



The **Opportunity** Agenda



Dangerous and Unlawful Executive Summary

A report on why our health care system is failing
New York communities and how to fix it.

Executive Summary:

Principal Findings and Recommendations

New York is synonymous with opportunity in the American vocabulary. Millions have sought greater opportunity here, and New York City has long served as the literal and symbolic gateway to the American dream. But opportunity in New York is endangered, as a growing segment of residents finds that health care is too expensive, too far away, too inconvenient for working families, too insensitive to language needs and cultural differences – in short, too far out of reach for too many.

These conditions are dangerous for New Yorkers and costly for all of us. They threaten our lives and diminish our quality of life. They contribute to skyrocketing costs and stymie our economic growth. And they violate our values as a City and a State that stand for the very principle of American opportunity: that everyone should have a fair chance to achieve his or her potential. As a recent poll revealed, New Yorkers believe that everyone has a right to health care, and find government – city, state, and federal – responsible for enforcing that right.

These barriers to adequate health care are also unlawful. Municipal, state, federal, and international law recognize the right of all New Yorkers to equal access to quality health care. Yet, a succession of decisions by New York state officials has made health care increasingly inaccessible and unequal for a growing number of our population.

This report offers new and crucial information to the Governor and the Legislature as they consider what steps to take to ensure access to quality health care for everyone in the State. The report:

- ▶ Measures the current availability of quality health care to all New York communities, in the context of those communities' actual health needs;
- ▶ Reviews the municipal, state, federal, and international laws that together guarantee New Yorkers equal access to quality health care;
- ▶ Identifies the ways in which inadequate and unequal health care access violates New Yorkers' rights and harms all communities; and
- ▶ Offers viable policy solutions that will improve access to high-quality comprehensive care for all who live in New York.

Based on a thorough review of government data, public health research, and the experiences of New Yorkers, we find a dangerous and unlawful situation in many New York communities. Many communities that have significant health care needs lack adequate access to quality health care services. That trend is especially pronounced, and especially harmful, in the case of care for new and expecting mothers, and primary care that can prevent more serious illness. And the pattern of inadequate services and hospital closings has consistently threatened the care of – or excluded completely from care – low-income communities and communities of color in the highest proportions.

The Law

New Yorkers' Right to Quality Health Care and Equal Opportunity to Receive It

- ▶ **The New York State Constitution guarantees effective systems to protect the public's health, and holds the New York State government responsible for establishing and maintaining those systems for everyone.** The State's responsibility is greatest when it comes to medically underserved communities.
- ▶ **A network of federal, state, and municipal laws reinforces the right of equal access to quality care.** Federal and state Medicaid laws require New York to ensure that care is available to all communities, whatever their economic standing.
- ▶ **The law requires that federal, state, and municipal governments take steps to guarantee everyone an *equal opportunity* to access health care.** In particular, the race of a person, or the racial character of a community, cannot determine access to care. Nor can limited English-language skills be allowed to prevent people from obtaining care.
- ▶ **International human rights laws make clear that access to health care is a right of all New Yorkers, and that New York State must maintain a system that offers care fairly and effectively.** They also make clear that protecting the health of mothers and children is an especially important obligation of our government. Under international human rights law, New York State government has a duty to ensure that all New Yorkers have equal access to quality health care.
- ▶ **Federal, state, and city laws all emphasize the importance of protecting and promoting the health of mothers and their children.** Federal courts have recognized an important governmental interest in protecting the health of the pregnant woman. Under federal Medicaid law, medical assistance to eligible pregnant women and children must include at least: inpatient and outpatient hospital services; family planning services; physicians' services; services furnished by nurse-midwives; and services furnished by certified pediatric nurse-practitioners.

Findings

Inadequate and Unequal Health Care and Violations of the Right to Health Care

Health care resources are inequitably distributed across New York communities, with some facing wholly inadequate access. Many neighborhoods with the highest health care needs, disproportionately low-income and communities of color, also have the fewest health care resources. These patterns violate the state, federal, and international laws protecting the right to health care. Any further cuts to services in underserved communities would exacerbate these conditions and constitute new and independent violations of the law.

