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John K. Carroll
President

Janet E. Sabel
Attorney-in-Chief
Chief Executive Officer

Adriene L. Holder
Attorney–in–Charge
Civil Practice

VIA EMAIL

March 26, 2020

Carolyn Kruk
Thomas Roberts
N.Y.C. Department of Law
100 Church Street
New York, NY 10007

Martha Calhoun
Carolyn Wolpert
N.Y.C. Department of Social Services
150 Greenwich St.
New York, NY 10038

Re: *Callahan* violations in the wake of the COVID-19 pandemic

Counsel:

In the face of the unprecedented challenges posed by the COVID-19 pandemic in New York City, it is now clear that the only way for the City to meet its obligations under *Callahan v. Carey* and its basic responsibilities to protect the health and safety of New Yorkers is to immediately provide hotel placements to everyone who needs one. We write to secure your commitment that you will comply with the City's obligations in this regard and that every homeless New Yorker will receive a placement that is safe for them and others.

It is impossible for the City to meet its obligations without offering an alternative to congregate shelter. The *Callahan* decree was drafted and agreed to precisely to prevent the kinds of harm that our clients are currently facing as the virus spreads throughout the City and the shelter system, and your disregard of those protections not only violates the decree but also places every shelter resident and staff worker – and any New Yorker who came or will come into contact with them – at grave risk of becoming ill or further spreading the virus. While we are aware of the extraordinary efforts you are making to respond to the crisis faced by all New Yorkers during the COVID-19 pandemic, your current plan is not consistent with the City's own assessment of best medical practices or the requirements of the *Callahan* decree, and it is endangering *Callahan* class members and unnecessarily consuming hospital resources urgently needed for other patients, while also placing these other patients and hospital staff at risk. The current practices also violate the City's obligations under disability law.

In response to the crisis, the City has effectively denied access to shelter to COVID-19-positive or likely positive homeless single adults who have not had recent prior contact with DHS. You are currently denying shelter to infected or presumably infected individuals in cases where DHS

determines that a homeless adult has not stayed in a DHS shelter in the past 12 months or had at least one contact with a DHS outreach team. In particular, these restrictions deny shelter to such individuals if they:

- have COVID-19 illness,
- have COVID-19-like illness,
- have had exposure to others with COVID-19 illness or COVID-19-like illness, or
- are highly vulnerable to COVID-19 because of an underlying or pre-existing condition.

This group includes patients who are newly homeless, people who are street homeless but have not been recorded by a DHS street outreach team, and those in non-DHS shelters. The result is to deny any shelter to *Callahan* class members who meet these criteria, including:

- people temporarily unable to return to their previous address due to the risk that other household members will become infected, whether they were previously doubled-up or part of the household;
- youth 18 or older previously served in the Runaway and Homeless Youth shelters;
- single adults who most recently were members but not heads of households staying in DHS family shelters who were required to leave due to alleged domestic violence circumstances;
- individuals who have recently lost their informal housing arrangements (such as rooms) as a result of pandemic-related job loss; and
- individuals who were hospitalized, in jail, or in other institutional settings who are now newly homeless and who have not received DHS services in the past 12 months.

We have raised these violations of the *Callahan* decree with multiple City agencies and were advised the City planned for the City's Office of Emergency Management to open isolation beds in hotels to serve this population, but to date no such beds have been made available. In the meantime, hospitals have had to use increasingly scarce beds to admit homeless patients with mild possible COVID-19 symptoms or discharge them with no realistic expectation that they will be able to successfully socially distance themselves.

At the same time, the shelter system is failing to comply with DOHMH guidance in regard to basic health and safety, including each area in DOHMH's most recent guidance on facilities offering congregate care, which includes the following top-line categories:

o Prevent the introduction of COVID-19 and other respiratory pathogens into your facility
o Rapidly identify persons with respiratory illness that could be COVID-19
o Prevent the spread of COVID-19 and other respiratory pathogens within and between your facility or facilities
o Manage and isolate persons with suspected or confirmed COVID-19

- o Be familiar with infection prevention guidance
- o Accommodate persons with possible or confirmed COVID-19

See DOHMH, "Coronavirus Disease (COVID-19) Guidance for Congregate Settings" (March 19, 2020). *See also* NYS DOH, "Health Advisory: COVID-19 Cases in Nursing Homes and Adult Care Facilities" (March 13, 2020). Currently DHS intake offices and shelters fail to adequately screen applicants and residents; provide basic cleaning supplies and nutrition; supply necessary equipment and supplies to protect clients and staff; communicate with clients and staff about their individual needs or current practices and procedures; or, of course, offer the vast majority of clients the ability to remain six feet from the next resident or use a private bathroom.

The pressures on the shelter system are increasing rapidly. As of March 25th, there were 44 confirmed cases of COVID-19 among homeless people staying in 30 city shelters.
The single adult men's shelter system set an all-time record of 12,706 on March 24th. The outbreak has caused a surge in demand for adult shelter beds for a number of reasons: hospitals are discharging other inpatients to make room for COVID-19 cases; people who had been living doubled-up in unstable or extremely crowded housing have now been forced out by hosts no longer willing to accept them; releases from jails and prisons to reduce crowding in jails and prisons, where those formerly incarcerated are much more likely to have been exposed than the general population; and the lack of other options for people who had been surviving on the streets but now find that it is impossible to meet their basic needs for nutrition and hygiene in any other way.

