

March 25, 2021

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**Re: Follow-Up on Urgent Need to Address Vaccine Administration Concerns**

Dear Secretary Sudders and Commissioner Bharel:

In anticipation of our meeting on March 29, 2021, Lawyers for Civil Rights writes to ask that the Commonwealth accelerate and substantially expand upon the affirmative and proactive steps it is taking to ensure that persons with disabilities, people of color and immigrants hit hardest by COVID-19 will have unimpeded access to the vaccine.

We recognize and applaud the efforts that have been made to realize these goals since our letter of February 1, 2021, particularly accelerating the vaccination of essential workers. We commend the Administration's promises to increase trust, as well as vaccine acceptance and administration rates, through the Vaccine Equity Initiative.<sup>1</sup> Nonetheless, more must be done, and done quickly, to address persistent disparities in access to the vaccine, and the Commonwealth must take the lead. This is what the Commonwealth has promised to do, this is what the law requires, and this is possible through common-sense measures that have already proven effective in Massachusetts.

**I. The Commonwealth must fulfill its promise to ensure equitable vaccine distribution.**

The Commonwealth has yet to meet its commitments, outlined in vaccination planning documents submitted to the Centers for Disease Control and Prevention ("CDC"), to ensure that the most vulnerable populations have access to the vaccine.<sup>2</sup> As you know, the Massachusetts Department of Public Health ("DPH") promised to distribute vaccines with an "equity" lens and

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<sup>1</sup> *Baker-Polito Administration Announces Vaccine Timeline for All Residents, Provides Weekly Dose Updates & \$27.4 Million in Federal Funding for Vaccine Equity Initiative*, Office of Governor Charlie Baker and Lt. Governor Karyn Polito (March 17, 2021) (retrieved from: <https://www.mass.gov/news/baker-polito-administration-announces-vaccine-timeline-for-all-residents-provides-weekly-dose-updates-274-million-in-federal-funding-for-vaccine-equity-initiative>).

<sup>2</sup> *Covid-19 Vaccination Plan*, Massachusetts Department of Public Health, 20 (Mass. Dep't of Public Health Oct. 16, 2020), (retrieved from: <https://www.mass.gov/doc/massachusetts-interim-draft-plan/download>).

to focus outreach efforts on providers that serve communities of color and historically marginalized groups, including Black, Latinx, Asian/Pacific Islander and LGBT communities, as well as Massachusetts residents born abroad.<sup>3</sup> DPH further pledged to leverage community partnerships to recruit additional vaccination providers and expand equitable access to vaccination as vaccine supply increases.<sup>4</sup>

Despite these promises and Governor Baker's commitment to reserve 20 percent of the state's vaccine supply for hard-hit communities,<sup>5</sup> stark disparities in vaccine access persist. While we recognize the Commonwealth's efforts to improve vaccine equity through outreach initiatives such as "Trust the Facts, Get the Vax,"<sup>6</sup> current vaccination rates demonstrate that substantially more must be done.

Black, Indigenous, and people of color ("BIPOC") residents have experienced significantly higher COVID-19 death rates than white people,<sup>7</sup> but vaccination rates of Black and Latinx people are significantly lower throughout the Commonwealth.<sup>8</sup> To cite one example, Chelsea, with a population that is nearly 70% Latinx and immigrant, has experienced one of the highest rates of infection in the state. It is deeply troubling that, to date, only 8.8% of Chelsea's Latinx residents and 13.8% of its Black residents have received vaccinations, as compared to 37.5% of its white residents.<sup>9</sup> These disturbing trends are borne out elsewhere in the Commonwealth: in Lowell, only 9.5% of Asian-American residents, 7.1% of Latinx residents, and 13.3% of Black residents have been vaccinated, as compared to over 20% of Lowell's white residents.<sup>10</sup>

For example, the **Southeast Asian Coalition of Central Massachusetts** makes daily attempts to register elderly Asian residents in Worcester, but either is consistently told that the state's vaccination sites are full, or is given extremely short notice to contact potential vaccination candidates. The stress caused by these last-minute attempts to get vaccinated and the often-heartbreaking disappointment caused by missed vaccination opportunities compound the trauma already deeply felt by the Asian-American community in Worcester. It is clear from these statistics and anecdotes that the Commonwealth has yet to provide adequate vaccine access to its BIPOC residents and, consequently, continues to fall short of its documented commitments.

