

April 27, 2020

Governor Ralph Northam
Office of the Governor
P.O. Box 1475
Richmond, VA 23218

Dear Governor Northam:

On behalf of the undersigned organizations representing people with disabilities and chronic conditions, thank you for your considerable efforts to address the coronavirus (COVID-19) crisis. We write today to request the Commonwealth of Virginia adopt a policy that clearly directs health care providers across the state to refrain from discriminating against people with disabilities and chronic conditions in the provision of treatment during the COVID-19 emergency.

We are facing unprecedented times as COVID-19 continues to spread through our communities. While it is possible the Commonwealth may reach a point where need outstrips health care capacity, any response to resource shortages cannot be based on discriminatory and outdated ideas about quality of life or the value added to society by people with disabilities and chronic conditions. While federal laws – including the American with Disabilities Act, Section 504 of the Rehabilitation Act, and Section 1557 of the Affordable Care Act – broadly protect people against discrimination in receiving care, direction is needed to ensure equal access to life-saving treatment. People living with disabilities and chronic conditions must not be denied treatment or deprioritized for COVID-19 care under medical triage or crisis standards currently under development or already being implemented.

On March 28, the Office for Civil Rights (OCR) at the US Department of Health and Human Services issued a bulletin regarding Civil Rights, HIPAA, and the Coronavirus Disease 2019 (COVID-19).¹ In the bulletin, OCR reminded federally-funded health programs and activities that Section 1557 of the Affordable Care Act and Section 504 of the Rehabilitation Act prohibit discrimination on the basis of disability, and that these civil rights laws are still in effect. OCR continues, “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 or age. 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.”

We are concerned with the discriminatory plans issued by some states that will harm the people we represent. In certain states, these plans have led to legal action. To date, advocates have filed complaints with OCR in response to plans issued in Washington,² Alabama,³ Kansas,⁴ Tennessee,⁵ and Pennsylvania.⁶ Thirty-two bipartisan members of Congress have also expressed concern.⁷

¹ <https://www.hhs.gov/sites/default/files/ocr-bulletin-3-28-20.pdf>

² https://www.centerforpublicrep.org/wp-content/uploads/2020/03/OCR-Complaint_3-23-20-final.pdf

³ https://www.centerforpublicrep.org/wp-content/uploads/2020/03/AL-OCR-Complaint_3.24.20.docx.pdf

⁴ <https://www.centerforpublicrep.org/wp-content/uploads/2020/03/Kansas-OCR-complaint-3.27.20-final.pdf>

⁵ <http://thearc.org/wp-content/uploads/2020/03/2020-03-27-TN-OCR-Complaint-re-Healthcare-Rationing-Guidelines.pdf>

⁶ <https://www.centerforpublicrep.org/wp-content/uploads/2020/04/04.03.2020-DRP-OCR-Complaint-with-Exhibit-A-1.pdf>

⁷ <https://chrissmith.house.gov/news/documentsingle.aspx?DocumentID=406467>

We urge you to work with our organizations to develop a plan that is centered on individual assessments of each patient and in accordance with the OCR bulletin. Several of our groups have endorsed additional guidance, written by disability rights professionals, on how to implement the bulletin in states.⁸ This should also serve as additional assistance toward writing a plan that is equitable, just, and does not discriminate against the people we represent. As mentioned in that document, any policy should state:

- To avoid discrimination, doctors or triage teams must perform a thorough individualized review of each patient and not assume that any specific diagnosis is determinative of prognosis or near-term survival without an analysis of current and best available objective medical evidence and the individual's ability to respond to treatment.

We look forward to working with you to develop a plan for our state that safeguards the health and affirms the rights of Virginians living with disabilities and chronic conditions. If you have any questions regarding this letter, or if we may provide further information, please don't hesitate to contact Shannon Wood with the National Multiple Sclerosis Society at shannon.wood@nmss.org or 804-591-3048.

Sincerely,

ALS Association – DC/MD/VA Chapter
American Diabetes Association
American Kidney Fund
Arthritis Foundation
Brain Injury Association of Virginia
Cystic Fibrosis Foundation
disAbility Law Center of Virginia
Easterseals DC MD VA
Epilepsy Foundation Virginia
Hemophilia Association of the Capital Area
National Multiple Sclerosis Society
National Organization for Rare Disorders
Virginia Association for Hospices and Palliative Care
Virginia Breast Cancer Foundation
Virginia Diabetes Council
Virginia Hemophilia Foundation

CC: Virginia Department of Health
Virginia Board for People with Disabilities

⁸ https://www.centerforpublicrep.org/wp-content/uploads/2020/04/Guidance-to-States-Hospitals_FINAL.pdf