Institutions, Jeremy Hough, on January 22, 2021, and June 24, 2021. These consultation meetings were conducted pursuant to AS 24.55.180, which requires that the Ombudsman consult with an agency "before giving an opinion or recommendation that is critical of an agency or person."

Allegations Investigated

The Ombudsman investigated the following allegations:

1. **Unreasonable:**[1] The Department of Corrections did not provide adequate medical treatment for the complainants, as required by DOC Policy 807.02 – Access to Health Care Services, the Alaska DOC HARS COVID-19 Response Plan, and the U.S. Centers for Disease Control and Prevention.
2. **Based on Improper Grounds:**[2] The Department of Corrections improperly used a tent housing unit with no running water or plumbing facilities to quarantine a group of female inmates with known exposure to an inmate with confirmed COVID-19.
3. **Unreasonable:** The Department of Corrections unreasonably added inmates to an existing intake quarantine cohort, a practice which does not meet criteria outlined in the Alaska DOC HARS COVID-19 Response Plan or from the U.S. Centers for Disease Control and Prevention.

[1] In an ombudsman investigation, "unreasonable" means that the agency adopted and followed a procedure in managing a program that is inconsistent with, or fails to achieve, the purposes of the program; adopted and followed a procedure that defeats the complainant's valid application for a right or program benefit; or placed the complainant at a disadvantage relative to all others through actions inconsistent with agency policy.
[2] In an ombudsman investigation, "based on improper grounds" means that the agency failed to consider all relevant information or factors in making a decision.

4. **Unreasonable:** The Department of Corrections unreasonably limited showers for medically isolated male inmates, which does not meet criteria outlined in the Alaska DOC HARS COVID-19 Response Plan or from the U.S. Centers for Disease Control and Prevention.

Ombudsman Note: *As discussed herein, overcrowding at LCCC and other DOC facilities is a complicating factor in the management of COVID-19 risk to inmate populations. However, this is a systemic issue that is too broad to address effectively in this investigation. In 2019, DOC proposed to move inmates to out-of-state facilities.[3] Subsequently, DOC decided to re-open the Palmer Correctional Center instead.[4] The Palmer Correctional Center reopened in August 2021.*

Relevant Statutory, Regulatory, and Policy Authority

Alaska law and departmental policies and procedures establish and define DOC's duty to provide health care services to inmates and manage infectious diseases. Infectious disease prevention guidance from state and federal authorities informs DOC's COVID-19 responses.

DOC's Access to Health Care Services Policy 807.02(VII)(C)(6)(b) provides, "The Department may isolate, transfer, or reclassify infected prisoners when necessary to prevent transmission of a contagious disease."[5] DOC policy allows inmates suspected of having a communicable disease to be assigned to Administrative Segregation.[6] Administrative Segregation is defined as "a form of separation from the general population imposed by the Superintendent or his/her designee when the continued presence of the inmate in the general population poses a serious threat to life, property, self, staff, or other inmates or to the security or orderly operation of the institution."[7]

[3] *See* "DOC Addresses Population Management," Department of Corrections Press Release (Oct. 15, 2019).
[4] *See* "State will reopen Palmer prison next year in expectation of growing inmate population," James Brooks, Anchorage Daily News (Aug. 27, 2020).
[5] DEPARTMENT OF CORRECTIONS, POLICIES AND PROCEDURES §807.02 (2009).
[6] DEPARTMENT OF CORRECTIONS, POLICIES AND PROCEDURES §804.01(VII)(3) (2014).
[7] DEPARTMENT OF CORRECTIONS, POLICIES AND PROCEDURES §804.01(V)(a) (2014).

