



DEPARTMENT OF JUSTICE | OFFICE OF THE INSPECTOR GENERAL

PANDEMIC RESPONSE REPORT

20-096

AUGUST 2020

Remote Inspection of Federal Bureau of
Prisons Contract Correctional Institution Giles
W. Dalby, Operated by Management & Training
Corporation

EVALUATION AND INSPECTIONS DIVISION

INTRODUCTION



OIG COVID-19 Inspection Efforts

In response to the coronavirus disease 2019 (COVID-19) pandemic, the U.S. Department of Justice (Department, DOJ) Office of the Inspector General (OIG) initiated a series of remote inspections of Federal Bureau of Prisons (BOP) facilities, including BOP-managed institutions, contract prisons, and Residential Reentry Centers (RRC). In total, these facilities house approximately 157,000 federal inmates. The OIG inspections sought to determine whether these institutions were complying with guidance related to the pandemic, including Centers for Disease Control and Prevention (CDC) guidelines, DOJ policy and guidance, and BOP policy. While the OIG was unable to meet with staff or inmates as part of these remote inspections, the OIG conducted telephone interviews with staff and issued a survey to over 38,000 BOP employees, as well as staff of contract prisons and RRCs.

[DOJ COVID-19 Complaint](#)

[Whistleblower Rights and Protections](#)

On March 23, 2020, the CDC issued guidance specific to correctional institutions noting that the confined nature of correctional facilities, combined with their congregate environments, “heighten[s] the potential for COVID-19 to spread once introduced” into a facility.¹ The BOP issued its own COVID-19 related guidance to its contract prisons beginning in February 2020.² On April 1, the BOP modified its underlying contract with contract prison vendors, emphasizing that, in the event of an epidemic or pandemic, the “contractor shall check with the CDC daily for updates and shall implement those changes timely to prevent further spread of the disease.”

Three different vendors, Management & Training Corporation (MTC); CoreCivic; and the GEO Group, Inc., currently operate the BOP’s 11 contract prisons, which house more than 14,500 of the approximately 157,000 federal inmates in BOP custody. The GEO Group, Inc., operates nine of these prisons, while CoreCivic and MTC operate one each. According to the BOP, as of July 10, 98.5 percent of inmates housed in private adult male contract prisons were criminal aliens or non-U.S. citizens subject to possible deportation based on their criminal offense.

As of August 4, 429 inmates and 236 staff in BOP contract prisons had tested positive for COVID-19, according to BOP data. However, testing within these 11 prisons has been limited—only 624 inmates in contract prisons had been tested for COVID-19 as of August 4. At the time of our fieldwork, between April 29 and June 9, Correctional Institution Giles W. Dalby (Dalby), operated by MTC, had no positive COVID-19

¹ CDC, “Interim Guidance on Management of COVID-19 in Correctional and Detention Facilities,” March 23, 2020 (updated July 14, 2020), www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html (accessed August 24, 2020).

² In 2016, the OIG issued a report on the BOP’s oversight of contract prisons. See DOJ OIG, *Review of the Federal Bureau of Prisons’ Monitoring of Contract Prisons*, Evaluation and Inspections Report 16-06 (August 2016), www.oversight.gov/sites/default/files/oig-reports/e1606.pdf.

cases.³ After the completion of our fieldwork, we learned that on June 22 four Dalby inmates tested positive for COVID-19. As of August 4, 83 Dalby inmates had tested positive, 8 had active cases, 74 had recovered, and 1 had died.

Between April 29 and June 9, the DOJ OIG conducted a remote inspection of Dalby, located in Post, Texas, to understand how the COVID-19 pandemic affected the prison and to assess the steps Dalby officials took to prepare for, prevent, and manage COVID-19 transmission within the prison (see [Appendix 1](#) for the scope and methodology of the inspection). As part of that effort, we considered whether Dalby's policies and practices complied with BOP directives implementing CDC guidance, as well as DOJ policy and guidance. We conducted this inspection through telephone interviews with Dalby officials, review of documents related to the BOP's and Dalby's management of the COVID-19 pandemic, analysis of BOP and Dalby data regarding Dalby inmates and Dalby-related staff and inmate COVID-19 cases, and the incorporation of Dalby-specific results from a survey of employees of all 11 BOP contract prisons (see [Appendix 2](#) for a summary of survey results from Dalby respondents).

Summary of Inspection Results

The OIG's remote inspection of Dalby found that:

- The BOP's Privatization Management Branch, which provides guidance to and oversight of contract prison vendors, issued guidance to contract prisons after the BOP issued guidance to BOP-managed institutions between February and April 2020. Contract prisons received most of these guidance documents between 1 and 5 days after comparable guidance was issued to BOP-managed institutions, but some delays were more significant. Given the limited community and lack of institution spread of COVID-19 at that time, the delays did not appear to have a material effect on Dalby's ability to mitigate the spread of COVID-19 between January and April (see [Appendix 3](#) for a timeline of the BOP's guidance).
- For 2 weeks, Dalby was unable to comply with the April 3 CDC guideline for individuals to wear cloth face coverings in public settings where social distancing measures are difficult to maintain due to unavailability of a sufficient number of face coverings.
- The results of our survey of Dalby staff, conducted in May 2020, rated Dalby better than the average survey results for other contract prisons and BOP-managed institutions on the availability of personal protective equipment (PPE), timeliness of guidance to staff, and management of potentially symptomatic inmates.

³ The current contract between MTC and the BOP, to house inmates at Dalby, began in July 2019. The contract is for 3 base years, with seven 1-year option periods.

We also found that Dalby had factors operating in its favor in responding to the COVID-19 pandemic. Specifically, we found that:

- Dalby had sufficient bed space to rehouse inmates from one housing unit to other housing units throughout the prison. This allowed Dalby to create a celled housing unit for inmates under medical isolation and quarantine.
- Dalby had sufficient Health Services staff members to effectively address inmate health needs and implement increased COVID-19 staff and inmate screening protocols.

We describe these findings in greater detail, and other observations we made during our inspection, in the [Inspection Results](#) section of this report.

COVID 19 at Dalby

Dalby houses approximately 1,439 criminal alien inmates. Most inmates at Dalby are under U.S. Immigration and Customs Enforcement (ICE) detainers, meaning that subsequent to the completion of their criminal sentence they will be transferred to ICE custody pending the completion of their removal proceedings and eventual deportation. Dalby has 267 correctional staff who provide daily correctional services to its inmates.

At the completion of our fieldwork on June 9, Dalby reported that no inmates or staff members had tested positive for COVID-19. After the completion of our fieldwork, we learned that four Dalby inmates tested positive for COVID-19 on June 22. As of August 4, 83 inmates had tested positive, 8 had active cases, 74 had recovered, and 1 had died.

As of May 27, the county in which Dalby is located, Garza County, had only four confirmed COVID-19 cases. However, more recently, there has been an increase in the number of confirmed cases in the community. As of August 4, Garza County had 97 confirmed COVID-19 cases.

Inmate Population as of
June 5, 2020



1,439

Active Inmate Cases as
of August 4, 2020^a



8

Inmate COVID-19 Deaths
as of August 4, 2020



1

Active Inmate COVID-19 Cases Over Time, March 30–August 4, 2020^a



^a The BOP defines “active cases” as open and confirmed cases of COVID-19. Once someone has recovered or died, he or she is no longer considered an active case.

Data Sources: BOP, MTC

Contract Staff as of
June 5, 2020



267

Active Staff Cases as of
August 4, 2020



12

Staff COVID-19 Deaths
as of August 4, 2020



0

Active Staff COVID-19 Cases Over Time, March 30–August 4, 2020



Data Sources: BOP, MTC

Total Confirmed Garza County COVID-19 Cases Over Time, March 30–August 4, 2020^a



^a Total confirmed cases are cumulative positive COVID-19 cases.

Data Source: Johns Hopkins University Center for Systems Science and Engineering

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INSPECTION RESULTS

The BOP's Delays in Issuing Guidance to Contract Prisons

We found that Dalby implemented strategies outlined in the BOP's technical directions and CDC guidance but note that the BOP did not always issue technical directions to contract prisons at the same time it issued comparable guidance to BOP-managed institutions between January and April 2020.⁴ For Dalby, given the limited community and lack of institution spread at that time, the delays we discuss below did not appear to have a material effect on its ability to mitigate the spread of COVID-19 during that time. Nonetheless, we discuss these delays to assist the BOP in its continued efforts to effectively manage the COVID-19 pandemic at its contract prisons and because we believe that moving forward it is important that the BOP share with contract prisons, as soon as practicable, the preventive measures it has taken at BOP-managed institutions, even if those measures are also outlined in CDC guidance.

In reviewing the issuance of COVID-19 technical directions to BOP contract prisons between January 31 and April 13, we found that contract prisons received most of these guidance documents within 1 and 5 days after comparable guidance was issued to BOP-managed institutions. However, we identified the following instances in which the delay was more significant:

- On January 31, the BOP issued to its institutions guidance that included screening for newly arriving inmates; the BOP did not distribute a similar technical direction to contract prisons until February 26.⁵
- On March 20, the BOP issued to its institutions guidance outlining steps for limiting outside medical and dental trips.⁶ The BOP never issued the guidance to contract prisons.
- On March 13, the BOP provided both BOP-managed institutions and contract prison operators with initial guidance to limit inmate movement and congregate gatherings.⁷ Most significantly, this guidance advised institutions to stagger meal and recreation times to limit the number of inmates who came into close contact with one another. On

⁴ The BOP's privatization contracts include a clause defining a technical direction as providing "technical direction on contract performance." A technical direction does not include "additional work that is outside the scope of the contract" or "action that would cause an increase or a decrease in contract pricing."

