



REPORT BY THE HEALTH LAW COMMITTEE

SUPPORT FOR A JUST AND EQUITABLE FRAMEWORK FOR ALLOCATION AND DISTRIBUTION OF THE COVID-19 VACCINE IN NEW YORK STATE

The Health Law Committee of the New York City Bar Association writes in support of the adoption of a just and equitable framework for allocation and distribution of the COVID-19 vaccination, including the implementation of a trust building communication campaign in communities of color and for individuals known to be vaccine hesitant, and prioritization of individuals with intellectual and developmental disabilities and individuals experiencing homelessness.

The New York City Bar Association is an organization of over 25,000 lawyers and judges dedicated to equipping and mobilizing a diverse legal profession to practice with excellence, promote reform of the law, and uphold the rule of law and access to justice in support of a fair society and the public interest. The Health Law Committee focuses on advancing the public interest and improving our healthcare process through consideration of the rights and welfare of patients as well as the perspectives of all stakeholders in the healthcare system.

Vaccine supply is limited, necessitating the equitable prioritization of limited resources during initial stages of vaccine distribution and allocation in an attempt to save the most lives and quality life-years. Decisions about prioritization should:

- be evidence based;
- address those who are most vulnerable among us, including those who suffer from disparities in health care, by communicating and educating members of these communities about the safety and benefits of the COVID-19 vaccines to promote acceptance of the vaccines; and
- identify and target those at highest risk of acquiring the infection and of developing serious disease, those who are likely to suffer severe morbidity or mortality, including the elderly and individuals with developmental disability and those most likely to transmit the infection.

About the Association

The mission of the New York City Bar Association, which was founded in 1870 and has 25,000 members, is to equip and mobilize a diverse legal profession to practice with excellence, promote reform of the law, and uphold the rule of law and access to justice in support of a fair society and the public interest in our community, our nation, and throughout the world.

Vaccination is a proven reliable and effective public health measure to combat and potentially eradicate infectious diseases. Public health goals are to safely protect as many individuals as quickly as possible from the disease and its impact, to curtail the spread of the coronavirus by achieving herd immunity, and to lessen the severity of the disease by prioritizing those who are most vulnerable. In addition, consideration should be given to restoring and promoting socioeconomic well-being, with a focus on those in disadvantaged communities that have been disproportionately impacted by COVID-19. As a reliable and accepted public health measure, successful and thorough administration of a COVID-19 vaccination may provide population and individual level protection against COVID-19, the disease caused by SARS-CoV-2.

Uptake of the vaccine requires widespread public acceptance and confidence, in addition to the logistics of distribution and allocation of currently scarce vaccine resources. To date, only two COVID-19 vaccines, those developed by Pfizer-BioNTech and Moderna, have received Emergency Use Authorization by the United States Food and Drug Administration for use in individuals 16 and 18 years and older, respectively. (Commissioner, 2020). Both rely on messenger ribonucleic acid (mRNA) and are 95% and 94.1% effective, respectively, in preventing COVID-19 disease. (Commissioner, 2020).

If additional vaccines are ultimately approved which rely on different technology and have differing levels of efficacy, it is imperative that members of disparately impacted communities have access to information regarding the different vaccine options and are provided with choices related to the vaccine. This will inspire confidence and establish trust in governmental decisions and recommendations related to COVID-19 vaccine allocation. (Hamel et al, 2020). African American adults who reported that they would be unlikely to take the vaccine cited a general lack of trust in vaccines and a fear that the vaccine might cause contraction of the disease, and a specific lack of confidence in fair distribution of the vaccine. (Hamel et al, 2020). Latinx and African American adults also expressed concerns that vaccine development was not performed with the needs of their communities in mind. (Hamel et al, 2020). It is essential that an equitable vaccine distribution and allocation plan address these specific concerns through communication and education of members of these communities which have been disparately impacted by COVID-19. Personal health care providers are trusted information sources and should be utilized as messengers to provide reliable vaccine information to patient populations. (Hamel et al, 2020). Many local and federal health officials remain trusted sources of information and public communication campaigns should rely on the established confidence in those sources. (Hamel et al, 2020).