During a pandemic, a new inmate entering into a facility could pose a serious threat to the general population and to staff. Therefore, DOC implemented intake quarantine for asymptomatic inmates, which typically lasts for 14 days and minimizes the inmate's movement within the facility.[8]

The U.S. Centers for Disease Control and Prevention (CDC) Guidance on Management of COVID-19 in Correctional and Detention Facilities states that "the guidance may need to be adapted based on individual facilities' physical space, staffing, population, operations, and other resources and conditions."[9] The CDC affirms that measures such as testing symptomatic and asymptomatic individuals and conducting quarantine or medical isolation can help prevent the spread of COVID-19 in correctional facilities.[10] If possible, facilities should consider quarantining all new intakes for 14 days before they enter the general population.[11]

Once the 14-day clock has started, correctional facilities should not add more individuals to an existing quarantine cohort.[12] Doing so could introduce new sources of infection and complicate the calculation of the quarantine period.[13] During the quarantine period, "individuals should be monitored for COVID-19 symptoms at least once per day, including temperature checks."[14] Ideally, those individuals should be housed separately in single cells with solid walls and a solid door that closes.[15] However, it is permissible to quarantine inmates as a cohort if there are no other options available.[16] Incarcerated people who have been in close contact with someone with confirmed or suspected COVID-19 should also be quarantined for 14 days.[17]

[8] "Alaska DOC HARS COVID-19 Outbreak Response Plan," Alaska Department of Corrections, Health and Rehabilitation Services, version June 16, 2020 (Last date visited: August 31, 2021).
[9] "Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities," Centers for Disease Control and Prevention, https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html (last visited February 4, 2021); this guidance was updated on February 19, May 6, and June 9, 2021.
[10] "Interim Guidance for SARS-CoV-2 Testing in Correctional and Detention Facilities," Centers for Disease Control and Prevention, https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/testing.html (last visited February 4, 2021); this guidance was updated on March 17 and June 7, 2021.
[11] *See* "Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities," Centers for Disease Control and Prevention.
[12] *See id.*
[13] *See id.*
[14] *See id.* at "Quarantine for Close Contacts (who test negative)."
[15] *See id.* at "Cohorted Quarantine for Multiple Close Contacts (who test negative)."
[16] *See id.*
[17] *See id.*

According to DOC policy, "Infected prisoners must receive periodic tests, health screenings, and physical examinations until health care staff determine that the prisoner's condition is arrested, cured, or non-communicable."[18]

The Alaska DOC HARS COVID-19 Outbreak Response Plan (hereinafter "DOC COVID-19 response plan") was updated nine times during the course of this Ombudsman investigation. The version in effect as of June 16, 2020, details how medical or security staff must check the status of well inmates in quarantine three times daily.

The DOC COVID-19 response plan requires that:

> All symptomatic inmates will remain on isolation until cleared for general population. In general, clearance will require a completion of isolation for 10 days since onset of symptoms; fever-free without temperature lowering medication for 72 hours; and improvement in overall viral illness-like symptoms.[19]

On August 28, 2020, the DOC COVID-19 response plan was updated to provide that "isolated individuals shall be monitored for clinical deterioration twice daily" and "quarantined individuals shall be monitored for new onset of COVID-19 symptoms twice daily."[20]

DOC Policy 806.02(VI)(B) provides that "showers and bathing facilities must be made available at least three times per week unless ordered otherwise by security staff or facility health care personnel." DOC Policy 806.02(VI)(E) requires DOC to "provide and maintain toilets, sinks, and showers in numbers which will reasonably provide for the prisoner population within the housing unit." It further requires DOC to ensure that:

> 1. Each cell, room, or housing unit in use must have a sink with hot and cold running water unless the cell is specifically designed for short-term housing of prisoners who are considered a danger to themselves or others. In such a case, the Department shall ensure that each prisoner in a security or holding cell is given reasonable access to running water and toilet facilities upon request.
> 2. Showers must be located near the housing units.

[18] DEPARTMENT OF CORRECTIONS, POLICIES AND PROCEDURES §807.02(6)(b) (2009).
[19] DOC HARS COVID-19 Outbreak Response Plan, version June 16, 2020.
[20] "Alaska DOC HARS COVID-19 Outbreak Response Plan," Alaska Department of Corrections Health and Rehabilitation Services, version August 28, 2020 (last visited: August 31, 2021).