Primary Care Services

- ▶ In 2001 an estimated 1.8 million New York State residents were designated by the U.S. Department of Health and Human Services' (HHS) Health Resources and Services Administration as living in medically underserved communities.
- ▶ Nearly 3.6 million people in New York State lived in Health Professional Shortage Areas in 2001. Between 2001 and 2005, the number increased by an estimated 13.23%. (The federal government defines a shortage area as less than one primary care physician per 3,500 people, and less than one per 3,000 people in high-need areas.)
- ▶ Almost 60% of New York City's zip codes have an inadequate supply of primary care physicians willing to see Medicaid patients.
- ▶ Nearly one in four New York City residents does not have a regular doctor. More than half a million New York City residents reported needing but not receiving medical care in a twelve-month period in 2002–03.
- ▶ Thirteen geographic areas in New York City are designated as Health Professional Shortage Areas:
 - Port Richmond and St. George in Staten Island;
 - Long Island City and South Jamaica in Queens;
 - Washington Heights-Inwood and West Central Harlem in Manhattan;
 - Williamsburg, East New York, Crown Heights, Bushwick, and Bedford-Stuyvesant in Brooklyn; and
 - Hunts Point-Mott Haven and Highbridge in the Bronx.

Maternal Health Care

- ▶ The availability of obstetric and gynecologic (OB/GYN) physicians varies considerably across New York City's five boroughs. On average, low-income communities and communities of color have the fewest OB/GYN providers.
- ▶ Women in neighborhoods that have the lowest density of OB/GYN providers often have the highest rates of receiving late or no prenatal care.
- ▶ New York's low-income communities and communities of color have a high percentage of babies born with low birth weight. While low birth weight is caused by many complex factors, access to good prenatal care and hospital-based delivery services can improve health outcomes of low birth-weight children.
- ▶ The current state of care jeopardizes the health of New York mothers and their children and violates the law. Moreover, any downsizing, closures, or service changes that further diminish prenatal or postnatal care will compound those violations and further threaten New Yorkers' health.

Equal Opportunity in Health Care

- ▶ In New York City, areas with high concentrations of African Americans, Latinos, and Asian Americans are most likely to have serious shortages of primary care physicians.
- ▶ Hospital closures and downsizing in New York City have disproportionately affected communities of color. Two-thirds of the twelve hospitals that closed between 1995 and 2005 in New York City – each with the approval of the New York State Department of Health – served predominantly people of color. In some cases, the patient populations served by those hospitals were more than 90% African American, Latino, and Asian American.

- ▶ These findings clearly establish that the State’s health care decisions violate municipal, state, federal, and international laws. The distribution of hospitals and other services has a strongly discriminatory effect on communities of color, which is only made stronger when the actual health care needs of communities are considered. The legal and moral weight of these findings obligates the State to change course and begin developing a fair and responsive system of health care services.

A Time for Change: A Cost-Effective System That Works for Everyone

These trends not only violate the law but are contrary to New Yorkers’ values and beliefs. A recent poll conducted by The Opportunity Agenda and designed by researchers at the Harvard School of Public Health finds that New Yorkers see health care as a fundamental human right: 89% surveyed said that “everyone in New York has a right to health care.”

New Yorkers also reject the idea of a health care system that overlooks those needing the most help. For example, almost 75% of those surveyed held the State responsible for ensuring that racial or ethnic minorities and low-income New Yorkers have an equal chance to access health care as wealthy people. An overwhelming number of New Yorkers believes that all levels of government – local, state, and federal – are responsible for ensuring that all people in New York get the health care they need.

Fortunately, New Yorkers need not tolerate an unfair health care system: effective practical alternatives exist to improve the system that we currently have. A health care system that provides coverage to everyone, emphasizes preventive and primary care, and addresses the needs of diverse groups can improve the health of the State’s population while corralling costs.

- ▶ New York State alone could save hundreds of millions of dollars if it ensured adequate primary care for all New Yorkers. New York City’s Health and Hospitals Corporation (HHC), which runs the City’s public hospitals, has seen the wisdom of this approach. It has assigned some 240,000 uninsured patients to personal primary care doctors, enabling them to get checkups and preventive care. As HHC President Alan Aviles told the *New York Times*: “For most preventative efforts there is an upfront expense,” but “over the long term it saves money.” New York State can and should follow that example.
- ▶ A relatively small investment in prenatal care and maternal health can also save the State money. As Ngozi Moses, executive director of the Brooklyn Perinatal Network, explains, the average cost of medical and follow-up care for a healthy normal weight baby is \$6,500. She stresses that “[i]f you don’t get care and you end up with a premature baby or a low birth-weight baby, or if the mother has risk factors, costs start at about \$90,000. For a very low birth-weight baby, that doubles to \$180,000.” She explains that “[p]reventing the birth of two low birth-weight babies can fund a \$180,000 health promotion program that will provide more than 50 at-risk pregnant women with intervention to reduce their risk of bearing low birth-weight babies.”

