

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, AND
PERSONS RECOMMENDED TO RECEIVE TESTING**

DATE OF ORDER: January 31, 2022

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. As of the effective date and time of this Order provided in Section 16, this Order supersedes the September 16, 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. This Order amends the categories of Patients to whom Healthcare Facilities must provide COVID-19 Diagnostic Testing. As of the effective date and time of this Order, 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 and to ensure that Patients have ongoing, ready access to COVID-19 Diagnostic Testing from Healthcare Facilities. 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), ensures those individuals receive appropriate care, protects vulnerable populations, limits the spread of COVID-19, and ultimately prevents serious illness and death. For COVID-19 Diagnostic Testing to help effectively prevent and control COVID-19 and to rapidly identify people who would benefit from treatment, 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 for COVID-19, 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 within the last 10 days; and
 - c. All persons for whom testing is recommended or required under the current guidance of either the California Department of Public Health or the County of Santa Clara Public Health Department (“County Public Health Department”) except that Healthcare Facilities are not required to provide routine surveillance testing to K-12 students. Nothing in this subsection shall be read to preclude the requirement that Healthcare Facilities provide testing for K-12 students who meet the requirements of categories (a), (b), or (c) for reasons other than routine surveillance testing (e.g., students who are symptomatic or report that they have been exposed to a confirmed case of COVID-19).
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) or (b) 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 (c) in Section 3, Healthcare Facilities must provide access to COVID-19 Diagnostic Testing if requested by the Patient during the time period when testing is recommended under either the guidance of the California Department of Public Health or County Public Health Department. If there are any differences between the guidance provided by the California Department of Public Health and the County Public Health Department, Healthcare Facilities shall follow the guidance issued by the County Public Health Department.
5. The Healthcare Facility providing care to the Patient must provide the COVID-19 Diagnostic Testing within 24 hours of when the Patient requests to be tested for COVID-19, whether in person or remotely. 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 that is within Santa Clara County, or a clinic or testing center operated by the Healthcare Facility that is outside the County but within 10 miles of the Patient’s home, so long as the Patient is provided with COVID-19 Diagnostic Testing within 24 hours.

6. Healthcare Facilities must provide to Patients in Section 3 the results of any PCR COVID-19 Diagnostic Testing or any other COVID-19 Diagnostic Testing that does not yield immediate results within a reasonable time period not to exceed 72 hours from the time the Patient's specimen was collected for COVID-19 Diagnostic Testing. If Healthcare Facilities are not able to provide these results within 72 hours, they must provide antigen COVID-19 Diagnostic Testing to the Patient in addition to PCR COVID-19 Diagnostic Testing. 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, the Healthcare Facility must notify the County of the reasons for the delay and the steps the Healthcare Facility is taking to resolve the delay within 24 hours of learning of the delay via www.scccovidconcerns.org. The Healthcare Facility must resolve the delay within 14 days of reporting the delay to the County.
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 COVID-19 Diagnostic 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. However, Healthcare Facilities cannot choose to prioritize COVID-19 Diagnostic Testing for persons not included in Section 3 over COVID-19 Diagnostic Testing for Patients included in Section 3.
9. Healthcare Facilities in the County must continue to comply with all applicable reporting requirements regarding testing results.
10. Healthcare Facilities must update any information they provide to Patients regarding COVID-19 Diagnostic Testing, including but not limited to Patient eligibility, to be consistent with the requirements set forth in this Order. Any public- or patient-facing website, including any web-based frequently asked questions, must be updated to be consistent with this Order. Healthcare Facilities 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, the Peninsula, or the South Bay), 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, no later than February 10, 2022, all 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 each patient waiting area, exam room, and treatment room.
- b. Conspicuously posting the Patient Testing Notice on the Healthcare Facility's public- or patient-facing websites, including on any web page or in any web-based or mobile application through which Patients schedule appointments.
- 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 the Patient Testing Notice in the body of the e-mail. Healthcare Facilities shall send an electronic copy of the template message to scc.testingorder@cco.sccgov.org at the time it is disseminated to Patients.

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 and online systems that allow Patients to see and book available time slots to receive COVID-19 Diagnostic Testing. However, a Healthcare Facility cannot require Patients 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 a molecular test, such as PCR, or an antigen COVID-19 Diagnostic Test to detect SARS-CoV-2, the virus that causes COVID-19. For purposes of this Order, COVID-19 Diagnostic Testing is defined to include any molecular or antigen test authorized by the United States Food and Drug Administration.

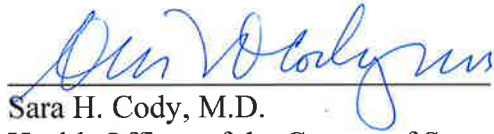
Order of the County Health Officer
for Certain Healthcare Facilities
to Offer COVID-19 Diagnostic Testing
(Rev. 1/31/2022)

- 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, or any other symptoms of COVID-19 included in the U.S. Center for Disease Control guidance at: <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html>.
 - 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. The need for timely testing has been heightened by surges in cases caused by aggressive variants such as the Delta and Omicron variants. 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, identify cases and isolate them, and thereby slow virus transmission as much as possible in order to protect the most vulnerable, prevent infections and serious illness and death, and prevent the healthcare system from being overwhelmed.
13. This Order is also issued in light of the existence of more than 270,000 reported cases of COVID-19 in the County, almost 2,000 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 County Public Health Department and California Department of Public Health, as each of them have been and may be supplemented

or amended.

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 February 7, 2022 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: 1/31/22

Approved as to form and legality:



James R. Williams
County Counsel

Dated: 1/31/22