

Requirements for proof of SARS-CoV-2 testing: ethical and legal conditions

No. 2021/02, The Hague, January 14, 2021

Executive summary

Health Council of the Netherlands



The Dutch government is exploring to what extent requirements for proof of a recent negative SARS-CoV-2 test (hereinafter “testing requirements”) can be used for regulating access to various facilities such as schools and (sporting) events. The Minister of Health, Welfare and Sport (VWS) has asked the Committee of Ethics and Law of the Health Council of the Netherlands to outline the ethical and legal context and establish a framework of conditions for responsible utilisation of testing requirements.

Testing requirements imply that people need to prove that they have recently tested negative for SARS-CoV-2 if they are to access certain facilities. Testing requirements could then potentially help reduce the spread of SARS-CoV-2 and allow certain facilities to open, or to do so sooner or with less restrictions. In addition to these potential advantages, there

are also potential disadvantages. Testing requirements mean that people will have to undergo a medical procedure (the test). There may also be concerns about the effectiveness of the measure and the risks of discrimination and unfair exclusion. The pros and cons will have to be weighed up for each facility to assess whether testing requirements are ethically and legally acceptable.

The committee has established an ethical and legal framework of conditions for assessing whether utilisation of testing requirements is justified. Testing requirement for access to a specific facility may only be considered if all conditions are met. These conditions are:

- Testing requirements must be necessary and effective in terms of reopening society while at the same time reducing the spread of infection;

- Testing requirements must be the least intrusive measure for achieving the objective;
- Testing requirements must be proportionate. This means that the potential negative consequences of testing requirements must not outweigh the potential benefits;
- Potential harmful effects of the measure must be minimised;
- Everyone must have equal (financial) access to testing opportunities and obtaining proof of negative testing;
- The policy must not result in discrimination;
- Personal data must be handled with due care and in accordance with privacy legislation;
- The policy must be monitored and evaluated periodically from the start;
- The policy must be explained clearly and comprehensibly to the public.



Testing requirements are capable of restoring freedoms but could also limit them.

This depends on the baseline against which testing requirements are evaluated: are the numbers of infections high with strict public health restrictions (e.g. in a lockdown) or are the numbers of infections low with unaffected free movement? The context in which testing requirements are being considered largely determines whether these conditions will be met. The committee would like to emphasise that the said context is dynamic, meaning testing requirements at one point in time may and at another may no longer be defensible.

The assessment of whether all conditions are met in a specific setting is a task for the government. If the government decides that proof of negative testing is to be required for access to a specific facility and there is no reasonable alternative, a formal law is needed for this restriction. 'No reasonable alternative' means that access without proof of testing is entirely impossible for people without symptoms who cannot get tested or do not wish to do so. In such cases, testing requirements constitute an indirectly mandatory measure.



The Health Council of the Netherlands, established in 1902, is an independent scientific advisory body. Its remit is “to advise the government and Parliament on the current level of knowledge with respect to public health issues and health (services) research...” (Section 22, Health Act).

The Health Council receives most requests for advice from the Ministers of Health, Welfare and Sport, Infrastructure and Water Management, Social Affairs and Employment, and Agriculture, Nature and Food Quality. The Council can publish advisory reports on its own initiative. It usually does this in order to ask attention for developments or trends that are thought to be relevant to government policy.

Most Health Council reports are prepared by multidisciplinary committees of Dutch or, sometimes, foreign experts, appointed in a personal capacity. The reports are available to the public.

This publication can be downloaded from www.healthcouncil.nl.

Preferred citation:

Health Council of the Netherlands. Requirements for proof of SARS-CoV-2 testing: ethical and legal conditions.

The Hague: Health Council of the Netherlands, 2021; publication no. 2021/02.

All rights reserved

