



March 30, 2020

The Honorable Ron DeSantis
Governor of the State of Florida
The Capitol, 400 S. Monroe Street
Tallahassee, Florida 32399

Governor DeSantis:

It is with a sense of extreme urgency that our organization writes to your administration and other relevant state officials to request that the State of Florida reiterate its legal and ethical commitment to ensuring non-discriminatory access to life-saving medical care for people with disabilities during the ongoing COVID-19 public emergency. Although the anticipated impacts of this public health crisis are likely to be borne across many sectors of public life in our state, perhaps the most immediately dire consequence brought to light by advocates and frontline health care workers across the social services spectrum is the shared concern that our health care systems have inadequate capacity to provide sufficient intensive care and ventilator access on the scale and for the duration necessitated by this global pandemic.

As your office has explained through its very vital public informational campaign during this time of crisis, it is well-accepted that the health risks associated with exposure to this virus are most severe for older Floridians and those with underlying medical complications. As persons with disabilities in the state – especially those in congregate settings and institutional placements – are therefore at higher risk of contracting COVID-19, it is essential that the state proactively instruct its health care and emergency medical providers to adhere to both state and federal anti-discrimination protections pertaining to providers' delivery of treatment and provision of related life-saving medical care.

Amidst legal challenges and related public outcry to efforts elsewhere in the nation to contemplate or institute medical "rationing" protocol¹ within emergency preparedness planning, the State of Florida should lead by example in ensuring that all relevant portions of the federal Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act, and Section 1557 of the Affordable Care Act prohibiting discrimination in the provision of life-saving medical care are upheld and complied with during this crisis. This includes specifically ensuring that policies and planning commenced in the state in response to the COVID-19 pandemic do not prohibit or restrict access to – or mandate the removal of – medically-necessary ventilator use by individuals with specific disabilities or functional impairments, and further do not permit the blanket issuance of "do not resuscitate" (DNR) orders for individuals receiving such life-saving care.

¹ Office of Civil Rights (OCR) complaints filed against the States of Washington, Alabama, Kansas and Tennessee can be found at <https://www.centerforpublicrep.org/news/cpr-and-partners-file-additional-complaints-regarding-illegal-disability-discrimination-in-treatment-rationing-during-covid-19-pandemic/> (March 27, 2020)

Only days ago, the Office of Civil Rights issued a bulletin (attached) reminding entities covered by civil rights authorities that these laws remain in effect during the COVID-19 emergency and, as such, “persons with disabilities should not be denied medical care on the basis of stereotypes, assessments of quality of life, or judgments about a person’s relative ‘worth’ based on the presence or absence of disabilities.”²

We generally acknowledge that decisions to prioritize access to essential treatment and lifesaving medical equipment could soon be a necessary consideration. However, Disability Rights Florida believes that the state must immediately engage all components of its health care and emergency medical systems to assess capacity and delivery options in a concerted effort to forestall, if not prevent, the need for such prioritization. The state must encourage or mandate the sharing of in-demand, life-saving medical equipment such as ventilators and essential personal protective equipment (PPE). Beyond helping to address known shortages, such endeavor would serve to promote supply-and-distribution equity to discrete or marginalized portions of these systems and as such should be commenced in earnest as a necessary precursor to any non-discriminatory prioritization, rationing or resource allocation. As appropriate, the State of Florida must support efforts to immediately and fully utilize the recently invoked Defense Production Act to generate and direct needed resources to these soon-to-be-overwhelmed systems.

If allocation of treatment and life-saving resources becomes necessary, the state has an obligation to ensure that prioritizations are administered ethically and in a way that respects the basic civil and constitutional rights of persons with disabilities. Such decisions cannot be left to individual hospitals or physicians tasked with making operational judgment calls in the heat of an overwhelming health care crisis. Therefore, consistent with similar calls³ from partner and affiliate organizations nationwide, Disability Rights Florida urges the state to immediately adopt and disseminate mandatory statewide guidelines affirming its commitment to promoting and ensuring relevant legal protections which:

- 1) require government decisions regarding the allocation of treatment and life-saving resources to be made based on individualized determinations using current objective medical evidence, rather than generalized assumptions about a person’s disability;
- 2) prohibit treatment allocation decisions based on misguided assumptions that people with disabilities experience a lower quality of life, or that their lives are not worth living;
- 3) prohibit treatment allocation decisions based on the perception that a person with a disability has a lower prospect of survival;
- 4) prohibit treatment allocation decisions based on the perception that a person’s disability will require the use of greater treatment resources; and
- 5) clarify that a person is “qualified” for purposes of receiving COVID-19 treatment if he or she can benefit from the treatment (that is, can recover) and the treatment is not contraindicated.⁴

² This guidance also recommends that covered entities make use of “multiple outlets and resources for messaging to reach individuals with disabilities [...]” and stock facilities with “items that will help people to maintain independence, such as hearing aid batteries, canes, and walkers.”