SPOTLIGHT ON CENTRAL BROOKLYN: ONE COMMUNITY'S STORY

Over one in four people (31%) in Central Brooklyn lives in poverty, and the diabetes and HIV/AIDS rates are 33% and 60% higher than City averages. Over the last 40 years the State has allowed the number of hospital beds to shrink by 40%, from 6,500 in 1960 to just over 4,000 in 2000, even though the population has increased during that time.

Central Brooklyn is not alone. Across the State, millions of New Yorkers do not have access to adequate health care. Although the State's Certificate of Need process requires the Department of Health to consider public need in approving health care service changes and the construction of new hospitals and clinics affiliated with hospitals, it has repeatedly failed to do so.

Barriers to Care for Central Brooklyn's Mothers and Children

Pregnant women and women with infant children in New York City have been hard hit by hospital downsizing and closures over the past several years, particularly in Central Brooklyn. In late 2004, Interfaith Hospital in Bedford-Stuyvesant closed its maternity ward, followed by the closing of St. Mary's Hospital – including its maternity beds – in 2005 in Crown Heights. When Interfaith shuttered its maternity ward, many pregnant women first learned of the closure when arriving at the ward's chained doors.

One patient learned Interfaith cut its maternity services during her first trimester. Though asthma and other health problems meant she had a high-risk pregnancy, the hospital apparently gave her no referral. Homeless, she received no prenatal care for three months. Finally, when she was six months pregnant, Lawrence Ubakanma, senior case manager at the Brooklyn Perinatal Network, located her and helped to navigate the complicated system to find new prenatal care. He contacted Long Island College Hospital, arranged an appointment, and gave her subway fare. While she was lucky to have encountered Ubakanma, many in the community do not fare as well.

Seeking care is especially complicated for pregnant mothers who already have children and have to juggle prenatal care appointments with school attendance logistics. Moreover, for pregnant mothers with infants in tow, it is difficult to travel. From Bedford-Stuyvesant, it can take over 30 minutes by subway or nearly an hour by bus to reach Long Island College Hospital. Interfaith Hospital's maternity ward, on the other hand, was located in the community, at most a short bus ride away.

The closure of several centers for Women, Infants, and Children (WIC) in Brooklyn over the past year has had similarly disturbing effects on mothers' ability to care for their infants and children. The federal WIC program serves low-income pregnant women and mothers of children under five, providing them with food security, nutritional information, and vouchers for milk, eggs, cereal, and infant formula.

In February 2006 the Lyndon B. Johnson Health Complex, which contained a WIC center in Bedford-Stuyvesant closed, leaving about 1,800 women and children without vouchers for food it had provided. LBJ's management did not notify the community, and WIC participants learned of the closure only when they arrived at the site. A few hundred women found their way to WIC centers run by Interfaith, but advocates expressed concern that over 1,000 women seemed to have fallen through the cracks.

In April 2006 Interfaith then announced its intention to close all five of its WIC centers, because it could no longer use them to funnel clients to the hospital after the closure of its maternity ward. In response to community pressure, three of the five centers remained open, but two centers still closed. Women like Kiara Green, who started at the LBJ center and transferred to one of Interfaith's, were left stranded. As Jackie Williams, former director of the WIC program at Kings County Hospital, noted, "[t]he hardship and inconvenience of traveling forces many people out."

Recommendations

To the New York State Legislature:

► **Implement a Moratorium on Hospital Closures and Service Reductions**

The Legislature must impose a moratorium on hospital closures in already medically-underserved communities, and prioritize investment in community health needs and equitable treatment of all neighborhoods. The Save Our Safety-Net Campaign, a coalition of community, labor, and civil rights organizations dedicated to ensuring access to quality health care services for all residents of New York, is advocating for measures that would institute these changes.

