

October 13, 2020

Steven Banks
Commissioner
NYC Department of Social Services
150 Greenwich Street
New York, NY 10007

Via Email

John K. Carroll
President

Richard J. Davis
Chairperson of the Board

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

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Re: HRA's plan to resume collections against SNAP, Public Assistance, and Medicaid recipients on November 1, 2020

Dear Commissioner Banks:

We write as advocates on behalf of SNAP, Public Assistance, and Medicaid beneficiaries in New York City in response to HRA's plan to resume billing individuals with existing SNAP, Public Assistance, and Medicaid payment and settlement agreements on November 1, 2020. For the reasons herein, we urge HRA to abandon this plan and continue to halt these collections for the duration of the COVID-19 financial crisis or at least stay collections until 60 days after the Federal Public Health Emergency is lifted to allow adequate notice to affected individuals.

We thank you and your staff for your efforts on behalf of New York City's SNAP, Public Assistance, and Medicaid beneficiaries during the COVID-19 emergency. We are grateful HRA has been a partner in advocating for our clients' interests and that many of our previously proposed recommendations to support the efficient administration of benefits during this unprecedented time have been implemented by HRA. We are hopeful we can likewise resolve our concerns regarding HRA's plans to resume previously-paused billings in agency enforcement actions.

In late March, HRA informed advocates via email that HRA and the NYC Law Department had taken various steps to halt all agency claims and collections during the COVID-19 emergency including:

- Instructing HRA's two contracted law firms – Leopold, Gross & Sommers and Linebarger Goggan Blair & Sampson – to halt pursuing all HRA collection efforts, billings, sheriff/marshal seizures, and garnishments, as well as instructing these firms not to commence any new actions, or affirmatively continue to prosecute any existing actions, and to extend any court ordered deadlines; and
- Suspension of collection on existing payment or settlement agreements:

- Individuals whose payment or settlement agreements are handled by the contracting law firms were mailed letters from the firms, alerting them to the suspension of agency collection efforts. The suspension letter stated that deferred payments will not accrue any interest, would not subject the individual to any penalties during the duration of the emergency, and that after the emergency has passed, the agency will work with the individual to resolve any continuing hardship suffered as a result of the emergency;
- For those whose payment or settlement agreements are handled by HRA, HRA identified the billing letters that should be stopped during the crisis and took immediate steps to temporarily suspend the mailing of non-payment/Dunning letters during the COVID-19 emergency. Advocates were later told verbally that it was impracticable for HRA to send letters to each individual whose agreement is handled by HRA as the contracting law firms did.

Given these steps and assurances, we were alarmed when advocates were told on a Medicaid call with HRA that HRA would resume billings on November 1, 2020.

We urge HRA to consider that resuming collections will further devastate low-income families already struggling to get by during this unprecedented time of illness and economic ruin. HRA must also consider how its plan to resume billing on November 1, with notices not scheduled to be sent until mid-October, does not allow enough time to adequately notify individuals of this policy change and impending collection.

I. HRA's plan to resume billing on November 1 will exacerbate the burdens already facing struggling New Yorkers during this unprecedented public health and economic crisis.

As you are well aware, New York is continuing to fight the virus and pandemic while it ravages most of the country and at the same time, the COVID-19 emergency has resulted in high levels of unemployment and financial hardship for millions of New Yorkers. In August, the City's unemployment rate was 16.3%, compared to 12.6% statewide, and 8.5% nationwide.¹ As of July 11, 2020, over 1.4 million unemployment claims had been filed in New York City.² In the week ending September 19, there were more new unemployment claims in New York than in any other state.³ The

¹ N.Y.S. DEP'T LABOR, EMPLOYED, UNEMPLOYED, AND RATE OF UNEMPLOYMENT BY PLACE OF RESIDENCE FOR NEW YORK STATE AND MAJOR LABOR AREAS, AUGUST 2020, <https://www.labor.ny.gov/stats/pressreleases/prtbur.pdf> (last accessed Oct. 12, 2020).

² E.J. McMahon, EMPIRE CENTER, *In Slow Recovery, NY's Job Drop as of June was Still Among the Worst in U.S.*, <https://www.empirecenter.org/publications/in-slow-recovery-nys-job-loss/> (July 17, 2020).

³ Sydney Pereira, GOTHAMIST, *NY Sees A Spike In Unemployment Claims As Economic Fallout From Coronavirus Continues* (Sept. 24, 2020).

hardest hit in terms of unemployment have been immigrants and people of color,⁴ communities which, in our experience, are disproportionately affected by the enforcement actions at issue here. Applications for and enrollment in SNAP, Cash Assistance, and Medicaid have skyrocketed.⁵ Federal Pandemic Unemployment Assistance, an invaluable lifeline⁶ for millions of New Yorkers, has expired. Despite some reopenings, many businesses remain shuttered. Jobs are scarce and economic stability is a long way off, especially as New York attempts to “reopen” safely.⁷ Moreover, if billings are resumed, the many individuals who are unable to meet their payments will be forced into litigation in state courthouses, which poses grave individual and public health concerns.⁸ Lastly, while we are aware of the fiscal crisis the City faces as a result of the COVID-19 emergency, budget shortfalls must not be met on the backs of struggling New Yorkers.