3. The Department shall maintain water temperatures at 100-120 degrees Fahrenheit.

4. Each cell, room or housing unit must have an adequate working toilet.

5. The Department shall use privacy screens to separate the toilet facilities from the living area in all dormitories.[21]

Both the June 2020 and August 2020 versions of the DOC COVID-19 response plan relied on handwashing as a "standard infection prevention and control measure."[22] The CDC recommends that everyone in a facility regularly wash their hands with soap and water for at least 20 seconds, "especially after coughing, sneezing, or blowing your nose; after using the bathroom; before eating; before and after preparing food; before taking medication; and after touching garbage."[23] The CDC also recommends assigning isolated individual(s) a dedicated bathroom when possible.[24] If a dedicated bathroom is not feasible, the recommendation is not to reduce access to restrooms or showers, but instead to clean and disinfect areas used by infected individuals frequently on an ongoing basis during medical isolation.[25]

Investigation Summary

On **July 29, 2020**, the female complainant was taken into custody and transported to LCCC. Upon arrival, she was screened and tested for COVID-19. While the test results are pending, inmates are placed in intake quarantine if they are asymptomatic, and they are placed in medical isolation if they are exhibiting symptoms of the virus. The female complainant was initially placed in quarantine and housed in a J-Dorm segregation cell in proximity to other inmates.

On July 31, 2020, a close contact of the female complainant joined the female general population in the tent unit after spending the requisite time in quarantine. On **August 1, 2020**, the female complainant tested positive for COVID-19 and was moved to medical isolation.

[21] DEPARTMENT OF CORRECTIONS, POLICIES AND PROCEDURES §806.02 VI.E. (2013).
[22] DOC HARS COVID-19 Outbreak Response Plan, version June 16, 2020.
[23] "Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities," Centers for Disease Control and Prevention.
[24] *See id. at* "Medical Isolation of Individuals with Confirmed or Suspected COVID-19."
[25] *See id.*

According to an **August 8, 2020**, COVID-19 Update issued by LCCC Superintendent Robert Cordle, both the tent unit and the J-Dorm were quarantined:

> We are currently awaiting a test result on one more person. If that result returns negative, that may allow us to end the quarantine on the female living units before the 14-day mark. If the test comes back positive, more testing of quarantine[d] persons may or will be necessary to give a screenshot of where we currently stand on this case.

LCCC reported that the J-Segregation cells are close to the J-Dorm, and inmates have to pass through a hall where the J-Segregation cells are located to get to the J-Dorm (it was unclear how frequently inmates make this trip). Therefore, LCCC thought it was appropriate to quarantine the tent and the J-Dorm until COVID-19 testing was completed and all the inmates were cleared. The female complainant (who had tested positive for COVID-19) was a close contact of the individual who transferred to the tent. On **August 11, 2020**, the tent and J-Dorm were removed from quarantine status and returned to normal operations.

The female complainant was cleared by medical staff on **August 14, 2020.** She joined the female general population in the tent unit. She experienced a brief bout of sickness and was moved to a Female Max Unit as a precaution. However, she returned to the tent a few days later on **August 18, 2020**.

The male complainant was incarcerated at LCCC on **October 2, 2020**. He was intake quarantined with a cohort in the Kilo Dorm. **On October 11, 2020**, an inmate joined the male complainant's existing cohort. This happened again on **October 15, 2020**, when six inmates were added to the Kilo Dorm. Shortly after, one of those inmates was suspected of having COVID-19. That individual was moved to medical isolation on **October 16, 2020**, and the remainder of the male complainant's cohort began a new period of contact quarantine.

Due to physical space limitations at the facility, DOC was not able to accommodate an uninterrupted quarantine for the incoming inmates. If the circumstances were different, the male complainant would have been released to a general population housing unit, at the earliest, on **October 16, 2020**, after completing a 14-day quarantine. However, due to the introduction of new inmates to his cohort, the male complainant's quarantine lasted 27 days, until **October 28, 2020**.

After the male complainant was moved to general population, medical staff suspected he might be showing symptoms of COVID-19 because he complained of being feverish and having body aches. Thus, on **November 22, 2020**, he was placed in medical isolation. According to Superintendent Cordle, LCCC security staff did not start tracking the male complainant's stay in isolation until **November 24, 2020**. LCCC records indicate that the male complainant was able to shower six times over the course of nine days. On **November 30, 2020**, he was cleared by medical staff and able to rejoin the male general population.

