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Hon. Carlina Rivera, Chair

<u>February 24, 2020</u>

Oversight: Safety of New York City Emergency Departments

I. INTRODUCTION

On February 24, 2020, the Committee on Hospitals, chaired by Council Member Carlina Rivera, will hold an oversight hearing titled, "Oversight: Safety of New York City Emergency Departments." During the hearing, the Committee will discuss the safety precautions hospital emergency departments (EDs) employ, as well as ED wait times, staffing ratios, and other related data. New York City's Health + Hospitals (H+H), voluntary hospitals, physicians, advocates, and other interested parties are expected to testify.

II. BACKGROUND

EDs have been described as the safety net of America's increasingly expensive health care system.[1] In recent years, the strain on EDs has increased due to a number of factors, including a reduction in the number of EDs, an aging population, limited access to primary care providers and specialists for those with Medicaid, shortages of hospital nurses and on-call specialist physicians in the ED, reduced inpatient capacity, and an increased willingness of physicians to direct their patients to the ED for faster diagnostics.[2] This has caused longer wait times, and patients are forced to occupy beds in the ED hallway for hours or even days before being admitted, a process known as "boarding."[3] One study analyzed California's ED market, and found that the capacity of EDs was actually increasing, and the main driver of overcrowding was "high hospital occupancy with

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[1] Dr. Amy Faith Ho, *Opinion: I'm An Emergency Room Physician. Inadequate Access To Health Care Is Breaking Us,* WBUR, Feb. 4, 2020, available at https://www.wbur.org/onpoint/2020/02/04/opinion-emergency-room-physician-overcrowding?fbclid=IwAR11g74-EfdRj0kPBFGRsqhsM4WVPbTR1f6Fd99s16aF4QC098aDYap5Z-0

[2] Bruce Siegel, *The Emergency Department: Rethinking The Safety Net For The Safety* Net, Health Affairs, 2004, available at https://www.healthaffairs.org/doi/full/10.1377/hlthaff.W4.146; *Emergency Department Wait Times, Crowding and Access*, American College of Emergency Physicians, available at http://newsroom.acep.org/2009-01-04-emergency-department-wait-times-crowding-and-access-fact-sheet

[3] Bruce Siegel, *The Emergency Department: Rethinking The Safety Net For The Safety* Net, Health Affairs, 2004, available at https://www.healthaffairs.org/doi/full/10.1377/hlthaff.W4.146

shrunken inpatient capacity (especially in critical care) and impaired patient flow."[4] Hospitals cannot move even their sickest patients fast enough,[5] and this can have dangerous repercussions,[6] including for elderly patients, who are more likely to have increased lengths of stays in the ED due to complex and chronic illnesses.[7] Increased length of stay is likely to increase the patient's risk for poor outcomes.[8]

One method EDs have recently employed to more quickly meet the needs of those waiting for care is a provider-in-triage system.[9] The provider-in-triage system calls for a doctor, nurse practitioner, or physician assistant to ask those waiting a few questions and order some diagnostic tests soon after one enters the ED.[10] This system has come under intense scrutiny, stating that the practices increase hospital profits yet cause doctors to perform rapid medical evaluations that are not thoughtful and can be meaningless.[11] Doctors work with limited information, cannot thoroughly examine the individual waiting, and may over-order tests that lead to higher bills for the patients.[12] Doctors have called for better ways to triage patients.[13]

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[4] Bruce Siegel, *The Emergency Department: Rethinking The Safety Net For The Safety* Net, Health Affairs, 2004, available at https://www.healthaffairs.org/doi/full/10.1377/hlthaff.W4.146

[5] *Id.*

[6] Gail Ciesielski & Nora Clark, *Safety in the Emergency Department: It's About* Time, Kansas Nurse, Mar. 2007, available at https://search-proquest-com.ezproxy.cul.columbia.edu/docview/212291815?accountid=10226&pq-origsite=summon; Emergency *Department Wait Times, Crowding and Access*, American College of Emergency Physicians, available at http://newsroom.acep.org/2009-01-04-emergency-department-wait-times-crowding-and-access-fact-sheet