⁵ BOP, Guidance on 2019 Novel Coronavirus Infection for Inmate Screening and Management, January 31, 2020. The same guidance was issued to contract prisons as Technical Direction: Corona Virus Notification, February 26, 2020. Subsequent guidance reinforcing this requirement was issued to BOP institutions on February 29 as BOP, Guidance Update for Coronavirus Disease 2019, February 29, 2020. The same guidance was distributed to contract prisons, in a more timely manner, on March 3. BOP, Technical Direction: Corona Virus Update, March 3, 2020.

⁶ BOP, Guidance for Prioritizing Outside Medical and Dental Trips During the COVID-19 Pandemic, March 20, 2020.

⁷ BOP, memorandum for All Chief Executive Officers, Coronavirus (COVID-19) Phase Two Action Plan, March 13, 2020. According to the BOP, this guidance was provided by the BOP to the contractors' corporate offices as a "best practice measure" while each contractor developed specific COVID-19 response plans.

March 31, the BOP provided guidance advising its institutions to further limit movement and congregate gatherings but did not provide similar guidance to contract prisons until April 8.⁸

- On April 6, the BOP issued to its institutions guidance requiring implementation of an April 3 CDC recommendation for individuals to wear cloth face coverings in public settings where social distancing measures are difficult to maintain. The BOP issued the guidance to contract prisons on April 16.⁹

A BOP official asserted that the underlying contract between the BOP and contract prison vendors required the vendors to comply with CDC COVID-19 guidance. The official further told the OIG that this information “was available on the CDC website, which the contractors are required to follow.” The official added that, on April 1, to “ensure better clarification of daily reviews and timely implementation” of CDC guidance, the BOP modified its contract with its contract prison vendors to require them, in the event of an epidemic or pandemic, “to check with the CDC daily for updates and...implement those changes timely to prevent further spread of the disease.” As a result, the official stated, additional BOP guidance would not have been necessary for MTC to take actions in advance of BOP guidance.

The OIG asked MTC whether it agreed with the BOP’s interpretation of these earlier contract requirements. MTC leadership explained, “We are taking all necessary precautions and implementing practices to keep people safe in light of the risks posed by the COV-19 virus.” However, MTC did not agree with the BOP’s assessment of what was required under the contract prior to the BOP’s April 1 contract modification. MTC leadership explained that it would “likely have discussions with the BOP as to what is or isn’t ‘implied’ ” in the contract as amended, but that it would “continue to work closely with the BOP and others to ensure we follow practices that attend to safety and health of both staff and inmates.”

For Dalby, given the limited community and lack of institution spread at that time, these delays in BOP guidance did not appear to have a material effect on its ability to mitigate the spread of COVID-19 between January and April. Although we did not identify any specific impact on Dalby’s management of COVID-19 arising from the BOP’s delayed guidance, the BOP must continue to maintain effective oversight of its contract prison vendors to ensure that inmates receive the same quality of care in BOP-managed institutions and contract prisons. The prompt issuance of

⁸ BOP, memorandum for All Chief Executive Officers, COVID-19 Phase Five Action Plan, March 31, 2020. The guidance directed institutions to limit inmate movement by April 1, 2020. Relevant inmate movement restriction guidance was issued to contract prisons on April 8 as Technical Direction: Establishment of COVID Community Health Point of Contact, April 8, 2020

⁹ CDC, [Recommendation Regarding the Use of Cloth Face Coverings, Especially in Areas of Significant Community-Based Transmission](https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/cloth-face-cover.html), April 3, 2020, www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/cloth-face-cover.html (accessed August 24, 2020). BOP, memorandum for All Chief Executive Officers, Coronavirus (COVID-19) Update–Use of Face Masks, April 6, 2020. The guidance indicated that the BOP would be distributing cloth face coverings. This guidance was issued to contract prisons as Technical Direction: COVID-19, Phase Six Action Plan, April 16, 2020.

guidance to contract prison vendors, even that which reiterates CDC guidance, is vital to this effort and will continue to be so as the BOP is likely to develop additional guidance as its knowledge of COVID-19 preventive measures continues to develop.

Personal Protective Equipment

Based on our review of relevant guidance, documentation, and discussions with Dalby management officials and staff, we found that Dalby was not able to comply with CDC guidance regarding the use of face coverings.¹⁰ Specifically, it was not until April 17 that Dalby had a sufficient supply of surgical masks to comply with an April 3 CDC recommendation for individuals to wear cloth face coverings in public settings where social distancing measures are difficult to maintain.¹¹ According to Dalby officials, they did not have a sufficient supply of surgical masks to provide to all staff and inmates at that time.¹² An MTC official stated that in early April MTC was in the midst of obtaining large quantities of PPE and, in some situations, suppliers had backorders that were being filled inconsistently. As we stated above, the BOP did not issue guidance to Dalby (or its other contract prisons) on the CDC measure until April 16, although it issued guidance to BOP-managed institutions on April 6. An MTC official added that Dalby's supply of masks built up around the same time as the BOP issued its guidance on the CDC recommendation to contract prisons.

For Dalby, given the limited community and lack of institution spread early in the pandemic, the 14-day delay between the CDC's recommendation and when Dalby had a sufficient supply of masks to distribute to staff and inmates did not appear to have a material effect on efforts to contain the spread of COVID-19 at the institution in April, as discussed above. Further, we found that Dalby complied with all other CDC guidance and BOP technical directions regarding the use of PPE. Specifically, Dalby's procedures required staff to wear surgical masks, face shields, eye protection, gloves, and gowns when:

- performing screening and temperature checks of staff, contractors, and visitors upon arrival at the facility;

¹⁰ The CDC defines PPE as "a variety of barriers used alone or in combination to protect mucous membranes, skin, and clothing from contact with infectious agents." Depending on the situation, PPE may include gloves, surgical masks, N95 respirators, goggles, face shields, and gowns. Cloth face coverings are intended to keep the wearer from spreading respiratory secretions when talking, sneezing, or coughing. The CDC does not consider cloth face coverings to be PPE.

¹¹ CDC, "Use of Cloth Face Coverings." According to our interviews with Dalby officials, inmates received a second set of surgical masks on April 23 and were scheduled to receive a third set of surgical masks on April 30. In addition to the surgical masks, Dalby staff told us that all staff received washable and reusable cloth face coverings beginning April 23. We also found that during our fieldwork Dalby had sufficient PPE in stock and planned to restock PPE as needed if it experienced a COVID-19 outbreak.

¹² Dalby management officials did state that at the time they were able to provide surgical masks to quarantined inmates, as well as to staff in areas of high risk or concern.

- screening newly admitted inmates;
- posted at the front desk; and
- interacting with inmates who were quarantined or isolated.¹³

According to our survey results, 100 percent of Dalby staff respondents stated that the institution had provided them PPE. While 21 percent of Dalby respondents stated that they would have liked more PPE to have been provided, this percentage was far less than the 38 percent of respondents from all contract prisons and the 68 percent of staff working at BOP-managed institutions who noted that more PPE was an immediate need for staff.¹⁴

Social Distancing and Quarantine Measures

We found that, in accordance with BOP guidance, Dalby modified its operations to implement a phased approach to social distancing.¹⁵ Specifically, on March 25, staff began educating inmates on general social distancing best practices and, on April 3, institution staff implemented more comprehensive operational changes to increase social distancing. Most significantly, management largely limited inmate movement to within individual housing units.

At Dalby, inmates live in:

- barracks, or open dormitory-style housing units in which inmate beds are in close proximity and are adjacent to shared communal spaces or
- celled housing units in which two inmates are assigned a cell with a door that closes at night. Inmates in celled housing units share communal space during the day.

Additional changes to operations included but were not limited to:

- limiting inmates' movement so they interacted only with inmates from their building,
- suspending educational programs and other group activities,
- modifying meal schedules by limiting the number of inmates who could be in the dining hall at one time, and

¹³ We found that Dalby's procedures also provided staff with guidance for the application and removal of PPE.

¹⁴ The OIG issued a similar survey to staff at BOP-managed institutions, as well as staff at RRCs.

¹⁵ Social distancing, also called "physical distancing," means keeping at least 6 feet between people and avoiding group gatherings. In a correctional setting, the CDC recommends implementing a host of strategies to increase the physical space between inmates (ideally 6 feet between all individuals, regardless of symptoms), noting that not all strategies will be feasible in all facilities and that strategies will need to be tailored to individual spaces within the facility and the needs of the population and staff. See CDC, "Interim Guidance."

- modifying recreation schedules to allow inmates only 1 hour each day for recreation.

Staff also marked the floor in various high traffic areas throughout the institution to encourage social distancing, as seen in the photographs below.



The image on the left shows physical distance markers in the food service line. The images on the right show physical distance markers in the library waiting area and check-in station.

