Supreme Court of Florida

No. AOSC20-32
Amendment 3[1]

IN RE: COVID-19 PUBLIC HEALTH AND SAFETY PRECAUTIONS FOR OPERATIONAL PHASE TRANSITIONS

ADMINISTRATIVE ORDER

The Coronavirus Disease 2019 (COVID-19) pandemic continues to have an effect upon the operations of the State Courts System and the lives of Floridians. The Florida state courts have taken measures to mitigate not only the effects of the public health emergency upon the judicial branch and its participants but also the spread of the novel Coronavirus. On April 21, 2020, the Workgroup on the Continuity of Court Operations and Proceedings During and After COVID-19[2] was created to develop findings and recommendations on the continuation of all court

1. This amended administrative order is issued to incorporate the recommendations of the Workgroup on the Continuity of Court Operations and Proceedings During and After Covid-19 in the report titled *Requirements, Benchmarks, and Guidelines Governing Operational Phase Transitions,* dated August 6, 2020. The modifications to the report are described in Footnotes 5 and 6 on page one of the attached report.

2. See *In re: Workgroup on the Continuity of Court Operations and Proceedings During and After COVID-19,* Fla. Admin. Order No. AOSC20-28 (April 21, 2020).

operations and proceedings statewide in a manner that protects health and safety and that addresses each of the following anticipated phases of the pandemic:

a) Phase 1 – in-person contact is inadvisable, court facilities are effectively closed to the public, and in-person proceedings are rare;

b) Phase 2 – limited in-person contact is authorized for certain purposes and/or requires use of protective measures;

c) Phase 3 – in-person contact is more broadly authorized and protective measures are relaxed; and

d) Phase 4 – COVID-19 no longer presents a significant risk to public health and safety.

Among its charges, the Workgroup was specifically directed to propose guidance – based on the advice of public health experts, medical professionals, or others with expertise in the management of a pandemic and the latest health advisories and safety guidelines – for protective measures that will allow the progressive and safe return of judges, personnel, parties, counsel, jurors, and the public (hereinafter collectively referred to as "justice stakeholders") to court facilities.

Originally set to expire on June 30, 2020, the Workgroup's term was extended through December 31, 2020, by Fla. Admin. Order No. AOSC20-51 on

June 15, 2020.[3]

Following extensive research and consultation with medical professionals, the Workgroup issued and subsequently updated its report titled *Requirements, Benchmarks, and Guidelines Governing Operational Phase Transitions,* August 6, 2020, (hereinafter "report"). In that report, the Workgroup recognized that: a) the COVID-19 situation remains dynamic and that the requirements, benchmarks, or guidance may have to be modified by a subsequent administrative order as more information regarding the pandemic and best practices becomes available; b) local community needs and resources and the specific public health conditions by county are important considerations that may have a direct bearing on the implementation of the requirements, benchmarks, and guidance; c) funding and the availability of certain equipment and supplies may impact the readiness of a court to move phases; d) justice stakeholders must feel confident that their safety and welfare are the primary considerations on which decisions are made; e) the requirements, benchmarks, or guidance should be no broader than necessary to protect public health and safety while fulfilling the court system's responsibilities for the administration of justice; and f) both Phase 2 and Phase 3 involve courts managing

3. See *In re: Workgroup on the Continuity of Court Operations and Proceedings During and After COVID-19,* Fla. Admin. Order No. AOSC20-51 (June 15, 2020).

limited resources to address needs.

The Workgroup further noted that benchmarks for moving to Phase 3 may need to be reevaluated based on additional guidance and reports from health officials and based on experience gained while operating in Phase 2. Details of any relaxation of or changes to protective measures will need to be prescribed closer to the anticipated movement to Phase 3 to ensure access to the most current and accurate guidance and information about COVID-19. The relaxation of protective measures proposed in Phase 3 may differ by county due to local public health circumstances and resources. Additionally, the Workgroup noted that in both Phase 2 and Phase 3 public health data and local conditions need to be monitored at least weekly.

Under the administrative authority conferred upon me by article V, section 2(b) of the Florida Constitution and by Florida Rules of Judicial Administration 2.205(a)(2)(B)(iv) and 2.205(a)(2)(B)(v), I approve and adopt the findings and recommendations of the Workgroup's report, as modified, which is attached hereto and incorporated herein by reference.

To advance the benchmarks, requirements, and guidelines set forth in the report, IT IS ORDERED that:

1. Court reopening protocols and practices shall be guided by Centers for Disease Control and Prevention recommendations and align with

guidance provided by the Florida Department of Health, county health departments, and local medical professionals.

2. In order to transition to Phase 2 and expand in-person activities in a manner consistent with Fla. Admin. Order No. AOSC20-23, as amended, each district court of appeal and each trial court must have met the five benchmark criteria provided in the report[4] and must have developed a Phase 2 operational plan addressing, at a minimum, implementation of the requirements identified in the report.[5] Requirements in the report include, but are not limited to, specific public health and safety measures such as: continuing remote work to the extent possible; developing a human resources policy to address potential COVID-19 exposure for court employees and judges; enforcing social distancing guidelines; conducting health screenings with a required temperature check; requiring the use of face masks for entry into, and throughout the public areas of, the courthouse; establishing detailed hygiene, cleaning, and disinfecting protocols; posting signage throughout the courthouse to remind individuals of hygiene, face mask, social distancing, and other requirements; and developing a policy to address individuals who refuse

4. See report at pp. 3-5.
5. Id. at pp. 6-13.

to follow health and safety requirements and guidelines in the courthouse. In developing its Phase 2 operational plan, the court shall consult with judges, court administrators, law enforcement, other justice partners, county administrators, other building occupants, if any, and county health departments or local health experts. A copy of the Phase 2 operational plan, once finalized by the chief judge of each district court of appeal and each judicial circuit, shall be filed with the Office of the State Courts Administrator.[6]

3. In order to transition to Phase 3 and expand in-person activities in a manner consistent with Fla. Admin. Order No. AOSC20-23, as amended, each district court of appeal and each trial court must have met the Phase 3 benchmark criteria provided in the report[7] and must have developed a Phase 3 operational plan that addresses the satisfaction of the Phase 3 benchmark criteria and details the health and safety measures being taken.[8] In developing its Phase 3 operational plan, the court shall consult with judges, court administrators, law enforcement, other justice partners,

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6. If a court has transitioned to Phase 2 on or before the date of this order in compliance with the previous versions of this order, the court may remain in Phase 2, but must comply with all requirements of this order and the attached report for continuing and operating in Phase 2.

