



October 4, 2021

The Honorable Kathy Hochul  
Governor of New York State  
NYS State Capitol Building  
Albany, NY 12224

Dear Governor Hochul:

Welcome to your new office. We, the members of the COVID-19 Working Group New York,<sup>1</sup> as well as allied health care professionals and advocates, academics, civil rights advocates, social workers, and community-based organizations, are eager to work with your administration to quell the COVID-19 pandemic in New York State and advance health equity for all New Yorkers.

Since April 2020, our coalition has submitted evidence-based, community-developed recommendations and strategies to New York State and New York City decision makers to address the SARS-CoV-2 pandemic and intervene to fix the fractured, inequitable systems of care that have exacerbated its impact, with low-income communities of color bearing a disproportionate burden of infection, serious illness, and mortality. Ongoing racial disparities continue to impede New York's COVID response, with Black New Yorkers significantly less likely to have received vaccination than members of other racial groups.<sup>2</sup>

As Governor, you have the opportunity to ensure that all of New York's communities emerge from the pandemic. Toward that end, we recommend the following initial actions to respond to COVID-19:

1. Establish a Statewide COVID-19 and Long COVID-19 Community Advisory Group
2. Increase vaccine access and equity by partnering with community-based organizations
3. Ensure meaningful access to vaccines for justice-involved New Yorkers
4. Reinstate emergency measures to mitigate the impact of COVID-19 on New Yorkers experiencing homelessness
5. Enact the Vaccine Confidentiality and Immunity Passports Privacy Bill

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<sup>1</sup> COVID-19 Working Group New York, <https://www.covid-19workinggroupnyc.org>. The COVID-19 Working Group New York is a coalition of doctors, health care professionals, scientists, social workers, community workers, activists, and epidemiologists committed to a rapid and community-oriented response to the SARS-CoV-2 pandemic.

<sup>2</sup> *New York State COVID-19 Vaccination Demographics: Race & Ethnicity*, NEW YORK STATE DEPARTMENT OF HEALTH, <https://covid19vaccine.health.ny.gov/vaccine-demographic-data> (last visited Sept. 27, 2021).

## 6. Veto S.4516-C/A.7536-B, the Vaccine Card Falsification Crime Bill

We welcome the opportunity to meet with your office to discuss these urgent issues, outlined below.

### **Establish a Statewide COVID-19 and Long COVID-19 Community Advisory Group**

The state has identified vaccination and contact tracing as key strategies to stem the spread of COVID-19 and its delta variant. However, as experience to date has demonstrated, community trust must be the foundation of any effective initiative.

Since the early days of the pandemic, the COVID-19 Working Group has consistently advocated for a Statewide Community Advisory Group to help ensure the necessary trust is generated and protected. It should be convened by the State's Department of Health (DOH) and co-facilitated by DOH and a representative of the community. The Statewide Community Advisory Group should adhere to New York State's Open Meetings Law. The advisory group should be comprised of members from each region of the State, including public health experts, a cross section of health care providers who provide direct care, leaders from community-based organizations, disability justice organizations, privacy law experts, faith leaders, and persons directly impacted by the pandemic, including but not limited to stakeholders from the Long COVID and ME/CFS communities, among others. The advisory group should reflect the cultural and linguistic diversity of New York State.

We strongly believe that the State must forge robust community partnerships with New Yorkers, their communities, and the organizations that serve them if it is truly committed to the success of its vaccine and contact tracing initiatives and to addressing the acute and long term COVID-related health needs of the community. We urge you to appoint a Statewide Community Advisory Group as soon as possible.

### **Increase Vaccine Access and Equity by Partnering with Community-Based Organizations**

The initial vaccine roll-out strategy, which focused on mass vaccination sites and the pharmacy network for vaccine delivery, sidelined community-based organizations (CBOs), safety-net providers, senior centers, and others who know how to reach our Black, Latinx, brown, immigrant, disabled, and low-income communities.<sup>3</sup> As a result, stark racial disparities in vaccination rates persist statewide.<sup>4</sup> Current efforts to support community-based delivery are hindered by the distrust that these early failures caused and by ongoing reliance on external contractors and agencies rather than utilizing local expertise and building community-level capacity. A Statewide Community