As you know well, many homeless people in New York City have the underlying conditions that have been found to put someone at risk for severe COVID-19 outcomes, including advanced age, lung disease, heart disease, chronic liver or kidney disease (including hepatitis and dialysis patients), diabetes, epilepsy, hypertension, compromised immune systems (such as from cancer, HIV, or autoimmune disease), blood disorders (including sickle cell disease), inherited metabolic disorders, stroke, developmental delay, and pregnancy. The presence of positive or presumptively positive individuals in congregate shelter settings poses a potentially fatal threat to anyone with one or more of these conditions and stands in violation of the DOHMH guidance issued in response to the crisis, as well as the City's obligations under *Butler v. City of New York* to accommodate shelter residents with disabilities who require placements that do not put them at higher risk.

Some localities throughout the U.S. are acting proactively and helping people move – especially the most vulnerable – out of congregate shelters and into housing or private rooms. This has not yet occurred in New York City but must, immediately, on a scale necessary to address the problem. Any other course of action will result in a significantly higher death toll and infection rate and perpetuate the epidemic throughout the City despite all other efforts to promote social distancing.

The mounting evidence of this unfolding disaster is overwhelming. Homeless individuals in contact with Coalition for the Homeless staff and other advocates have reported:

- Living with dorm-mates in shelters who have tested positive for COVID-19 but remain in shelter dormitories, or in cordoned-off areas of congregate shelters.
- Being advised to return to a congregate dormitory or to practice social distancing on the street following testing for COVID-19 in an ER and learning of their positive test result days later.
- Being sent with positive symptoms not including fever to their assigned congregate shelter from an emergency department with a note to the shelter provider advising the need for isolation.
- The creation of a quarantine rooms in two congregate shelters.
- Four LGBTQ COVID-19+ patients in one emergency department waiting over the weekend for eligibility determinations for DHS isolation placements based on prior DHS history.

Physicians have reported to Coalition for the Homeless staff and other advocates:

- A patient who is COVID-19+ and had been living with five other people in a studio, unable to quarantine at home, but ineligible for a DHS isolation bed because, although now temporarily homeless, they have not previously been served by DHS in the past 12 months.
- On one day alone, five homeless patients waiting in one emergency department, all with mild COVID-19 symptoms, denied isolation placements due to not having received DHS services in the past 12 months.
- Emergency departments advising people who are doubled-up, and unable to access isolation beds because they have been found not to have been served by DHS in the past 12 months, to figure out self-quarantine arrangements on their own.
- Homeless patients with mild pneumonia or mild COVID-19 symptoms who have been admitted to hospitals unnecessarily because they were ineligible for isolation sites due to a lack of recorded DHS history, or were "not sick enough," notwithstanding their lack of access to a safe place in which to self-quarantine.
- An outreach client escorted to shelter intake at 30th Street diverted to an emergency department for testing prior to shelter admission despite having no symptoms.
- A young, healthy patient with mild symptoms requiring isolation was the subject of 30 emails over a period of 12 hours between the emergency department and DHS due to reported "inconsistencies" in the person's history before finally receiving approval of the isolation placement.
- Hours-long or overnight delayed responses to calls placed by hospitals to the DHS isolation placement hotline, resulting in numerous unnecessary inpatient admissions for homeless people who were later denied an isolation placement.
- A patient mildly ill with COVID-19 symptoms denied an isolation bed on the basis of their need to receive medication while isolated.

- Three homeless patients with mild symptoms served in the emergency department all day while the DHS hotline calls were met with a busy signal.
- Delays in discharging patients to isolation because car companies declined to transport them.
- Newly homeless patients referred from 30th Street shelter intake to the emergency department due to mild possible COVID-19 symptoms who were unnecessarily admitted to the hospital after being denied isolation placement due to not having been served by DHS in the past 12 months.
- A patient referred to an emergency department with possible COVID-19 symptoms readmitted to congregate shelter facility serving 800 men to retrieve belongings en route to an isolation facility.
- A hospital serving a patient with mild COVID-19-like symptoms advised by the DHS isolation hotline and the patient's assigned shelter to return to the congregate shelter rather than an isolation shelter.
- A hospital advised that no access to isolation was possible for a patient with mild COVID-19-like symptoms for whom no test would be performed due to new testing limits.
- Failure to follow protocols to avoid sending sheltered homeless patients with mild symptoms to emergency departments.

As one group of doctors recently noted in the Daily News, "The cost of inaction is incalculable. While governments must currently choose to invest in certain priorities and not others, ignoring homeless New Yorkers will hurt them and all of us in ways that had not been previously imagined."[1]

We look forward to your response on this issue but maintain the right to seek appropriate relief for our clients who desperately need access to safe shelter.

Very truly yours,

/s/
Joshua Goldfein
Judith Goldiner
Beth Hofmeister
Kathryn Kliff

Cc: Shelly Nortz and David Giffen

[1] "What homeless patients need most now: Coronavirus is a special threat to especially destitute New Yorkers," Dr. Betty Chang, Dr. Jordan Foster, Dr. Nicholas Gavin, New York Daily News, March 25, 2020. *See:* https://www.nydailynews.com/opinion/ny-oped-what-homeless-patients-need-most-20200324-rjbkkp3r6rdv3cmqeiixekniu4-story.html