



Treatment Action Group

15 May 2020

**Testimony of Mark Harrington, Treatment Action Group
to The New York City Council Committee on and Health
and The New York Council Committee on Hospitals
on Oversight: NYC's Plan for COVID-19 Testing and Contact Tracing**

Thank you, Chairpersons Rivera – in whose district I live – and Levine, Speaker Johnson, and members of the Committees on Health and on Hospitals. My name is Mark Harrington and I speak on behalf of the Treatment Action Group (TAG), which works to end HIV, HCV, tuberculosis, and COVID-19, and for the COVID-19 Working Group, New York. We are calling for the City to preserve the ability of the Department of Health and Mental Hygiene (DOHMH) to carry out its statutory duty to oversee and conduct contact tracing as the City emerges from the worst COVID-19 outbreak in the United States, and one of the worst in the world.

We ask that you consider these following questions before the City recklessly departs from decades of experienced contact tracing and hands this activity over to Health + Hospitals, we ask that you consider these following questions.

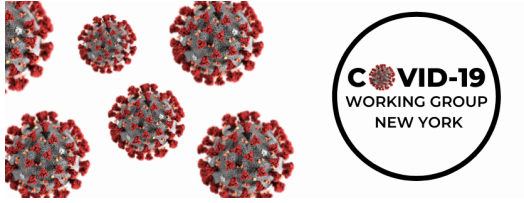
1. City Hall and Health + Hospitals [H+H] were [wrong](#) about the need to shut down the City early while DOHMH argued for an early and comprehensive shut-down. Why is City Hall transferring responsibility for Test, Trace, Isolate, Support from DOHMH which has decades of experience doing this ethically and safely to H+H which has its own primary responsibilities of running the City's hospitals?
2. How will H+H handle the [expected second wave](#) of new COVID-19 cases which is likely to occur as a result of the City's poor coordination of Test, Trace, Isolate due to the fact that H+H has no experience in contact tracing [CT] and will be overwhelmed with new severely ill people with COVID-19?
3. How will DOHMH handle the expected resurgence of [HIV](#), [tuberculosis](#), [sexually-transmitted infections](#) [STIs], [viral hepatitis](#), and opioid overdose, when the leadership of their experienced contact tracing team will be seconded to H+H to deal with COVID-19 Test, Trace, Isolate and Support?
4. Clearly the City lacks a coherent quantitative plan for rolling out testing to scale (both PCR + antibodies) as shown by the failure to be able to specify the needed number of daily tests of both types.
5. Clearly the City has failed to communicate clearly throughout this pandemic crisis as shown by this fiasco and by the larger unanswered questions such as those about mandatory quarantine and informed consent as part of the T2 initiative.

6. This entire fiasco is a distraction, created by City Hall, and a power grab, abetted by H+H, to weaken, perhaps permanently, the renowned and essential DOHMH and is likely to further delay the effective and safe emergence from lockdown, with potential costs in lives.
7. Will H+H investigations be limited to COVID-19? What will happen if co-morbidities, such as TB, HIV, or STD are uncovered? Will separate, duplicative contact tracing efforts be required?
8. Will the new hires as contact tracers be employees of H+H? What legal and regulatory limitations will these employees face due to the fact that H+H lacks statutory and regulatory authority or experience to manage CT, Isolate, and Support?
9. How will the privacy and confidentiality of persons involved in Test, Trace, Isolate and Support be protected given H+H's lack of experience and expertise? Who will have access to data collected and how will it be made available to the public? DOHMH has decades of experience safely and confidentially gathering these data and protecting people's confidentiality. How will H+H protect the individuals and communities?
10. What are the core elements of the recruitment, training, demographics and diversity of the new workforce in charge of the implementation of the NYC CT program? Which institution will be accountable for the success or failure of the CT program in NYC?
11. The confidentiality of epidemiological and surveillance reports and records is fundamental to public health functionality, community support, and success. Will H+H employees, or H+H leadership, have access to contact tracing reports or to the information generated by a contact tracing investigation from cases reported by non-H+H hospitals, clinics and doctors? Will H+H contact tracers, staff, or supervisors have access to other DOHMH data registries so as to perform cross matches searching for unknown contacts?
12. DOHMH has had no known breaches of its epidemiological and surveillance systems. What systems are in place at H+H to protect these data registries? Will data collected by H+H remain there indefinitely? What confidentiality laws will protect such information?
13. What data agreements, MOUs and other workarounds will be necessary, since the Health Code vests contract tracing authority at DOHMH, and DOHMH receives data from many sources pursuant to agreements that do not allow H+H to have access to the data? What is the status and timing of those agreements and other arrangements?
14. What is the H+H plan for isolation and quarantine? Are they contemplating mandatory isolation and quarantine orders with penalties for violations, and are they worried that such an approach will create fear of testing?
15. How will the most-affected communities, including Black, Latino, Asian, Indigenous, immigrant/migrant, homeless, or congregate care communities respond to being approached by inexperienced, inexpert H+H staff only recently hired with no experience or expertise on culturally-informed, community-responsive CT, when there is the possibility of mandatory quarantine and punitive sanctions?

