**COMMITTEE ON IMMIGRATION & NATIONALITY LAW**

VICTORIA F. NEILSON
**CHAIR**
42 W. 44TH STREET
NEW YORK, NY 10036
Vickie.neilson@gmail.com

**COMMITTEE ON HEALTH LAW**

BRIAN MCGOVERN
**CHAIR**
590 MADISON AVE
NEW YORK, NY 10022-2544
bmcgovern@crowell.com

**COMMITTEE ON BIOETHICAL ISSUES**

ALAN BRUDNER
**CHAIR**
575 MADISON AVE
NEW YORK, NY 10022-2585
Alan.brudner@katten.com

November 26, 2019

Hon. Mark Levine
New York City Council
500 West 141st Street
New York, NY 10031

**RE: Int. 1668-2019, establishing a health access program**

Dear Council Member Levine:

The Immigration and Nationality Law, Health Law, and Bioethical Issues Committees (the Committees) of the New York City Bar Association (City Bar) submit this letter in support of Int. 1668-2019, a proposed amendment to Title 17 of the administrative code of the city of New York that would establish a public health access program. We also would like to offer some recommendations for your consideration that we believe will further the goals of the bill.

## I. THE PROPOSAL

Under the proposed legislation, a new Chapter 19 would require the New York City Department of Health and Mental Hygiene, or other designated agency, to establish and administer a public Health Access Program guaranteeing health care for all New York City residents across the five boroughs. Importantly, the aim of the Health Access Program would be to expand access to affordable and timely preventive, primary, and specialty medical and mental health care through public hospitals and community-based clinics. The program would address gaps in care for uninsured city residents, regardless of their immigration status or ability to pay, and would help to assure access to high quality culturally and linguistically competent care.

Covered health care services under Chapter 19 would include primary medical services delivered by primary care physicians or practitioners through medical homes, including referrals to testing and specialty services as well as management of chronic conditions and diseases. Patient navigators would assist program participants in accessing the care they need. Twenty-four-hour, seven-day per week telemedicine services would also be available.

## II. BARRIERS TO HEALTH CARE

It is widely recognized that there are major barriers to accessing health care among New York City residents, especially among marginalized and disenfranchised populations and groups such as immigrant women and men, their children and families, asylees, persons transitioning from prison to the community, racial, ethnic, gender and sexual minorities, persons who are non-English speakers, isolated older adults, and those who are living below or near the poverty line.[1] In light of the patchwork quilt of health care benefits available through federal and state insurance programs, and both current and proposed new restrictions on access to the Medicaid program such as those listed in the Public Charge Rule[2], it is incumbent upon local governments to take steps to expand access to health care.

## III. THE PROPOSAL SUPPORTS PUBLIC HEALTH THROUGHOUT NEW YORK CITY

The proposed establishment of a Health Access Program would go a long way in advancing more effective public health approaches to integrating non-discriminatory health systems in all New York City neighborhoods and communities, and in addressing social and economic, as well as legal, determinants of health. Providing community-based preventive, primary, and specialized care for uninsured and underinsured New York residents is a commonsense way to promote the health and well-being of all New Yorkers. In these contexts, the Committees of the City Bar also express full support for S.3900/A.5974, an act to amend the social services law, in relation to coverage for health care services under a state-funded basic health program for individuals whose immigration status renders them ineligible for federal financial program participation.

---

[1] Access to health care for these communities is also problematic based on hospital type, location within the city, stage during a medical episode in which an individual seeks health care, age, etc. See, for instance, Tikkanen, R. S. et al. (2017). Hospital Payer and Racial/Ethnic Mix at Private Academic Medical Centers in Boston and New York City. *International Journal of Health Services*, 47(3), 460–476. https://doi.org/10.1177/0020731416689549; Howell, E.A. et al (2018). Differences in Morbidity and Mortality Rates in Black, White, and Hispanic Very Preterm Infants Among New York City Hospitals. *JAMA Pediatr.*, 172(3), 269–277. https://doi.org/10.1001/jamapediatrics.2017.4402; and Remien, R. H. et al. (2015). Barriers and facilitators to engagement of vulnerable populations in HIV primary care in New York City. *Journal of acquired immune deficiency* syndromes, 69 Suppl 1(1), S16–S24. https://doi.org/10.1097/QAI.0000000000000577. (All links cited in this letter were last checked on November 26, 2019).

[2] A recent barrier for some of these communities is the so-called "Public Charge" rule. Under it, those individuals likely to use certain federal public benefits for more than 12 months over a 36 month period could be rendered inadmissible to the United States on a visa or adjustment of status to lawful permanent resident. Although this rule has been enjoined in federal court, an appeal is underway. U.S. Citizenship and Immigration Services, *Public Charge*, last modified on October 18, 2019, at https://www.uscis.gov/greencard/public-charge. Also, National Immigration Law Center, *Public Charge*, last modified on October 15, 2019, at https://www.nilc.org/issues/economic-support/pubcharge/.

