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Testimony of Arielle Wisbaum, Health Justice Staff Attorney, New York Lawyers for the Public Interest Before the New York City Council’s Committees on Women and Gender Equity and Health

**June 12, 2023, Oversight:
Current State of Access to Healthcare for LGBTQIA+ Individuals**

My name is Arielle Wisbaum, and I am a staff attorney at New York Lawyers for the Public Interest (NYLPI). I work in NYLPI’s UndocuCare TGNCI+ program, a program striving to ensure that immigrant New Yorkers who are transgender, gender-nonconforming, intersex (TGNCI), or who are living with HIV can [obtain and sustain access to gender-affirming healthcare, HIV care](#), and housing through immigration legal advocacy.¹ At the outset, we want to thank the City Council for its leadership in defending the human rights of LGBTQIA+ immigrants, including through funding the Immigrant Health Initiative. NYLPI has been a long-time recipient of this funding and we see an increasing need this coming Fiscal Year. We strongly encourage the LGBTQIA+ Caucus and the entire City Council to enhance this initiative so that more new New Yorkers can be reached. Additionally, I also want to thank you for the opportunity to present testimony about some of the barriers that the community members we work with experience and how New York City can better respond to their needs. Our testimony today is informed by our clients’ experiences.

A significant number of the immigrant LGBTQIA+ New Yorkers we work with are seeking asylum and have survived extraordinary violence and persecution in their lives merely for expressing their true gender or sexuality—for existing. Those in need of gender-affirming healthcare in their home countries often did not have the opportunity to seek this crucial care due to safety concerns, or it was simply unavailable to them; and those in need of HIV medication frequently encountered discriminatory denials of healthcare, exacerbating their medical conditions. The violence these asylum seekers have endured in their lives often leaves them with trauma related symptoms such as posttraumatic stress disorder (PTSD), Major Depressive Disorder (MDD), and severe Anxiety. For these reasons, immediate access to gender-affirming healthcare for LGBTQIA+ asylum seekers, including mental healthcare, is a necessity.

Upon reaching the United States, LGBTQIA+ asylum seekers and those living with HIV may choose New York City as their destination due to its reputation of having community support networks and healthcare access. However, several barriers continue to stand in the way

¹ The Center for Urban Pedagogy and New York Lawyers for the Public Interest, *Healthcare is For You!*, <https://www.nylpi.org/undocare-cup-resource-launch-healthcare-is-for-you/>.

of asylum seekers needing this care, including funding cuts to Safety Net Providers that offer critical care to immigrant New Yorkers, regardless of their immigration or insurance status, and staffing and training issues at New York City's Department of Social Services/Human Resources Administration (HRA).

New York must act to truly earn its reputation of being a safe place for all LGBTQIA+ community members. NYLPI supports several of the items on today's agenda which move our City and State in this direction, including Res. 591, in Support of Legislation to Protect New York State's Safety Net Providers and Special Needs Plans, Res. 555, Protecting Access to Gender-Affirming Care in New York State and Combating Policies of Other States, Int. 1074, Prohibiting the use of City resources on restrictions on gender affirming care, and Int. 66, Amending the Administrative Code for Signage Regarding Transgender Rights and Services at Hospitals. Today, I am here to address why NYLPI stands in support of the aforementioned mentioned bills and resolutions, and to highlight the immediate need to strengthen New York City's Department of Social Services/Human Resources Administration (HRA) to better meet the needs of LGBTQIA+ asylum seekers.

The City Must Support Funding Protections for Safety Net Providers, Which Offer Lifesaving Care to TGNCI Immigrant New Yorkers, Regardless of Immigration Status

NYLPI supports the Committee's Resolution calling on the New York State Legislature to reverse the Medicaid pharmacy carve-out and to preserve the 340B Drug Discount Program. This support comes in recognition of the catastrophic impact that this ill-conceived carve-out has on health services for LGBTQIA+ individuals and people living with HIV.