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<sup>3</sup> Letter from COVID-19 Working Group to Dr. Howard Zucker, Commissioner, New York State Department of Health, Dr. Dave A. Chokshi, Commissioner, New York City Department of Health & Mental Hygiene, & Dr. Mitchell Katz, President & Chief Executive Officer, New York City Health + Hospitals (Feb. 12, 2021) (<https://static1.squarespace.com/static/5e6fd0a65abcc54f238eae48/t/602b288efcff027e852f7129/1613441167335/Vaccine+Equity+Sign-on+Letter+2-11-21.pdf>); *see generally* NEW YORK CITY COUNCIL COMMITTEES ON HEALTH, AGING, AND TECHNOLOGY ON OVERSIGHT - COVID-19 AND SENIORS: ADDRESSING EQUITY, ACCESS TO THE VACCINE, AND SCHEDULING VACCINATION APPOINTMENTS ONLINE IN NYC (2021); NEW YORK CITY COUNCIL COMMITTEES ON HEALTH AND HOSPITALS ON OVERSIGHT OF NYC'S COVID-19 TESTING AND CONTACT TRACING PROGRAM, PART II (2020).

<sup>4</sup> *See New York State COVID-19 Vaccination Demographics: Race & Ethnicity*, NEW YORK STATE DEPARTMENT OF HEALTH, <https://covid19vaccine.health.ny.gov/vaccine-demographic-data> (last visited Sept. 27, 2021).

Advisory Group can infuse much-needed expertise and trust into our state’s vaccination distribution mechanisms. In addition, your administration should: consult with CBOs on the placement of vaccination sites and other strategic decisions; partner with and fund CBOs to engage harder to reach populations; pair every vaccination site with CBOs or connector organizations to facilitate effective outreach; employ and resource CBOs to staff outreach teams; work with CBOs to design funding opportunities to reach smaller grassroots CBOs that do not have the capacity to find, write, administer, and report on large grants themselves; incentivize and support well-connected and larger CBOs to work with smaller CBOs with strong community ties; provide support to smaller CBOs seeking vaccine allocations; and increase CBO influence on and access to the placement of mobile vaccination units. Where these decisions are made locally, your office should work with and incentivize localities to engage in authentic partnership with CBOs.

### **Ensure Meaningful Access to Vaccines for Justice-Involved New Yorkers**

The public health need for widespread vaccine acceptance in prisons is clear, and the COVID-19 Working Group, along with other public health professionals, advocacy groups, and impacted individuals and their families, has called for an effective roll-out in State facilities since vaccines became available. Due to the nature of congregate living facilities, researchers have called jails and prisons “epicenters of COVID-19 transmission” that “present an ideal setting for infections to spread.”<sup>5</sup> These same researchers note that “community rates of infection will not decrease if jails are not a central focus of public health strategies to mitigate the spread of the epidemic.”<sup>6</sup>

While we are relieved that the Department of Corrections and Community Supervision (DOCCS) is finally offering the COVID-19 vaccine to all incarcerated New Yorkers, we remain concerned about the current strategy for vaccine education and delivery. Beyond access to the vaccines, an effective DOCCS vaccination plan must reflect the realities that may hinder meaningful education and informed consent in the prison context. The State must be cognizant of the effects of the history of medical experimentation on incarcerated people and people of color in the United States, the hierarchical constraints inherent in carceral settings, and the deep distrust many incarcerated people and their families feel towards correctional authorities, including health providers. We recommend that DOCCS, via trusted peer educators, provide regular, clear, culturally appropriate information about COVID-19 and the vaccine’s safety and efficacy to incarcerated individuals. In addition to written information, there should be the chance for discussion and answering questions. Thoughtful messaging from someone trained in public health, that takes into account cultural and personal circumstances, is far more likely to yield fully informed voluntary consent to vaccination than a message from correctional officers. The Prisoners AIDS Counseling and Education (PACE) peer advocacy program is a good model for this kind of peer-led education. Likewise, we recommend that vaccines be administered by outside health personnel rather than DOCCS providers, who are often distrusted by incarcerated individuals. Individuals who receive the vaccine should have ready access

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<sup>5</sup> Lisa B. Puglisi et al., *Estimation of COVID-19 basic reproduction ratio in a large urban jail in the United States*, 53 ANNALS OF EPIDEMIOLOGY 103-05 (2021), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7480336/>.

<sup>6</sup> *Id.*

to over-the-counter pain relievers to manage common side effects such as muscle soreness, and there should of course be monitoring in place for any rare serious side effects.

