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March 12, 2020

Governor Charlie Baker
Office of the Governor
Massachusetts State House
24 Beacon St., Room 280,
Boston, MA 02133

Dear Governor Baker:

The recent novel coronavirus outbreak confirms what public health experts have long known to be true – that we live in an interconnected society and that safeguarding the public health requires preserving the health of all. As a result, we were pleased that your administration recently invoked its emergency powers to marshal special funding, the Division of Public Health released new guidance for long term care facilities and the Massachusetts Health Connector expanded open enrollment. Actions like these will save lives.

We nevertheless have recommendations for additional necessary actions that will protect the Commonwealth's residents. As an organization dedicated to expanding health care access to underserved communities, Health Law Advocates stands with those who are most at risk, including low income individuals and families, the elderly, and the front line first responders and health care staff who serve them. As recent events confirm, we must protect the most vulnerable in order to safeguard the health of everyone in the Commonwealth.

I. The Poor

Lower income communities in Massachusetts will be disproportionately affected by the coronavirus outbreak. This is because the poor suffer from lower rates of health insurance, encounter greater barriers to accessing care, and have higher rates of chronic disease. Compounding these health risks are economic factors. Lower income individuals rely more heavily upon part time, low wage and shift work with limited access to paid sick leave and no ability to work from home. If low wage employers remain open for business, workers face the stark choice of risking exposure to illness or losing income they desperately need.

II. The Elderly

Early reports indicate that the mortality rate for elderly individuals with Covid-19 significantly exceeds that of the general population. Older

people are also at risk given that they experience a greater frequency of underlying medical conditions such as diabetes, cardiovascular disease, or compromised immune systems, and are more likely to live in congregate housing, long-term care and assisted living facilities. Residents of long-term care facilities share living quarters, dining facilities, transportation vehicles, and facility staff, all of which contribute to higher rates of disease transmission. Moreover, many of these facilities struggle with understaffing, poor infection control and staff who may lack adequate health insurance themselves.

III. Health Care Staff and First Responders

Cases out of Washington state also illustrate the risks confronted by health care staff and first responders, even before the first diagnosis of respiratory illness. Emergency workers and medical professionals on the front lines are frequently called upon to respond to conditions at nursing facilities. As a result, they may be exposed to coronavirus even before serious respiratory illness is observed. News media reports that numerous staff members and first responders are now under quarantine after visits to long-term care facilities in Washington.

IV. Recommendations

Preserve safety net benefits for low income individuals. For the duration of this public health crisis, additional state funding should be allocated to ensure benefits like SNAP, housing, MassHealth and the Health Safety Net remain accessible to as many low-income individuals as possible. Access to health insurance will facilitate greater likelihood of diagnosis and treatment, which will help to limit community spread. Likewise, emergency funding for safety net programs will provide a much-needed support for families and make it less likely that sick individuals will feel the need to report to work to make ends meet.

Expand testing including through mobile testing facilities. The federal government's testing response has been profoundly lacking. Fortunately, independent and academic laboratories have begun to develop and implement reliable tests with swift turnaround times for results. The Commonwealth should allocate resources to locate temporary or mobile testing facilities near densely populated areas to facilitate widespread testing which will lead to early outbreak detection and enable a more targeted infection response.

Remove barriers to testing and treatment for the uninsured and underinsured. Conflicting messages from the federal government has created unnecessary confusion regarding coverage of testing and treatment for Covid-19. Individuals who fear incurring medical debt are less likely to seek diagnosis and treatment for Covid-19 and increase the risk of community spread. Your administration should set aside special funding and issue clear guidance that testing and treatment of the illness will be covered.

Issue uniform requirements that hospitals and other large health care providers train and monitor the health of all staff, including non-medical staff. Hospitals and other large health care providers rely upon many non-medical staff for their daily operation and should ensure that they receive the training and protection they need to counter the risks of increased exposure to the coronavirus. Non-medical staff, such as cleaning crews, food staff and administrative staff, can become exposed to the virus during their work shifts. Without proper training and protection, they can become additional transmission points for the virus to enter the community.

Develop a plan for surge allocation. In the event of a sharp increase in Covid-19 cases, certain hospitals should be designated in advance to be the primary facilities to treat the illness so that care for all other illnesses can continue in other facilities.

Inspect every long-term care facility, homeless shelter, single room occupancy hotel and prison to ensure compliance with safety and infection control recommendations. The Commonwealth should inspect and monitor those facilities most vulnerable to infection for compliance with safety regulations and compel compliance for facilities that fall short.