Health disparities are compounded for immigrant New Yorkers in the LGBTQIA+ community who may be undocumented and/or uninsured.² Safety Net Providers offer critical care that members of this community would not otherwise receive. For example, a majority of NYLPI's clients who are transgender immigrant New Yorkers receive gender-affirming healthcare from the Transgender Family Program at Community Healthcare Network (CHN). CHN is a Federally Qualified Healthcare Center and Safety Net Provider that serves immigrant LGBTQIA+ community members regardless of their insurance status, immigration status or ability to pay. CHN provides gender affirming medical treatment such as Hormone Replacement Therapy to immigrant community members before they may qualify for New York State Medicaid. CHN additionally provides crucial support to LGBTQIA+ asylum seekers by frequently coordinating with immigration attorneys to draft letters of support, mental health evaluations, and gender verification documentation that are key pieces of evidence in immigration court and at the asylum office.

Unfortunately, the loss of 340B savings has a devastating impact on Safety Net Providers like the Transgender Family Program at CHN. Immigrant LGBTQIA+ community members that Safety Net Providers serve could be deprived of services such as low cost or free medications,

² NYLPI appreciates the Council's resolution in support of the Coverage For All bill, which would give all low-income New Yorkers access to basic health insurance regardless of immigration status and which would create substantial cost savings and economic benefits for New York City and State.

transportation vouchers, care coordination for HIV, and transitional housing placements or referrals. **Fighting to protect Safety Net Providers is most certainly an LGBTQIA+ and immigrant justice issue, and NYLPI appreciates the Council’s efforts to join in this fight.**

The City Must Invest More Resources In HRA, Which Lacks Sufficient Capacity and Training to Meet The Needs Of LGBTQIA+ Asylum Seekers

New York City’s Local Department of Social Services/Human Resources Administration (HRA) helps more than three million New Yorkers annually through the administration of more than twelve major public assistance programs, including Medicaid for those living with a disability and New York City’s HIV/AIDS Services Administration (HASA). This is a significant task, and yet, time and time again, HRA has demonstrated itself ill-prepared to properly administer such programs for immigrant New Yorkers. **HRA’s staffing issues and diversion tactics, both of which create barriers to accessing vital services, can be addressed with enhanced training for HRA employees, and increased funding that ensures sufficient staffing.**

Immigrant New Yorkers who are “Permanently Residing Under Color of Law” (“PRUCOL”) may qualify for New York State-funded benefits such as state Medicaid and Safety Net Assistance.³ However, between January 2022 and April 2023 alone, a significant number of transgender and gender-nonconforming asylum seekers that NYLPI represents or has conducted immigration screenings for have encountered wrongful denials of benefits that they already qualify for, including denials of New York State Medicaid,⁴ and Public Assistance via HASA—a program which includes rental assistance for people living with HIV.

The laws around public benefits and immigration are highly complex and hard to reconcile, understandably making it difficult for immigrant New Yorkers to understand what benefits they are eligible for and how to obtain them. Exacerbating this issue is the fact that HRA employees reviewing benefits applications may engage in the process of “diversion,” whereby a city employee illegally discourages or deters immigrant New Yorkers from applying, even in ways so subtle as to ask for a green card or social security number when such documents are not required.⁵ Compounding this issue, transgender and gender-nonconforming asylum seekers may encounter discriminatory diversion tactics from HRA employees who do not follow protocol to ensure a person’s chosen name or correct gender marker are on record with HRA.

Since January 2023 alone, NYLPI has taken note of several diversion practices by HRA employees and has advocated for LGBTQIA+ immigrant New Yorkers in these circumstances.

³ 18 N.Y.C.R.R. § 360-3.2(j)(ii); § 370.2(c)(6)(vii).

⁴ Footnote 2, *supra*.

⁵ See also New York Lawyers for the Public Interest. “FAQ: Health Insurance and Immigration Status,” NYLPI, <https://www.nylpi.org/wp-content/uploads/2022/12/FAQ-Health-Insurance-and-Immigration-Status-in-New-York.pdf>.

