



NEW MEXICO CORRECTIONS DEPARTMENT

Secretary
Alisha Tafoya Lucero

CD-036400 COVID-19 Direct Threat Employee Policy	Issued: 10/27/20 Effective: 10/27/20	Reviewed: 10/27/20 Revised: 10/27/20
Alisha Tafoya Lucero, Cabinet Secretary		<i>Original Signed and Kept on File</i>

AUTHORITY:

Governor Michelle Lujan Grisham Executive Order 2020-004, issued March 11, 2020.

REFERENCES:

- A. NMSA 1978, § 12-10A-1, et seq., Public Health Emergency Response Act
- B. NMSA 1978, § 12-10-1, et seq., All Hazard Emergency Management Act
- C. Centers for Disease Control (CDC) Discontinuing Home Isolation for Persons with COVID-19
See <https://www.cdc.gov/coronavirus>.
- D. EEOC Pandemic Preparedness in the Workplace and the Americans With Disabilities Act (updated March 21, 2020)
- E. CDC Guidance for Businesses and Employers – Plan, Prepare and Respond to Coronavirus Disease 2019 (COVID-19) (updated May 6, 2020)
- F. CDC Interim Guidance for Implementing Safety Practices for Critical Infrastructure Workers Who May Have Had Exposure to a Person with Suspected or Confirmed COVID-19 (updated October 21, 2020)
- G. CDC Ending Home Isolation Interim Guidance (updated July 20, 2020)
- H. CDC Duration of Isolation & Precautions for Adults (updated July 22, 2020)
- I. New Mexico Department of Health (NMDOH) Home Isolation Guidance for a Confirmed COVID-19 Case (updated May 8, 2020)
- J. NMDOH Home Quarantine Guidance for Close Contacts of a Confirmed COVID-19 Case

PURPOSE:

The COVID-19 pandemic presents an unprecedented challenge to the State of New Mexico and the New Mexico Corrections Department. The New Mexico Corrections Department (NMCD) recognizes that some of its employees will contract COVID-19 and is committed to minimizing the risk of COVID-19 spreading to its other employees and inmate population. The purpose of this policy is to provide guidance to NMCD employees exposed to COVID-19, experiencing COVID-19 Symptoms, waiting for COVID-19 test results due to COVID-19 exposure or Symptoms, or diagnosed with COVID-19. If any provision of this policy is in conflict with a provision of an applicable Collective Bargaining Agreement (CBA), the CBA shall control.

APPLICABILITY:

All NMCD staff.

FORMS:

- A. **Return to Work** form (*CD-036401.1*)
- B. **Policy/Procedure Acknowledgement** Form (*CD-036401.2*)

Employee Initials: _____

ATTACHMENTS:

None

DEFINITIONS:

- A. Close Contact: Close Contact is defined as an exposure of 3 minutes or longer, within 6 feet of a confirmed COVID-19 case during the case's infectious period with or without a mask or cloth face covering. NOTE: Contact with a COVID-19 case in a healthcare setting where appropriate personal protective equipment (PPE) is worn is not considered a COVID-19 exposure.
- B. COVID-19: The disease caused by the new or "novel" coronavirus SARS-CoV-2.
- C. COVID-19 Symptoms: Fever or chills, cough, shortness of breath or difficulty breathing, fatigue, muscle or body aches, headache, new loss of taste or smell, sore throat, congestion or runny nose, nausea or vomiting, diarrhea, and such other Symptoms as may be identified and published on the respective websites of the CDC or NMDOH.
- D. COVID-19 Viral Test: A test that tells you if you have a current COVID-19 infection.
- E. Critical Infrastructure Workers/Essential Staff: According to the CDC, these essential workers include corrections officers, law enforcement officers, healthcare staff, janitorial staff and other custodial staff, workers in food, critical manufacturing, information technology, transportation, and government facilities critical to maintain continuation of essential public services and protection of the health and safety of incarcerated and detained persons, facility staff, and the community.
- F. Direct Threat: Under the ADA, a significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation. 42 U.S.C. §§ 12111(3), (8); 29 C.F.R. §§ 1630.2(r), 1630.15(b)(2).
- G. Employee: Anyone whose duties include working routinely inside of a prison facility, on prison property (Public or Private), a probation field office, agency support building or other location where contact with inmates or employees exist. This includes but is not limited to Educators, Food Service, Commissary, Industries, Health Care, Mental Health and Academy Instructors.
- H. Exposure: Time between exposure to an infection and appearance of Symptoms.
- For a confirmed **Symptomatic** COVID-19 case, the exposure period is 14 days prior to illness onset.
 - For a confirmed **Asymptomatic** COVID-19 case, the exposure period is 14 days prior to specimen collection date.
 - For a contact of a confirmed COVID-19 case, the exposure period is the last date of close contact with the case. This date is used when determining the quarantine period.