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<sup>3</sup> *Id.* at 22.

<sup>4</sup> *Id.* at 25.

<sup>5</sup> *Vaccine Rollout Earmarks Additional Doses for Hard-Hit Mass. Communities. But Delivering on that Could be a Challenge*, Boston Globe (December 22, 2020) (retrieved from: <https://www.bostonglobe.com/2020/12/22/nation/vaccine-rollout-earmarks-additional-doses-hard-hit-mass-communities-delivering-that-could-be-challenge>).

<sup>6</sup> *Trust the Facts. Get the Vax*, Department of Public Health (retrieved from: <https://www.mass.gov/info-details/trust-the-facts-get-the-vax>).

<sup>7</sup> *Equity Analysis of COVID-19 Spread by City/Town*, Boston Indicators (August 11, 2020) (retrieved from: [https://www.bostonindicators.org/reports/report-website-pages/covid\\_indicators-x2/covid-indicators-alone#Equity%20Analysis](https://www.bostonindicators.org/reports/report-website-pages/covid_indicators-x2/covid-indicators-alone#Equity%20Analysis)).

<sup>8</sup> *See How Many People Have Been Vaccinated in Your Town*, Boston Globe (March 18, 2021) (retrieved from: [https://www.bostonglobe.com/2021/03/18/nation/see-who-has-been-vaccinated-your-town/?p1=HP\\_TrendingBar](https://www.bostonglobe.com/2021/03/18/nation/see-who-has-been-vaccinated-your-town/?p1=HP_TrendingBar)).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

The pandemic has also disproportionately affected people living with disabilities. Although the Commonwealth does not report COVID-19 data correlated with disability status, data from states that track these statistics demonstrate that this population faces an elevated risk of COVID-19 infection.<sup>11</sup> People living with disabilities often rely on close physical proximity to caregivers for their daily needs, limiting their ability to adopt preventive measures such as social distancing. Research also suggests that BIPOC people living with disabilities face even more disproportionate adverse health consequences due to COVID-19.<sup>12</sup>

Compounding the heightened impact of COVID-19 on this highly vulnerable population, people living with disabilities face serious, often insuperable, accessibility barriers at vaccine distribution sites. For example, many people living with disabilities experience mobility issues that make driving or reliance on public modes of transportation infeasible. The need to travel significant distances to reach mass vaccination sites, coupled with the absence of more proximate community-focused vaccination centers, places vaccination opportunities beyond the reach of these all-too-often marginalized individuals. For example, **LCR's community partner, the Central West Justice Center, recently informed us that an 82-year-old woman living in Worcester was only able to get a vaccination appointment in Natick, over 35 miles away.** Like many other elderly or mobility-limited individuals, this 82-year-old woman cannot travel long distances to access a vaccination site and had to forego the appointment. Ultimately, the Commonwealth's focus on establishing a few large-scale mass vaccination sites to the exclusion of many local and accessible vaccine options for people living with disabilities risks undermining the state's commitment to ensure that the most vulnerable populations have access to the vaccine.

In short, the Commonwealth's current vaccination efforts fail to meet the needs of immigrant and minority communities and people living with disabilities who have suffered, and continue to suffer, the greatest losses to COVID-19.

## **II. The Commonwealth must comply with federal law requiring that vaccination sites afford equitable access regardless of race, national origin, or ability.**

Beyond honoring its public commitments, federal law requires that the Commonwealth ensure equitable access to vaccination sites. Under Section 1557 of the Affordable Care Act ("ACA"), it is unlawful to exclude any individual from participation in, or deny anyone the benefits of, "any health program or activity. . . which is receiving Federal financial assistance" on the basis of race, national origin, sex, age, or ability.<sup>13</sup> Section 1557 prohibits actions that violate the regulations promulgated under Title VI of the Civil Rights Act of 1964 ("Title VI"), as well as

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<sup>11</sup> *COVID-19 Vaccine Access for People with Disabilities*, Kaiser Family Foundation (March 1, 2021) (retrieved from: <https://www.kff.org/medicaid/issue-brief/covid-19-vaccine-access-for-people-with-disabilities/>).