³ See, Letter of National Council on Disabilities to Roger Severino, Director, Office for Civil Rights, U.S. Department of Health & Human Services, March 18, 2020, available at <https://ncd.gov/publications/2020/ncd-covid-19-letter-hhs-ocr>

⁴ See, Consortium of Citizens with Disabilities, letter to Secretaries of EOHHS and the Office of Civil Rights, March 20, 2020, available at <http://www.c-c-d.org/fichiers/Letter-re-COVID-19-and-Disability-Discrimination-final.pdf>

For nearly three decades, Florida has prescribed a state “Patient’s Bill of Rights and Responsibilities” providing that patients have the right to “impartial access to medical treatment or accommodations, regardless of race, national origin, religion, handicap [sic], or source of payment,” as well as the right to “treatment for any emergency medical condition that will deteriorate from failure to provide such treatment.”⁵ Especially where the state has affirmatively undergirded its health care system and that system’s delivery with such fundamental assurances, the equally-protected rights of persons with disabilities cannot be abrogated or diminished through discriminatory resource allocation or altered standards of care.

To allow or propose otherwise would be a tacit endorsement of long refuted social eugenic notions constructed around deep-seated biases and stereotypes regarding the perceived value or worth of living with a disability. Those abhorrent notions have been appropriately dismantled over decades of hard-fought disability rights advances in this country in support of an important organizing principle that permeates across our network – the abiding belief that disability rights are at once both civil and human rights. Florida must be unwavering in its adherence to these values and entrenchments.

Disability Rights Florida is the state’s federally mandated Protection and Advocacy (P&A) system, providing free-and-confidential legal and advocacy services for the benefit of all persons with disabilities in the state through authority maintained across nine federal grants. Our organization wishes to be a resource to your office during this troubling time, to support and collaborate on efforts undertaken by the state in response to these predicaments, and to amplify vital information that the state is seeking to communicate to Florida’s disability communities. If there is additional assistance that our staff may provide in this regard, please do not hesitate to contact our offices directly to discuss.

Our organization thanks you for your administration’s commitment to safeguarding the lives and interests of all citizens in the state, including all Floridians with all disabilities.

Sincerely,

/s/ Peter Sleasman
Peter P. Sleasman
Interim Executive Director
Disability Rights Florida

/s/ Tony DePalma
Tony DePalma
Director of Public Policy
Disability Rights Florida

Cc:

David Clark, Deputy Chief of Staff, Executive Office of the Governor
Bill Galvano, President of the Florida Senate
Lisa Vickers, Chief of Staff, Office of the President of the Florida Senate

⁵ Section 381.026(4)(d), Fla. Stat.; see also section 765.1105, Fla. Stat., “Transfer of a patient.”

Jose Oliva, Speaker of the Florida House of Representatives
Carol Gormley, Chief of Staff, Office of the Speaker of the Florida House of Representatives
Scott Rivkees, Secretary of the Florida Department of Health & State Surgeon General
Mary Mayhew, Secretary of the Florida Agency for Health Care Administration
Barbara Palmer, Director of the Florida Agency for Persons with Disabilities
Richard Prudom, Secretary of the Florida Department of Elder Affairs
Chad Poppell, Secretary of the Florida Department of Children and Families
Simone Marstiller, Secretary of the Florida Department of Juvenile Justice
Mark S. Inch, Secretary of the Florida Department of Corrections
Members of the Florida Senate
Members of the Florida House of Representatives

Attachments:

U.S. Department of Health & Human Services, Office of Civil Rights "[BULLETIN: Civil Rights, HIPAA, and the Coronavirus Disease 2019 \(COVID-19\)](#)" (March 28, 2020)