Analysis, Findings, and Recommendations

Allegation 1: Unreasonable: The Department of Corrections did not provide adequate medical treatment for the complainants, as required by DOC policy 807.02 – Access to Health Care Services, the Alaska DOC HARS COVID-19 Response Plan, and the Centers for Disease Control and Prevention.

The Ombudsman evaluates complaints objectively and bases her findings upon the preponderance of evidence. This means the evidence must show that it is more likely than not that the agency made a mistake before we can make a critical finding or recommendation to the agency. If the preponderance of the evidence shows that the administrative act (or failure to act) took place and the complainant's criticism of it is valid, the allegation is found *justified*.

After the female complainant tested positive for COVID-19 on August 1, 2020, she remained in medical isolation. In her complaint to the Ombudsman, she alleged that her temperature was only checked one or two times a day. She thought this care was inadequate.

The male complainant began intake quarantine on October 2, 2020, which was later reclassified as contact quarantine after suspected COVID-19 exposure. He also alleged that, during this time, temperature checks were not conducted regularly by medical staff.

The complainants' time in isolation and quarantine overlapped with different versions of the DOC COVID-19 response plan and therefore followed the protocol of the plan in effect on those dates.

LCCC's understanding of the definition of symptom screenings included temperature checks and monitoring for the onset of new symptoms.

The female complainant was examined by a registered nurse the day after her COVID-19 test came back positive. Medical staff recorded her vital signs and explained to her that she should "notify security immediately if she started to feel worse or develop shortness of breath." DOC records documenting the female complainant's periodic health screenings showed her temperature and oxygen levels appeared normal. DOC medical records indicate she only reported mild COVID-19 symptoms – headache, chills, and fatigue – during this time.

Medical staff did not elevate her care to the infirmary, which was reasonable based on her reported symptoms and observed condition. The female complainant's temperature checks were not consistently conducted (or if conducted, were not documented) twice a day by DOC medical staff for the entire duration of her medical isolation. DOC medical records do not indicate that the female complainant's temperature was monitored at all on August 13, 2020. However, the DOC COVID-19 response plan in effect at that time did not require "twice daily" monitoring for clinical deterioration for isolated inmates. Therefore, the female complainant received medical care that met agency requirements during most of the time she was in isolation.

The male complainant's time in quarantine was covered by the August 28, 2020, DOC COVID-19 response plan. That version included "twice daily" symptom screenings for quarantined inmates. The male complainant's DOC medical records show only sporadic temperature checks while he was in intake and contact quarantine. DOC did not check his temperature for a total of 17 days during his 27-day quarantine. The longest he went without a documented temperature check was seven (7) consecutive days.

At DOC leadership's suggestion, the ombudsman investigator asked LCCC to review the correctional officer's logbook to determine if temperature checks were documented there. However, Superintendent Cordle confirmed that they were not logged. According to LCCC leadership, the male complainant was screened daily by medical staff, but it was not as detailed as it should have been and did not always include temperature checks.

DOC has tried to manage medical staffing shortages throughout the pandemic. The Department has hired 33 non-permanent, on-call registered nurses since May 2020 to assist with COVID-19-related needs. However, staffing remained a challenge at different points in time.

During the male complainant's quarantine in October 2020, LCCC was understaffed. Some temperature checks were not completed because of time/staff constraints. LCCC leadership gave the example of the facility having to operate while 40% of its nursing staff was out at one point, due to COVID-19 exposure. DOC Health and Rehabilitation Services (HARS) Director, Laura Brooks, confirmed that similar staffing issues were also happening during the female complainant's stay in medical isolation. "There were points during the pandemic when our Chief Medical Officer had staff focus their efforts on inmates in the high risk category (those with underlying health conditions, obesity or over age 60) and continue with other checks as soon as staff were available to do so," Brooks said.

Director Brooks said LCCC has long dealt with medical staffing shortages, but the complications caused by the pandemic exacerbated the issue. "We quickly realized that medical staffing there would not be enough." She explained that, with this in mind, DOC took steps to increase staffing at other facilities that might possibly become overwhelmed during COVID-19 outbreaks.