<sup>12</sup> *Id.*

<sup>13</sup> *See* 42 U.S.C. § 18116 (a) ("an individual shall not, on the ground prohibited under Title VI of the Civil Rights Act of 1964. . . Title IX of the Education Amendments of 1972 . . . the Age Discrimination Act of 1975 . . . or [the Rehabilitation Act of 1973], be excluded from participation in, be denied the benefits of, or be subjected discrimination under, and health program or activity, any part of which is receiving Federal financial assistance").

the Rehabilitation Act of 1973 (the “Rehabilitation Act”).<sup>14</sup> Regulations issued pursuant to both of these federal anti-discrimination statutes, and incorporated into Section 1557, require the Commonwealth to ensure that federally funded health programs, such as vaccination sites, are located where they are accessible to all regardless of race, national origin, or ability.

The U.S. Department of Health and Human Services (“HHS”) has adopted the following regulatory mandate enforcing Title VI:

In determining the site or location of a facilit[y] an applicant or recipient may not make selections with the effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination. . . on the ground of race, color, or national origin.<sup>15</sup>

HHS has issued regulations to the same effect to protect individuals with disabilities.<sup>16</sup>

It is, therefore, beyond dispute that the Commonwealth must make the COVID-19 vaccine available in locations that afford *all* Massachusetts residents their federally secured and enforceable right to meaningful access. Reliance on a small number of mass vaccination sites—whatever their purported efficiencies as a distribution method—falls short of meeting this guarantee. Few of these sites are readily accessible to minority and immigrant communities, forcing those who have been hit hardest by the pandemic, and who often lack access to effective means of transportation, to travel longer distances to obtain the vaccine. These same individuals often have work schedules or family responsibilities that preclude them from the luxury of taking a day off for this purpose.<sup>17</sup> People living with disabilities—for whom traveling long distances is often more difficult, if not outright infeasible—likewise are disproportionately burdened by the lack of vaccination sites close to where they live. The Commonwealth’s vaccination distribution priorities and siting policies impose disparate burdens on minority communities and people

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<sup>14</sup> *See id.*

<sup>15</sup> 45 C.F.R. § 80.3(b)(3).

<sup>16</sup> 45 C.F.R. § 84.4(b)(5) (“In determining the site or location of a facility, an applicant for assistance or a recipient may not make selections (i) that have the effect of excluding handicapped persons from, denying them the benefits of, or otherwise subjecting them to discrimination under any program or activity that receives Federal financial assistance or (ii) that have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the program or activity with respect to handicapped persons”). Indeed, in Massachusetts, similar protections for people with disabilities have been codified in the Commonwealth’s Constitution. See art. 114 of the Amendments to the Massachusetts Constitution (“No otherwise qualified handicapped individual shall, solely by reason of his handicap, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity within the commonwealth”).

<sup>17</sup> *Lack of Health Services and Transportation Impede Access to Vaccine in Communities of Color*, The Washington Post (February 13, 2021) (retrieved from: <https://www.washingtonpost.com/health/2021/02/13/covid-racial-ethnic-disparities/>).

living with disabilities, and deprive these groups of meaningful access to vaccination sites in contravention of federal law.<sup>18</sup>

### **III. Community-based and mobile vaccination sites are a practical and attainable means for the Commonwealth to honor its promises and comply with the law.**

Community-centered interventions, especially those focused on the neighborhoods most besieged by the COVID-19 pandemic, are critical to addressing the inequities caused by the Commonwealth's current vaccination program. We strongly urge the Commonwealth to follow the federal government's lead<sup>19</sup> and CDC recommendations<sup>20</sup> to establish community-based vaccination sites and deploy mobile units that will travel into local communities to provide vaccines directly to underserved populations.<sup>21</sup>

With the increase of vaccine supply<sup>22</sup> and disbursement of \$27.4 million in federal funding for the Vaccine Equity Initiative,<sup>23</sup> the Commonwealth can—and must—take immediate action to address the glaring vaccine access disparities that have surfaced along dimensions of race, class, disability status, and zip code. There is simply no reason why the Commonwealth's BIPOC and immigrant populations and persons with disabilities should be left behind in the COVID-19 vaccine rollout.