[7] Gail Ciesielski & Nora Clark, *Safety in the Emergency Department: It's About* Time, Kansas Nurse, Mar. 2007, available at https://search-proquest-com.ezproxy.cul.columbia.edu/docview/212291815?accountid=10226&pq-origsite=summon

[8] *Id.*

[9] Keith Corl, *Hospitals' new emergency department triage systems boost profits but compromise care*, STAT News, Sept. 5, 2019, available at https://www.statnews.com/2019/09/05/triage-system-boost-profits-compromises-care/

[10] *Id.*

[11] *Id.*; Melissa Bailey, *Beyond Burnout: Docs Decry 'Moral Injury' From Financial Pressures Of Health Care*, Kaiser Health News, Feb. 4, 2020, available at https://khn.org/news/beyond-burnout-docs-decry-moral-injury-from-financial-pressures-of-health-care/

[12] *Id.*

[13] Sven Oredsson, *Triage and patient safety in emergency departments,* The BMJ, Oct. 20, 2011, available at https://www-bmj-com.ezproxy.cul.columbia.edu/content/343/bmj.d6652

ED staff, under federal law, must provide stabilization to all persons who enter the facility, and, according to the American College of Emergency Physicians, ED physicians must not discriminate against any patient based on their race, gender, national identity, or ability to pay.[14] ED physicians routinely encounter individuals from diverse cultural backgrounds,[15] and areas with large numbers of patients requiring translation services have an attendant increase in ED visits.[16] Those with limited access to health care, poor health literacy, and/or those who rely on public health insurance tend to use the ED more frequently, and, although research is sparse, there are studies showing disparities in health outcomes for those who use the ED based on race and gender.[17] Additionally, there have been concerns about ED staff being particularly susceptible to unconscious bias, given the nature of their work.[18] A 2007 study by the Kaiser Family Foundation found that high utilizers of EDs included those with higher needs for health care services, specifically those who are elderly, poor, and/or living with chronic conditions.[19] Given these equity concerns, there is even more of a reason to ensure that our EDs are safe.

State Oversight of Hospitals

In New York, the Division of Hospitals and Diagnostic and Treatment Centers (DHDTC) has regulatory oversight of all hospitals, associated clinics and free-standing clinics, as well as

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[14] American College of Emergency Physicians, *Delivery of Care to Undocumented Persons*, Revised June 2018, available at https://www.acep.org/patient-care/policy-statements/delivery-of-care-to-undocumented-persons/

[15] American College of Emergency Physicians, *Cultural Awareness and Emergency Care*, Reaffirmed April 2014, available at https://www.acep.org/patient-care/policy-statements/cultural-awareness-and-emergency-care/

[16] John L. Westhoff II, et. al., *Disparities in Emergency Care*, American College of Emergency Physicians, Oct. 2017, available at https://www.acep.org/globalassets/uploads/uploaded-files/acep/clinical-and-practice-management/policy-statements/information-papers/disparities-in-emergency-care.pdf

[17] *Id.*

[18] *Id.*

[19] Elizabeth M. Peppe, et. al., *Characteristics of Frequent Emergency Department Users*, Kaiser Family Foundation, October 2007, available at https://www.kff.org/wp-content/uploads/2013/01/7696.pdf

several federally defined facility types including End-Stage Renal Disease Dialysis Clinics, Ambulatory Surgery Centers, Federally Qualified Health Centers, Rural Health Centers, Comprehensive Outpatient Rehabilitation Facilities, and Outpatient Physical Therapy Speech Pathology Centers.[20] DHDTC also manages the Resident Work Hours and Conditions of Post-Graduate Medical Trainees program in New York's teaching hospitals.[21] DHDTC is under the statutory authority of Article 28 of the Public Health Law (PHL) and Title 10 of the New York Code of Rules and Regulations (NYCRR).[22] Complaints or concerns relating to any aspect of care during a hospital stay can be submitted to the Department of Health.[23]