Source: Dalby

Given the limited spread of COVID-19 in the surrounding community and the lack of spread in the prison in March and April, Dalby loosened some inmate movement restrictions and resumed limited education and hobby craft programming on April 17. Dalby also increased in-person access to the law and leisure libraries. However, after the identification of COVID-19 infection at the institution in late June, Dalby re-implemented more restrictive procedures. On July 14, we asked the Warden whether he believed that the layout of a housing unit (cell or open dormitory)

influenced the degree to which COVID-19 was spreading throughout different housing units. He stated that at the time Dalby did not have sufficient information to answer the question.

Dalby officials told the OIG that it had sufficient bed space to rehouse inmates from one housing unit to other housing units throughout the prison. This allowed Dalby to create a celled housing unit for inmates under medical isolation and quarantine.¹⁶ Based on our discussion with Dalby staff and review of Dalby documentation, we determined that Dalby officials took the following medical isolation and quarantine actions:

- On March 18, Dalby began to isolate all incoming inmates exhibiting potential COVID-19 symptoms for 14 days before medically clearing the inmates to enter the general population.
- On March 19, in concert with the BOP, Dalby established a central reporting process for identifying inmates exhibiting COVID-19 symptoms.
- On March 27, upon identification of a staff member with COVID-19 symptoms, Dalby began quarantining all inmates who had been in close contact with symptomatic staff or inmates.
- On March 27, upon receipt of additional direction from the BOP on inmate isolation and quarantine, Dalby expanded isolation protocols to include all incoming inmates.

Ninety-six percent of Dalby staff who responded to our survey stated that inmates were quarantined for 14 days upon arrival to the institution, and more than 77 percent stated that symptomatic inmates were placed in medical isolation (17 percent stated that they did not know whether symptomatic inmates were placed in medical isolation).

Conditions of Confinement

In accordance with BOP guidance issued on March 13, Dalby suspended social visiting while allowing a small number of in-person legal visits on a case-by-case basis.¹⁷ As mentioned above, inmates were confined to their housing units and experienced a reduction in programming opportunities but continued to be able to occupy communal spaces within their housing units. As

¹⁶ Isolation is used to separate people who (1) are infected with the virus (those who are sick with COVID 19 and those who are asymptomatic), (2) are awaiting test results, or (3) have COVID 19 symptoms from people who are not infected. In a correctional setting, the CDC recommends using the term “medical isolation” to distinguish the isolation from punitive action. See CDC, “Interim Guidance.”

Quarantine is used to keep someone who might have been exposed to COVID-19 away from others for 14 days to help prevent the spread of disease and determine whether the person develops symptoms. In a correctional setting, the CDC recommends, ideally, quarantining an inmate in a single cell with solid walls and a solid door that closes. If symptoms develop during the 14-day period, the inmate should be placed in medical isolation and evaluated for COVID-19. See CDC, “Interim Guidance.”

¹⁷ BOP, memorandum for All Chief Executive Officers, Coronavirus (COVID-19), March 13, 2020. The memorandum suspended social visits for 30 days.

a result, inmates in both open dormitory and celled housing units had access to communal showers and telephones throughout the day. Additionally, as of April 15 inmates received a total of 500 free minutes of telephone time a month (increased from 300 paid minutes per month) to communicate with their families. Inmates continued to have access to mail as well as commissary items.

Staff Movement Restrictions

On April 16, the BOP issued a memorandum stating that “compartmentalization of staff and inmate movement will continue to help slow the cross-contamination of work spaces and housing units.”¹⁸ The memorandum directed that staff post assignments should not be changed unless to fill a vacant post. Dalby management told us that it had assigned staff to fixed rather than rotational posts, except when an employee called out sick. They added that staff absences had not created a significant operational issue.

Health Screening and Medical Capacity

As stated above, Dalby received BOP guidance on screening newly arriving inmates on February 26, several weeks after similar guidance was issued to BOP-managed institutions on January 31. On March 3, Dalby received additional guidance from the BOP reinforcing the requirement to screen all incoming inmates.¹⁹ On March 13, Dalby received BOP guidance requiring enhanced staff screening in areas with “sustained community transmission.”²⁰ The BOP issued comparable guidance to BOP-managed institutions on the same day. We found that Dalby implemented BOP guidance, once received, in a timely matter.²¹ Despite the additional requirements outlined in the guidance, as well as new responsibilities related to managing COVID-19 in a correctional environment in general, multiple Dalby Health Services staff members told us that Dalby had sufficient Health Services staff to address both COVID-19 related and routine medical issues.

¹⁸ BOP, memorandum for All Chief Executive Officers, Coronavirus (COVID-19) Phase Six Action Plan, April 13, 2020. The same guidance was issued to contract prisons as Technical Direction: COVID-19, Phase Six Action Plan, April 16, 2020.

¹⁹ BOP, Technical Direction: Corona Virus Update, March 3, 2020. Although the Technical Direction was dated March 3, Dalby documentation indicates that the institution received it on March 4.

²⁰ BOP, memorandum for All Chief Executive Officers, March 13, 2020. We also found that as early as March 5 Dalby screened staff for COVID-19 symptoms and risk factors; however, screenings did not include a temperature check until March 13.

²¹ On March 26, the BOP issued to its institutions guidance stating that all institutions should begin enhanced staff screening, regardless of whether the institution was in an area of sustained community transmission. BOP, memorandum for All Chief Executive Officers, Coronavirus (COVID-19), Phase Four Action Plan, March 26, 2020. The BOP issued this guidance to contract prisons as Technical Direction: Coronavirus (COVID-19) Phase Four Action Plan, March 27, 2020.

Dalby began COVID-19 screening of all new inmate admissions on March 5. As stated above, on March 18 Dalby began quarantining all incoming inmates for 14 days following their arrival. Dalby also began medically isolating inmates exhibiting COVID-19 symptoms for 14 days and quarantining inmates who had been in close contact with symptomatic inmates. After the quarantine period, inmates were medically screened, which included a temperature check, and were released to the general population as long as the screening was negative. Medically isolated inmates could reenter the general population after two negative COVID-19 test results.²² Additionally, the OIG was advised that the entire inmate population was temperature screened once per week—half on Tuesday and half on Friday.²³ In response to our survey, of the Dalby staff who were aware of the process by which inmates were screened, 87 percent indicated that that inmates were screened for COVID-19 symptoms.

Dalby implemented enhanced staff screening on March 13. Before entering the facility, staff were temperature checked, visually inspected, and questioned about any COVID-19 symptoms. Staff presenting a temperature over 100.4 degrees or exhibiting any other disqualifying symptoms were denied entry to the facility and were required to use a paid time off category to continue receiving pay.²⁴ According to a Dalby official, staff with a temperature over 100.4 were sent home for 72 hours and checked again prior to reentering the facility. We were told that staff was advised not to report to work if they felt feverish.

Dalby Health Services staff includes one Staff Physician, two Nurse Practitioners, three Registered Nurses, five licensed Vocational Nurses, four Emergency Medical Technicians, and two Nursing Assistants. Dalby's Health Services Administrator told us that she believed medical staffing was adequate to address the additional responsibilities of managing COVID-19 both before and after Dalby identified positive inmate cases. We also spoke with the Physician and a Nurse Practitioner, who explained that Dalby had not experienced any issues addressing inmate health needs with the medical staff available. The Warden confirmed that the Health Services staff was adequate for current needs, including routine non-COVID-19 related issues.

²² The BOP's Phase Six Action Plan allowed for two strategies, a "symptom-based strategy" and a "test-based strategy," for inmates to be released from medical isolation. An inmate could be released from medical isolation under the symptom-based strategy if fever had resolved for 72 hours without the use of fever reducing medications, respiratory symptoms had improved for at least 72 hours, and 7 days or more had passed since the onset of symptoms. An inmate could be released from medical isolation under the test-based strategy if fever had resolved for 72 hours without the use of fever reducing medications, respiratory symptoms had improved for at least 72 hours, and a molecular test for COVID-19 was negative on two occasions at least 24 hours apart.

²³ In compliance with BOP guidance, for inmates with COVID-19-like symptoms Dalby waived the co-pay that inmates normally would have paid to seek medical attention.

²⁴ Dalby staff could also accrue a negative balance of up to 40 hours of paid time off if MTC sent them home due to potential exposure at work.

COVID-19 Testing

On March 13, the BOP issued to both BOP-managed institutions and contract prisons testing guidance requiring them to isolate and test symptomatic inmates for COVID-19 consistent with local health authority protocols.²⁵ We found that Dalby complied with the guidance. According to Dalby's Health Services Administrator, obtaining test kits was initially difficult due to limited local availability. To overcome the limited local availability, MTC headquarters staff assisted local staff in obtaining test kits. We were advised that the first shipment of 20 test kits arrived on April 2. When we spoke with the Dalby Staff Physician on April 29, he told us that the laboratory generally provided results within 2 to 3 days. During our conversation with the Warden on July 14, he told us that the time it took to receive test results was variable but it was generally taking longer to receive test results in July than it had been in April. The Warden also explained that, although Dalby had a sufficient supply of test kits to test symptomatic inmates, it had once again become difficult to purchase a large number of test kits. He added that it would be difficult to expand testing beyond symptomatic inmates. He attributed the difficulty in acquiring a large number of test kits to increased demand in the region surrounding Dalby. He added that MTC headquarters and the BOP had been assisting Dalby in ensuring it had a sufficient supply of kits to test symptomatic inmates.