7. Id. at pp. 13-14.

8. Id. at pp. 14-15.

county administrators, other building occupants, if any, and county health departments or local health experts. The plan must be reviewed by a county health department or local health expert and, once finalized by the chief judge of each district court of appeal and each judicial circuit, shall be filed with the Office of the State Courts Administrator. Each trial court chief judge must certify that a compliant Phase 3 operational plan has been submitted and that the circuit or a county within the circuit is ready to transition on a specified future date to Phase 3. The certification must be approved by the Chief Justice prior to such transition.

4. While operating in Phase 2 or Phase 3, the chief judge shall monitor public health data and local conditions at least weekly to determine if a modification to operations, an amendment to the operational plan, or a reversion in phases is necessary. The court shall amend its operational plan or revert to a previous phase if the court no longer meets Benchmark 3 pursuant to the methodology identified in the report or if the county health department or local health expert advises, or data or other information establishes, that local health or other conditions have deteriorated or changed to the point that the court no longer meets the

other benchmarks required for the phase.[9] If the court amends its operational plan or reverts to a previous phase, the court must notify the Office of the State Courts Administrator of this circumstance and of any changes to its operational plan. After a reversion, the chief judge must follow the requirements in the report to return from a previous phase.[10]

This order shall remain in effect until amended or terminated by subsequent administrative order of the chief justice.

DONE AND ORDERED at Tallahassee, Florida, on August 12, 2020.

AOSC20-32 a3

Chief Justice Charles T. Canady

AOSC20-32 a3 8/12/2020

ATTEST:

AOSC20-32 Amendment 3 8/12/2020

John A. Tomasino, Clerk of Court

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9. Id. at pp. 15-16.
10. Id. at p. 16.

COVID-19 WORKGROUP

CONTINUITY OF COURT OPERATIONS & PROCEEDINGS DURING AND AFTER

Court Operations Subgroup

Requirements, Benchmarks, and Guidelines Governing Operational Phase Transitions[1, 2, 3, 4, 5, 6]

August 6, 2020

Background

The Court Operations Subgroup (COS) was tasked with developing findings and recommendations on the continuation of all court operations and proceedings statewide in a manner that protects health and safety and that addresses each of the following phases of the pandemic, as defined in Fla. Admin. Order No. AOSC20-28: a) in-person contact is inadvisable, court facilities are effectively closed to the public, and in-person proceedings are rare; b) limited in-person contact is authorized for certain purposes and/or requires use of protective measures; c) in-person contact is more broadly authorized and protective measures are relaxed; and d) COVID-19 no longer presents a significant risk to public health and safety.

The recommendations below specifically address Charge 3 articulated in Fla. Admin. Order No. AOSC20-28, to:

[1] On May 20, 2020, the Health and Safety Requirements section was modified to clarify symptoms and comport with the latest Centers for Disease Control and Prevention (CDC) guidance.

[2] On June 12, 2020, the Benchmarks for Transition from Phase 1 to Phase 2 and the Requirements and Guidelines sections were modified to clarify Benchmark 3 and to clarify the health and screening requirements, modify personal protective equipment requirements, and clarify the enforcement of requirements.

[3] On June 16, 2020, a modification was made to the Requirements and Guidelines section to clarify requirement and guideline exemptions for activities inside of the separate offices of constitutional officers in a multi-use building.

[4] On July 2, 2020, a modification was made to update the symptoms of COVID-19 to comport with the latest CDC guidance, clarify inmate and detainee screening, incorporate the benchmarks governing the transition to Phase 3, and clarify the requirements for reverting to and returning from a previous operational phase.

[5] On August 6, 2020, modifications were made to: amend the benchmark criteria for transition from Phase 1 to Phase 2 (note that these benchmark criteria are also incorporated by reference for the transition from Phase 2 to Phase 3); require a human resources policy to address potential COVID-19 exposure for court employees and judges; update the health screening requirements for entry into a courthouse; provide that a return to Phase 3 following a reversion does not require spending one month in Phase 2; amend the requirements for reverting to and returning from a previous operational phase; make conforming changes for the amendments throughout the document; and add Appendices A and B.

[6] On August 11, 2020, modifications were made to: correct a cross-reference; clarify that a court, which reverts from Phase 3 to Phase 1, must return to Phase 2 before returning to Phase 3; and clarify that specified reversion requirements apply not only to trial courts but also to district courts of appeal.

> Propose guidance – based on the advice of public health experts, medical professionals, or others with expertise in the management of a pandemic and the latest health advisories and safety guidelines – for protective measures that will allow the progressive and safe return of judges, personnel, parties, counsel, jurors, and the public to court facilities[.]

The COS conducted an extensive literature review, discussed state and national court reopening practices and guidelines, and consulted with medical professionals.[7] The COS recognizes that the COVID-19 situation remains dynamic and that the benchmarks and guidance offered below may have to be modified as more information regarding the pandemic and best practices becomes available. Local community needs, resources, and the specific public health conditions by county are important considerations and may have a direct bearing on implementation of the benchmarks and guidance offered below. Court reopening protocols and practices shall be guided by Centers for Disease Control and Prevention (CDC) recommendations and align with guidance provided by county health departments and local medical professionals.[8]

The COS recognizes that funding and the availability of certain equipment and supplies may impact the readiness of a court to move to Phase 2 or Phase 3. The COS recommends exploring local, state, federal, and grant funding opportunities to ensure the necessary supplies are available to protect the health and safety of all those entering the courthouse building.

Introduction

Florida is a very diverse state, and health and operational conditions vary greatly even at the local level. Precautions and safeguards necessary in one area of the state may not be necessary, appropriate, or feasible in another. Further, variations in caseloads, dockets, facilities, resources, and available employees make it difficult to establish functional and effective statewide directives. The plans and measures for resuming in-person proceedings may vary out of necessity. However, it is important that lawyers, litigants, victims, witnesses, jurors, and the public know what to expect when they interact with the courts, regardless of where that court is located within the state.

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[7] The COS met with two medical professionals to discuss their professional opinions related to precautions courts should take in order to open their doors to the public and conduct in-person proceedings: Erin Kobetz, PhD, MPH, Professor of Medicine and Public Health Sciences at the University of Miami Miller School of Medicine, and Cindy Prins, PhD, MPH, CIC, CPH, Clinical Associate Professor in the Department of Epidemiology at the University of Florida College of Public Health and Health Professions and College of Medicine. The Subgroup extends its thanks and appreciation for their invaluable input and expertise.

[8] The CDC's guidance as of June 26, 2020, listing the symptoms of COVID-19 and recommending at least six feet for social distancing has been included in this report at pages seven through nine and page eleven. Staff of the Office of the State Courts Administrator will routinely monitor the CDC guidance and notify the chief judges of the appellate and trial courts of any significant changes in the future.