OVERVIEW OF IMPACT OF COVID-19 AND DISPARITIES

COVID-19 has claimed the lives of more than 407,111 Americans as of January 21, 2021, with over ten percent of those deaths occurring in New York. (Dong et al, 2020). Over 41,587 New Yorkers have died since the start of the pandemic, and COVID-19 has disrupted the lives of many New Yorkers, disrupting access to health care, routine vaccination schedules, and education. There has been increased economic instability due to job loss, increased domestic violence, and emotional strain, and disruption of social and familial support due to necessary social distancing

and lost lives. The pandemic has highlighted existing health disparities, many of which are the product of profound and ingrained systemic social inequities.

While the initial phase of vaccine distribution has focused on the elderly and persons living in congregate settings such as nursing homes – populations that suffered the most serious outbreaks and the worst outcomes of COVID-19 – vaccine allocation and distribution priorities are also warranted for additional populations for which the evidence shows heightened vulnerability, as discussed below.

Black/African American and Latinx Populations

In New York City, the majority of COVID-19 deaths and hospitalizations have been in the Black/African American and Latinx communities with the majority of hospitalizations and deaths in the Bronx, the borough with the highest proportion of minority individuals, the highest percentage of families living in poverty, and lowest levels of educational attainment. (NYC COVID-19 Data; Wadhera et al, 2020). The death and hospitalization rates are also positively correlated with poverty levels and age, with higher rates of death in impoverished populations and those aged 65 years and older. (NYC COVID-19 Data). It has been observed that the elevated death rates in minority and impoverished communities are the result of inequitable access to the conditions that support health and healthy outcomes, commonly referred to as the social determinants of health. (Schmidt et al, 2020). The COVID-19 pandemic has exacerbated these inequities, especially amongst minorities who have experienced higher rates of unemployment, and housing and food insecurity as a result of the pandemic. (Schmidt, et al 2020; Schmidt 2020; Pew Research).

Other Vulnerable Populations

Individuals with developmental, physical, and cognitive impairments have also borne a disproportionate burden of the COVID-19 pandemic. Reportedly, individuals with intellectual and developmental disabilities receiving supports and services were 5.34 times more likely than the general population to develop COVID-19 and 4.86 times more likely to die from the disease. (Lytle, 2020). COVID-19 has also had a disparate impact on individuals with intellectual and developmental disabilities, through interruption of services, including access to trained caregivers, inability to safely or effectively institute public health measures such as social distancing, mask wearing, and routine handwashing, as well as the impact of budgetary restraints on community services due to the pandemic.

Down Syndrome is often associated with many of the risk factors of severe disease from COVID-19, including known comorbidities and anatomical obstructions which may complicate treatment modalities, such as intubation. (Dard, et al 2020). Although rates of infection amongst the Down Syndrome community are not yet known, it is clear that individuals with Down Syndrome have higher rates of mortality due to COVID-19, with data from the UK indicating that people with Down Syndrome are four times more likely to be hospitalized and ten times more likely to die from COVID-19 as compared with the general population. (Clift et al, 2020; Wadman, 2020).

Further, notwithstanding valiant efforts to minimize the vulnerability of individuals experiencing homelessness, COVID-19 has had a disparate impact on both the sheltered and unsheltered population. (Johnson, 2020). Homelessness is disproportionately experienced by African American and Latinx individuals as well as LGBTQI youth. (Johnson, 2020).

The City Bar Health Law Committee recommends that these communities and vulnerable populations be considered a priority during vaccine allocation and distribution.

THE NEED FOR COMMUNITY VACCINE EDUCATION, OUTREACH, AND EQUITABLE ACCESS

New York State's COVID-19 vaccine allocation and distribution implementation program must not exacerbate existing disparities but, rather, should address and account for them. The City Bar Health Law Committee recommends that state and local public health authorities address legitimate concerns related to vaccine hesitancy and distrust by providing an equitable distribution program, a public education campaign, and ongoing publicly available data based on state Department of Health oversight of the distribution and allocation process. Community leaders should be engaged to participate in the implementation of vaccine distribution to increase public trust in both the vaccine and its distribution. The vaccine should be made available at convenient and accessible locations, and people with disabilities and living in congregate settings should be amongst early tiered populations.