As of June 9, when we completed our fieldwork, Dalby reported that a total of 12 inmates had been tested for COVID-19 and that all 12 inmates tested negative. At that time, Garza County had only six confirmed cases. Garza County subsequently experienced a spike in cases and, as of August 4, had 97 confirmed cases. Coinciding with the increase of COVID-19 in the surrounding community, Dalby experienced an increase in active cases among Dalby staff and inmates. As of June 9, no Dalby staff or inmates had tested positive for COVID-19; as of August 4, 37 staff and 83 inmates had tested positive. As of the latter date, 25 staff and 74 inmates had recovered, 12 staff and 8 inmates had active cases, and 1 inmate had died as a result of COVID-19.

On May 6, the BOP's Medical Director told the OIG that guidance on how institutions could begin to offer testing to staff was forthcoming. However, as of the publication of this report, such guidance had not been issued and neither BOP nor CDC guidance required institutions to test all inmates or staff for COVID-19.

Other Aspects of Dalby's Experiences with or Management of COVID-19

Cleaning and Sanitation

As of March 20, Dalby increased cleaning and disinfecting in compliance with CDC guidelines. Accordingly, staff had more frequent sanitation inspections and provided inmates and inmate work details with additional non-hazardous cleaning supplies to clean cells and housing units. Additionally, beginning on April 6, staff began providing inmates with hand sanitizer in the dining hall service line. Dalby provided inmates with educational materials detailing best practices for

²⁵ BOP, memorandum for All Chief Executive Officers, March 13, 2020.

social distancing and health and hygiene. Dalby management provided the OIG with purchasing documentation that Dalby increased its inventory of cleaning supplies in response to COVID-19.

We also found that staff assessed Dalby's inventories of cleaning and sanitation supplies in compliance with the BOP's guidance. Dalby provided documentation, dating back to March 18, demonstrating that staff maintained a complete inventory of all essential items. Results from the OIG's contract prison staff survey reflected positively on Dalby management's efforts. Ten percent of Dalby staff respondents reported an immediate need for more cleaning supplies, compared to the average of 22 percent from staff of all contract prisons who cited more cleaning supplies as an immediate need. Additionally, 12 percent of Dalby staff respondents stated a need for more personal hygiene supplies for staff, which was less than half of the average 27 percent of respondents from all contract prisons and substantially lower than the average 49 percent of respondents from BOP-managed institutions who identified more personal hygiene supplies for staff as an immediate need.

Communication

According to our interviews with Dalby staff and the survey results, Dalby staff generally felt that the COVID-19 guidance provided to them was timely, clear, and comprehensive. A review of emails and memoranda demonstrated that Dalby management regularly communicated guidance and procedural changes to staff and inmates. According to the survey, over 86 percent of staff stated that they were provided with sufficient information about COVID-19 symptoms and preventive actions. Further, over 87 percent of staff responded that they felt inmates were given sufficient information about COVID-19 symptoms, preventive actions, and changes to daily routines.

Use of Home Confinement and Compassionate Release Authorities

In response to the COVID-19 pandemic, the Attorney General authorized the BOP, consistent with pandemic-related legislation enacted in late March 2020, to reduce the federal prison population by transferring inmates from prison to home confinement.²⁶ In an April 3 memorandum, the Attorney General also directed the BOP to "immediately maximize appropriate transfers to home confinement of all appropriate inmates" at those prisons "where COVID-19 is materially affecting operations."²⁷ The BOP assigned to its Central Office the responsibility for developing policy guidance and initially identifying inmates who would be considered for possible transfer to home confinement. Over the next 5 weeks, the Central Office issued three guidance memoranda and sought to assist institutions in identifying eligible inmates by providing them with rosters of

²⁶ Home confinement, also known as home detention, is a custody option whereby inmates serve a portion of their sentence at home while being monitored.

²⁷ William P. Barr, Attorney General, memorandum for Director of Bureau of Prisons, Increasing Use of Home Confinement at Institutions Most Affected by COVID-19, April 3, 2020, www.justice.gov/file/1266661/download (accessed August 24, 2020).

inmates that the Central Office determined might be eligible for transfer pursuant to the BOP's guidance. The Central Office's initial policy guidance in early April was focused on transferring to home confinement those inmates who faced the greatest risks from COVID-19 infection, including elderly inmates. In late April, the BOP began to expand its use of home confinement to cover inmates other than those who were elderly or at high risk for COVID-19, as determined by CDC guidance. In addition, the BOP allowed institution Wardens to identify inmates otherwise ineligible for home confinement under Central Office guidance criteria and to seek approval from the Central Office to transfer those inmates to home confinement.

However, BOP memoranda on transfer of inmates to home confinement indicate that inmates subject to a detainer were excluded from being considered for transfer. That exclusion was particularly relevant to Dalby since, as described above, most of the 1,439 inmates in the prison were subject to ICE detainees.

On April 6, the BOP provided Dalby a roster of 35 inmates it deemed potentially eligible for transfer to home confinement. Dalby data indicates that it reviewed 92 additional inmates, either at the request of the inmate or independently. As of August 4, none of these 127 inmates had been transferred pursuant to the expanded home confinement authorities. Of the 127 inmates, 117 were ineligible because they either had an active ICE detainer or were deemed ineligible because their removability was being determined by an immigration judge through DOJ's Institutional Hearing and Removal Program.²⁸ The BOP informed the OIG that a criminal alien inmate could be deemed eligible for home confinement only if he or she was deemed by an immigration judge not to be removable under the Institutional Hearing and Removal Program.

The remaining 10 inmates were denied for other reasons, including convictions of violent or sex crimes, institutional misconduct, and reentry risk assessment scores too high for consideration for transfer to home confinement. When, on April 3, the Attorney General expanded Coronavirus Aid, Relief, and Economic Security Act authorities, 1 of the 10 inmates was within 6 months of his projected release date.²⁹ This inmate was released from BOP custody at the end of his criminal sentence on June 5, 2020.

Another means by which inmates can be transferred from prison to home is through a reduction to their sentence pursuant to the compassionate release statute, 18 U.S.C. § 3582(c)(1)(A)(i).³⁰

²⁸ As part of the Institutional Hearing and Removal Program, ICE identifies federal inmates who may be removable from the United States and initiates removal proceedings before an immigration judge while an inmate is still serving his or her criminal sentence.

²⁹ Pub. L. No. 116-136.

³⁰ For more information about how the BOP manages its compassionate release program, see BOP Program Statement 5050.50, Compassionate Release/Reduction in Sentence: Procedures for Implementation of 18 U.S.C. §§ 3582 and 4205(g), January 17, 2019. In 2013, the OIG issued a report examining the BOP's compassionate release program. The OIG found, at that time, that the program had been poorly managed and inconsistently implemented. See DOJ OIG, (Cont'd)

Under the statute, either the BOP or an inmate may request that a federal judge reduce the inmate's sentence for "extraordinary and compelling reasons," such as age, a terminal illness, other physical or medical conditions, or family circumstances. An inmate must first submit a compassionate release request to the Warden, but the inmate is permitted to file a motion directly with the court if the petition is denied, or 30 days after the inmate files the petition, whichever occurs first.

Dalby received 88 compassionate release requests from inmates between April 1 and July 20, 2020. As of July 20, 79 of these requests were denied by the Warden, while 9 were still under review. According to the Warden, one inmate subsequently petitioned the court and was granted compassionate release by a judge on June 11.³¹

To provide more insight into these issues, the OIG will report separately on the Department's and the BOP's use of home confinement and other early release authorities provided under the Coronavirus Aid, Relief, and Economic Security Act to manage the spread of COVID-19 within BOP facilities.

The Federal Bureau of Prisons' Compassionate Release Program, E&I Report I-2013-006 (April 2013), www.oig.justice.gov/reports/2013/e1306.pdf.

³¹ ICE removed this inmate's detainer on June 11, and the inmate was released from Dalby the same day.

SCOPE AND METHODOLOGY OF THE INSPECTION

The OIG conducted this inspection in accordance with the Council of the Inspectors General on Integrity and Efficiency's *Quality Standards for Inspection and Evaluation* (January 2012). We conducted this inspection remotely because of CDC guidelines and DOJ policy on social distancing. This inspection included telephone interviews with Dalby officials, a review of documents produced by the BOP, MTC, and Dalby related to the management of the COVID-19 pandemic at Dalby, the results of an OIG survey issued to all BOP contract prison staff, and an analysis of BOP and CDC COVID-19 data. The photographs included in the report were provided by Dalby officials to illustrate Dalby's social distancing protocols.

To understand BOP contract prison staff concerns, impacts, and immediate needs related to COVID-19, we issued an anonymous, electronic survey to all contract prison employees from May 1 through May 11, 2020. We issued 2,689 invitations for employees to take the survey and received 774 responses, a 29 percent response rate. Dalby staff represented 80 of the 774 total responses (10 percent). We received responses from 31 percent (80 of 255) of the invitations we sent to Dalby staff.³²

We conducted a group teleconference with Dalby officials, including the Warden and Health Services Administrator. We also conducted telephone interviews with a Correctional Officer, Disciplinary Hearing Officer, Case Management Coordinator, Nurse Practitioner, Staff Physician, and Safety and Environmental Specialist. Finally, we conducted telephone interviews with BOP staff responsible for overseeing Dalby, including the Privatization Field Administrator, Contracting Officer, and a BOP On-site Contract Monitor. We did not interview inmates as part of our remote inspection.