As courts consider additional in-person proceedings and more judges and court staff return to the courthouse,[9] it is imperative that judges, court staff, justice partners, and the public feel confident that their safety and welfare are the primary considerations on which decisions are made. The requirements and benchmarks provided will establish some uniformity in approach, while the operational guidelines provide needed flexibility for courts to adjust for local conditions.

To the extent possible, courts shall continue to use technology of all types (such as teleconferencing, videoconferencing, or other means) to facilitate the remote conduct of proceedings as an alternative to in-person proceedings. Courts should continue to innovate, increase the use of technology, and take other measures to expand remote capacity while limiting person-to-person contact when not necessary.

Benchmark Criteria for Transition from Phase 1 to Phase 2

The Supreme Court identified four phases of the pandemic: a) in-person contact is inadvisable, court facilities are effectively closed to the public, and in-person proceedings are rare (Phase 1); b) limited in-person contact is authorized for certain purposes and/or requires use of protective measures (Phase 2); c) in-person contact is more broadly authorized and protective measures are relaxed (Phase 3); and d) COVID-19 no longer presents a significant risk to public health and safety (Phase 4). Using the benchmarks provided, courts may consider moving from Phase 1 to Phase 2, wholly or in-part, based on local conditions and resources. If local conditions deteriorate, or resources become strained, it may be necessary for a court to revert to Phase 1 or adjust facets of how it is operating in Phase 2 to meet the current public health situation or the needs of the court. Additional information regarding reverting to and returning from a previous operational phase is found later in this document.

The following benchmark criteria must be met prior to any court transitioning from Phase 1 to Phase 2 and expanding in-person activities:

1. No confirmed or suspected cases of COVID-19 in the court facility within a 14-day period; or if confirmed or suspected cases have occurred in the court facility, deep cleaning and disinfecting of exposed areas have been completed and applicable employees have been directed to self-isolate or quarantine.

2. No local or state restrictive movement or stay-at-home orders that limit the ability of individuals to leave their homes during the daytime.

[9] References in this document to a courthouse should be read to extend to any facility or building that houses courtrooms, hearing rooms, court staff or where court business is conducted, whether or not that building is formally called a courthouse.

3. Improving COVID-19 health conditions over a 14-day period in the community. The public health data[10] necessary to determine whether this benchmark has been met will be provided on an Intranet page maintained by OSCA that will be updated on a weekly basis. This data will provide seven-day averages at the county level for the most recent four-week period for the following four measures:
    a) The daily number of new positive COVID-19 cases ("new cases");
    b) The daily percentage of positive tests based on the total number tests ("positivity rate"); [11]
    c) The daily number of hospitalizations for COVID-19 ("hospitalizations"); and
    d) The daily number of emergency department visits for COVID-like illness ("ED visits").

    To ensure uniformity statewide, courts must use this data and the following methodology in determining whether this benchmark has been met. For purposes of the methodology, the phrase "two consecutive weeks of decline or stabilization" with respect to new cases, hospitalizations, and ED visits means that the measure's seven-day average for:
    a) The most recent week is lower than or equal to the seven-day average for the measure for the prior week; and
    b) The prior week is lower than or equal to the seven-day average for the measure for the week that is two weeks prior to the most recent week.

    To meet this benchmark, condition a) or b) below must be met:
    a) Both of the seven-day averages for new cases for the most recent two-week period must be 20 or fewer[12] and both of the following measures must demonstrate two consecutive weeks of decline or stabilization:
        i. The seven-day averages for hospitalizations for the most recent two-week period; and
        ii. The seven-day averages for ED visits for the most recent two-week period.

[10] The data source for the daily number of new positive COVID-19 cases, daily number of hospitalizations for COVID-19, and daily number of emergency department visits for COVID-like illness is: Florida COVID-19 Case Line Data from the Florida Department of Health, https://open-fdoh.hub.arcgis.com/datasets/florida-covid19-case-line-data/data. The data source for the daily percentage of positive tests based on the total number tests is: Daily county reports from the Florida Department of Health, http://ww11.doh.state.fl.us/comm/_partners/covid19_report_archive/. The data dictionary for these sources may be found at: Florida Department of Health, https://fdoh.maps.arcgis.com/sharing/rest/content/items/efffb9350de948ac9d67f9d74190413d/data.

[11] In using the positivity rate data for purposes of determining whether to transition to Phase 2 or 3 or for reversion, as discussed later in this document, the percentages may not be rounded to the nearest whole number.

[12] Due to the lower rates of testing in smaller counties, positivity rates can be significantly increased by only one or two positive test results. To account for this effect, the methodology authorizes counties having 20 or fewer new cases weekly for the most recent two-week period to consider the hospitalization and ED visit measures instead of positivity rates.

b) If either of the seven-day averages for new cases for the most recent two-week period exceed 20, then both of the following criteria must be met:
    i. The seven-day averages for new cases for most recent two-week period must demonstrate two consecutive weeks of decline or stabilization; and
    ii. Both of the seven-day averages for the positivity rate for the most recent two-week period must be less than 10 percent. If not, then both of these averages must be less than 11 percent and both of the following measures must demonstrate two consecutive weeks of decline or stabilization:
        a. The seven-day averages for hospitalizations for the most recent two-week period; and
        b. The seven-day averages for ED visits for the most recent two-week period.

A decision matrix illustrating the methodology above is attached as Appendix A.

Courts that meet the criteria for this benchmark based on declining or stabilizing new cases and positivity rates less than 10 percent may also wish to consider the data for hospitalizations and ED visits as well as other public health data that may be available before determining whether to transition to the next phase. Given the evolving science and dynamic nature of the pandemic, other factors may weigh against transitioning even when this benchmark is met based on the referenced measures. For example, hospitalizations or ED visits may be increasing or hospital bed or intensive care unit capacity may be decreasing although the numbers of new cases and positivity rates have declined. Moreover, resource constraints, such as insufficient personal protective equipment (PPE) or a shortage in staffing, or other operational issues may exist. In any of these instances, the chief judge should consider delaying a transition until health conditions improve or operational or other issues are resolved.

4. Sufficient availability of COVID-19 tests to meet community needs.

5. Consultation with other building occupants (for multi-tenant courthouses or buildings) and with justice system partners (including, but not limited to clerk of court, state attorney, public defender, law enforcement, local bar, and others necessary to resume certain case types, such as the Department of Children and Families).

It is important to ensure capacity exists for increasing or modifying operations and that all health and safety concerns are met.