In order to achieve herd immunity, there must be a high degree of acceptance of the vaccine. There are those who have vaccine hesitancy because of a distrust in the government and/or the scientific authorities who have developed the vaccine. This distrust stems in part from the legacy of historic abuses of African Americans and other minorities in public health research and other initiatives, including the Tuskegee syphilis research, forced sterilization of incarcerated and minority populations, and the widely held belief that Henrietta Lacks was exploited in the name of science. (After Ms. Lacks died in 1951, the cancer cells in her body were used -- without her or her family's consent -- in order to create the first immortalized human cell line for use in medical research.) (Schoch-Spana et al, 2020). There are also segments of the population who are skeptical about all vaccines. Any vaccination initiative should incorporate the goal of educating these two groups, emphasizing the safety of the vaccine as well as the dangers associated with contracting COVID-19. This initiative should involve mixed media, including public service messages and social media. Community leaders and celebrities should be tasked with educating the public in order to gain increased acceptance. Funding for these initiatives should be a priority.

Vaccine hesitancy is a recognized public health threat. (WHO). A survey conducted in connection with the Kaiser Family Foundation (KFF) COVID-19 Vaccine Monitor found that if scientists determined that a COVID-19 vaccine was safe and the vaccine was free, approximately 71% of people surveyed would be amenable to receiving the vaccine, meaning that even when assured it is safe and effective, public acceptance is not universal. (Hamel, et al, 2020). The level of immunity required to achieve herd immunity for COVID-19 is currently unknown, but for other diseases the percentage of required vaccination to achieve herd immunity is between 80% - 95%, as for polio and measles, respectively. (WHO, 2020). Varying rationales for vaccine hesitancy include concerns about the novel nature of the vaccination and its potential side effects, lack of

trust in government related specifically to the safety and efficacy of the vaccine, and the politicization of vaccine development. Individuals who identified as Latinx and African American have been found to be more concerned about community-acquired COVID-19 than non-Hispanic white individuals surveyed, and individuals with lower-incomes were more concerned than those with middle and high incomes. (Pew Research Center, 2020). This highlights the desire of members of those marginalized groups to avoid contracting COVID-19. Therefore, it is incumbent on government and healthcare providers to establish trust and confidence in vaccination amongst these groups.

In addition, to the extent there are available vaccines that have not been distributed, government should make efforts to see that they are promptly distributed; and to the extent once distributed they are not administered, consideration should be given to broadening eligibility so as to accelerate the speed at which the population at large is vaccinated and immunized.

RECOMMENDED ACTION

New York State's COVID-19 Vaccination Program issued by the NYS Department of Health provides an initial framework for the vaccination program, but the State must take additional proactive steps to ensure equity and fairness in the allocation and distribution process.

Uncertainty remains regarding the timing of additional vaccine procurement, but in anticipation of additional vaccine doses, the Health Law Committee of the New York City Bar Association recommends that the State be guided by the recommendations provided in the National Academy of Medicine's Framework for Equitable Allocation of COVID-19 vaccination and the United States Advisory Committee on Immunization Practices (ACIP) to incorporate ethical principles of: (1) maximizing benefits to individuals and society while minimizing risk; (2) promotion of justice through the removal of unjust social and economic barriers to access; (3) mitigating health inequities by reduction of existing disparities and active avoidance of creation of new disparities; and (4) trust building through transparency. (National Academies, 2020; McClung et al, 2020).

The Health Law Committee further recommends avoiding implementation of punitive measures, such as fines, to address slower vaccine distribution by health facilities, in favor of supportive measures to assist health facilities to develop and implement vaccine distribution and allocation programs, especially in under-resourced communities.

Ensuring that the legitimate trust concerns of disproportionately impacted populations are addressed through communication and education campaigns, providing equitable access and distribution of the vaccine in predominantly minority communities, and prioritizing vaccinations for individuals with disabilities and those experiencing homelessness will promote just and equitable vaccine allocation.

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