ED Wait Times & "Hallway Care"

According to a study published by *Annals of Emergency Medicine*, long wait times can have dangerous effects on patients, such as increased risk of death and increased length of stay for those who need to be admitted to the hospital.[24] Some patients experiencing long wait times decide to leave without being seen or leave against medical advice, which can lead to life threatening issues.[25] While New York State has focused on reducing preventable ED visits over the past several years,[26] the American College of Emergency Physicians has proposed other strategies to assist

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[20] *Id.*

[21] *Id.*

[22] N.Y. Department of Health, Hospitals and Diagnostic and Treatment Centers (Clinics) in New York State, https://www.health.ny.gov/facilities/hospital/.

[23] N.Y. Department of Health, NYS Health Profiles, https://profiles.health.ny.gov/hospital/pages/complaints.

[24] *Emergency Department Wait Times, Crowding and Access*, American College of Emergency Physicians, available at http://newsroom.acep.org/2009-01-04-emergency-department-wait-times-crowding-and-access-fact-sheet

[25] *Id;* Phillip Reese, *As ER Wait Times Grow, More Patients Leave Against Medical Advice,* Kaiser Family Foundation, available at https://khn.org/news/as-er-wait-times-grow-more-patients-leave-against-medical-advice/

[26] *Statistical Brief #8: Office of Quality and Patient Safety Division of Information and Statistics*, New York State Department of Health, available at https://www.health.ny.gov/statistics/sparcs/sb/docs/sb8.pdf

with ED overcrowding.[27] Some examples include moving admitted patients out of the ED to a different inpatient area, and increasing outpatient access by extending primary care evening and weekend hours.[28]

Millions of New Yorkers visit EDs every year.[29] In 2016, there were a total of 6,858,624 ED visits in New York State, and 3,260,226 (or 46.4 percent) occurred in New York City.[30] In June 2019, this Committee held a hearing on safe staffing ratios and ED wait times. At the time, ProPublica, an independent, nonprofit newsroom that analyzed data from CMS, reported that New Yorkers wait, on average, 28 minutes before seeing a doctor in an ED, and wait 170 minutes until they are sent home.[31] However, since then, CMS removed "wait time before seeing a doctor" as a quality measure from their reporting.[32] CMS and ProPublica still track the average time it takes for a person to be sent home, the number of ED-related violations at each hospital, and the time before a patient is admitted.[33]

On average, patients in New York State spend nearly 3 hours in the ED before being sent home, and wait a little over 6 hours before being admitted.[34] Wait times can vary greatly from hospital to hospital.[35] For example, Mount Sinai, Kings County, Brookdale, and Jacobi Hospitals

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[27] *Emergency Department Wait Times, Crowding and Access*, American College of Emergency Physicians, available at http://newsroom.acep.org/2009-01-04-emergency-department-wait-times-crowding-and-access-fact-sheet
[28] *Id.*
[29] *NYS Health Connection*, The New York State Department of Health, available at https://nyshc.health.ny.gov/web/nyapd/emergency-department-visits-in-new-york
[30] *Id.*
[31] *State-by-State Waiting Times*, ProPublica, available at https://projects.propublica.org/emergency/
[32] Lena V. Groeger, *Be Prepared: Find the ER You Want to Go to Before an Emergency Happens,* ProPublica, Sept. 19, 2019, available at https://www.propublica.org/article/prepared-find-the-er-you-want-to-go-to-before-an-emergency-happens
[33] *New York Waiting Times*, ProPublica, available at https://projects.propublica.org/emergency/state/NY
[34] *State-by-State Waiting Times*, ProPublica, available at https://projects.propublica.org/emergency/
[35] *New York Waiting Times*, ProPublica, available at https://projects.propublica.org/emergency/state/NY