► **Establish Statewide Health Care Planning**

The Legislature must reestablish a system of health care planning in New York State that ensures that all communities have access to high-quality affordable care. In 1983 the State Legislature amended the Public Health Law to include a statewide network of health systems agencies to study and recommend improvements in the delivery of health care services in local communities. Although the laws creating the Health Systems Agency are still on the books, the State stopped funding the agency in the 1990s. This agency should be reinstated, fully funded, and given the authority to engage in concrete health care planning with public participation and community involvement.

► **Create Investment Incentives and Coordination of Services**

The State must promote collaborations among local health departments, hospitals, academic medical centers, federally qualified health centers, and community groups to create a foundation for improved services for underserved populations. The State should take steps to ensure that access to quality specialty care is available to all New Yorkers, including uninsured and Medicaid patients.

► **Expand Community Health Centers**

Greater investment in community health centers – the first point of care for many low-income New Yorkers – is needed to ensure that everyone has access to quality hospital-based services in their neighborhoods. Community health centers and other community-based programs have proven effective in expanding access to care in underserved communities, and can help reduce racial disparities in health care outcomes.

► **Promote a Diverse Health Care Workforce**

The State must work to increase the racial and ethnic diversity of the health care workforce. Studies demonstrate that racial and ethnic minority health care providers are more likely to work in medically underserved communities of color. Furthermore, increased diversity at the top levels of hospital administration can have a positive impact on the care provided, including more culturally and linguistically appropriate services.

► **Expand Health Care Outreach and Services to Women**

New York State can improve children's chances of having a healthy start by ensuring that all women have access to adequate health care before conception. The State Legislature should direct public health outreach programs toward women at a high risk for not receiving prenatal care. In addition, the Legislature should improve access to prenatal care through expansion of Women, Infants, and Children programs and New York State's Prenatal Care Assistance Program.

► **Move to Universal Coverage**

Larger trends make clear that New York State must ultimately move to a system of universal health coverage for all its residents. Such a system will greatly reduce financial barriers to effective and equitable distribution of health care resources. It will equalize incentives for hospitals, health care systems, and private providers to serve a range of communities, regardless of their wealth or poverty. Expanding successful public health insurance programs can help meet this goal. The State Child Health Insurance Program (SCHIP), for example, has already improved access to health care for thousands of children whose families did not qualify for other sources of insurance or who did not receive health benefits through employers. SCHIP should be fully funded and expanded to cover all uninsured children.

To the Governor and Executive Agencies of New York State:

► **Prioritize Communities' Health Care Needs in the Regulation of Services**

The Governor must ensure that the State Department of Health considers the public's health needs in decisions affecting hospitals. Obtaining a Certificate of Need – the regulatory prerequisite for service changes – should be contingent on evidence that the changes sought would reduce racial and economic health care inequality. In addition, the parts of the Certificate of Need application that address issues of access and public need must once again be reviewed and enforced.

► **Collect and Analyze Data on Community Need and Equal Health Care Opportunity**

The Department of Health should collect data and monitor for disparities in health care access and quality on the basis of income, race, ethnicity, gender, primary language, and immigration status, as required under federal civil rights laws. Collection of this information provides the foundation for addressing disparities in access to health care.

► **Challenge Exclusionary and Discriminatory Practices**

The Governor should encourage the Office of the New York State Attorney General to challenge systemic inequities in the health care system. The Attorney General possesses broad authority under *parens patriae* standing, which provides states with the ability to sue to protect the health of their residents. The Governor should also encourage the New York State Division of Human Rights to initiate its own investigations, file its own complaints, and conduct studies in order to prevent and eliminate discrimination. The Governor should consider establishing a task force to identify strategies for eliminating health care disparities.

► **Review and Increase Medicaid Rates**

When Medicaid reimbursement rates are too low, health care providers have little incentive to serve individual Medicaid patients or whole communities that desperately need care. The Governor should establish a task force to review the Medicaid reimbursement system and increase reimbursement rates for crucial primary, prenatal, and maternal health care services. The Governor should also renegotiate the Health Care Reform Act, and urge the Legislature to review health care spending and redistribute bad debt and charity care funds based on facilities' actual provision of services in order to ensure that the needs of uninsured, underinsured, and low-income New Yorkers are met.