## **Reinstate Emergency Measures to Mitigate the Impact of COVID-19 On New Yorkers Experiencing Homelessness**

The COVID-19 Working Group urgently requests that you exercise the State’s authority to ensure that appropriate actions are taken in every community across the State to protect people at heightened risk of SARS-CoV-2 infection and serious illness due to homelessness or housing instability. We particularly urge you to work closely with New York City to ensure the continuation or reinstatement of strategies recommended by the CDC and the Federal Interagency Council on Homelessness to mitigate the impact of the pandemic on people experiencing homelessness – particularly in light of the renewed dangers posed by the delta variant and the surge in new COVID-19 diagnoses.

We applaud your efforts to prevent evictions and to speed the delivery of assistance necessary to avert adding thousands of New Yorkers to the ranks of those experiencing homelessness. Yet homelessness remains at record highs in NYC, with over 45,000 individuals in City shelters, including over 16,000 single adults who face greatly heightened risk of SARS-CoV-2 infection in crowded congregate shelters where as many as 20 persons sleep in a single room. While the current COVID-19 pandemic in NYC has dramatically impacted the lives of every person in our city, homeless New Yorkers are particularly vulnerable, as they have much higher rates of serious underlying health problems, generally lack access to quality health care, and have no way to self-quarantine. Multiple outbreaks in homeless shelters have been documented in a number of U.S. cities,<sup>7</sup> and a CDC analysis found that people experiencing homelessness, particularly those living in close quarters, are at increased risk for severe COVID-19 illness.<sup>8</sup> In NYC, analysis of available data showed that through February 2021, homeless New Yorkers experienced an age-adjusted mortality rate 49% higher than the rate for NYC as a whole.<sup>9</sup>

Most urgently, we seek a halt and reversal of NYC’s dangerous decision to transfer single adults experiencing homelessness from the safety of FEMA-funded hotel rooms back into crowded congregate shelters. Recognizing the unconscionable risk posed by congregate shelters, and following clear CDC guidance,<sup>10</sup> in late spring 2020 the NYC Department of Homeless Services (DHS) moved some 10,000 single adults into hotel rooms to stop the spread of the virus. DHS announced in early summer this year that given the lowered rate of transmission in the City, it would begin the

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<sup>7</sup> Mosites E, Parker EM, Clarke KE, et al. Assessment of SARS-CoV-2 Infection Prevalence in Homeless Shelters — Four U.S. Cities, March 27–April 15, 2020. *MMWR MORB MORTAL WKLY REP* 2020; 69:521–522.

DOI: <http://dx.doi.org/10.15585/mmwr.mm6917e1> external icon.

<sup>8</sup> Cha S, Henry A, Montgomery MP, et al. Morbidity and Mortality Among Adults Experiencing Homelessness Hospitalized With COVID-19. *J INFECT DIS*. 2021;224(3):425-430. doi:10.1093/infdis/jiab261

<sup>9</sup> *Age -Adjusted Mortality Rate for Sheltered Homeless New Yorkers*, COALITION FOR THE HOMELESS, <https://www.coalitionforthehomeless.org/age-adjusted-mortality-rate-for-sheltered-homeless-new-yorkers/> (last visited Sept. 2, 2021).

<sup>10</sup> *CDC Interim Guidance for Homeless Service Providers to Plan and Respond to Coronavirus Disease 2019 (COVID-19)*, CDC, June 8, 2021,

<https://www.cdc.gov/coronavirus/2019-ncov/community/homeless-shelters/plan-prepare-respond.html>

process of returning single adults back into congregate shelter. As you know, however, the rise of the delta variant has changed the trajectory of the pandemic dramatically over the course of the summer, and for weeks New York has been classified as having a “high” risk of community transmission.<sup>11</sup> Despite the resurgence of the highly transmissible delta variant, including breakthrough infections among vaccinated persons, and in direct contravention of recent delta variant guidance from the U.S. Interagency Council on Homelessness,<sup>12</sup> DHS continues to transfer homeless New Yorkers back into crowded congregate shelters.

As stated in the Interagency Council guidance, based on the level of community transmission, “communities that have begun to deactivate or have discontinued COVID-specific NCS [non-congregate shelter] may need to pause or re-activate operations. Indeed, on August 17<sup>th</sup>, the White House announced that FEMA will continue to cover 100% cost sharing for non-congregate shelter and other COVID-19 related expenses through December 31, 2021.<sup>13</sup>

Although there has been no public explanation for this course of action by the City, we understand that DHS may believe that a lack of clear New York State direction has constrained its access to FEMA funding to support continued de-densification of the congregate shelters. We urge you to exercise your authority to work with the City to take immediate action to protect extremely vulnerable, primarily Black and Latinx, New Yorkers experiencing homelessness.