Even for asylum seekers who can already demonstrate their PRUCOL eligibility, these diversion practices have included:

1. Requiring that asylum seekers be granted a change of the immigration court's venue prior to approval of benefits – not a determinant of PRUCOL eligibility;
2. Requesting a social security number – not a determinate of PRUCOL eligibility;
3. Requiring proof that an asylum application has been filed, even where an asylum seeker may already be PRUCOL-eligible via a different immigration status, such as humanitarian parole;
4. Requiring an evaluation and written "PRUCOL letter" from an immigration attorney that states whether the asylum seekers is PRUCOL-eligible, despite clear instructions that the adjudication of benefits must be based on documentation from a federal immigration agency.

Further, in the last two months alone, NYLPI has represented two asylum seekers who, although already able to establish PRUCOL eligibility, have been denied a HASA caseworker. They were told this denial was due to staffing issues.

Such staffing issues and diversion tactics are harmful, exacerbate the trauma asylum seekers face, and are contrary to local law. For transgender and gender-nonconforming asylum seekers who may qualify for HASA, wrongful denials of Medicaid and HASA assistance delay crucial gender-affirming care and unnecessarily prolong stays in the Department of Homeless Services' shelter system, which although committed to improving, at this time, continues to lack gender-affirming spaces and fails to protect transgender and gender-nonconforming people from hate crimes. **The City must ensure that HRA is sufficiently staffed, and its employees are properly trained so that asylum seekers do not continue to experience harmful barriers to accessing healthcare and housing.**

NYLPI Supports Int. Nos. 1074 and 66, and Res. 555, Which Will Protect and Facilitate Access To Gender-Affirming Healthcare For TGNCI Individuals

Informed by our clients' experiences, NYLPI supports legislation that will prevent discrimination in healthcare settings, and that will protect those accessing and providing gender-affirming healthcare in New York State. Nearly half of transgender people – and 68% of transgender people of color – reported having experienced mistreatment at the hands of medical providers, including refusal of care and verbal or physical abuse.⁶ Discrimination can then prevent people from seeking future care, including by postponing or not getting necessary medical care for fear of discrimination. NYLPI supports Int. No. 66, requiring the Department of Health and Mental Hygiene (DOHMH) to distribute signs on an individual's right to be referred to by a chosen name, title, gender and pronoun to every hospital in the city. This signage can

⁶ Medina, Santos, Mahowald, *Protecting and Advancing Health Care for Transgender Adult Communities*, Center for American Progress (August 18, 2021).

combat discrimination in healthcare settings and empower transgender and gender-nonconforming patients to advocate for their rights in these scenarios.

Finally, as unfortunate attacks on gender-affirming healthcare and the very existence of trans and gender-nonconforming people spread throughout the United States, it is all the more important that New York State serve as a safe haven for people seeking this care. NYLPI supports Res. 555, calling on the Governor to immediately sign into law S.2475, supporting the livelihoods of TGNCI asylum seekers who choose to make New York their final destination in hopes that their access to gender-affirming care will be protected.

Conclusion

Once again, we thank the Committees on Health and Women and Gender Equity for convening this critical oversight hearing. We appreciate the opportunity to present testimony today on behalf of our LGBTQIA+ clients who are seeking asylum and deserve access to vital services like gender-affirming healthcare and housing.

We hope the issues we have identified above will help inform the committees' advocacy in the coming months, and we welcome the opportunity to discuss the barriers we have identified and the recommendations we have included in this testimony. With the support of the Council's Immigrant Health Initiative, we look forward to continuing our work to improve LGBTQIA+ immigrant New Yorkers' access to healthcare for new arrivals and long-time New Yorkers alike. **Health is a human right.**

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NYLPI has fought for more than 40 years to protect civil rights and achieve lived equality for communities in need. Led by community priorities, we pursue health, immigrant, disability, and environmental justice. NYLPI combines the power of law, organizing, and the private bar to make lasting change where it's needed most.

NYLPI's Health Justice Program brings a racial equity and immigrant justice focus to health care advocacy, including ongoing work addressing the human rights crisis in immigration detention and advocating for healthcare for all New Yorkers.