The main issues we assessed through our interviews and data requests were the institution's compliance with BOP directives and CDC guidance related to PPE, COVID-19 testing, medical response and capacity, social distancing, quarantine, sanitation, supplies, cleaning procedures, and conditions of confinement. We also assessed actions taken to reduce the inmate population through implementation of relevant authorities.

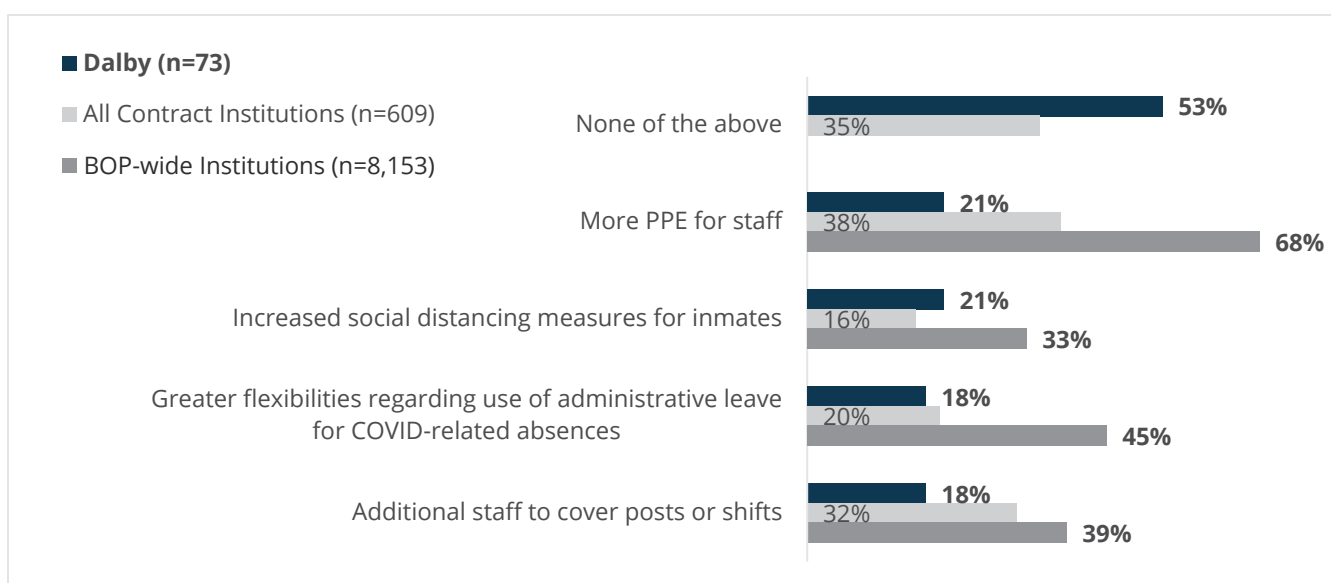
We reviewed CDC guidelines and BOP-wide guidance and procedures, as well as Dalby daily operations briefs, documentation of staff and inmate COVID-19 screening, PPE guidance and inventory, quarantine checklists, N95 respirator fit test rosters, and guidance provided to staff and inmates.

³² According to Dalby, as of June 5 its staff total was 267. However, we sent the survey invitation to the 255 staff email addresses MTC provided on April 24.

OIG COVID-19 SURVEY RESULTS FOR DALBY

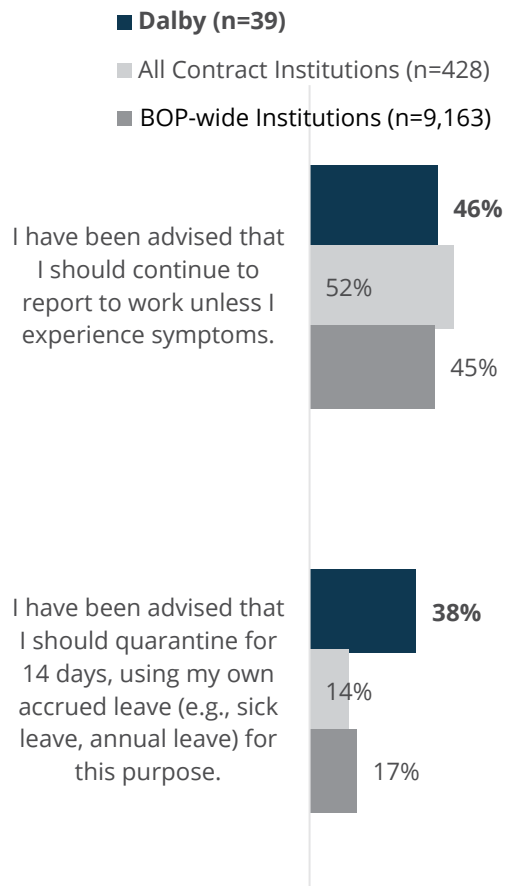
Open Period:	Invitations Sent:	Overall Responses:	Dalby Responses:
May 1–11, 2020	2,689	774 (of 2,689)	80 (of 255)
Dalby Response by Department			
Correctional Services: 22% Health Services: 10% Correctional Programs: 19% All Other Departments: 49%			

Which of the following are immediate needs for your institution during the COVID-19 pandemic? (Top 5 Responses)



Notes: Personal hygiene supplies are defined as soap and hand sanitizer. The response "Increased social distancing measures for inmates" was written as "Increased social distancing measures for staff and inmates" in the BOP-wide survey. The BOP-wide survey did not include an answer choice of "None of the above."

Which of the following statements best describes the current guidance you have received from institution leadership about what you should do if you have been exposed to COVID-19? (Top 2 Responses)



How strongly do you agree with the following statements about the adequacy of the guidance you have received about what you should do if you have been exposed to COVID-19? (All Responses)

Respondents rated each item on a 5-point scale, with "strongly disagree" worth 1 point and "strongly agree" worth 5 points. "Don't know" responses are excluded.

	Dalby Rating	Contract Prison Rating	BOP-wide Rating
The guidance was timely.	3.84	3.49	3.18
The guidance was clear.	3.87	3.53	2.97
The guidance was comprehensive.	3.82	3.55	3.03

How strongly do you agree with the following statements about the adequacy of the practices your institution is taking to mitigate the risk of spreading COVID-19? (Top 3 and Bottom 3 Responses)

<i>Respondents rated each item on a 5-point scale, with "strongly disagree" worth 1 point and "strongly agree" worth 5 points. "Don't know" responses are excluded.</i>	Dalby Rating (n=73)	Contract Prison Rating (n=638)	BOP-wide Rating (n=8,978)
Three Practices Rated Highest:			
Inmates diagnosed with, or showing symptoms of, COVID-19 are being sufficiently segregated from other inmates to mitigate the virus spreading.	4.62	4.26	3.94
Inmates have an opportunity to shower at least three times a week.	4.56	4.33	4.27
Inmates are given sufficient information about changes to their daily routines due to COVID-19.	4.56	4.24	4.10
Three Practices Rated Lowest:			
Staff are provided a sufficient supply of masks.	4.05	3.76	3.13
Staff are provided a sufficient supply of uniforms.	4.05	3.59	N/A*
Shared staff equipment such as radios and keys are regularly cleaned and sanitized.	3.73	3.84	3.15

* The BOP-wide survey did not include this answer choice.

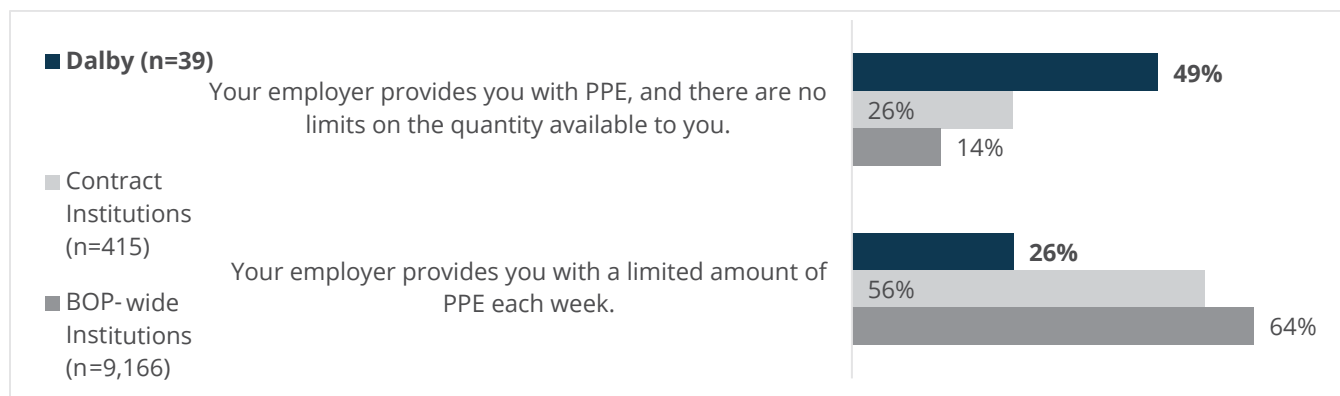
Note: The response "Inmates are given sufficient information about changes to their daily routines due to COVID-19" was written as "Inmates are given sufficient information about COVID-19 symptoms; preventive actions (e.g., hand washing, wearing masks); and changes to their daily routines" in the BOP-wide survey.