Operational Plan for Transition from Phase 1 to Phase 2

Prior to expanding operations beyond Phase 1 as outlined in AOSC20-23, as amended, each court shall develop an operational plan. Broadly, the plan should describe the court's planning process and use of the benchmark criteria, detail those involved in the planning, and identify the steps to be taken in order to increase operations. Further, the court must ensure that its plan addresses all requirements discussed below and may wish to also address the guidelines specified below in that plan.

Once the plan has been finalized and approved by the chief judge, a copy shall be provided to OSCA for informational purposes.[13] As the plan is updated, revised copies shall be submitted.

While operating in Phase 2, public health data and local conditions shall be monitored at least weekly to determine if a modification to operations, an amendment to the operational plan, or a reversion in phases is necessary.

Requirements and Guidelines for Transition from Phase 1 to Phase 2[14]

The following requirements provide the key elements that must be included in each court's Phase 2 operational plan. Guidelines are also provided for each court's consideration. Each court may develop a single plan that encompasses all facilities and operations or may develop a separate plan for each facility or operational or functional area. Many of these requirements and guidelines may still apply when transitioning from Phase 2 to Phase 3. As noted in the Phase 3 benchmarks, courts must identify any modified or relaxed Phase 2 requirements and guidelines, as well as any public health and safety practices planned for Phase 3.

In developing the operational plan, courts shall engage and consult with judges, court administrators, law enforcement, other justice partners, county administrators, other building occupants, if any, and county health departments or local health experts. The plan will need to be updated on a regular basis to keep pace with advancements in best practices and to adjust for lessons learned. Courts are encouraged to establish an ongoing relationship and communication with county health departments or local health experts. Those relationships will help inform recommendations regarding the local court's readiness to authorize limited in-person contact for certain purposes and institute any appropriate measures to further safeguard public health and safety.

[13] In current practice, courts are required to file their Continuity of Operations Plan and other emergency preparedness plans with the General Services Unit.

[14] In the case of a multi-use building, these requirements and guidelines are not intended to govern activities inside of the separate offices of other constitutional officers.

Remote Hearings and Remote Work

To the extent possible, consistent with Supreme Court administrative orders or similar guidance, all proceedings shall occur remotely (such as by teleconferencing, videoconferencing, or other means) unless litigants or other court participants are unable to successfully participate in a remote hearing for reasons beyond the court's control. Courts may need to conduct hybrid hearings (concurrently in-person and remotely) in certain instances. Further, all employees should be allowed to work remotely to the extent their work can be done remotely throughout Phases 1-3. Particular effort should be made to ensure that vulnerable employees, and those that are caregivers for someone that is vulnerable, are able to work remotely until at least Phase 4.

Human Resources Policy

A human resources policy shall be developed that addresses potential COVID-19 exposure in the workplace, which shall apply to court employees, including judicial assistants, and judges who enter a court facility to perform all or part of their work. The policy must address requirements for court employees to notify their supervisors and for judges to notify the chief judge if they have tested positive for or have been diagnosed with COVID-19; are experiencing symptoms consistent with having COVID-19; or have been in close contact with an individual who has tested positive for COVID-19 or who is exhibiting symptoms. The policy must also define the court's responsibilities for contact tracing and for notifying persons who may have been exposed.

Health and Safety Screening

General Considerations

- Take precautions to ensure no one enters the courthouse when there is a likelihood that they may have COVID-19.[15, 16]
- Direct judges and employees, at a minimum, to self-check for symptoms. If they present symptoms, they must remain home and should consult their doctor or other medical professional. Law enforcement personnel, working within the courthouse or acting in their official capacity visiting the courthouse, whose agency has a policy that requires self-checking for symptoms and remaining home if they present symptoms are not subject to the health screening described below.[17] Other

[15] As of June 26, 2020, the CDC lists the symptoms of COVID-19 to include cough, shortness of breath or difficulty breathing, fever or chills, muscle or body aches, fatigue, headache, sore throat, new loss of taste or smell, congestion or runny nose, nausea or vomiting, or diarrhea.

[16] For purposes of this document, entry into a courthouse in a multi-use building refers to the security point at which individuals are screened before entering the courthouse.

[17] Workgroup member Public Defender Dimmig, who represents the Florida Public Defender Association, dissents from the portion of this recommendation that would allow a law enforcement officer, who is entering the courthouse for purposes of testifying as a witness in a jury trial, to bypass the health screening. Public Defender Dimmig expressed concern that a juror, who will later hear the officer's testimony, may see the officer receive the

employees working within a courthouse, who are authorized to enter the courthouse with a security badge or other means that allows entry without the security screening applicable to the general public, are not subject to the health screening described below if the employee's employing agency has a policy that requires self-checking for symptoms and remaining home if they present symptoms.

- Require all others entering the courthouse to undergo health screening with a required temperature check.[18] A person who refuses the health screening, who has a fever of 100.4 degrees or greater, who answers affirmatively to any of the symptoms in Question 1, or who answers affirmatively to Question 2, 3, or 4 shall not be allowed to enter the facility. Alternative arrangements should be made for this person, such as handling their business over the phone, rescheduling a hearing, or other means as appropriate. The screening shall include the following questions:
  - Question 1: Do you have any of the following symptoms (excluding those due to a known medical reason other than COVID-19):
    a) Cough
    b) Shortness of breath or difficulty breathing
    c) Fever or chills
    d) Fatigue
    e) Muscle or body aches
    f) Headache
    g) Sore throat
    h) New loss of taste or smell
    i) Congestion or runny nose
    j) Nausea or vomiting
    k) Diarrhea[19]
  - Question 2: Are you currently awaiting the results of a test to determine if you have COVID-19 based on symptoms or suspected exposure?
  - Question 3: Are you under instructions to self-isolate or quarantine due to COVID-19?

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differential treatment that may improperly influence the juror who must, pursuant to the jury instructions, treat the officer's testimony the same as any other witness with respect to credibility. Public Defender Dimmig is also concerned that defendants, and some members of the public at large, will question the fairness of a court system that gives preferential treatment to certain witnesses simply because they are law enforcement officers. Workgroup member Chief Judge Bonner of the Twelfth Judicial Circuit concurred in Public Defender Dimmig's dissent and also noted that it will be overly cumbersome to distinguish at the courthouse entrance who is on or off duty and who has already been screened. Further, Chief Judge Bonner noted that the likelihood of substantially longer lines because of officer screenings seems minimal given that in-person proceedings are limited in Phase 2 and that creation of a "line cut" gives a public optic that certain professions are exempt from a screening with which the public must comply.

[18] The responsibility for conducting the health screening and temperature check should be defined within the local operational plan.