As a leader and partner in the efforts to address the multifaceted hardships caused by the COVID-19 pandemic, HRA and the NYC Law Department should abandon their plan to resume enforcement billing on November 1 and continue to suspend billing and collection on existing agency payment or settlement agreements indefinitely while New Yorkers deal with the economic crisis caused by the COVID-19 pandemic. Many individuals and families are in no better financial position to meet these obligations now than they were in March. In fact, many are much worse off. There is no reason to believe they will be in better financial circumstances come November 1.

II. HRA must delay collection to ensure proper notice.

While we strongly believe there are moral, humanitarian, and public health justifications for delaying collection activities indefinitely throughout this economic emergency, if HRA does not agree to do so, we urge HRA to stay collections at least until 60 days after the Public Health

⁴ CITY OF NEW YORK OFFICE OF THE COMPTROLLER, THE NEW YORK CITY EMPLOYMENT SITUATION IN MAY: CONTINUED DETERIORATION, <https://comptroller.nyc.gov/reports/the-new-york-city-employment-situation-in-may-continued-deterioration/> (June 19, 2020).

⁵ See Testimony of Steven Banks, Commissioner, Department of Social Services before the New York City Council, Committee on General Welfare (May 18, 2020), available at https://www1.nyc.gov/assets/hra/downloads/pdf/news/testimonies/2020/Testimony_FY21%20Exec%20Budget_051820_FINAL.pdf; Bill Hammond, EMPIRE CENTER, *New York’s Medicaid Enrollment Surges to an All-Time High*, <https://www.empirecenter.org/publications/new-yorks-medicaid-enrollment-surges-to-an-all-time-high/> (July 29, 2020).

⁶ See Linda Giannarelli, Laura Wheaton & Gregory Acs, URBAN INST., *2020 Poverty Projections: Initial US Policy Response to the COVID-19 Pandemic’s Economic Effects is Projected to Blunt the Rise in Annual Poverty* (July 9, 2020), available at https://www.urban.org/sites/default/files/publication/102521/2020-poverty-projections_1_0.pdf.

⁷ See, generally, *supra* notes 2,4; Patrick McGeehan, N.Y. TIMES, *A Million Jobs Lost: A ‘Heart Attack’ for the N.Y.C. Economy*, <https://www.nytimes.com/2020/07/07/nyregion/nyc-unemployment.html> (July 7, 2020); Sally Goldenberg, POLITICO, *Prominent Business Group Paints Grim Outlook for City Economy*, <https://www.politico.com/states/new-york/albany/story/2020/07/19/prominent-business-group-paints-grim-outlook-for-city-economy-1302258> (June 20, 2020).

⁸ See, e.g., Testimony of The Legal Aid Society before The New York State Senate, Joint Public Hearing to Examine the Re-Opening and Operation of New York’s Courts During the COVID-19 Pandemic (Aug. 21, 2020), available at https://www.nysenate.gov/sites/default/files/the_legal_aid_society_-_joint_senate_hearing_on_the_re-opening_of_the_courts.pdf.

Emergency is lifted to allow adequate notice to affected individuals. HRA's proposed November 1 resumption date is wholly inadequate to assure proper notice after eight months of non-collection and after notices went out to thousands of individuals notifying them of the moratorium and that the Agency would work with them to resolve continuing hardship post-crisis.

As stated above, the current plan does not leave adequate time to ensure proper notice of billing resumption to those affected, especially given well-documented postal delays.⁹ Nor does it allow proper time for individuals to reach out to HRA/HRA's contracted collection law firms to "resolve any continuing hardship suffered as a result of the emergency." By the time individuals receive notice of billing resumption and reach out to HRA, they will already be delinquent. Advocates have also requested to review the proposed notices and to be informed of the number of individuals who will be affected by billing resumptions. However, we have not received answers from HRA. We also do not have any clarity on how HRA plans to "work with" those who are facing financial hardship and cannot meet their payments. If HRA is going to resume billing during a public health and economic crisis, it must at least do so thoughtfully, after engaging with stakeholders, and with proper notice. At a minimum, HRA must commit to stay collections at least until 60 days after the Public Health Emergency expires, which is currently planned for January 21, 2021.

As was the case in March, when HRA made these commitments, continuation of a temporary moratorium on collection activity ensures that New Yorkers do not face added economic stress as they try to seek and retain employment, provide for their families, and attend to their health needs during this time of ongoing crisis.

We thank you again for your leadership and commitment to New York's benefits programs. We appreciate you engaging with us to find solutions to these unprecedented challenges.

Sincerely,



Adriene Holder
Attorney-in-Charge
Civil Practice