each had an average wait time of over 12 hours before a patient from the ED is admitted.[36] Elmhurst and New York Presbyterian were not far behind, both with average wait times of between 11 and 12 hours.[37] Also, 53 percent of hospitals in the state have at least one ED-related violation since 2015.[38] All hospitals that participate in Medicare are subject to health and safety regulations, and CMS publicly releases violations found during the investigation of a complaint.[39] Violations can include not properly assessing and treating patients, inadequate medical and nursing staff, and not following ED procedures and policies.[40]

Patients who are waiting for an inpatient bed may need to wait in the ED for hours, sometimes days, and end up receiving "hallway care," or care received in beds in a hallway, sometimes also referred to as boarding.[41] According to one study published by the American Journal of Emergency Medicine, "compared to patients in standard treatment rooms, [patients in hallways] report lower overall satisfaction scores and lower satisfaction based specifically on their treatment area."[42] Studies have suggested that hallway care could also be a threat to patient safety, and the study concluded that patients initially triaged to the hallway have a higher chance of returning to the ED within 30 days, readmission to observation, and inpatient admission.[43] In a survey of 60 Norwegian hospitals, "the head physicians and head nurses agree with statements that

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[36] *Id.*
[37] *Id.*
[38] *Id.*
[39] Lena V. Groeger, *Be Prepared: Find the ER You Want to Go to Before an Emergency Happens,* ProPublica, Sept. 19, 2019, available at https://www.propublica.org/article/prepared-find-the-er-you-want-to-go-to-before-an-emergency-happens
[40] *Id.*
[41] Jeffrey A. Rixe, et. al., *Is hallway care dangerous? An observational study,* The American Journal of Emergency Medicine, 2018, available at https://www.ajemjournal.com/article/S0735-6757(18)30278-X/fulltext
[42] *Id.*
[43] *Id.*

caring for patients in corridors reduces the quality of care, increases the risk of mistakes and accidents, increases the risk of infections, and decreases the amount of time spent by providers with patients."[44] The American College of Emergency Physicians affirms these findings, stating that the boarding of admitted patients contributes to lower quality of care, decreased patient safety, reduced timeliness of care, and reduced patient satisfaction.[45]

ED Physician and Staff Safety and Health

The increased strain on EDs has a direct impact on the health and safety of patients and staff alike. More and more physicians are utilizing the phrase "moral injury" to describe their struggles on the job.[46] Moral injury, a term developed to describe veterans, refers to the emotional, physical, and spiritual harm people feel after "perpetrating, failing to prevent, or bearing witness to acts that transgress deeply held moral beliefs and expectations."[47] The reason physicians are gravitating towards this term is because, while they know how to best deliver care for their patients, they are blocked from doing so because of systemic barriers and issues outside of their control, such as the profit-focused nature of the hospital setting.[48]

ED staff need to practice rushed medicine, and provide care that is not of the quality they would provide under more ideal situations.[49] ED physicians are typically serving vulnerable and

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[44] *Id.*

[45] American College of Emergency Physicians, *Boarding of Admitted and Intensive Care Patients in the Emergency Department*, Revised June 2017, available at https://www.acep.org/patient-care/policy-statements/boarding-of-admitted-and-intensive-care-patients-in-the-emergency-department/

[46] Melissa Bailey, *Beyond Burnout: Docs Decry 'Moral Injury' From Financial Pressures Of Health Care*, Kaiser Health News, Feb. 4, 2020, available at https://khn.org/news/beyond-burnout-docs-decry-moral-injury-from-financial-pressures-of-health-care/