In December 2020, HARS opened recruitments for seven (7) traveling COVID-19 technicians to assist with tasks, such as health screenings and COVID-19 testing. Two (2) additional COVID-19 technicians were brought on to help with data needs. The Department of Health and Social Services (DHSS) entered into contracts with Capstone Clinic and Beacon to assist DOC with COVID-19 testing.

Director Brooks explained that "the original intent was to support DHSS and DOC with testing, documenting, symptom checks and vaccinations. The focus quickly became testing and reporting results," but she did not believe that the contracts could "stretch to cover symptom checks within our facilities." Additionally, she noted that "many staff volunteered to put in extra hours at their own facility or to travel to other sites to assist with whatever was needed."

After learning about the male complainant's situation from the ombudsman investigator, LCCC leadership took action to ensure that temperature checks for inmates were more consistent and directed nursing staff to include them as part of their daily health screenings.

Based on the preponderance of the evidence, the Ombudsman found Allegation 1 ***partially justified***. The evidence shows that the female complainant received COVID-19 symptom monitoring (temperature checks) according to the DOC policy in effect at the time. However, the male complainant did not.

Recommendation 1: DOC should examine training correctional officers to conduct symptom screenings, such as temperature checks.

The Ombudsman appreciates DOC's ongoing efforts to modify the DOC COVID-19 response plan as new research and information becomes available and to prepare for critical staffing shortages. DOC leadership has stated that it is committed to continuing tabletop exercises to prepare for incident response.

Early detection of COVID-19 and symptom screenings are important tools in the toolkit for keeping people in congregate living environments safe. The Ombudsman recommends that correctional officers be trained to conduct symptom screenings, such as temperature checks, in emergency situations when medical staff are stretched thin. A variety of organizations and businesses (gyms, health care facilities, churches, etc.) have implemented basic door screenings for COVID-19 symptoms. Correctional officers can just as easily ask basic questions about symptoms, check a person's temperature, and record the information on a standard checklist when a nurse or other health care staff are not available.

The Ombudsman understands that DOC may at times experience shortages of correctional officers. Under those circumstances, the Ombudsman recommends that correctional officers conduct symptom screenings, including temperature checks, as long as it does not impair facility security.

Agency Response to Recommendation 1

DOC did not reject the Ombudsman's recommendation.

Allegation 2: Based on Improper Grounds: The Department of Corrections improperly used a tent housing unit with no running water or plumbing facilities to quarantine a group of female inmates with known exposure to an inmate with confirmed COVID-19.

LCCC has housed inmates in a Quonset hut-style tent for over 23 years. LCCC first acquired the tent from the Ketchikan Correctional Center in 1998. The tent has an internal metal frame and features both air conditioning and heat. The tent can house up to 18 female inmates, but LCCC strives to stay under 14 inmates, due to the fact that it is not as spacious as the dorms. The facility uses the tent because there is overcrowding in the general population housing units. LCCC leadership has stated that female inmates prefer the tent housing unit because of the quiet surroundings and access to fresh air. LCCC currently has no plans to move away from using the tent unless it can acquire funding to build additional housing.

Hygiene in the Tent

DOC explained that the tent is cleaned and sanitized regularly by a contract company and a paid housing janitor (an inmate). Inmates can take hot showers daily inside the main housing dorm. Hot and cold drinking water is available from a water cooler inside the tent, but the tent does not have indoor plumbing, flushable toilets, or a sink. Instead, inmates rely on two portable toilets located just outside of the tent to go to the bathroom. They have access to hand sanitizer and soap that does not require water for rinsing.