Please identify which, if any, of the following social distancing measures your institution is currently employing to increase the amount of space between staff and inmates. (Top 5 Responses)

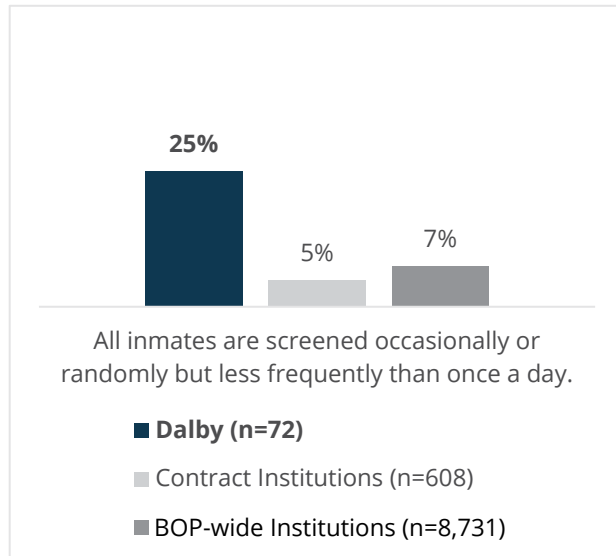
	Dalby Percent of Respondents (n=70)	Contract Prisons Percent of Respondents (n=585)	BOP-wide Percent of Respondents (n=8,435)
The number of inmates participating in a program or activity at one time has been reduced.	63%	33%	42%
Daily schedules are adjusted so that only one housing unit at a time is allowed to enter common space (e.g., the inmate cafeteria, Health Services clinic, library, classrooms, chapel, workspace, or recreation space).	56%	43%	44%
Chairs have been removed or cordoned off or limits on seating have been otherwise enforced to reduce the number of inmates sitting at a common table at the same time.	50%	12%	9%
Work details are reconfigured to provide more space between inmates while they are working.	31%	35%	12%
Alternative activities for in-person programs have been introduced.	16%	19%	20%

Note: The majority of Dalby respondents who answered "Other" reported that Dalby implemented a 14-day modified schedule within the facility.

Which of the following statements best describes the current guidance you have received from facility leadership about your use of personal protective equipment (PPE)? (Top 2 Responses)

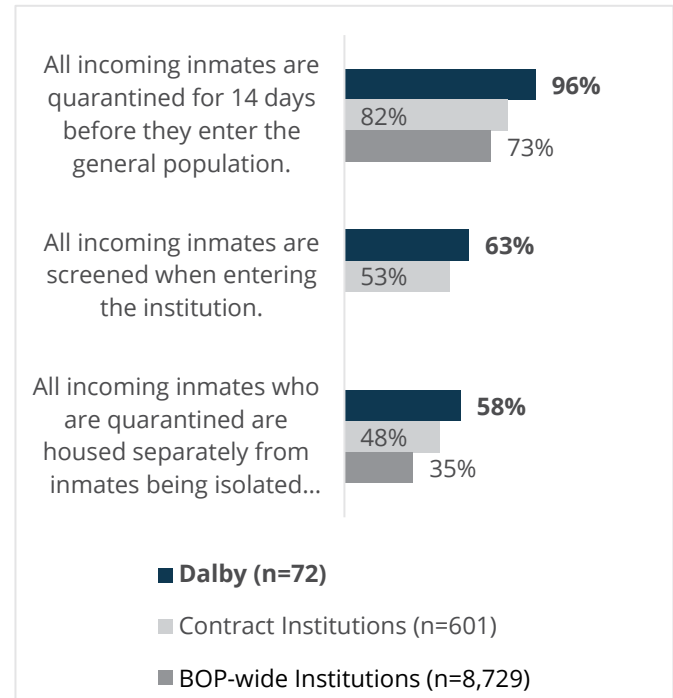


Which of the following statements best describes the current approach to COVID-19 screening of existing inmates (temperature check, questioning about other symptoms) at your institution? (Top Response)



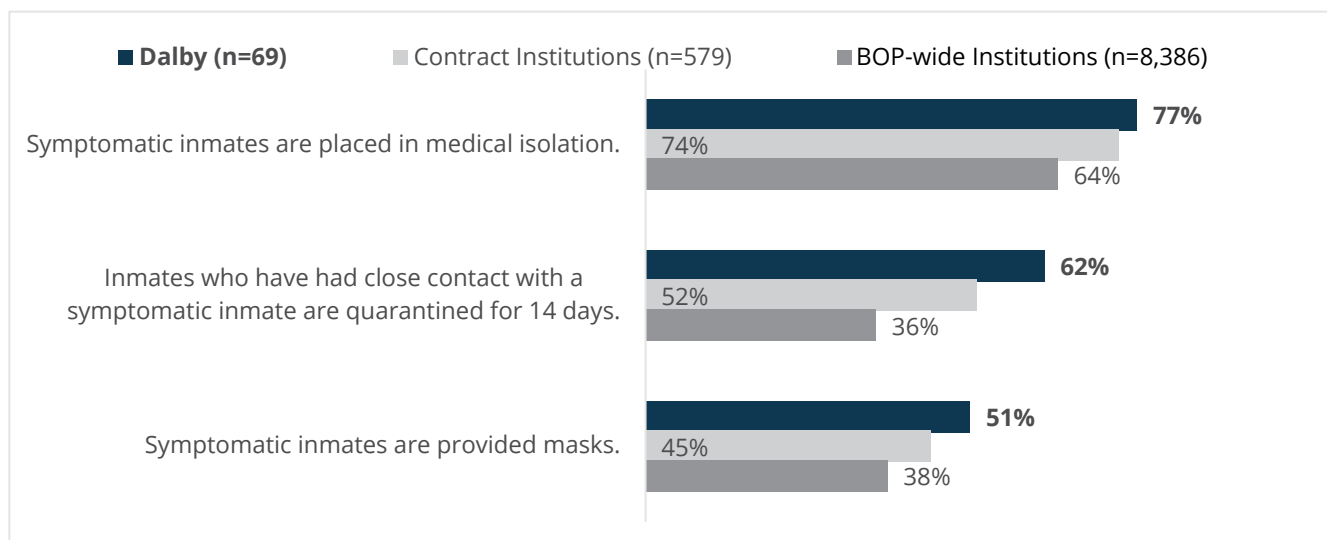
Note: Most of the Dalby respondents who selected "Other" (21 percent) reported that inmates were screened once a week. "I don't know" responses (28 percent) were excluded.

Please identify which, if any, of the following COVID-19 measures for screening incoming and departing inmates (temperature check, questioning about other symptoms) your institution is currently taking. (Top 3 Responses)

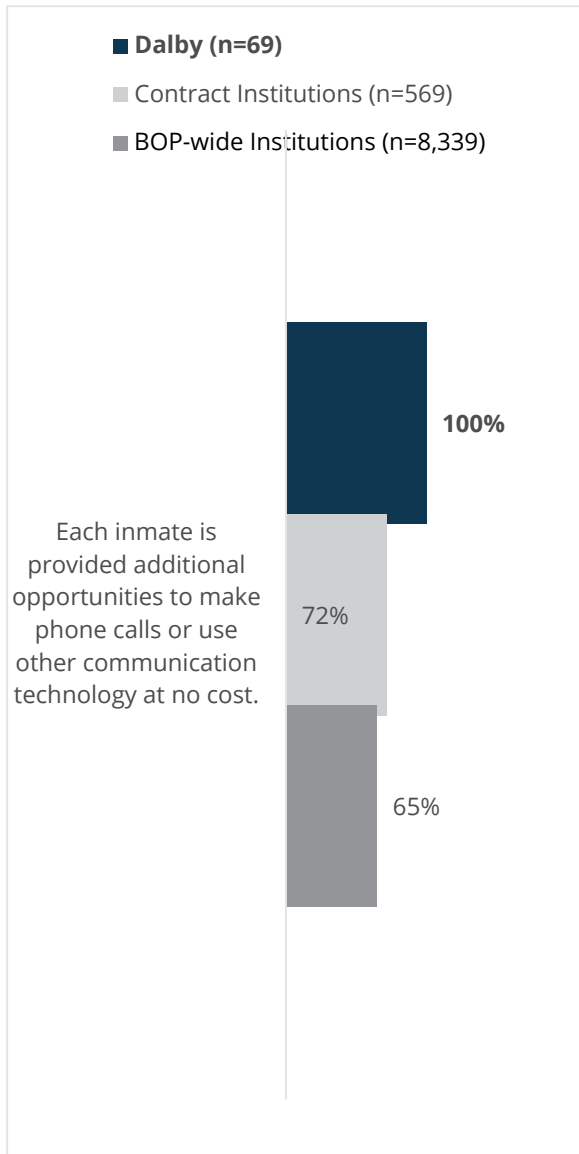


Note: The "All incoming inmates are screened when entering the institution" was not an answer choice for the BOP-wide survey.