To address these disparities, the Commonwealth should prioritize a community-focused vaccine distribution model and engender partnerships between healthcare providers and trusted grassroots community organizations that will distribute vaccines directly in hard-hit neighborhoods. Such collaborations have already demonstrated their efficacy in reaching groups with low vaccination rates. We urge the Commonwealth to promote these collaborations and also to bring them to scale across the state.

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<sup>18</sup> See, e.g., *Resolution Agreement between the U.S. Department of Health and Human Services Office of Civil Rights and The University of Pittsburgh Medical Center*, 2 (retrieved from:

<https://www.hhs.gov/sites/default/files/ocr/civilrights/activities/agreements/upmcra.pdf?language=es>) (medical center agreed to provide transportation to ensure access to primary and urgent care services after hospital closure in a minority community to resolve complaint alleging violation of Title VI); *Rodde v. Bonta*, 357 F. 3d 988, 997-998 (9<sup>th</sup> Cir. 2004) (affirming issuance of preliminary injunction to prevent closure of hospital that served people with disabilities because the closure effectively would deprive people with disabilities of meaningful access to government health services).

<sup>19</sup> *Fact Sheet: President Biden to Announce All Americans to be Eligible for Vaccinations by May 1, Puts the Nation on a Path to Get Closer to Normal by July 4<sup>th</sup>*, The White House (March 11, 2021) (retrieved from: <https://www.whitehouse.gov/briefing-room/statements-releases/2021/03/11/fact-sheet-president-biden-to-announce-all-americans-to-be-eligible-for-vaccinations-by-may-1-puts-the-nation-on-a-path-to-get-closer-to-normal-by-july-4th/>).

<sup>20</sup> *COVID-19 Vaccination Program Interim Operational Guidance*, Centers for Disease Control and Prevention (October 29, 2020), 19 (retrieved from: [https://www.cdc.gov/vaccines/imz-managers/downloads/COVID-19-Vaccination-Program-Interim\\_Playbook.pdf](https://www.cdc.gov/vaccines/imz-managers/downloads/COVID-19-Vaccination-Program-Interim_Playbook.pdf)).

<sup>21</sup> The White House, *supra* note 19.

<sup>22</sup> *COVID-19 Vaccine Supply Increasing in Massachusetts as More Residents Become Eligible*, WWLP (March 18, 2021) (retrieved from: <https://www.wwlp.com/news/health/coronavirus-local-impact/covid-19-vaccine-supply-increasing-in-massachusetts-as-more-residents-become-eligible/>).

<sup>23</sup> Office of Governor Charlie Baker and Lt. Governor Karyn Polito, *supra* note 1.

For instance, **La Colaborativa** and the **East Boston Neighborhood Health Center** have partnered together to launch a highly successful vaccination site in Chelsea.<sup>24</sup> Likewise, the **Whittier Street Health Center**, in collaboration with several congregations and community groups, is deploying dedicated mobile health vans to bring vaccines directly to Boston’s hard-hit BIPOC communities. To date, Whittier Street has hosted mobile vaccination clinics for the bilingual congregation at the **León de Judá** church and the **Brazilian Worker Center** in Boston.<sup>25</sup> As a result of these collaborations, hundreds of individuals who lacked ready access to the Commonwealth’s current vaccination sites have received life-saving vaccines. Given the exemplary success of these initiatives, the Commonwealth must now step up to provide the technical assistance, resources and—most critical of all—adequate supplies of vaccine so that healthcare providers and community-based organizations can create similar vaccination programs and sites across the Commonwealth.