- I. HR or Human Resources: NMCD's Human Resources Bureau.
- J. Public Health Emergency: The occurrence or imminent threat of exposure to an extremely dangerous condition or a highly infectious or toxic agent, including a threatening communicable disease, which poses an imminent threat of substantial harm to the population of New Mexico or any portion thereof. NMSA 1978, § 12-10A-3.
- K. Telework: A work flexibility arrangement under which an employee performs the duties and responsibilities of such employee's position, or other authorized activities, from an approved worksite other than the location from which the employee would otherwise work, during any part of regular, paid hours, including from an employee's residence.

POLICY:

- A. On March 11, 2020, Governor Michelle Lujan Grisham issued Executive Order 2020-004, Order Declaring A State of Public Health Emergency and Invoking the Powers Provided by the All Hazard Emergency Management Act and the Emergency Licensing Act, declaring a Public Health Emergency due to the spread of COVID-19 in New Mexico. The COVID-19 Public Health Emergency has been renewed and extended by subsequent Executive Orders and remains in effect.
- B. On March 21, 2020, the U.S. Equal Employment Opportunity Commission (EEOC) issued guidance finding that COVID-19 meets the Direct Threat standard under the Americans with Disabilities Act (ADA), which means that significant risk of substantial harm is posed by having someone with COVID-19, or Symptoms of COVID-19, present in the workplace. Because COVID-19 meets the Direct Threat standard, employers may lawfully exclude individuals with COVID-19, or Symptoms of it, from the workplace for health and safety reasons.
- C. In response to the COVID-19 Public Health Emergency, NMCD shall take appropriate measures to ensure its employees are safe within the workplace and its inmate populations are safe within its facilities.
- D. NMCD will coordinate and consult with the Office of the Governor, the State Personnel Office, the New Mexico Department of Health, and other appropriate government and health authorities when responding to the effects of the COVID-19 Public Health Emergency in the workplace. NMCD's decisions surrounding COVID-19 responses within its facilities and for all employees shall be based on current and well-informed medical judgments concerning the disease and the risks of transmitting the disease to others as published by the CDC and NMDOH, taking into consideration the particular circumstances of any and all employees.
- E. NMCD employees with COVID-19 pose a Direct Threat to their co-workers and the inmate population.

- F.** During the COVID-19 Public Health Emergency, it is critical that NMCD employees do not report to work if they have been exposed to COVID-19 within the last fourteen (14) days; if they are experiencing COVID-19 Symptoms; if they are awaiting the results of a COVID-19 Viral Test they had as a result of exposure to COVID-19 or COVID-19 Symptoms; or if they have been diagnosed with COVID-19, even if asymptomatic.
- G.** In accordance with guidance from the CDC, to ensure continuity of essential operations, critical infrastructure workers/essential staff may be directed to continue to work following potential exposure to COVID-19, providing that they remain asymptomatic and additional precautions are followed to protect them and others.
- H.** Critical infrastructure workers/essential staff who have had an exposure but remain asymptomatic should adhere to the following practices prior to and during their work shift:

 - 1. Pre-Screen: Each work location must measure the employee’s temperature and assess Symptoms prior to them starting work.
 - 2. Regular monitoring: As long as the employee doesn’t have a high temperature or any other COVID-19 related Symptoms, they should self-monitor and report any Symptoms that may develop immediately to their direct supervisor.
 - 3. Wear an N-95 or KN-95 mask: If potentially exposed to a known COVID-19 positive case, the employee should wear a N-95 or KN-95 face mask at all times while in the workplace pending results of a negative test result and for 14 days after last exposure. Employees should continue to wear all other appropriate PPE.
 - 4. Social distance: The employee should maintain 6 feet and practice social distancing as work duties permit in the workplace. Employees should physically distance when they take breaks together. Breaks should be staggered and congregating in the breakroom should not occur; food and utensils should not be shared.
 - 5. Disinfect and clean work spaces: Increase the frequency of cleaning and disinfecting. All areas such as control centers, bathrooms, common areas, shared electronic equipment should be cleaned and disinfected routinely.
- I.** As required by NMCD’s Code of Ethics, CD-032200/01, NMCD employees are expected to conduct themselves in a manner that reflects the highest level of professional and respectful behavior, which includes protecting co-workers and inmate populations by complying with this policy and the procedures as outlined below.



