

FOR IMMEDIATE RELEASE

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Contact: HHS Press Office

202-690-6343

media@hhs.gov

OCR Resolves Complaint with Tennessee After it Revises its Triage Plans to Protect Against Disability Discrimination

Today, the Office for Civil Rights (OCR) at the U.S Department of Health and Human Services (HHS) is announcing that it has reached an early case resolution with the state of Tennessee after it updated its crisis standards of care (“CSC”) plan to ensure that the criteria does not discriminate against persons based on disability or age. This is OCR’s [fourth resolution](#) with a state regarding disability discrimination concerns during COVID-19.

OCR enforces a number of federal antidiscrimination laws, including Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act, Section 1557 of the Patient Protection and Affordable Care Act, and the Age Discrimination Act of 1975.

OCR received a complaint from Disability Rights Tennessee and other advocacy organizations alleging that Tennessee’s CSC plan, titled “Guidance for the Ethical Allocation of Scarce Resources during a Community-Wide Public Health Emergency as Declared by the Governor of Tennessee” discriminates based on disability. Among other things, complainants alleged that Tennessee’s CSC would unlawfully disqualify individuals with advanced neuromuscular disease, metastatic cancer, traumatic brain injury, dementia, and other disabilities from use of a ventilator in times of scarcity.

After OCR provided technical assistance to Tennessee, the state has updated its CSC plan and:

- Clarified that resource-intensity and duration of need on the basis of age or disability should not be used as criteria for the allocation or re-allocation of scarce medical resources. This protects patients who require additional treatment resources due to their age or disability from automatically being given a lower priority to receive life-saving care;
- Removed language permitting the use of a patient’s long-term life expectancy as a factor in the allocation and re-allocation of scarce medical resources, instead indicating that providers should consider only risk of imminent mortality;

- Added language stating that reasonable modifications to the use of the state’s primary instrument for assessing likelihood of short-term survival should be made when necessary for accurate use with patients with underlying disabilities. Such reasonable modifications ensure that people with disabilities are evaluated based on their actual mortality risk, not disability-related characteristics unrelated to their likelihood of survival;
- Removed categorical exclusion criteria that prohibited people with disabilities from receiving care on the basis of their diagnosis, and required individualized assessments of patients based on the best available objective medical evidence; and
- Incorporated language stating that hospitals should not re-allocate personal ventilators brought by a patient to an acute care facility to continue pre-existing personal use with respect to a disability. Under this language, long term ventilator users will be protected from having a ventilator they take with them into a hospital setting taken from them to be given to someone else.

In light of these actions, OCR is closing the complaint as resolved to the satisfaction of all parties involved without any finding of liability.

Regarding the early case resolution, Roger Severino, OCR Director said, “We commend Tennessee for updating its policies to ensure that hospitals do not deny life-saving care during a crisis based on stereotypes about disabilities or other impermissible factors. Our civil rights laws reflect the principle that we are all created with equal dignity and worth.” Severino added.

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For more information about how OCR is protecting civil rights during COVID-19, please visit <https://www.hhs.gov/civil-rights/for-providers/civil-rights-covid19/index.html>.

To learn more about non-discrimination on the basis of sex, race, color, national origin, age, and disability; conscience and religious freedom; and health information privacy laws, and to file a complaint with OCR, please visit www.hhs.gov/ocr.

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