[47] *Id.*

[48] *Id.*

[49] *Id.;* Keith Corl, *Hospitals' new emergency department triage systems boost profits but compromise care*, STAT News, Sept. 5, 2019, available at https://www.statnews.com/2019/09/05/triage-system-boost-profits-compromises-care/

underserved populations, and more and more care is being provided in EDs, with one study stating that nearly half of all medical care in the United States is being performed in EDs.[50] The toll on those who staff the ED has been devastating. In fact, 4 in 10 physicians report feelings of burnout, and the physician suicide rate is more than double that of the general population.[51] In addition, the rate of nurse suicide is increasing.[52] Nurses have struggled to achieve safe and effective ratios and, in contrast to the New York State Nurses Association's (NYSNA) recommended safe nurse-to-patient ratios, which range from 1:1 in the Trauma Emergency Unit to 1:6 in the Well-Baby Nursery,[53] there have been reports that some nurses in New York City treat up to 15 patients at a time.[54] Hospital representatives have expressed concerns that the estimated several billion dollars needed to enforce suggested staffing ratios would be detrimental for struggling hospitals.[55] However, the actual cost is unclear, as some studies have found that increasing staffing ratios can increase profits by leading to a reduction in adverse events and an increase in retention.[56]

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[50] Dr. Amy Faith Ho, *Opinion: I'm An Emergency Room Physician. Inadequate Access To Health Care Is Breaking Us,* WBUR, Feb. 4, 2020, available at https://www.wbur.org/onpoint/2020/02/04/opinion-emergency-room-physician-overcrowding?fbclid=IwAR11g74-EfdRj0kPBFGRsqhsM4WVPbTR1f6Fd99s16aF4QC098aDYap5Z-0

[51] *Id.;* Keith Corl, *Hospitals' new emergency department triage systems boost profits but compromise care*, STAT News, Sept. 5, 2019, available at https://www.statnews.com/2019/09/05/triage-system-boost-profits-compromises-care/

[52] Dr. Amy Faith Ho, *Opinion: I'm An Emergency Room Physician. Inadequate Access To Health Care Is Breaking Us,* WBUR, Feb. 4, 2020, available at https://www.wbur.org/onpoint/2020/02/04/opinion-emergency-room-physician-overcrowding?fbclid=IwAR11g74-EfdRj0kPBFGRsqhsM4WVPbTR1f6Fd99s16aF4QC098aDYap5Z-0

[53] NYSNA "Safe Staffing: Get the Facts" Available at https://www.nysna.org/our-campaigns/safe-staffing/safe-staffing-get-facts#.XPfFCohKiUk

[54] McGeehan, Patrick. "Nurses Strike in New York: Threats Increase Over 'Safe Staffing' Levels" *New York Times.* March 30, 2019. Available at https://www.nytimes.com/2019/03/30/nyregion/nyc-nurses-strike.html

[55] Grause, Bea. (HANYS) "HANYS' SFY 2019-2020 state budget testimony and health policy recommendations" Pub. February 5, 2019. Available at: https://www.hanys.org/government_affairs/state/state_budget/docs/2019_budget_testimony.pdf; Lovett, Kenneth. "New York nurses union unveiling $1M campaign for 'safe staffing' bill" *Daily News.* June 4, 2018. Available at https://www.nydailynews.com/news/politics/ny-pol-nurses-hospitals-staffing-20180603-story.html

[56] Everhart, Damian et al. "The effects of nurse staffing on hospital financial performance: competitive versus less competitive markets." *Health care management review*. Pub. August 2013. Available at https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4543286/

Doctors, nurses, and staff also have physical safety concerns. According to the Bureau of Labor Statistics, nearly 75 percent of significant injuries due to workplace assault in 2013 occurred in the health care and social services sectors.[57] ED staff are among the most frequent victims of patient attacks, with many patients acting under the influence of alcohol or drugs, or experiencing mental illness-related needs.[58] According to surveys by the American College of Emergency Physicians and the Emergency Nurses Association, "almost half of emergency physicians report being physically assaulted at work, while about 70 percent of emergency nurses report being hit and kicked while on the job" and 80 percent of emergency physicians say violence in the ED also harms patient care.[59] As a result, EDs and staff have needed to adjust their practice to include new trainings and security measures.[60]