Even before COVID-19 was a major health concern, DOC emphasized the importance of handwashing for inmate health and safety in its policy.[26] In 2015, former DOC Commissioner Ronald Taylor acknowledged the living situation in the tent was not adequate, especially without running water.[27] However, due to overcrowding, he felt that DOC did not have much choice.[28]

---

[26] DOC HARS COVID-19 Outbreak Response Plan, version August 28, 2020.
[27] *See* "Juneau Prison Deals with Overcrowding by Housing Women in a Tent," Lisa Phu, KTOO-Juneau, https://www.alaskapublic.org/2015/04/07/juneau-prison-deals-with-overcrowding-by-housing-women-in-a-tent/ (last visited February 4, 2021).
[28] *See id.*

While it was appropriate to establish a contact quarantine cohort, DOC should not isolate inmates at risk of serious illness or exposure to a highly infectious disease in a setting without the ability to take care of their basic hygienic needs. The tent setup does not meet the DOC policy requirement that each housing unit must have a sink with hot and cold running water. It does not achieve the prevention measure standards outlined in the DOC COVID-19 response plan. Furthermore, the CDC guidelines suggest regular hand washing with soap and hot water is more effective than using hand sanitizer at removing certain kinds of germs.[29] If soap and water is not readily available, an alcohol-based sanitizer that has 60% alcohol can be used, but an individual should wash with soap and water as soon as they can.[30] That was not an option for inmates in the tent.

Therefore, based on the preponderance of the evidence, the Ombudsman found Allegation 2 ***justified***.

Resolution

The Ombudsman notes that a host of hygiene and sanitation disparities arise from housing inmates in a tent without running water or indoor toilet facilities, and that this housing choice by DOC currently results in only the female inmates living in the tent without access to the necessities for basic hygiene within their housing unit. However, this investigation focused solely on the issue within the context of the COVID-19 pandemic.

After a conversation with the Ombudsman on January 22, 2021, Director of Institutions Hough inquired about installing a sink with hot and cold running water near the tent to provide on demand access to handwashing for inmates housed in the tent. On February 9, 2021, DOC informed the Ombudsman that a sink had been installed close to the tent. It is in an unlocked entryway, and the women who reside in the tent have access to it 24/7. The Ombudsman appreciates that DOC quickly responded and implemented a solution during this investigation to help address and mitigate this problem.

[29] "Hand Sanitizer Use Out and About," Centers for Disease Prevention and Control, updated November 4, 2020, https://www.cdc.gov/handwashing/hand-sanitizer-use.html (last visited November 4, 2020).
[30] *See id.*

Allegation 3: Unreasonable: The Department of Corrections unreasonably added inmates to an existing intake quarantine cohort, a practice which does not meet criteria outlined in the Alaska DOC HARS COVID-19 Response Plan or from the Centers for Disease Control and Prevention.

Toward the end of the male complainant's 14-day intake quarantine, LCCC placed additional inmates in the Kilo Dorm to join the cohort. Shortly after, one of those inmates was suspected of having COVID-19. The inmates were then removed from the Kilo Dorm and sent to medical isolation, which resulted in the male complainant and the rest of the cohort being further quarantined as "close contacts."

Upon remand, inmates are screened for COVID-19 and tests are administered. During this time, asymptomatic male inmates who are not known to have the virus are placed in an eight-person cell. Once that eight-person cell is full, those inmates spill over to the Kilo Dorm, which is continuously occupied by up to 24 people. The inmates usually reside there for 14 days before moving to general population housing. However, the timeline for receiving COVID-19 test results can fluctuate and potentially prolong the intake quarantine period.

DOC reported that test results typically come back within two to three days, but it can take up to seven days. Therefore, it is not uncommon for individuals to move to the Kilo Dorm before receiving a negative test. This can inadvertently expose inmates, already in the process of quarantining in the Kilo Dorm, to the COVID-19 virus.

LCCC was not designed to house a large number of inmates individually in cells. Most inmates are housed in an open barracks setting, which makes it challenging for the facility to provide a true 14-day quarantine without interruption. Kilo Dorm was created before the pandemic, in response to overcrowding at the facility, by converting the hobby shop into a housing unit.

The facility considered converting the gymnasium into additional housing during the pandemic. However, Superintendent Cordle explained to the Ombudsman that this would have resulted in inmates losing access to recreation time. The Ombudsman appreciates DOC's consideration for

the overall well-being of inmates, especially at a time when regular programming has stopped, due to the pandemic.