### **Enact Vaccine Confidentiality and Immunity Passports Privacy**

Given the rise of the delta variant and the increasing requirement that people show proof of vaccination in order to engage in indoor activities, New York must double down on eliminating barriers to vaccination, and it must ensure that immunity passports do not cut the most vulnerable off from participating in society. During the legislative session, we supported A.7326/S.6541, which advances these goals by ensuring that everyone both is and *feels* safe sharing the personal information required to receive a vaccine and by making sure that immunity passports do not become another tool that disproportionately hurts the people who have suffered most throughout the COVID-19 pandemic. Although the bill passed the Assembly unanimously, it failed to advance in the Senate. We urge you to do whatever you can to enact these critical protections, whether that be by executive order, by calling the Senate into special session, or by including these protections in your budget.

The bill advances three critical protections: 1) it imposes privacy and confidentiality obligations on vaccine navigators, the third parties that help people sign-up for vaccine appointments and that are

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<sup>11</sup> *CDC COVID Data Tracker*, CDC, <https://covid.cdc.gov/covid-data-tracker/#datatracker-home> (last visited Sept. 10, 2021).

<sup>12</sup> *The Delta Variant: 5 Ways Communities Can Protect People Experiencing Homelessness*, UNITED STATES INTERAGENCY COUNCIL ON HOMELESSNESS, [https://www.usich.gov/resources/uploads/asset\\_library/USICH\\_COVID\\_Delta\\_Guidance.pdf](https://www.usich.gov/resources/uploads/asset_library/USICH_COVID_Delta_Guidance.pdf).

<sup>13</sup> *Memorandum on Maximizing Assistance to Respond to COVID-19*, THE WHITE HOUSE, PRESIDENTIAL ACTIONS, Aug. 17, 2021, <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/08/17/memorandum-on-maximizing-assistance-to-respond-to-covid-19/>.

not currently subject to HIPAA or Public Health Law 18; 2) it tightens up the privacy protections in our state Immunization Information System (IIS) to ensure that vaccine recipient information cannot be used to criminalize or deport anyone; and 3) it ensures that people can use vaccine passports without fear that they will become universal tracking devices or that they will be used to criminalize or deport anyone or to take away anyone's children.<sup>14</sup>

We urge you to do everything in your power to make sure that these sensible protections, which will remove barriers to vaccination, become law expeditiously.

### **Veto S.4516-C/A.7536-B**

This bill would make falsifying a COVID-19 vaccine card a class A misdemeanor and would create a new E felony for intentional alteration or destruction of "computer material" regarding COVID-19 vaccine provision. This bill will do nothing to stem the spread of COVID-19 but will further marginalize the very communities who have already borne the brunt of the pandemic.

Unfortunately, it is still gallingly difficult to obtain a vaccine in many of New York's most marginalized communities for a variety of reasons, including a paucity of vaccination sites<sup>15</sup> and a lack of culturally and linguistically competent vaccine outreach.<sup>16</sup> A bill directed not at vaccine access, awareness, and education but at criminalization of workarounds borne of that lack of access, awareness, and education will effectively penalize Black, Latinx, brown, immigrant, and low-income communities. Many of these communities are home to essential workers, who may seek fake vaccine cards because they cannot afford not to work and do not have jobs that allow work-from-home. This bill will criminalize individuals from these communities, who have been unable to receive a vaccine, simply for doing what they can to survive.

Moreover, we know that our Black, Latinx, brown, immigrant, and low-income communities are already disproportionately over-surveilled and over-policed.<sup>17</sup> As our nation stands in the midst of a

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<sup>14</sup> See generally Memorandum from the NYCLU to the New York State Legislature (2021 - 2022) (<https://www.nyclu.org/en/legislation/legislative-memo-confidentiality-vaccine-information>); Memorandum from Access Now et. al to the New York State Legislature (May 2021) ([https://www.nyclu.org/sites/default/files/field\\_documents/2021-jointmemo-vaccineconfidentialityandpassports.pdf](https://www.nyclu.org/sites/default/files/field_documents/2021-jointmemo-vaccineconfidentialityandpassports.pdf)).

<sup>15</sup> E.g. Natasha Williams, Haleigh Tutrow, Paulo Pina, et al, *Assessment of Racial and Ethnic Disparities in Access to COVID-19 Vaccination Sites in Brooklyn, New York*, JAMA NETWORK OPEN 1 (2021) ("The median (range) number of vaccination sites (4 [0-5]) among districts with less than 40% White (non-Hispanic) race/ethnicity was less than the number of vaccination sites (6 [3-8]) among districts with greater than or equal to 40% White (non-Hispanic) race/ethnicity . . . Of note, district 16 had the highest percentage of the population below the poverty threshold (29.4%) and has 0 vaccination sites."). See generally Letter from ACT UP NY et. al. to Kathy Hochul, Governor of New York State (Aug. 30, 2021) (<https://www.nyclu.org/en/publications/sign-letter-bill-criminalizing-falsified-vaccine-cards>).