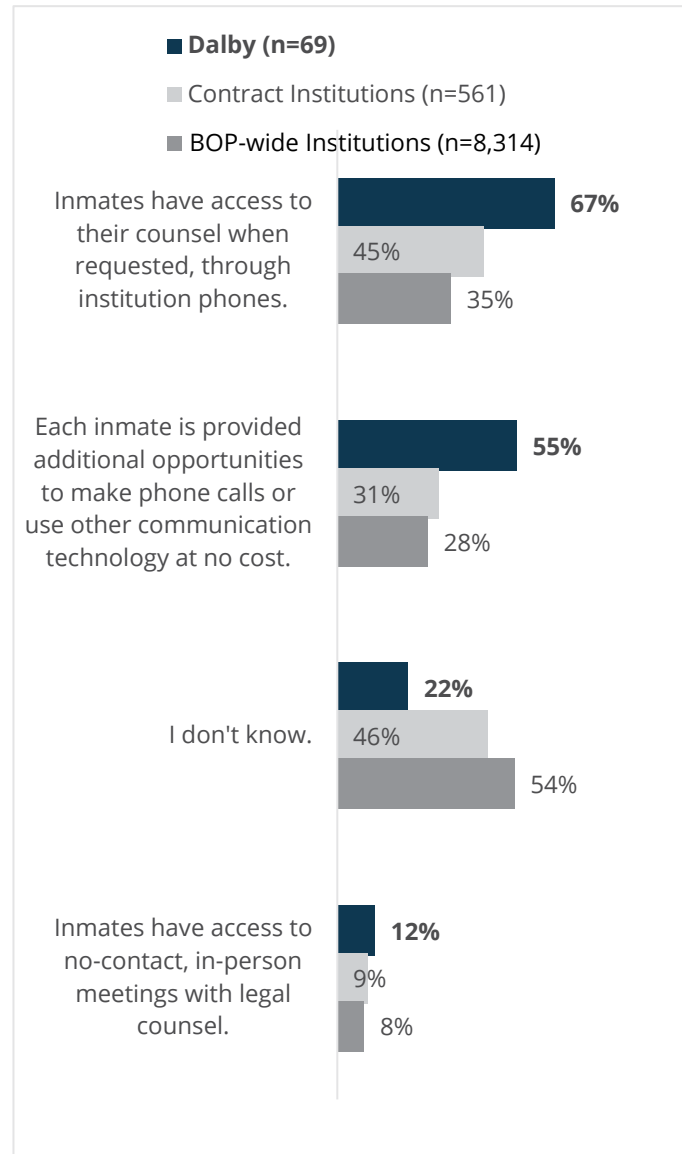
Please identify which, if any, of the following measures your institution is currently employing to manage inmates with COVID-19 symptoms. (Top 3 Responses)



Please identify which, if any, of the following strategies your institution is currently employing to facilitate inmates' ability to communicate with family and friends outside the institution with whom they would normally interact. (Top Response)



Please identify which, if any, of the following strategies your institution is currently employing to facilitate inmates' ability to communicate with legal counsel. (Top 4 Responses)



TIMELINE OF BOP GUIDANCE

January	31	<p>The BOP Issued Action Plan Phase One:</p> <ul style="list-style-type: none"> Identified the potential risk of exposure within BOP facilities and informed recipients about risk factors, symptoms to look for, and preventive measures Recommended screening all new inmate arrivals to the BOP for COVID-19 risk factors and symptoms using a provided screening questionnaire Recommended use of PPE for those in close contact with individuals who are suspected of being infected or individuals who have been diagnosed with COVID-19
		<p>The BOP Issued Technical Direction to Contract Prisons Consistent with Action Plan Phase One.</p>
February	26	<p>The BOP Issued Updated Guidance for COVID-19 to BOP Medical Staff:</p> <ul style="list-style-type: none"> Recommended screening staff with potential risk factors and all new inmate arrivals using a screening questionnaire Recommended conducting fit-testing for N95 respirator masks, disseminating information about proper PPE use, and establishing baseline supplies of PPE Recommended establishing communication with local public health authorities, identifying possible quarantine areas, and alerting visitors that people with illnesses would not be allowed to visit
	29	
March	3	<p>The BOP Issued Technical Direction to Contract Prisons Consistent with Updated Guidance for COVID-19 to BOP Medical Staff.</p>
	9	<p>The BOP issued screening and leave guidance for staff.</p>
	11	<p>The World Health Organization declared COVID-19 a pandemic.</p>
	13	<p>The BOP Issued Action Plan Phase Two:</p> <ul style="list-style-type: none"> Suspended internal inmate movements for 30 days (exceptions for medical treatment and other exigencies) and legal visits (exceptions on a case-by-case basis), social visits, and volunteer visits Canceled staff travel and training Instructed institutions to assess inventories of food, medicine, cleaning supplies, and sanitation supplies Required screening of staff (by self-reporting and temperature checks) "in areas with sustained community transmission," as well as all new BOP inmates and quarantining inmates where appropriate (those with exposure risk factors or symptoms) Required Wardens to modify operations to maximize social distancing, such as staggering meal and recreation times, for 30 days
		<p>The BOP issued a memorandum to Chief Executive Officers outlining necessary inmate mental health treatment and services during social distancing.</p>
		<p>The BOP Issued Technical Direction to Contract Prisons Consistent with Action Plan Phase Two.</p>
		<p>The BOP Issued an Update to Action Plan Phase Two:</p> <ul style="list-style-type: none"> Stated that additional accommodations could be made for staff in high risk categories
	18	<p>The BOP Issued Action Plan Phase Three:</p> <ul style="list-style-type: none"> Provided guidance for noninstitutional locations that perform administrative services
		<p>The BOP Issued Technical Direction to Contract Prisons on COVID-19 Reporting:</p> <ul style="list-style-type: none"> Required contract prisons to complete and daily submit a chart that identifies both new and running totals of identified COVID-19 cases

19

The first two BOP staff were presumed positive for COVID-19.

20

The BOP Issued Technical Direction to Contract Prisons Consistent with Update to Action Plan Phase Two.

21

The first BOP inmate tested positive for COVID-19.

23

The CDC issued Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities.

26

The BOP Issued Action Plan Phase Four:

- Required all new inmates to be screened using a screening questionnaire and temperature check. If asymptomatic, inmates were to be quarantined for at least 14 days or until cleared by medical staff. If symptomatic, inmates were to remain in isolation until they tested negative for COVID-19 and were medically cleared.
- Required all inmates to be screened upon exiting the facility; any symptomatic inmates were to be placed in isolation.
- Required all staff/contractors/other visitors to be screened upon entering the facility using a screening questionnaire and temperature check
- Required institutions to develop alternatives to in-person court appearances
- Required all non-bargaining unit positions to comply with and participate in the respiratory protection program, including completing medical clearance, training, and fit-testing for N95 masks

27

The BOP Issued Technical Direction to Contract Prisons Consistent with Action Plan Phase Four.

28

The BOP Issued an Update to Action Plan Phase Four:

- Required inmates transferring within the BOP, in addition to new inmates, to be screened upon arrival

31

The BOP Issued Action Plan Phase Five:

- Enacted a 14-day nationwide action, effective April 1, to minimize movement within BOP facilities
- Emphasized continued and ongoing screening of all inmates to identify symptomatic cases and encourage early reporting of symptoms by inmates
- Required prompt and thorough contact tracing investigations for symptomatic cases, quarantining close contacts of suspected or confirmed COVID-19 cases, and isolating any inmates with symptoms similar to COVID-19
- Emphasized good hygiene and cleaning practices
- Required institutions to limit staff movements to the areas to which they were assigned
- Limited inmate movements to prevent group gatherings and maximize social distancing
- Directed inmate work details to continue with appropriate screening
- Worked with the U.S. Marshals Service to limit inmate movements between institutions
- Required all staff to be fit-tested for N95 respirators (included shaving all facial hair)
- Announced that UNICOR had initiated the manufacturing of face masks for inmates

The BOP Issued Technical Direction to Contract Prisons:

- Announced no sick call co-pays for COVID-like symptoms

April	3	The BOP issued a memorandum directing Chief Executive Officers to: (1) establish a point of contact with local public health officials and local hospitals, if not already established, and (2) be responsive and transparent with outside stakeholders to demonstrate that the BOP is taking aggressive action to mitigate the spread of COVID-19.
		The CDC issued new guidance recommending the use of cloth face coverings in addition to social distancing.
	4	The BOP Issued Home Confinement Technical Direction to Contract Prisons: <ul style="list-style-type: none"> • Provided guidance on reviewing at-risk inmates for placement in home confinement and a roster to aid in the identification of inmates potentially eligible for home confinement
	6	The BOP issued a memorandum to Chief Executive Officers indicating that it was working to issue face masks to all staff and inmates to lessen the spread of COVID-19 by asymptomatic or pre-symptomatic individuals.
	7	The BOP issued a memorandum to Chief Executive Officers establishing that all inmates being released or transferred from a BOP facility into the community were to be placed in quarantine for 14 days prior to release.
	8	The BOP Issued Technical Directions to Contract Prisons Consistent with Action Plan Phase Five and on Community Health Points of Contact and Responsiveness to Outside Stakeholders.
	13	The BOP Issued Action Plan Phase Six: <ul style="list-style-type: none"> • Extended guidance issued in Phase Five through May 18
	16	The BOP Issued Technical Direction to Contract Prisons Consistent with Action Plan Phase Six and Mandates Issuance of Face Coverings at Contract Prisons.
May	24	The BOP expanded COVID-19 testing to include asymptomatic inmates following the acquisition of rapid ribonucleic acid testing equipment at select BOP facilities.
	3	The CDC updated guidelines to increase the period of recommended isolation from 7 to 10 days. For persons recovered from COVID-19 illness, the CDC recommended that isolation be maintained for at least 10 days after illness onset and at least 3 days (72 hours) after recovery.
	18	The BOP Issued Action Plan Phase Seven: <ul style="list-style-type: none"> • Extended guidance issued in Phase Six through June 30
	19	The BOP Issued Technical Direction to Contract Prisons Consistent with Action Plan Phase Seven.
June		The BOP Issued Action Plan Phase Eight: <ul style="list-style-type: none"> • Extended guidance issued in Phase Seven through July 31 • Established new procedures for in-person court trips and inmate movement between BOP institutions • Required COVID-19 testing of all incoming inmates
	30	
July	2	The BOP Issued Technical Direction to Contract Prisons Consistent with Action Plan Phase Eight.