The CDC guidelines suggest that facilities should consider providing a 14-day intake quarantine for inmates – if possible.[31] LCCC tried to provide reasonable workarounds within the confines of the facility's design. While it is not optimal to introduce potential new sources of infection to an existing intake quarantine, the Ombudsman acknowledges that LCCC has few options. The Ombudsman believes it was reasonable and appropriate for LCCC to quarantine the male complainant's group for an additional 14 days after contact exposure to further prevent the spread of COVID-19 within the facility.

Based on the preponderance of the evidence, the Ombudsman found Allegation 3 ***not justified***.

Allegation 4: Unreasonable: The Department of Corrections unreasonably limited showers for medically isolated male inmates, which does not meet criteria outlined in the Alaska DOC HARS COVID-19 Response Plan or from the Centers for Disease Control and Prevention.

On November 22, 2020, LCCC medical staff noted that the male complainant was exhibiting symptoms of COVID-19. He was administered a COVID-19 test and placed on medical isolation for nine (9) days. DOC records show that he was able to shower six (6) times while he was in isolation. The longest documented period that the male complainant went without a shower was a span of two days – November 22, 2020, and November 23, 2020.

LCCC leadership explained to the Ombudsman that the shower used by the male complainant during his medical isolation is also used by other inmates. It is located in a different part of the facility, and inmates who are isolated have to walk through the booking area, which is a high traffic area. After inmates who have been confirmed or are suspected of having COVID-19 use the shower, LCCC conducts an extensive decontamination process before the shower is used again.

---

[31] *Supra* n. 9.

All of this requires scheduling and staffing resources. LCCC leadership explained that they are careful to limit the time medically isolated inmates have outside their cells to prevent the spread of the virus. LCCC's current policy is that isolated or quarantined inmates, who do not have direct access to showers, receive a shower every three days. That is one shower fewer a week than outlined in DOC's Prisoner Hygiene and Grooming Policy, which provides that showers and bathing facilities must be made available at least three times per week unless ordered otherwise by security staff or health care personnel.[32]

The CDC guidelines recommend against reducing inmates' access to showers.[33] However, given the physical space limitations of the facility and the challenges posed by the COVID-19 pandemic, the Ombudsman believes it was not unreasonable for LCCC to be prudent about scheduling showers in shared areas, and it is within the agency's discretion to limit access under these circumstances.

Therefore, based on the preponderance of the evidence, the Ombudsman found Allegation 4 ***not justified***.

Conclusion

Both the female and male complainants shared spaces near other inmates after arriving at LCCC. LCCC leadership explained that, due to the facility's layout and physical space limitations, it is necessary to house new remands together. In the female complainant's case, an entire group of inmates were quarantined in the tent because of exposure to one inmate who had been in contact with the female complainant.

The female complainant recovered from COVID-19 and later joined the tent unit when she was relatively healthy, but she developed concerns about hygiene in these living conditions. The tent did not have access to hot running water for handwashing. However, DOC implemented a solution

[32] DEPARTMENT OF CORRECTIONS, POLICIES AND PROCEDURES §806.02 VI.B. (2013).
[33] "Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities," Centers for Disease Control and Prevention.

during the course of this investigation – the installation of a sink with hot and cold water near the tent – to mitigate that problem.

Similar to the mingling of inmates that occurred with the female complainant, the male complainant was nearing the end of his intake quarantine when he came in contact with a person suspected of having COVID-19. In both instances, LCCC lacked adequate staffing resources which made it difficult to conduct symptom screenings. Medical staff were stretched thin because they were trying to manage their own COVID-19 exposure. The recommendation made by the ombudsman is designed to support DOC's efforts to respond to emergencies and protect incarcerated people and correctional staff to the best of its ability.

Alaska's correctional facilities were designed for security, not for pandemics. As one superintendent said during our investigation, "It is hard to socially distance when you are living in a shoe box." The Ombudsman evaluated the evidence based on the research and the standards that were relevant and applicable at the time of this investigation. As the COVID-19 pandemic continues, research and guidance changes. The pandemic has presented new and escalating challenges, such as the surge of the highly contagious Delta, and more recently Omicron, variants.