<sup>16</sup> See generally Letter from ACT UP NY et. al. to Kathy Hochul, Governor of New York State (Aug. 30, 2021) (<https://www.nyclu.org/en/publications/sign-letter-bill-criminalizing-falsified-vaccine-cards>).

<sup>17</sup> E.g., Joshua Solomon & Emilie Munson, *New data: In New York, nearly half of police use of force cases involved Black people*, TIMES UNION, July 10, 2021, <https://www.timesunion.com/news/article/Nearly-half-of-use-of-force-cases-by-police-16302282.php> ("Half the time police in New York say they wielded force it was used on a person who is Black . . . [T]he state's overall population . . . is 18 percent Black. Some Capital Region

long-overdue reckoning on racism, police brutality, and white supremacy, we are concerned that this new crime will disproportionately impact Black, Latinx, brown, and low-income communities and offer police officers yet another reason to surveil, stop, search, investigate, and detain members of these communities.<sup>18</sup>

A new crime will not encourage individuals to get vaccinated, because a new crime does nothing to make it easier to get vaccinated. But a new crime does threaten to cut off the very people who have carried us through the pandemic – disproportionately Black, Latinx, brown, immigrant, and low-income essential workers – from society. We urge you to veto S.4516-C/A.7536-B.

We urge you to adopt each of these proposals – a safe and just reopening depends on it – and we stand ready to work with your administration as you design and implement community-driven and evidence-based approaches to address the COVID-19 pandemic. We look forward to meeting with your office to discuss these proposals in detail.

Sincerely,

ACT UP NY

African Services Committee

Alliance for Positive Change

Body Politic

Brooklyn Defender Services

Callen-Lorde Community Health Center

Center for Appellate Litigation

Center for HIV Law and Policy

Commission on the Public's Health System

Covid Courage

CUNY Institute for Implementation Science in Public Health

Gender Equality New York, Inc.

Grand St. Settlement

Harlem United

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police departments, including Albany, Troy and Schenectady, reported that Black people accounted for more than 60 percent of cases in which they used force . . ."); *Annual Stop-and-Frisk Numbers*, NYCLU, 2019, <https://www.nyclu.org/en/stop-and-frisk-data> (documenting that in 2019, 59% of people subjected to stop and frisk in New York City were Black, 29% were Latinx, and only 9% were white); Jake Offenhartz, *NYPD's Enforcement of Marijuana Laws Still Plagued By Extreme Racial Disparities*, GOTHAMIST, Mar. 10, 2021, <https://gothamist.com/news/nypds-enforcement-marijuana-laws-still-plagued-extreme-racial-disparities> ("93% of those arrested for marijuana in NYC [in 2020] were Black or Hispanic. White people — who make up 45% of the city's population and have been shown to use marijuana at equal rates as other racial groups — accounted for less than 5% of citywide arrests.").

<sup>18</sup> This would not be the first time that COVID-19-related enforcement actions have fallen disproportionately on communities of color. According to data released by the NYPD, more than 80 percent of those ticketed for social distancing-related enforcement are Black and Latinx. Erin Durkin, *Black and Latino New Yorkers Get Vast Majority of Social Distancing Summonses*, POLITICO, May 8, 2020, <https://www.politico.com/states/new-york/albany/story/2020/05/08/black-and-latino-new-yorkers-get-vast-majority-of-social-distancing-summonses-1283223>.

High Impact Strategies  
Hispanic Health Network  
Housing Works  
Latino Commission on AIDS  
#MEAction New York  
National Black Leadership Commission on Health, Inc.  
New York Civil Liberties Union  
New York State Association of Criminal Defense Lawyers (NYSACDL)  
Southern Tier AIDS Program  
S.T.O.P. The Surveillance Technology Oversight Project  
Treatment Action Group  
Wayne Action for Racial Equality

Individuals<sup>19</sup>

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Kalvin Leveille, AIDS Institute  
David Barr, The Fremont Center  
Joseph Osmundson, PhD, Clinical Assistant Professor of Biology, NYU  
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Judy Wessler, MPH

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<sup>19</sup> Organizational affiliation provided for identification purposes only.