[19] https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html

        - Question 4: Within the past 14 days, have you had close contact with someone with a COVID-19 diagnosis or who is awaiting test results for COVID-19 based on symptoms or suspected exposure? (Note: Close contact is defined as contact that is less than 6 feet for 15 minutes or more, irrespective of whether a cloth face covering or respiratory PPE was worn.[20])
    - Establish a process to safeguard against release of sensitive health information in communicating to the court that a person was not allowed to enter the facility (e.g., a checkbox form solely indicating non-admittance based on refusal to comply with the guidelines or based on the screening/temperature check).
    - Consider whether special attention needs to be given to how inmates or detainees from jail and juvenile facilities who may be transported to a courtroom will be screened, including consideration of a lower threshold temperature as an indicator of symptoms. At a minimum, if inmates and detainees do not undergo a health screening and temperature check prior to being transported to the courthouse, they are subject to the health screening and temperature check requirements that are applicable to members of the public for entry into the courthouse.

Social Distancing

Social distancing guidelines shall be established and strictly enforced during Phases 1 and 2. This includes all areas of the courthouse, including areas of private circulation. Current CDC social distancing guidance recommends staying at least six feet from other people.

- Ensure social distancing in public common areas, galleries and wells of the courtroom, hallways, elevators, restrooms, or other locations where the public might gather.
    - Some areas may need to be reconfigured or have chairs, benches or other furniture removed to ensure social distancing.
    - Special attention should be given to scheduling hearings on a staggered schedule as common areas such as hallways, restrooms, and elevators may become crowded in such a way that it is impossible to maintain appropriate social distancing.

Hygiene Protocols and Personal Protective Equipment (PPE)

- Establish hygiene protocols, such as hand washing and covering coughs and sneezes.

[20] https://www.cdc.gov/coronavirus/2019-ncov/php/public-health-recommendations.html

- Post readily visible signage[21] throughout the courthouse reminding individuals of hygiene protocols, including hand washing, as well as social distancing, directional guidance and any changes to processes due to the pandemic.
- Establish guidelines for the purchase and use of hand sanitizer and PPE.
    - Hand sanitizer should be widely available throughout the courthouse, including inside courtrooms.
    - Face masks covering the nose and mouth are required for everyone entering the courthouse building, with no exceptions. Face masks shall be worn at all times throughout the public areas of the courthouse building, including inside the courtroom if two or more individuals are in the courtroom. If visitors do not have a face mask, one should be provided to them at no cost. The following exclusions apply to wearing face masks in a courthouse:
        a) Judges and court staff do not have to wear a mask in their private chambers or office as long as social distancing is possible. If they do not have a private office, and ample social distancing is not observed, a mask should be worn while at their desk.
        b) Present medical advice advocates that adequate face masks offer the best protection. However, a chief judge may adopt a policy allowing the use of a face shield or other face covering protocol as an alternative to a face mask during a court proceeding if the court determines, based on consultation with the county health department or other local health experts, that scientific guidance supports use of the alternative as a reasonable means to protect participants in the proceeding. If a court adopts such a policy, it shall apply the policy consistently across all court proceedings in the same courthouse.
    - Consider other PPE, such as gloves and face shields, for use as appropriate. Health experts have noted that proper hand hygiene is generally preferable to gloves. An example where multiple types of PPE (mask, gloves, face shield or goggles, and apron or other covering) may be required is during the fingerprinting process.

Judge and Court Staff Training

- Provide training or other technical assistance to judges and court staff, if necessary, on changes required by the operational plan.

[21] Any signage used should (at a minimum) be in English and Spanish and shall comply with the Americans with Disabilities Act.

Other Building Occupants

- Collaborate with other building occupants and law enforcement to ensure agreement on health, safety, cleaning and disinfecting,[22] and related issues to avoid contamination by other occupants in a multi-tenant courthouse.

Vulnerable Populations[23]

- Provide accommodations to reduce the need for vulnerable individuals to appear in-person at the courthouse, when feasible.

Courthouse Facility and Security

Exterior

- Consider ingress and egress as well as queuing areas and the need to temporarily close some entry points or designate for entry or exit only.
- Use tape, paint, or other means to demark the floor and/or walls, to the extent possible, at six-foot intervals as a social distancing aid.
- Provide directional signage, if necessary.

Interior

- Reconfigure queueing areas, if needed.
- Determine if any occupancy limits or constraints are necessary to allow for maximum social distancing within the building. Some courts may consider only admitting persons with scheduled proceedings or appointments with a person or office in the courthouse, even for non-court matters. If a person does not have an appointment, provide information on how to set one. Also, limit their entry to, for example, 10 minutes prior to the scheduled appointment or proceeding time.
- Use tape, paint, or other means to demark the floor and/or walls, to the extent possible, at six-foot intervals as a social distancing aide.
- Review all space within the courthouse to determine any mitigation measures that can be taken and reconfiguration that may be necessary to allow for proper social distancing. Open office areas, in particular, may require reconfiguration or movement of employees to other areas.
- Close or reconfigure areas such as break rooms, waiting areas, cafeterias, and other spaces where people tend to congregate, as needed.
- Consider installing physical barriers, such as sneeze guards and partitions, in spaces where an employee might come into close contact with large numbers of people,

[22] CDC guidance on cleaning and disinfecting public spaces, workplaces, and other public locations is available here: https://www.cdc.gov/coronavirus/2019-ncov/community/reopen-guidance.html.
[23] CDC guidance on people who need to take extra precautions is available here: https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/index.html.

such as an information desk. While such a barrier may protect from droplets caused by a sneeze, it is not a replacement for wearing a mask.
- Limit the number of persons allowed in a shared restroom.

Security

- Determine what security practices or policies may require modification.
- Reconfigure the security screening station, if needed.
- Develop policies, training, and/or other technical assistance for security personnel if they are charged with health screening visitors.
- Establish a policy regarding persons who refuse to follow health and safety requirements and guidelines, such as not wearing a mask.[24]

Cleaning and Disinfecting

- Establish and enforce detailed cleaning and disinfecting protocols for all areas.
- Make adequate supplies of cleaning and disinfecting products available throughout the facility.
- Clean and disinfect high traffic areas and frequently touched surfaces multiple times per day.
- Perform enhanced nightly cleaning and disinfecting of all areas.
- Make hand sanitizer and sanitizing or disinfecting wipes readily available throughout the facility for use by employees and visitors.
- Clean or disinfect shared equipment, such as copiers, before every use.