Notably, mobile vaccination units are uniquely positioned to administer vaccine to people living with disabilities, homebound individuals and others for whom travel is challenging. For instance, New York City has launched a program in which the New York City Fire Department deploys field teams to call on thousands of homebound seniors and vaccinate them in their homes.<sup>26</sup> In Massachusetts, Last Mile Vaccine Delivery—a joint initiative of Mascon Medical, Brewster Ambulance, and the Professional Firefighters of Massachusetts—has successfully provided vaccinations in the homes of individuals with mobility impairments.<sup>27</sup> These models prove that vaccine can be effectively administered in the home and should be expanded to assure all persons with disabilities full and equitable access to the COVID-19 vaccine.

While highly effective, the existing private efforts to provide community and mobile vaccination access suffer from a lack of centralized, government-led coordination. We call on the Commonwealth to muster the necessary leadership, funding and coordination to bring these initiatives to scale and meet the urgent call of this public health and civil rights emergency.

#### **IV. The Commonwealth must improve access *now*.**

While the emergence of effective vaccines offers the hope of at last controlling the pandemic, it comes at a time when any significant delay could result in a catastrophic “third wave” of

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<sup>24</sup> *Local Groups Team Up to Launch a Hard-Earned Vaccination Site*, Boston Globe (Feb. 3, 2021) (retrieved from: <https://www.bostonglobe.com/2021/02/04/nation/chelsea-early-epicenter-covid-outbreak-local-groups-team-up-launch-vaccination-site-their-own/>).

<sup>25</sup> *Whittier Street Health Center Launches Covid-19 Mobile Vaccination With Community-Based Groups in Communities of Color in Boston*, Whittier Street Health Center (March 16, 2021) (retrieved from: <https://www.wshc.org/news-item/whittier-street-health-center-launches-covid-19-mobile-vaccination-with-community-based-groups-in-communities-of-color-in-boston/>).

<sup>26</sup> *Vaccine for All: City Begins Vaccination for Homebound New Yorkers*, City of New York (March 4, 2021) (retrieved from: <https://www1.nyc.gov/office-of-the-mayor/news/155-21/vaccine-all-city-begins-vaccination-homebound-new-yorkers>).

<sup>27</sup> *Housebound Massachusetts Residents Have Coronavirus Delivered to Them*, Boston Herald (March 16, 2021) (retrieved from: <https://www.bostonherald.com/2021/03/16/housebound-massachusetts-residents-have-coronavirus-vaccine-delivered-to-them/>).

infections, of the sort that many other countries now face.<sup>28</sup> The threat posed by COVID-19 and its growing cohort of variants cannot be overstated and represents a once-in-a-century emergency that requires an immediate and commensurate response.

**V. Working in partnership.**

We share the Commonwealth's goal of ensuring access to COVID-19 vaccines for all Massachusetts residents and appreciate the Commonwealth's efforts to date. Yet, as this letter explains, the Commonwealth must redouble its efforts to distribute the vaccine equitably: that is what fairness demands, what the law requires, and what the Commonwealth has promised to do, publicly and repeatedly. The initiatives described in this letter demonstrate that community-based and mobile vaccination sites are feasible and effective tools to deliver vaccines to communities of color, immigrant communities, and people living with disabilities. As such, it is now high time for the Commonwealth to lead these efforts and to ensure that they are implemented in a coordinated and comprehensive manner and with the requisite energy. We look forward to discussing these urgent issues in greater detail during our meeting next week.

Please feel free to follow up with the team at Lawyers for Civil Rights, including Nina Garcia, at [ngarcia@lawyersforcivilrights.org](mailto:ngarcia@lawyersforcivilrights.org). We look forward to discussing these important issues during our March 29 meeting.

Sincerely,

Nina Garcia  
Oren Sellstrom  
Iván Espinoza-Madrigal  
Lawyers for Civil Rights

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<sup>28</sup> See, e.g., *Europe Has Missed Its Chance to Stop the Third Wave. The US Could Be Next*, CNN (March 19, 2021) (retrieved from: [Coronavirus: Europe has missed its chance to stop the third wave. The US could be next - CNN](#)); *Canada's Largest Province Says It's in the Third Wave—and Officials Worry the Vaccine Rollout May Not Happen Fast Enough*, CNN (March 23, 2021) (retrieved from: [Canada's Ontario says it's in the Covid-19 third wave -- and officials worry the vaccine rollout may not happen fast enough - CNN](#)).