Source: OIG analysis of documents provided by the BOP

THE BOP'S RESPONSE TO THE DRAFT REPORT



U.S. Department of Justice

Federal Bureau of Prisons

Office of the Director

Washington, D.C. 20534

August 25, 2020

MEMORANDUM FOR RENE ROCQUE LEE
 ACTING ASSISTANT INSPECTOR GENERAL
 EVALUATION AND INSPECTIONS

FROM:

Gene Beasley
 Gene Beasley
 Deputy Director

SUBJECT:

Response to the Office of Inspector General's (OIG)
 Draft Audit Report: Remote Inspection of Federal
 Bureau of Prisons Correctional Institution Giles W.
 Dalby, Operated by Management & Training
 Corporation (A-2020-007A)

The Bureau of Prisons (BOP) appreciates the opportunity to provide a response to the Office of the Inspector General's above referenced report. The BOP would like to address the following areas in the draft report.

Draft Report: Page 1, 1st paragraph, last sentence, "... and because we believe that moving forward, it is important that the BOP share with contract prisons, as soon as practicable, the preventative measures it has taken at BOP-managed institutions, even if those measures are also outlined in CDC guidance."

Pages 2-3, last paragraph, "Although we did not identify any specific impact on Dalby's management of COVID-19 arising from the BOP's delayed guidance, the BOP must continue to maintain effective oversight of its contract prison vendors to ensure that inmates receive the same quality of care in BOP-managed institutions and contract prisons. The prompt issuance of guidance to contract prison vendors, even that which reiterates CDC guidance, is vital to this effort and will continue to be so as the BOP is likely to develop additional guidance as its knowledge of COVID-19 preventive measures continues to develop."

BOP's Response: Neither the FAR nor the relevant privatization contracts require issuance of Technical Direction. It is a discretionary tool held by the Contracting Officer's (COR) Representative to provide technical direction on contract performance. See *infra* Privatization Contract Clause G.1 Technical Direction ("The COR **may at times** provide technical direction on contract performance.") (emphasis added). Upon determining a TD is practical, they are issued within 5 days. This process aligns with authorities in the FAR and is adhered to by the BOP. As the TD is a discretionary tool, G.1 does not establish a threshold for when an event becomes so significant as to require technical direction.

Furthermore, mandating the issuance of TDs when significant events occur: (1) gives the appearance that private providers would await direction from BOP prior to taking required action(s) in response to such significant events; and (2) may cause confusion regarding the distinction between TDs and contract modifications. Any delay to act poses potential serious risk to inmates, staff, and surrounding communities. It is incumbent upon each provider to adhere to contract requirements and implement action accordingly.

Lastly, on information and belief, the BOP's action phase plans in response to COVID were posted on its public website within one business day of issuance to BOP-managed facilities. This rendered the information readily available to private providers, negating the need for Technical Direction.

Relevant Definitions Provided As Referenced Below:

The term "Contract Modification" is defined by the Federal Acquisition Regulation (FAR) as "any written change in the terms of a contract." FAR 2.101. The authority for executing modifications solely rests with the contracting officer (CO). See FAR 1.602-2(d)(5). The contracting officer's representative (COR) is responsible for assisting the CO in the technical monitoring or administration of the contract. FAR 1.604. To this end, BOP's privatization contracts include a clause defining "Technical Direction" as providing "technical direction on contract performance." An example of this clause is attached below.

G.1 CONTRACTING OFFICER'S REPRESENTATIVE (COR)

A. An individual that shall be named after contract award is hereby designated to act as Contracting Officer's Representative (COR) under this contract. Additional COR's may be appointed as needed.

B. The COR is responsible, as applicable, for: receiving all deliverables, inspecting and accepting the supplies or services provided here under in accordance with the terms and conditions of this contract; providing direction to the contractor which clarifies the contract effort, fills in details or otherwise serves to accomplish the contractual Scope of Work; evaluating performance; and certifying all invoices/vouchers for acceptance of the supplies or services furnished for payment.

C. The COR does not have the authority to alter the contractor's obligations under the contract, and/or modify any of the expressed terms, conditions, specifications, or cost of the agreement. If as a result of technical discussions it is desirable to alter/change contractual obligations or the Scope of Work, the Contracting Officer shall issue such changes.

G.2 TECHNICAL DIRECTION

(a) The COR may at times provide technical direction on contract performance. Technical Direction includes:

(1) Direction to the Contractor which will assist them in accomplishing the requirements of the contract.

(2) Comments on and approval of services.

(b) Technical Direction does not include:

(1) Additional work outside the scope of the contract.

(2) A change as defined by the "Changes" clause.

(3) Any action that would cause and increase or a decrease in contract pricing.

(4) Any action that would alter the period of performance.

(5) Changes any of the other expressed terms or conditions of the contract.

(c) Technical direction will be issued in writing or confirmed in writing within five (5) days after oral issuance. The

contracting officer will be copied on any technical direction issued by the contracting officer representative.

(e) If, in the contractor's opinion, any instruction or direction by the contracting officer representative(s) falls within any of the categories defined in paragraph (b) of the clause, the contractor shall not proceed but shall notify the contracting officer in writing within three (3) days after receiving it and shall request that the contracting officer take appropriate action as described in this paragraph. Upon receiving this notification, the contracting officer shall:

(1) Advise the contractor in writing as soon as practicable, but no later than 15 days after receipt of the contractor's notification, that the technical direction is within the scope of the contract effort and does not constitute a change under the "Changes" clause of the contract.

(2) Advise the contractor within a reasonable time that the government will issue a written modification to the contract; or

(3) Advise the contractor that the technical direction is outside the scope of the contract and is thereby rescinded.

(f) A failure of the contractor and contracting officer to agree as to whether the technical direction is within the scope of the contract, or a failure to agree upon the contract action to be taken with respect thereto, shall be subject to the provisions of the clause entitled "Disputes" in this contract.

(g) Any action(s) taken by the contractor, in response to any direction given by any person acting on behalf of the government or any government official other than the contracting officer or the contracting officer representative, shall be at the contractor's risk.

OIG ANALYSIS OF THE BOP'S RESPONSE

The OIG provided a draft of this report to MTC and the BOP for their comment. MTC did not provide comment. The BOP's response is included in [Appendix 4](#) to this report. Below is the OIG's analysis of the BOP's response.

Highlights of the BOP's Response

In its response to a draft of this report, the BOP stated that it is not required to issue technical direction to contract prison vendors. Further, the BOP stated that mandating the issuance of technical direction in response to significant events could cause contract prison vendors to await direction from the BOP prior to taking required action(s) and may cause confusion regarding the distinction between technical directions and contract modifications. Lastly, the BOP asserted that its action phase plans were readily available for contract prison vendors because they were published on BOP's website within 1 business day of issuance to BOP-managed facilities.

OIG Analysis

Our report did not state that the BOP was required to issue technical direction to its contract prison vendors. We stated, and continue to maintain, that, in the context of mitigating the effects of the pandemic on inmates within the ambit of the BOP's care and custody, it would be prudent and important that the BOP share with contract prison vendors, as soon as practicable, the preventive measures it has taken at BOP-managed institutions. In our report, we noted that with certain exceptions the BOP did issue comparable guidance to contract prison vendors soon after it issued it to BOP-managed institutions. We recognize the immense challenges that the COVID-19 pandemic has presented to the BOP. Our purpose was to convey that, under these exigent conditions, the BOP should make every effort to communicate in a timely manner the same information to its contract prison vendors as it communicates to BOP-managed facilities.

The intention of the OIG's remote inspections of BOP-managed institutions, contract prisons, and RRCs is to assist the BOP in its continued efforts to effectively manage the COVID-19 pandemic. Therefore, we described some delays by the BOP in issuing to contract prison vendors technical direction about guidance the BOP was providing to its own facilities. We did so to highlight a potential risk area for the BOP to consider as it moves forward in its efforts to protect inmates in its custody and staff from COVID-19. While we recognize that the BOP believes it is not obligated to issue technical direction, we believe that communication through technical direction is an important tool that can help the BOP's oversight of its contract prison vendors.