HHS Office for Civil Rights in Action



March 28, 2020

BULLETIN: Civil Rights, HIPAA, and the Coronavirus Disease 2019 (COVID-19)

In light of the Public Health Emergency concerning the coronavirus disease 2019 (COVID-19), the Office for Civil Rights (OCR) at the U.S. Department of Health and Human Services (HHS) is providing this bulletin to ensure that entities covered by civil rights authorities keep in mind their obligations under laws and regulations that prohibit discrimination on the basis of race, color, national origin, disability, age, sex, and exercise of conscience and religion in HHS-funded programs.¹

In this time of emergency, the laudable goal of providing care quickly and efficiently must be guided by the fundamental principles of fairness, equality, and compassion that animate our civil rights laws. This is particularly true with respect to the treatment of persons with disabilities during medical emergencies as they possess the same dignity and worth as everyone else.

The Office for Civil Rights enforces Section 1557 of the Affordable Care Act and Section 504 of the Rehabilitation Act which prohibit discrimination on the basis of disability in HHS funded health programs or activities. These laws, like other civil rights statutes OCR enforces, remain in effect. As such, persons with disabilities should not be denied medical care on the basis of stereotypes, assessments of quality of life, or judgments about a person's relative "worth" based on the presence or absence of disabilities. Decisions by covered entities concerning whether an individual is a candidate for treatment should be based on an individualized assessment of the patient based on the best available objective medical evidence.

"HHS is committed to leaving no one behind during an emergency, and this guidance is designed to help health care providers meet that goal," said Roger Severino, OCR Director. "Persons with disabilities, with limited English skills, or needing religious accommodations should not be put at the end of the line for health services during emergencies. Our civil rights laws protect the equal dignity of every human life from ruthless utilitarianism," Severino added.

¹ Due to the public health emergency posed by COVID-19, OCR is exercising its enforcement discretion in connection with the conditions outlined herein. This guidance is a statement of agency policy not subject to the notice and comment requirements of the Administrative Procedure Act (APA). 5 U.S.C. § 553(b)(A). For the same reasons explained above, OCR additionally finds that, even if this guidance were subject to the public participation provisions of the APA, prior notice and comment for this guidance is impracticable, and there is good cause to issue this guidance without prior public comment and without a delayed effective date. 5 U.S.C. § 553(b)(B) & (d)(3).

NOTE: The CDC has advised that the best way to prevent illness is to avoid being exposed to this virus: practice social distancing; clean your hands often; cover coughs and sneezes; and call your healthcare provider if you believe you may be infected. <http://www.coronavirus.gov>.

OCR remains in close coordination with federal partners to help ensure that the Nation's response effectively addresses the needs of at-risk populations. To this end and as resources allow, government officials, health care providers, and covered entities should not overlook their obligations under federal civil rights laws to help ensure all segments of the community are served by:

- Providing effective communication with individuals who are deaf, hard of hearing, blind, and visually impaired through the use of qualified interpreters, picture boards, and other means;
- Providing meaningful access to programs and information to individuals with limited English proficiency through the use of qualified interpreters and through other means;
- Making emergency messaging available in plain language and in languages prevalent in the affected area(s) and in multiple formats, such as audio, large print, and captioning, and ensuring that websites providing emergency-related information are accessible;
- Addressing the needs of individuals with disabilities, including individuals with mobility impairments, individuals who use assistive devices or durable medical equipment, and individuals with immunosuppressed conditions including HIV/AIDS in emergency planning;
- Respecting requests for religious accommodations in treatment and access to clergy or faith practices as practicable.

Some actions or accommodations may not be required on the basis that they may fundamentally alter the nature of a program, pose an undue financial and administrative burden, or pose a direct threat.

In addition, the Secretary's March 17, 2020, Declaration under the Public Readiness and Emergency Preparedness (PREP) Act may apply with respect to some private claims arising from the use or administration of a covered countermeasure and may provide immunity from certain liability under civil rights laws. Questions regarding the scope of PREP under this guidance document should be directed to the Office of the General Counsel.

Finally, covered entities should consider adopting, as circumstances and resources allow, the following practices to help ensure all segments of the community are served:

- Making use of multiple outlets and resources for messaging to reach individuals with disabilities, individuals with limited English proficiency, and members of diverse faith communities; and
- Stocking facilities with items that will help people to maintain independence, such as hearing aid batteries, canes, and walkers.