To New York City Officials:

▶ **Enact Health Care Opportunity Planning**

The New York City Council must turn its attention to the issue of health care planning to ensure that communities' health care needs are met. An effective plan should allow for public participation, so that the diverse voices and perspectives of New Yorkers are included in the process. In addition, the City Council should continue to allocate resources to programs like asthma prevention, child health clinics, and the Infant Mortality Reduction Initiative, as well as to other prenatal, primary, and preventive health care services and to new community health centers.

▶ **Study New Solutions**

Mayor Michael Bloomberg should establish a commission to examine ways to ensure that all New York City residents have equal access to health care, similar to his Commission on Economic Opportunity which studied ways to help New Yorkers living in poverty.

▶ **Invest in Primary Care**

HHC should continue its investment in preventative care. HHC's mission is to provide health care services for all New Yorkers, regardless of their ability to pay. The City's Department of Health and Mental Hygiene should expand its focus and take steps to address health care disparities in addition to public health promotion.

▶ **Investigate Unequal Opportunity**

The Mayor should urge the New York City Commission on Human Rights to investigate practices by hospital chains that appear to have a disparate impact on communities of color, and initiate its own complaints where unlawful discriminatory practices appear to be occurring. Similarly, Corporation Counsel for the City of New York should draw upon its authority to institute a civil action to enforce the City's Human Rights Law.

To the Federal Government:

▶ **Amplify Civil Rights Enforcement**

The federal government must considerably step up civil rights enforcement in the health care sphere. The U.S. Department of Justice can initiate litigation on behalf of an agency, like the U.S. Department of Health and Human Services (HHS), for a violation of Title VI of the Civil Rights Act of 1964. And the HHS Office of Civil Rights has the power to initiate an investigation of a recipient of federal funds, like the New York State Department of Health, and require the recipient to create a plan to remedy discrimination.

▶ **Require a Health Care Opportunity Impact Statement**

To ensure that federal funds for health care are distributed fairly and equitably, HHS should require funding recipients, like the New York State Department of Health, to review how a potential policy would impact racial and ethnic communities before implementing the policy or program. HHS should require a disparate impact analysis as a substantive compliance condition, as opposed to a post-complaint enforcement response.

To Health Care Providers:

- ▶ Regularly assess the needs of the patient populations served and provide culturally and linguistically competent services for an increasingly diverse population.
- ▶ Design, implement, and evaluate cultural competency programs that eliminate cultural and linguistic barriers to care, which some racial and ethnic minority patients face.
- ▶ Collect data on the demographic makeup, race, ethnicity, gender, income, and language skills of patients; provide information on health care access and quality along these dimensions to state and federal agencies, so that services can be better tailored to meet patients' needs.
- ▶ Eliminate other barriers to health care by providing sufficient transportation, shortening wait times for appointments, scheduling appointment hours that are more convenient for working families, and providing medical translators.
- ▶ Train health professionals in cross-cultural medicine to improve provider-patient communication and eliminate pervasive racial and ethnic disparities in medical care.

Uniformly high-quality care is essential. Too frequently, services and facilities in low-income communities and communities of color are underresourced and understaffed. And, despite the hard work and commitment of the vast majority of health care professionals, poor people and people of color often receive inferior or disrespectful treatment.

To All New Yorkers:

New Yorkers in far greater numbers should begin to claim and insist upon their right to quality health care.

- ▶ Attend or organize town hall meetings and other public forums where health care decisions are made or discussed.
- ▶ Write public officials to demand adequate and equal access for all.
- ▶ Challenge discriminatory or exclusionary practices through complaints to the New York State Human Rights Commission, the New York City Commission on Human Rights, the HHS Office of Civil Rights, or other agencies.
- ▶ Support officials and health care providers who are doing their part to ensure quality health care for all New Yorkers.

A more equitable and effective health care system would not only help to restore opportunity for individuals and families who have been hampered by illness and poor health; it would reduce the State's overall health care costs, reduce the burden on the State's fragile health care safety-net infrastructure, and provide tangible benefits for the State's economy. At the same time, it would bring the State into alignment with city, state, federal, and international legal standards regarding government's responsibilities to ensure equitable treatment for all.

About The **Opportunity** Agenda

The Opportunity Agenda is a communications, research, and advocacy organization dedicated to building the national will to expand opportunity in America.

www.OpportunityAgenda.org

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