Courtroom/Hearing Room

- Establish a courtroom maximum occupancy based on the size and configuration of the room and social distancing protocols.
- Consider a courtroom admittance policy to limit persons from entering with family members or friends that are not essential to the proceeding. Limit those physically permitted in the courtroom to the parties, attorneys, victims, witnesses, court reporter, court interpreter and other persons whose presence is essential.
- Determine potential waiting area(s) to ensure social distancing while parties wait for their proceeding.
- Follow and enforce strict social distancing protocols.
- Make hand sanitizer and sanitizing or disinfecting wipes available for use.
- Clean or disinfect shared surfaces, such as counsel tables and podiums, after every proceeding or similar court event at which they are used.

[24] The Workgroup recognizes that law enforcement's primary responsibility is the provision of security. Court employees and law enforcement/security officers shall make reasonable efforts to enforce these health and safety requirements and guidelines, consistent with the local operational plan and judicial direction as applicable.

Other Business Process Considerations

- Consider a staggered schedule for court appearances and employee schedules to minimize the number of people in the building at any time and prevent crowding.
- Prioritize certain proceedings or events, if needed.
- Consider dividing employees into shifts so that there is no overlap in scheduling. If a member from one shift tests positive for COVID-19, it will be easier to identify potentially exposed colleagues.
- Take adequate steps to ensure the public is provided a reasonable means of access to the proceeding, for those proceedings in which the public's right to in-person access is appropriate.
- Live-stream or record the proceeding, if practicable, and make the recording available as soon as possible following the conclusion of the proceeding.
- Develop a process or protocol for handling paper, both from the public and from employees. Use of a drop box may be prudent for some public submissions. Creation and use of electronic documents is a preferable practice. When paper has been submitted, scanning of all paper and transmitting electronically is a preferable practice.
- Consider staffing strategies, such as redeployment of personnel, to meet staffing needs and social distancing requirements.

All aspects of the operational plan should be applied evenly throughout each courthouse. It is understood that differences in locations or facilities may necessitate modified practices at a different courthouse within the same county or circuit.

The operational plan should provide the court with the guidance and structure necessary to navigate moving from Phase 1 to Phase 2, once the benchmark criteria have been met. All pertinent aspects of the plan should be shared broadly to ensure employees and the public are aware of the precautions being taken and are on notice of what to expect when conducting business at the courthouse. In addition to providing such information in hearing notices or other case-related postings, courts are encouraged to utilize their court's public information officer to share the information.

Benchmark Criteria for Transition from Phase 2 to Phase 3

The COS recognizes the importance of mitigating the negative effects of the public health crisis, while keeping courts operating to the fullest extent possible based on the latest recommended public health and safety measures and scientific guidance. Each court must carefully examine and balance increasing court operations with ensuring public health and safety in making a determination to transition to Phase 3. In Fla. Admin. Order No. AOSC20-28, Phase 3 is defined as "in-person contact is more broadly authorized and protective measures are relaxed." Phase 3 represents a more significant "reopening" of the courts where the nature of case types and the volume of cases being heard in-person will increase.

The following benchmark criteria must be met prior to any court transitioning from Phase 2 to Phase 3 and further expanding in-person activities:

a. Continual operation under Phase 2 for at least one month before proceeding to Phase 3 unless returning to Phase 3 after reversion to a prior phase. Additional information regarding reverting to and returning from a previous operational phase is found later in this document.
b. Confirmation that the court continues to meet each of the five Phase 2 benchmark criteria.
c. Confirmation of the availability of adequate resources, supplies, and capacity to accommodate the authorization of broader in-person contact in Phase 3, consistent with national, state, and local public health guidance.
d. Identification of any modified or relaxed Phase 2 requirements and guidelines, as well as any public health and safety practices planned for Phase 3.

Operational Plan for Transition from Phase 2 to Phase 3

The court shall develop a Phase 3 operational plan that addresses the satisfaction of the criteria listed in a. through d. above. The plan shall be reviewed by the county health department or a local health expert and such consultation with the department or expert must be documented in the plan. The plan must be submitted to OSCA upon completion.

For trial courts, the chief judge must certify to the Chief Justice that a compliant Phase 3 operational plan has been submitted and that the circuit or a county within a circuit is ready to transition on a specified future date to Phase 3. Prior to such transition, the Chief Justice must approve the certification.

While operating in Phase 3, public health data and local conditions shall be monitored at least weekly to determine if a modification to operations, an amendment to the operational plan, or a reversion in phases is necessary.

The subgroup recognizes the following with respect to the transition from Phase 2 to Phase 3:

- Both Phase 2 and Phase 3 involve courts allocating limited resources to needs that exceed capacity. Transition to Phase 3 will not be uniform across courts due to differing needs and resources.
- Any benchmarks for moving to Phase 3 may need to be reevaluated based on further guidance and reports from health officials.
- Per AOSC20-28, Phase 3 includes the relaxation of protective measures. The subgroup recognizes that the details of any relaxation of or changes to protective measures will need to be prescribed closer to the anticipated transition of courts to Phase 3 to ensure access to the most current and accurate guidance and information about COVID-19.

The relaxation of protective measures in Phase 3 may differ by county due to local public health circumstances and resources.

Reverting to and Returning from a Previous Operational Phase

As previously indicated in this document, while operating in Phase 2 or Phase 3, public health data and local conditions shall be monitored at least weekly to determine if a modification to operations, an amendment to the operational plan, or a reversion in phases is necessary.

For purposes of the methodology below addressing the requirement for an amendment to the operational plan or for a reversion to a previous phase when the criteria for Benchmark 3[25] are no longer met, the phrase "two consecutive weeks of increase" with respect to new cases, hospitalization, and ED visits means that the measure's seven-day average for:

a) The most recent week is higher than the seven-day average for the measure for the prior week; and
b) The prior week is higher than the seven-day average for the measure for the week that is two weeks prior to the most recent week.

A court shall amend its operational plan or revert to a previous phase if condition a) or b) below applies:

a) Both of the seven-day averages for new cases for the most recent two-week period are 20 or fewer and either of the following measures demonstrate two consecutive weeks of increase:
    i. The seven-day averages for hospitalizations for the most recent two-week period; or
    ii. The seven-day averages for ED visits for the most recent two-week period.
b) Either of the seven-day averages for new cases for the most recent two-week period exceed 20 and any one of the circumstances described in i., ii. a., or ii. b. below has occurred:
    i. The seven-day averages for new cases during the most recent two-week period demonstrate two consecutive weeks of increase; or
    ii. Either of the seven-day averages for the positivity rate during the most recent two-week period is:
        a. 11 percent or higher; or

[25] Benchmark 3 for Phase 2 applies in both Phase 2 and Phase 3 as indicated on pages four and fourteen of this report.

b. 10 percent or higher, but less than 11 percent and either of the following measures demonstrate two consecutive weeks of increase:
    - The seven-day averages for hospitalizations for the most recent two-week period; or
    - The seven-day averages for ED visits for the most recent two-week period.