## IV. RECOMMENDATIONS

While the Committees embrace the critically important goal of expanding access to health care that the proposed legislation would advance, the Committees have specific recommendations for strengthening the proposed Health Access Program legislation:

- Financing: More detailed information on how the Health Access Program would be financed would be helpful in garnering broader support. For example, would the program be funded by a combination of sliding scale fees, state and local monies and independent philanthropic donations, to the exclusion of federal funds?
- Intended beneficiaries: To ensure that the Health Access Program expands coverage to those who are uninsured or underinsured, or who cannot access care on account of gaps in coverage, as intended, and does not supplant existing coverage available to program applicants, the bill should provide that only those individuals who can demonstrate that they are not insured for the covered services in question or are not eligible for insurance, as determined by the Health Department, would be eligible to participate in the Health Access Program.
- Integrated medical and social care: Access to primary medical and mental health services must include access to social services to help address social and economic determinants of health, such as unmet housing and transportation needs.
- Expanded access to palliative care: All New Yorkers have a right to palliative care. Expanded access to palliative care, including palliative counseling, for persons with chronic and serious illness or serious mental illness, is also imperative in assuring pain and symptom management in addition to other appropriate services under New York's palliative care laws.[3]
- Trauma-informed care and workforce training: Funding for workforce training in trauma-informed care must be covered under the Health Access Program to assure all physicians and practitioners are equipped to assess and provide appropriate trauma-informed services to undocumented immigrants and their children as their needs indicate, as well as any other persons in need of such services.[4]

---

[3] Stacie Sinclair et al. How States Can Expand Access to Palliative Care. *Health Affairs Blog*, January 30, 2017. https://www.healthaffairs.org/do/10.1377/hblog20170130.058531/full/; Meier D. E. (2011). Increased access to palliative care and hospice services: opportunities to improve value in health care. *The Milbank quarterly*, 89(3), 343–380. https://doi.org/10.1111/j.1468-0009.2011.00632.x.

[4] Bowen, E. A. et al. (2016). Trauma-Informed Social Policy: A Conceptual Framework for Policy Analysis and Advocacy. *American Journal of Public Health*, 106(2), 223–229. https://doi.org/10.2105/AJPH.2015.302970; Damian, A. J. et al. (2017). Organizational and provider level factors in implementation of trauma-informed care after a city-wide training: an explanatory mixed methods assessment. *BMC health services research*, 17(1), 750, https://bmchealthservres.biomedcentral.com/articles/10.1186/s12913-017-2695-0. See also *Ms. J.P et al. v. Jefferson B. Sessions et al*, Case 2:18-cv-06081-JAK-SK, Nov. 5, 2019, a decision of the U.S. District Court, Central District of California, in which the court found that defendants had not presented evidence that they had responded to the significant indicia of trauma described by plaintiffs, who had been detained by the United States and separated from their children, and their experts; and further, granting a preliminary injunction and ordering that defendants make available medically appropriate mental health screenings and mental health treatment to address plaintiffs' identified treatment needs and effects of prior or ongoing separation from their minor children.

- Privacy protections: Health access program participants must be given effective notice of and afforded the opportunity to opt-out of participating in Regional Health Information Organization Systems. This is particularly important in an environment of eroding rights, especially for undocumented immigrants who may be at heightened risk for detention and deportation if their personal identifying health information should become available to certain government agencies. Further information privacy protections and notice requirements must be built into the bill. Additionally, to ensure the RHIO opt-out option is fully effective, Health Access Programs should be required to document that the opt-out has been clearly communicated to participants in linguistically and culturally competent fashion.
- Public Charge: Should the public charge regulation go into effect, we urge those who would be implementing the Health Access Program to adequately explain to all applicants the potential immigration implications of accepting these services, and to provide resources and referrals to organizations/attorneys who can answer an individual's questions about potential immigration implications, if any, of accepting these services.

***

All New Yorkers should have full and unfettered access to health and mental health services as assured through law and the establishment of health systems that are fully available, accessible, affordable and non-discriminatory. The Health Access Program would advance these goals and help to remove barriers to getting care in all neighborhoods and communities of New York City. The City Bar's Immigration, Health, and Bioethical Issues Committees fully support the Health Care Access legislative proposal.

We would welcome the opportunity to have you come and speak with our Committees and let us know how we can be helpful in supporting and promoting the proposal.

Respectfully,

Victoria Neilson, Chair
Immigration Committee

Brian McGovern, Chair
Health Law Committee

Alan Brudner, Chair
Bioethical Issues Committee

Cc: Hon. Margaret S. Chin
Hon. Mathieu Eugene
Hon. Corey D. Johnson
Hon. Ben Kallos
Hon. Brad S. Lander

Hon. Keith Powers
Hon. Carlina Rivera