16. Why not instead does the City consider providing pre-test counseling and requiring signed informed consent to ensure that individuals involved in CT understand the risk to their individual liberty and family well-being posed by unsupported COVID-19 exposure or illness or by punitive quarantine measures?
17. Why not instead does the City consider providing incentives such as food and income support to individuals and their families subject to isolation?
18. Does the City Council believe that moving CT from DOHMH to H+H is legal? What legal steps is the Council prepared to take to protect the City's residents from out-of-control bureaucratic over-reach by H+H and City Hall?
19. Does the City Council believe that weakening DOHMH in the midst of the City's greatest pandemics since HIV/AIDS (1981-present) and influenza (1918-19) is in the best interest of the City and its residents?
20. Have City Hall or the Council considered the possible harm to the residents of NYC from the potential loss of New York State Article 6 public health funding if it is determined that NYC expenditures for COVID-19 contact tracing and investigation are ineligible for these funds because the "core public health function" of communicable disease control is not conducted by DOHMH, the local public health department?

To this testimony I have appended the updated letter to the Mayor and the City Council Speaker and Committee chairs, now signed by over 600 individuals and organizations, supporting the DOHMH's continuing role in contact tracing and opposing this irresponsible and unwise move by City Hall to weaken contact tracing as New York City emerges from the COVID-19 lockdown.

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**COVID-19 Working Group
New York City**
www.covid-19workinggroupnyc.org

7 May 2020
sign-ons to 15 May

To: Mayor Bill de Blasio
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NYC Council Hospitals Chair Carlina Rivera
NYC Council General Welfare Chair Stephen Levin
First Deputy Mayor Dean Fuleihan
Chief of Staff Emma Wolfe
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For the NYC COVID-19 Working Group

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As New York City begins to emerge from the most severe COVID-19 epidemic outbreak in the United States, and, perhaps, the most severe in the world, we are writing to our City leaders to demand that the next phase of the epidemic response—one which is vital to restoring the City to health and its economy to functionality—be based on sound public health practice and leadership. This requires a strong, coordinated, professionally led response that includes testing, contact tracing, and supported isolation and quarantine to stop forward transmission of SARS-CoV-2 and to prevent new cases and avoidable deaths.

We are alarmed and dismayed to hear from media [sources](#) that indicate that Mayor de Blasio intends to place [Health + Hospitals](#) in the leadership role of the citywide efforts to conduct the essential work of case-finding and contact tracing.

This catastrophic proposal would fundamentally disrupt the key role and statutory authority of the New York City Department of Health and Mental Hygiene (DOHMH) to lead and coordinate case-finding and contact tracing efforts—as mandated by law and backed by decades of demonstrated expertise and stellar performance in conducting ethical contact tracing in all communities in the City, including those suffering disproportionately from the effects of COVID-19. This proposal is not only a likely violation of law and the Health Code, but also a reckless and potentially disastrous departure from sound public health practice. On the most basic level, H+H must comply with federal HIPAA law, which prohibits the sharing of confidential health information. This alone makes contact tracing by H+H staff effectively illegal.

A large-scale effort to identify, trace, and isolate persons exposed to COVID-19 is desperately needed to continue to drive down the number of new cases and restore our City's economy. DOHMH, the preeminent health department in the nation—comprise staff whose core training, experience and expertise is in engaging communities to identify, diagnose, prevent, and control infectious disease. Any decision by the Mayor to shift contact tracing responsibilities away from DOHMH to an agency with no experience in contact tracing at this critical point in the COVID epidemic, which is bound by HIPAA restrictions, and which will require guidance and expertise from DOHMH, will hamper rather than advance these efforts—in a manner that mirrors the tragic dysfunction of the federal response, where the Centers for Disease Control and Prevention (CDC) is being similarly shunted aside in an approach focused on optics rather than results.

H+H clearly has a critical and ongoing role to play in our epidemic response: providing care and treatment for patients, and supporting and monitoring those convalescing at home or in temporary shelter, in coordination with community based organizations and DOHMH. However, they simply have no expertise or capacity in outreach, health education or contact notification.

This move would compound the City leadership's chaotic management of the COVID-19 epidemic in the City, already characterized by a reluctance to follow the advice of DOHMH experts to swiftly enact social distancing measures. As a result of these delays, and other missteps, NYC has borne an almost unbearable burden of illness and death and became the gateway to COVID-19 for the entire country. This move would compound the perception of chaotic response to the COVID-19 epidemic in the City, which has borne an almost unbearable burden of illness and death and become the gateway to COVID-19 for the entire country.

We urge the Mayor to reconsider this ill-conceived approach and support the expertise and authority of the DOHMH to carry out its core functions of protecting the public's health. This is the moment when the City can call upon its historic strengths to show the nation what can be done to end this epidemic.

Signed

Organizations:

COVID-19 Working Group – New York
Treatment Action Group
Callen-Lorde Community Health Center
The Trustees of Columbia University in the City of New York
ICAP at Columbia University
New Alternatives for Homeless LGBTQ Youth
National Advocates for Pregnant Women
EngageWell IPA
The New York Immigration Coalition
Gay Men of African Descent Inc
Rockland County DOH
National Black Gay Men's Advocacy Coalition
CUNY Institute for Implementation Science in Population Health
Bannon Consulting Services
Columbia University Mailman School of Public Health
Harlem United
Shubert Botein Policy Associates
Department of Environmental Health Sciences, Columbia University Mailman School of Public Health
Amida Care
St. Ann's Corner of Harm Reduction
The Blue School
Argus Community Inc
New Alternatives for LGBT Homeless Youth
Alliance for Positive Change

Unity Fellowship of Christ Church
Fight Back Bay Ridge
Progressive Doctors
TestTracelsolate Organizing Team
Metropolitan Klezmer
National Working Positive Coalition
Beachwold Partners LP

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