Being mindful of all segments of the community and taking reasonable steps to provide an equal opportunity to benefit from emergency response efforts, including making reasonable accommodations will help ensure that the emergency response is successful and minimizes stigmatization.

<https://www.cdc.gov/coronavirus/2019-ncov/about/related-stigma.html>.

For information regarding how Federal civil rights laws apply in an emergency, please visit:
<https://www.hhs.gov/civil-rights/for-individuals/special-topics/emergency-preparedness/index.html>

For information regarding Emergency Preparedness Resources for Persons from Diverse Cultural Origins, please visit: <https://www.hhs.gov/civil-rights/for-individuals/special-topics/emergency-preparedness/diverse-cultural-origins/index.html>.

COVID-19 and HIPAA

OCR issued a bulletin on February 3, 2020, providing information on the ways that covered entities and business associates may share protected health information under the HIPAA Privacy Rule during a public health emergency.

- [February 2020 HIPAA and Novel Coronavirus Bulletin - PDF*](#)

In order to ensure that healthcare providers can serve patients, including those who cannot or should not leave their homes during this emergency, OCR [announced](#) on March 17, 2020, that it will exercise its enforcement discretion and will not impose penalties for HIPAA violations against health care providers that in good faith provide telehealth using non-public facing audio or video communication products, such as FaceTime or Skype, during the COVID-19 nationwide public health emergency. This exercise of enforcement discretion applies regardless of whether the telehealth service is related to the diagnosis and treatment of health conditions related to COVID-19. OCR also issued guidance in the form of frequently asked questions in support of the good faith rendering of telehealth services.

- [Notice of Enforcement Discretion for Telehealth](#)
- [FAQs on Telehealth and HIPAA](#)

OCR also issued guidance on when the HIPAA Privacy Rule permits a covered entity to disclose the protected health information of an individual who has been infected with, or exposed to, COVID-19, with law enforcement, paramedics, other first responders, and public health authorities without the individual's authorization.

- [Guidance on Disclosures to Law Enforcement and Other First Responders](#)

Filing a Complaint with OCR

If you believe that a covered entity violated your civil rights, conscience and religious freedom, or health information privacy rights, you may file a complaint at <https://www.hhs.gov/ocr/complaints>.

Other Resources

You may send inquiries to OCRMail@hhs.gov or call the OCR toll-free phone line at (1-800-368-1019), (TTY: 1-800-537-7697) for further information.

For a list of other Federal civil rights enforcement agencies and how to file a complaint with them, please visit: <https://www.justice.gov/crt/fcs/Agency-OCR-Offices>

For resources provided by the Administration for Community Living, please visit:
<https://acl.gov/COVID-19>

COVID-19 resources are now available in American Sign Language (ASL) on CDC's YouTube page:
<https://www.youtube.com/user/CDCStreamingHealth/videos>

To see CDC updates on COVID-19, please visit:
<https://www.cdc.gov/coronavirus/2019-ncov/whats-new-all.html>

For the U.S. Department of Education's COVID-19 statement addressing stereotyping, harassment, and bullying, please visit: <https://content.govdelivery.com/accounts/USED/bulletins/27f5130>

If you would like to learn more about Civil Rights, Conscience and Religious Freedom, the HIPAA Privacy Rule and the HIPAA Security Rule subscribe to the OCR Civil Rights Listserv at:
<https://www.hhs.gov/ocr/list-serv>.

For copies of OCR documents in alternative formats, please call (800) 368-1019 or (800) 537-7697 (TDD).

If you speak a non-English language and need help with this document, call 1-800-368-1019 (TTY: 1-800-537-7697), and you will be connected to an interpreter who will assist you at no cost.

Español (Spanish)

ATENCIÓN: Si habla español, tiene a su disposición servicios gratuitos de asistencia lingüística. Llame al 1 (800) 368-1019 (TTY: 1 (800) 537-7697).

