CHALLENGING MEDICAL DISCRIMINATION DURING COVID-19

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• In March, it became clear that COVID-19 pandemic may lead to rationing of medical care.

• Guiding Principles for Non-Discrimination in Medical Care:
  
  • Lives of people with disabilities are equally worthy & valuable
  
  • People with disabilities must have equal opportunity to receive life-sustaining treatment
  
  • Stereotypes and judgments about qualify of life of people with disabilities have no place in treatment decisions
  
  • To avoid discrimination, doctors must perform a thorough, individualized review of each patient and not assume a disability diagnosis is determinative of prognosis
  
  • Federal disability rights laws broadly protect people with disabilities against discrimination in receiving medical treatment
The Arc filed 13 complaints with chapters + state & national partners with U.S. Department of Health & Human Services, Office for Civil Rights challenging:

- Discriminatory Crisis Standard of Care Plans
- Hospital No-Visitor Policies
- Inaccessible COVID-19 Testing Sites
• Complaints filed in: AL, AZ, CT, NC, NE, OK, OR, TN, TX, UT, WA, DC

• Examples of Crisis Standard of Care Plans Discrimination:
  
  • Categorical exclusions based on disability diagnosis

  • Exclusions from treatment based on assumptions re greater time/resources required for recovery or projected lifespan

  • Failure to modify triage assessment tools to avoid penalizing people with disabilities

  • Allow reallocation of personal ventilators to another patient deemed more likely to benefit from treatment

  • Disproportionate impact on Black, Native, & Latinx communities who experience greater COVID-19 infection & hospitalization & may have greater occurrence of underlying conditions and shorter lifespans.
• No-Visitor Policies discriminate by:

• Denying patients effective communication;

• Depriving patients of right to make informed decisions and provide informed consent;

• Causing patients to be subjected to unnecessary use of physical and chemical restraints;

• Leading to denial of adequate/necessary medical care;

• Subjecting patients to lasting emotional harm.
• COVID-19 Testing Sites May Be Inaccessible to People With Disabilities in:

• Requiring ability to access and use internet to complete pre-screening

• Requiring ability to drive to a testing site
Complaints have led to:

- [HHS-OCR Bulletin Prohibiting Discrimination in Medical Care During COVID-19](#)
- Favorable resolutions through HHS-OCR in [Alabama, Connecticut, Tennessee, & Utah](#) and ongoing investigations of the remaining states
- Extensive state and national [media coverage](#) of discrimination facing people with disabilities in medical care
The Arc developed resources for chapters & stakeholders to evaluate state & hospital policies:

- **Applying HHS’s Guidance for States and Health Care Providers on Avoiding Disability-Based Discrimination in Treatment Rationing**

- **Evaluation Framework for Crisis Standard of Care Plans**

- **Evaluation Framework for Hospital Visitor Policies**
The Arc filed amicus brief before Wisconsin Supreme Court in a case challenging state’s stay at home order.

Brief explained that if the stay at home order was lifted prematurely, this would disproportionately harm people with disabilities, older adults, and people of color who face higher risk of contracting the virus in a life-threatening capacity.

Court allowed the order to be lifted, with no alternative plan in place to contain COVID.
• Keep up to date with our COVID-19 Legal Advocacy news by signing up for The Arc’s Disability Docket Legal Advocacy Newsletter.
QUESTIONS?