Allocate resources to ensure that all first responders and in-home health workers can safely continue to perform their necessary job functions. Front line emergency responders and in-home health workers frequently have contact with vulnerable populations and can spread the illness or become sick themselves. To ensure the continued availability of emergency services and minimize community spread, the Commonwealth must devote sufficient resources to counter this heightened risk of infection.

Allocate resources for sanitation, training and screening for shelters, single room occupancy hotels and organizations working with the unhoused, and to prepare for possible shelter closures due to staff shortages or high rates of infection among residents. Individuals without stable housing cannot follow recommendations to self-quarantine and can also struggle to access soap and water for handwashing. Consequently, greater resources should be devoted to providing sanitation stations at homeless encampments, alcohol-based sanitizer, cleaning equipment and crews, and other basic resources for the unhoused. Similarly, resources should be provided to shelters, SROs and organizations working with the unhoused to enable training of staff and screening of residents for potential medical issues. Resources should also be set aside to address shelter closures due to staff shortages or high rates of infection. In the event of a shelter closure, the Commonwealth should be prepared to assist with isolating and treating clinically ill homeless individuals and providing additional shelter beds to counter the shelter closure.

The state should take immediate steps to reduce the prison population. Prisons are ill-equipped to respond to an infectious outbreak and are dangerous vectors for the illness to spread. Prisons should take steps to suspend imprisonment of non-violent offenders, release medically vulnerable and older inmates, stop charging copays for medical care in prisons, lower jail admissions, reduce unnecessary probation and parole meetings, and end imprisonment for technical parole and probation violations such as breaking a curfew or failing drug tests.

In addition, MassHealth and the Division of Insurance should take the following actions to limit the spread of the illness and promote access to treatment:

Suspend MassHealth eligibility terminations, eligibility reviews and appeal deadlines. For the duration of the public health crisis, MassHealth should ensure that all members continue to have coverage without any gaps. Eligibility terminations, service denials, and subsequent appeals, will be greatly complicated by limited staffing on every side, including at the provider, health plan, government agency and advocacy organizations – and will hinder individuals from accessing care when they need it most. We propose an immediate suspension of all eligibility terminations, appeal deadlines and appeal proceedings except for those involving urgent service denials.

Adopt targeted policies to facilitate access to MassHealth and other health coverage programs for people who do not have coverage. MassHealth should reduce the requirements for hospital presumptive eligibility to allow new applicants to get into coverage promptly when they are seen

at the point-of-care. Also, MassHealth should restore provisional eligibility rules from 2017 to allow more applicants to receive benefits while their income verifications are pending.

MassHealth and DOI should encourage managed care organizations to provide heightened support for patients, coordinate care and navigate health care access issues that arise relating to the pandemic. Managed care organizations should provide support to members relating to health care issues while physical travel to providers and purchasing medications are more difficult. Further, managed care organizations should be prepared to assist members with negative effects arising from increased isolation or limitations placed on interpersonal interactions due to compliance with self-quarantine or social distancing recommendations.

MassHealth should implement policies favoring in-home care vs. institutionalization. Mandate expanding approvals of in-home care services and suspending reductions of in-home care hours will divert at risk individuals away from institutional settings that place them at greater risk for contracting illness.

MassHealth and DOI should relax prescription refill requirements for insulin and other medications. Some managed care organizations have already begun allowing members to obtain 90-days' worth of insulin and other needed medications to limit the need for sick or at-risk individuals to leave their homes. MassHealth and DOI should require that all state regulated health plans and managed care entities do the same.

MassHealth and DOI should relax barriers to telehealth services. To minimize coronavirus transmission, MassHealth and DOI should consider suspending certain telehealth requirements until such time as needed to contain the outbreak. For example, MassHealth's telehealth regulations require that providers comply with training and other requirements before billing for outpatient telehealth services.

V. Conclusion

As we know you understand, the safety of all residents in the Commonwealth depends on a swift and coordinated state and local government response. While we are concerned about the lack of needed action and guidance from the federal government, we are hopeful that these measures will help our communities avoid the worst effects of Covid-19. We remain eager to assist in any way that we can. Please feel free to contact us to discuss any of these recommendations.

Very truly yours,

Justin J. Lowe
Legal Director

and

Wendy E. Parmet
HLA Board Member, Matthews Distinguished Professor of Law at Northeastern University, and
Director of the Center for Health Policy and Law

cc:

Secretary Marylou Sudders, Executive Office of Health and Human Services (via email)
Assistant Secretary Daniel Tsai, MassHealth (via email)