A decision matrix illustrating the methodology above is attached as Appendix B.

Further, if the county health department or local health expert advises, or data or other information establishes, that local health or other conditions have deteriorated or changed to the point that the court no longer meets the other benchmarks required for the phase, the court shall amend its operational plan or revert to a previous phase to comply with health and safety requirements.

Additionally, resource constraints or other issues may require a court to modify its operations, to amend its operational plan, or to revert to a previous phase in order to adjust to the ongoing nature of the public health crisis.

If the court amends its operational plan or reverts to a prior phase, the court must notify OSCA of this circumstance and of any changes to its operational plan. If a court reverts from Phase 3 to Phase 1, it must return to Phase 2 before returning to Phase 3. After a reversion, to return to:

- Phase 2, the chief judge must ensure that the court satisfies all Phase 2 benchmark criteria and has an operational plan as required by this document. The court must notify OSCA of the return to Phase 2.
- Phase 3, the chief judge must ensure the court satisfies all Phase 3 benchmark criteria, except for Benchmark a. of that criteria, and has an operational plan as required by this document. The chief judge of a circuit court must also recertify to the Chief Justice that the circuit or a county within the circuit is ready to return on a specified future date to Phase 3. Before the return, the Chief Justice must approve the recertification.

Resource Items to Consider Having Available as Phase Transitions are Considered

The following is a non-exclusive list of items that courts may need as part of their operational plans. The COS recommends that local, state, federal, and grant funding opportunities be explored to address COVID-19-related equipment and supply needs. The list below is provided as a starting point for each court's consideration.

Hygiene, Cleaning, and Disinfecting

- Hand Sanitizer
- Dispensers for hand sanitizer (touchless preferred)
- Sanitizing or disinfecting wipes
- Dispensers for wipes (touchless preferred)
- Disposable masks
- Dispensers or storage containers for masks
- Gloves
- Face shields
- Goggles
- Thermometers (touchless)
- Appropriate cleaning supplies (soap, cleaning or disinfecting spray, etc.)
- Handwashing or hand sanitizing stations outside of the facility
- Tissues/paper towels (in addition for use to cover sneezes, can be used to open doors, etc.)
- Cleanable or disposable covers for commonly touched or used items, such as microphones

Facilities, Security, Queuing, Social Distancing

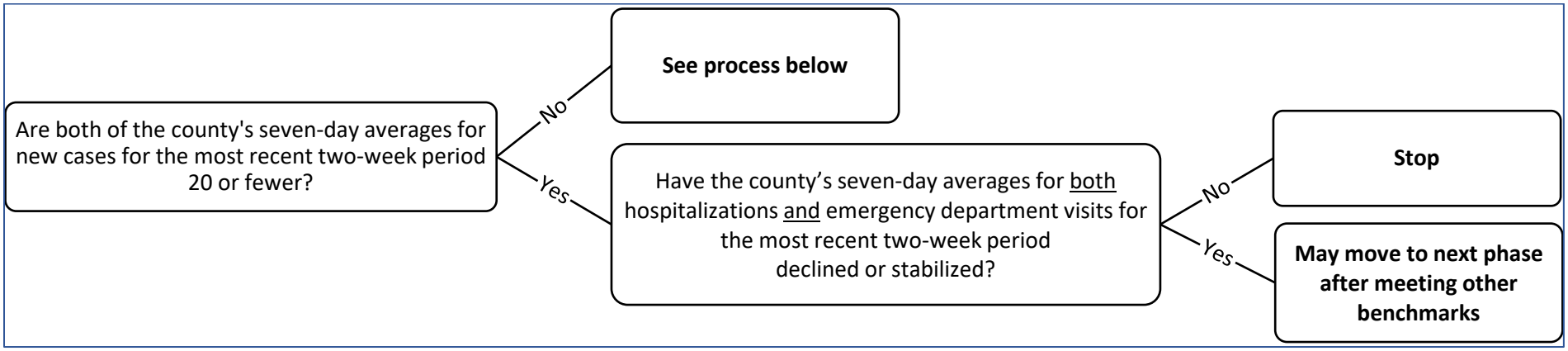
- Clip Boards
- Writing Utensils
- Barricades
- Stanchions
- Gaffer's or other type of tape to demark spacing
- Folding tables/chairs
- Radios or other communication devices
- Laptop/tablet for data collection
- Portable document scanners
- Large format monitors
- Medical grade or waterproof keyboards, mice and similar computer accessories (to allow for proper cleaning and disinfecting of shared accessories)
- Fingerprinting pads
- Portable podiums (to limit sharing of existing podium during a proceeding)
- Acrylic partitions or other barrier in spaces like information desks
- Wrist bands or other means for indicating a person has been screened (for example, to allow for them to leave for lunch and return without having to undergo expanded screening again)

Signage

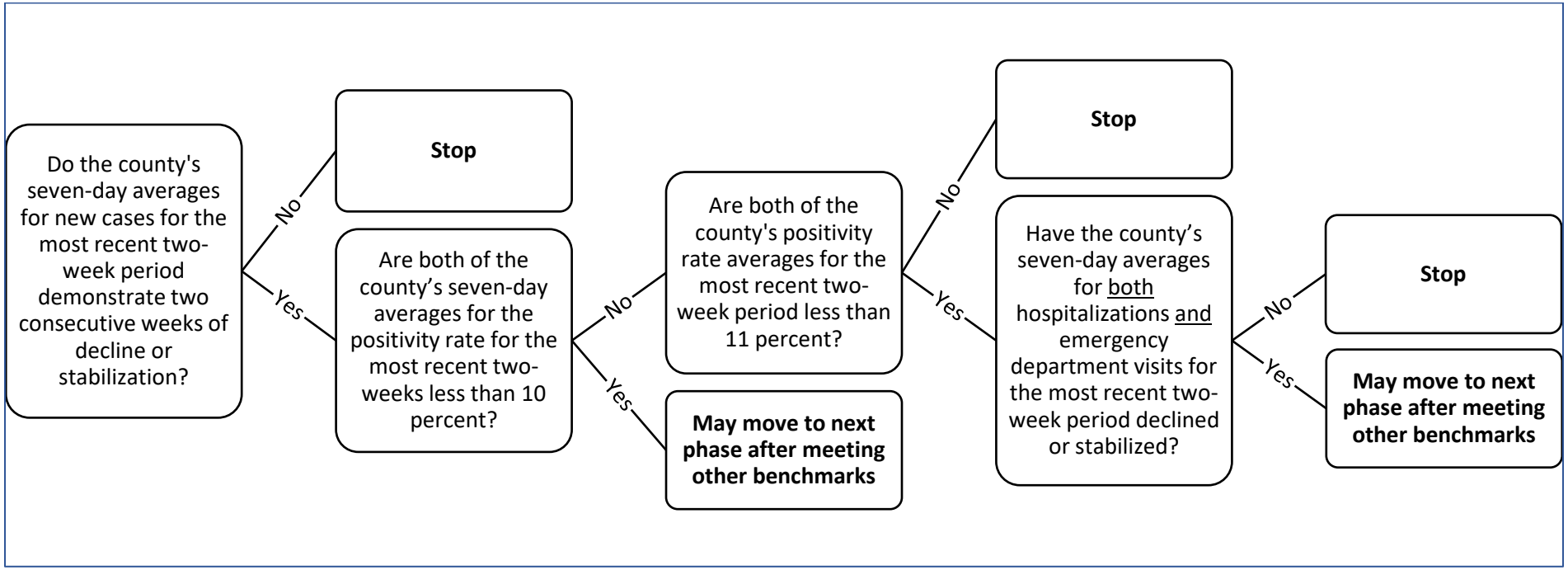
- Hygiene protocols (hand washing, hand sanitizer, etc.)
- Social distancing reminders
- Markings to notate distance