NEW MEXICO CORRECTIONS DEPARTMENT

Secretary
Alisha Tafoya Lucero

CD-036401 COVID-19 Direct Threat Employee Policy	Issued: 10/27/20 Effective: 10/27/20	Reviewed: 10/27/20 Revised: 10/27/20
Alisha Tafoya Lucero, Cabinet Secretary		<i>Original Signed and Kept on File</i>

AUTHORITY:

Policy *CD-036400*

PROCEDURE:

- A.** If you have a household member who has tested positive for COVID-19, or you have otherwise been knowingly exposed to someone with COVID-19 within the last fourteen (14) days, notify your direct supervisor and HR immediately via email/text message/phone and do not report to work unless directed otherwise. You must follow this procedure even if you are asymptomatic. In order to maintain critical staffing levels, critical infrastructure workers/essential staff may be directed to continue to work following potential exposure, provided they remain asymptomatic and follow all additional precautions to protect them and others.
- B.** If you or a household member have COVID-19 Symptoms, notify your direct supervisor and HR contact immediately via email/text message/phone and do not report to work. If you develop COVID-19 Symptoms while at work, notify your supervisor and HR immediately. You will be immediately separated from other employees and inmates and you will be sent home. See CD-036400 K below for leave options.
- C.** If you were knowingly exposed to COVID-19 or if you have COVID-19 Symptoms, promptly arrange for a COVID-19 Viral Test. Please consult HR or the NMDOH website (<https://cv.nmhealth.org/public-health-screening-and-testing>) for testing sites and procedures. In some cases, NMCD will be able to provide you with a COVID-19 Viral Test. If this occurs, you must cooperate with directives from NMCD command center staff related to testing.
- D.** If you were exposed to COVID-19 or if you have COVID-19 Symptoms and you are waiting for COVID-19 Viral Test results, notify your direct supervisor and HR immediately via email/text message/phone and do not report to work unless directed otherwise. You must follow this procedure even if you are asymptomatic. In order to maintain critical staffing levels, critical infrastructure workers/essential staff may be directed to continue to work following potential exposure, provided they remain asymptomatic and follow all additional precautions to protect them and others.
- E.** NMCD will not require proof of a positive COVID-19 Viral Test result or a healthcare provider's note to justify your absence in accordance with policy. However, HR may request information from you to confirm your need to be absent and to show how your absence relates to COVID-19. This information will be treated as a confidential medical record in compliance with the ADA. However, in furtherance of this policy, this information may be disclosed to supervisors, managers, first aid and safety personnel, and government officials as

Employee Initials: _____

appropriate and necessary on a need-to-know basis or in accordance with applicable laws, regulations, or policies. All COVID-19 positive results and deaths in the aggregate without direct personal identifiers are published daily by the New Mexico Department of Health on their website www.nmdoh.gov. NMCD's website has a link to NMDOH's COVID-19 positive list. Given the agency's mission, the total number of inmates within each respective facility and the total number of NMCD staff with positive COVID-19 results is considered public information and may be disseminated as appropriate in the aggregate without direct personal identifiers.

- F. If you feel well enough to work and have been approved to Telework, you will be expected to Telework while home. If you feel well enough to work, but have not been approved to Telework, contact your direct supervisor to discuss all viable options for Telework or work from home while you are home.
- G. Notify your direct supervisor and HR of the results of your COVID-19 Viral Test via email/text message/phone promptly, and in no event more than 24 hours (1 day) after receiving the results. The results of your COVID-19 Viral Test will be treated as a confidential medical record in compliance with the ADA. In furtherance of this policy, this information may be disclosed to supervisors, managers, first aid and safety personnel, and government officials as appropriate and necessary on a need-to-know basis or in accordance with applicable laws, regulations, or policies. All COVID-19 positive results and deaths in the aggregate without direct personal identifiers are published daily by the New Mexico Department of Health on their website www.nmdoh.gov. NMCD's website has a link to NMDOH's COVID-19 positive list. Given the agency's mission, the total number of inmates within each respective facility and the total number of NMCD staff with positive COVID-19 results is considered public information and may be disseminated as appropriate in the aggregate without direct personal identifiers.
- H. If your Viral Test is positive for COVID-19 and you had/currently have COVID-19 Symptoms, you may return to work only if: (i) you have received two negative COVID-19 Viral Test results over the span of a 14 day period, separated by 24 hours, (ii) at least 14 days have passed since your COVID-19 Symptoms first appeared, (iii) you have experienced an improvement in your COVID-19 Symptoms, and (iv) you have been fever-free for at least 3 days (72 hours) without the use of any fever-reducing medications. Before you may return to work, you must also obtain written approval via a **Return to Work** form (*CD-036401.1*) signed by your supervisor and HR.
- I. If your Viral Test is positive for COVID-19 and you have been asymptomatic, you may return to work only if: you have received two negative COVID-19 Viral Test results over the span of a 14-day period, separated by 24 hours, providing you have not subsequently developed COVID-19 Symptoms. Before you may return to work, you must also obtain written approval via a **Return to Work** form (*CD-036401.1*) signed by your supervisor and HR.
- J. If your Viral Test is negative after you have been knowingly exposed to COVID-19 or have experienced COVID-19 Symptoms, you may return to work only if: fourteen (14) days has