- [Hojas de datos - sobre las leyes en contra de la discriminación](#)
- [Derechos sobre la confidencialidad de la información sobre su salud](#)

繁體中文 (Chinese)

注意：如果您使用繁體中文，您可以免費獲得語言援助服務。請致電 1 (800) 368-1019（TTY 文字電話：1 (800) 537-7697）。

- [事實紙頁-關於反視的法律](#)
- [您的健康資訊隱私權](#)
- [您的健康信息隐私权](#)

Tiếng Việt (Vietnamese)

CHÚ Ý: Nếu bạn nói Tiếng Việt, có các dịch vụ hỗ trợ ngôn ngữ miễn phí dành cho bạn. Gọi số 1 (800) 368-1019 (TTY: 1 (800) 537-7697).

- [T Thông Tin - v các điều luật chng phân biệt đối xử](#)
- [Quyền Bảo mật Thông tin Sức khỏe của Quý vị](#)

한국어(Korean)

주의: 한국어를 사용하시는 경우, 언어 지원 서비스를 무료로 이용하실 수 있습니다. 1 (800) 368-1019번 (TTY: 1 (800) 537-7697번)으로 전화하십시오.

- [정보 안내서 -- 차별 금지법에 관한 정보](#)
- [개인의 의료 정보 보호 권리](#)

Tagalog (Tagalog)

PAUNAWA: Kung nagsasalita ka ng Tagalog, may mga libreng serbisyo para sa tulong sa wika na maaari mong gamitin. Tumawag sa 1 (800) 368-1019 (TTY: 1 (800) 537-7697).

- [Paunawa - tungkol sa mga batas laban sa diskriminasyon](#)
- [ANG IYONG MGA KARAPATAN SA PAGKAPRIBADO NG IMPORMASYONG PANGKALUSUGAN](#)

Русский (Russian)

ВНИМАНИЕ! Если вы говорите на русском языке, то вам доступны бесплатные услуги перевода. Звоните по номеру 1 (800) 368-1019 (телетайп: 1 (800) 537-7697).

- [Информационные листки о законах, запрещающих дискриминацию](#)
- [ВАШИ ПРАВА НА ЗАЩИТУ КОНФИДЕНЦИАЛЬНОСТИ МЕДИЦИНСКОЙ ИНФОРМАЦИИ](#)

العربية (Arabic)

ملحوظة: إذا كنت تتحدث العربية، فإن خدمات المساعدة اللغوية تتوافر لك بالمجان. اتصل على الرقم 1 (800) 368-1019 (هاتف الصم والبكم: 1 (800) 537-7697)

Kreyòl Ayisyen (French Creole)

ATANSYON Si w pale Kreyòl, gen sèvis èd pou lang gratis ki disponib pou ou. Rele 1 (800) 368-1019 (TTY: 1 (800) 537-7697).

Français (French)

ATTENTION : Si vous parlez français, des services d'aide linguistique vous sont proposés gratuitement. Appelez le 1 (800) 368-1019 (ATS : 1 (800) 537-7697).

Português (Portuguese)

ATENÇÃO: Se fala português, encontram-se disponíveis serviços linguísticos, grátis. Ligue para 1 (800) 368-1019 (TTY: 1 (800) 537-7697).

Polski (Polish)

UWAGA: Jeżeli mówisz po polsku, możesz skorzystać z bezpłatnej pomocy językowej. Dzwonić pod numer 1 (800) 368-1019 (TTY: 1 (800) 537-7697).

- [Strony informacyjne na temat ustaw o przeciwdziałaniu dyskryminacji](#)
- [PRAWA DO OCHRONY PRYWATNOŚCI DANYCH ZDROWOTNYCH](#)

日本語 (Japanese)

注意事項：日本語を話される場合、無料の言語支援をご利用いただけます。Call 1 (800) 368-1019 (TTY: 1 (800) 537-7697).

Italiano (Italian)

ATTENZIONE: In caso la lingua parlata sia l'italiano, sono disponibili servizi di assistenza linguistica gratuiti. Chiamare il numero 1 (800) 368-1019 (TTY: 1 (800) 537-7697).

Deutsch (German)

ACHTUNG: Wenn Sie Deutsch sprechen, stehen Ihnen kostenlos sprachliche Hilfsdienstleistungen zur Verfügung. Rufen Sie uns an unter 1 (800) 368-1019 (TTY: 1 (800) 537-7697).

Persian (Farsi)

توجه: اگر به زبان فارسی صحبت می کنید، خدمات یاری رسانی زبانی، بطور رایگان، در دسترس شما می
 تماس بگیرید (1 (800) 537-7697) ، باشد. با شماره 1 (800) 368-1019