Media Coverage of ED Safety

There have been several stories in the media examining patient safety in New York City EDs. In December 2019, *The New York Post* broke a story about Mount Sinai's "war zone" of an ED, quoting former and current staff who say that the environment is extremely dangerous for patients and staff, and one that prioritizes profits over patients.[61] Because of faulty triage techniques, understaffing, and overcrowding, patients can waits days to receive a proper inpatient

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[57] Bob Tedeschi, *As patients turn violent, doctors and nurses try to protect themselves,* STAT News, Nov. 20, 2015, available at https://www.statnews.com/2015/11/20/patients-violence-hospitals/

[58] *Id.*

[59] American College of Emergency Physicians, *Violence in the Emergency Department: Resources for a Safer Workplace*, available at https://www.acep.org/administration/violence-in-the-emergency-department-resources-for-a-safer-workplace/

[60] Bob Tedeschi, *As patients turn violent, doctors and nurses try to protect themselves,* STAT News, Nov. 20, 2015, available at https://www.statnews.com/2015/11/20/patients-violence-hospitals/

[61] Ebony Bowden, *Mount Sinai Hospital emergency department is a 'war zone,' workers say*, The New York Post, Dec. 9, 2019, available at https://nypost.com/2019/12/09/mount-sinai-hospitals-emergency-department-is-a-war-zone-workers-say/

bed and may go unnoticed for hours.[62] Over three years ago, the hospital had three out-of-state medical experts come review their ED, and their subsequent report detailed conditions that were "among the worst [they had] ever seen."[63] The report detailed poor staffing ratios, infection control, and safety, as well as patient boarding and other conditions.[64] As a result of the article, the NYSDOH announced an investigation into Mount Sinai Hospital, and Mount Sinai issued a statement noting the improvements made to their ED since the release of the report as well as their commitment to the safety of their patients.[65]

The lack of oversight within Mount Sinai's ED was also highlighted in an extensive investigative report issued by the news outlet *The Cut*, detailing the sexual assault perpetrated by one of Mount Sinai's most highly respected ED physicians.[66] In 2016, Aja Newman, a patient in the ED at Mount Sinai, through her own self-advocacy and initiative, proved that David Newman, then a doctor at Mount Sinai, sexually assaulted her after deliberately delivering an overabundance of pain medication to her to make her incoherent by quickly undergoing a forensic evaluation.[67] The eventual court case also included three more people – all young, lower income women of color – who said that David Newman touched or grabbed their breasts when they entered Mount Sinai's ED.[68] The report details a male-dominated and profit-oriented culture at Mount Sinai.[69] Given the

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[62] *Id.*
[63] *Id.*
[64] *Id.*
[65] Brendan Krisel, *Horror Stories From Mount Sinai Lead to Investigation Of Hospital*, Patch, Dec. 10, 2019, available at https://patch.com/new-york/upper-east-side-nyc/report-leads-state-investigation-mount-sinai-hospital; *Statement: The Mount Sinai Hospital Emergency Department,* Mount Sinai, Dec. 10, 2019, available at https://www.mountsinai.org/about/newsroom/2019/statement-the-mount-sinai-hospital-emergency-department
[66] Lisa Miller, *One Night at Mount Sinai*, The Cut, Oct. 15, 2019, available at https://www.thecut.com/2019/10/mount-sinai-david-newman.html
[67] *Id.*
[68] *Id.*
[69] *Id.*

pervasive and repetitive nature of David Newman's actions, the reports have raised concerns about patient safety at Mount Sinai.

III.   CONCLUSION

The purpose of this hearing is for the Committee to better understand the safety of NYC EDs, and to discuss the barriers to quality care in the City's EDs. The Council will examine the available data and information related to ED care, such as wait times, staff to patient ratios, and physician burnout, safety, and health.