- Directional signage
- Instructions/reminders for new procedures
- Admittance/Health screening notice
- Requirement to wear mask

Appendix A: Benchmark 3 Transition to Next Phase Decision Matrix

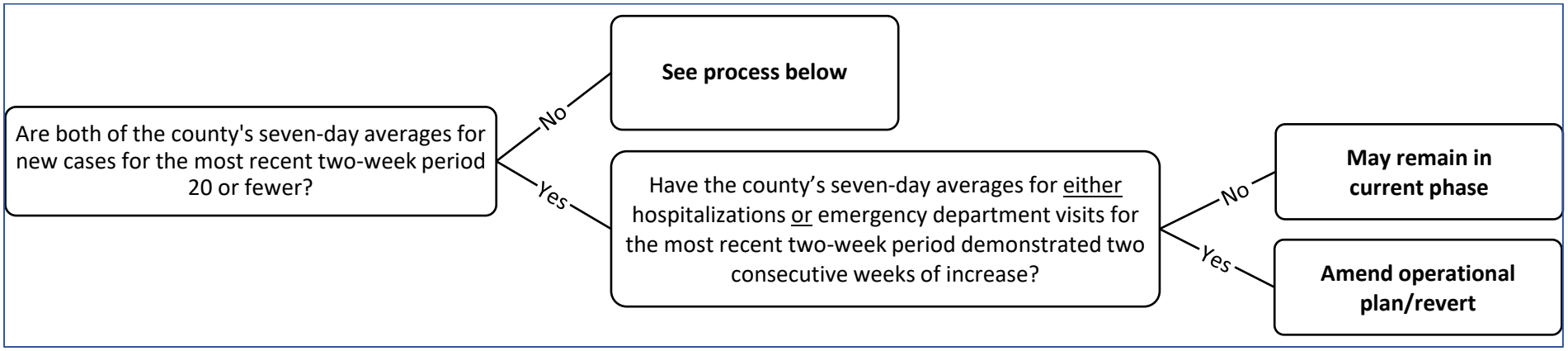


Condition a) to meet Benchmark 3 (as identified on p. 4 of the report)

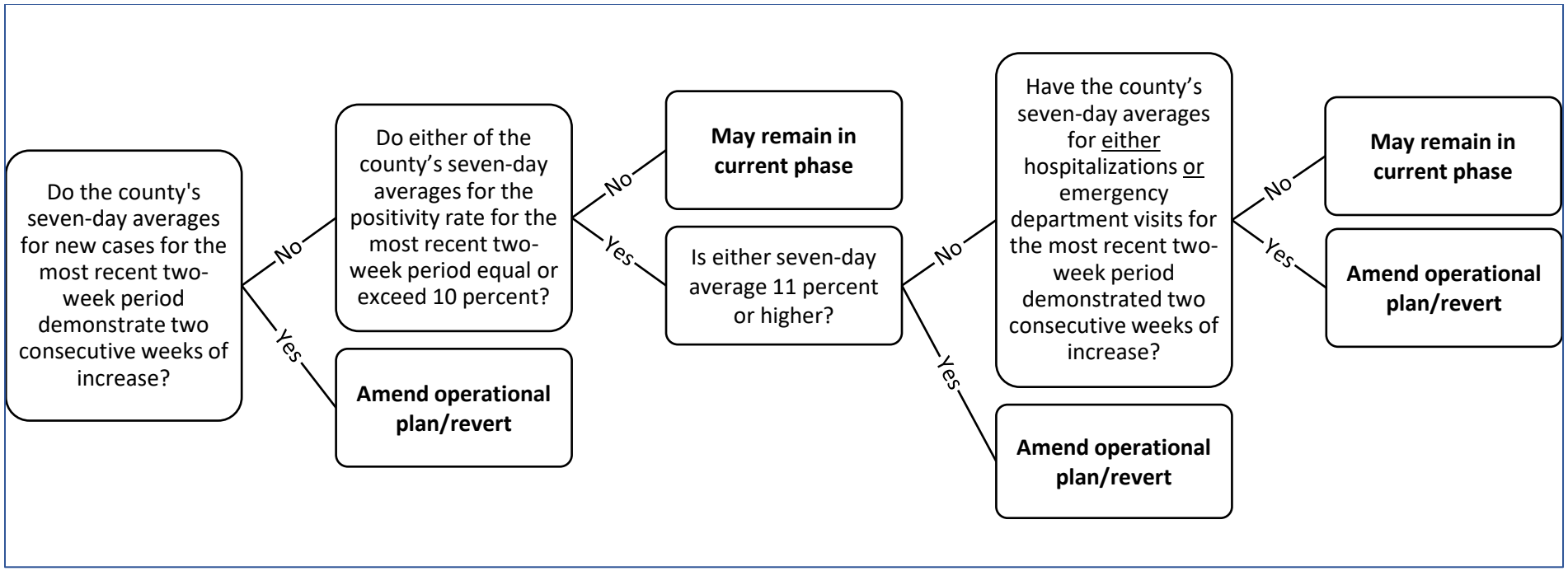


Condition b) to meet Benchmark 3 (as identified on p. 4 of report)

Appendix B: Benchmark 3 Operational Plan Amendment/Phase Reversion Decision Matrix



Condition a) to amend the operational plan or revert to a previous phase (as identified on p. 15 of report)



Condition b) to amend the operational plan or revert to a previous phase (as identified on p. 15 of report)