elapsed since your last exposure to COVID-19 and you have not developed COVID-19 Symptoms. In the case that you have a household member with or other daily exposure to COVID-19, fourteen (14) days must have elapsed since the COVID-19-positive person has been “cleared” to stop their own isolation by NMDOH. In order to maintain critical staffing levels, critical infrastructure workers/essential staff may be directed to continue to work following potential exposure, provided they remain asymptomatic and follow all additional precautions to protect them and others.

K. NMCD provides limited paid sick time and other benefits to compensate employees who are unable to work due to illness. Please consult HR and the State Personnel Office’s webpage (www.spo.state.nm.us) for information on and eligibility criteria for paid COVID-19 leave through the federal Families First Coronavirus Response Act (FFRCA). Employees requesting leave under the federal Family and Medical Leave Act (FMLA) or ADA will be required to provide a health care provider’s certification as required by those policies.

L. Failure to Comply

1. Failure to comply with these procedures will be a violation of NMCD’s Code of Ethics, CD-032201/01 and of this policy. For example, see CD-036400 I., above.
2. Any NMCD employee who fails to comply with this policy or these procedures shall be subject to disciplinary action, including dismissal.

M. Acknowledgments

1. All employees shall receive a copy of this policy in paper or electronic form, initial each page, and acknowledge their receipt and understanding of the policy on the **Policy/Procedure Acknowledgement** form (*CD-036401.2*).

NEW MEXICO CORRECTIONS DEPARTMENT
Return to Work

Employee Name: _____

Facility/Division: _____ Job Title: _____

Name of Immediate Supervisor: _____

Note: Please complete section A or B, whichever applies.

A. In accordance with policy **CD-036401 (H.)**, employees who have had a viral test with a positive result for COVID-19 and had/currently have COVID-19 Symptoms must obtain written approval to return to work signed by their immediate supervisor and HR. The employee may return to work only if (mark all that apply):

- You have received two negative COVID-19 Viral Test results over the span of a 14-day period, separated by 24 hours;
- At least 14 days have passed since your COVID-19 Symptoms first appeared;
- You have experienced an improvement in your COVID-19 Symptoms; AND
- You have been fever-free for at least 3 days (72 hours) without the use of any fever-reducing medications.

(Employee may return to work if all conditions listed above are met.)

OR

B. In accordance with policy **CD-036401 (I.)**, employees who have had a viral test with a positive result for COVID-19 and have been asymptomatic must obtain written approval to return to work signed by their immediate supervisor and HR. The employee may return to work only if (mark all that apply):

- You have received two negative COVID-19 Viral Test results over the span of a 14-day period, separated by 24 hours; AND
- Subsequent to a COVID-19 positive viral test result, you have not developed COVID-19 Symptoms.

(Employee may return to work if all conditions listed above are met.)

Employee Printed Name	Employee Signature	Date
Supervisor Printed Name	Supervisor Signature	Date
HR Printed Name	HR Signature	Date

Employee Initials: _____

NEW MEXICO CORRECTIONS DEPARTMENT
Policy/Procedure Acknowledgement
(CD-036400-01, COVID-19 Direct Threat Employee Policy)

I, _____, acknowledge that I have received a copy of policy (CD-036400) and Procedure (CD-036401) and I further acknowledge that it is my responsibility to become familiar with this policy/procedure and recognize that violations may result in disciplinary action. If I have questions or if I do not understand any provision of this policy/procedure, I will ask my supervisor.

Employee Printed Name

Employee Signature

Date

Witness Printed Name

Witness Signature

Date

Original placed in employee file
Copy of policy and acknowledgement given to employee

Employee Initials: _____