

Equitable Access to Healthcare in the Time of COVID-19: Perspectives from Disability Law

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At the Top of the Covid-19 Curve, How Do Hospitals Decide Who Gets Treatment?

Guidelines that could determine which coronavirus patients get prioritized for lifesaving care vary by state, involving factors such as age, health problems, pregnancy and cognitive abilities.



A ward for coronavirus patients in Brooklyn this week. Victor J. Blue for The New York Times

Opinion

DISABILITY

'I Will Not Apologize for My Needs'

Even in a crisis, doctors should not abandon the principle of nondiscrimination.

By Ari Ne'eman

Mr. Ne'eman is a disability rights activist and author.

March 23, 2020

OPINION

Respirators, rationing and the disabled: Coronavirus reminds us why everyone deserves health care



By TONY COELHO

NEW YORK DAILY NEWS | MAR 18, 2020 | 10:10 AM



I'm disabled and need a ventilator to live. Am I expendable during this pandemic?

As medical rationing becomes a reality, "quality of life" measures threaten disabled people like me.

By Alice Wong | Apr 4, 2020, 10:20am EDT

Federal Disability Laws Apply

- **Americans with Disabilities Act of 1990** - employment (Title I), public programs, services, and activities (Title II), public transportation and places of public accommodations (Title III), and telecommunications (Title IV)
- **The Rehabilitation Act of 1973** - federal employment, programs and activities that receive federal financial assistance
- **Section 1557 of the ACA** - amends the Rehabilitation Act to reach certain health programs and activities

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.

Looking Forward

- Laws are powerful tools to promote health, and they require persistent development and enforcement to be effective
- Changing attitudes is a work in progress. Reports of disability bias and discrimination persist and there is widespread lack of knowledge of and noncompliance with these laws in health care settings
- We lack health data for people with disabilities, including data related to COVID-19 testing, infections, and outcomes

Legal and Data Resources

- HHS OCR, “HIPAA and COVID-19,” <https://www.hhs.gov/hipaa/for-professionals/special-topics/hipaa-covid19/index.html>.
- Center For Public Representation, “COVID-19 Medical Rationing & Hospital Visitor Policies,” <https://www.centerforpublicrep.org/covid-19-medical-rationing/> (links to legal and ethical analyses, updated list of complaints filed with HHS OCR, letters from advocacy organizations to federal and state officials, and media coverage)
- EEOC, “What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws,” <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-adarehabilitation-act-and-other-eeo-laws>
- Okoro, C. A. (2018). Prevalence of Disabilities and Health Care Access by Disability Status and Type Among Adults—United States, 2016. *Morbidity and Mortality Weekly Report*, 67(32), 882-887
- Yee S., et al. (2019). Compounded Disparities: Health Equity at the Intersection of Disability, Race, and Ethnicity, <https://dredf.org/2018/01/19/compounded-disparities-health-equity-intersection-disability-race-ethnicity/>

Readings

- Elizabeth Pendo, Protecting the Rights of People with Disabilities, Part II IN ASSESSING LEGAL RESPONSES TO COVID-19 (Scott Burris, et al, eds.) (Boston: Public Health Law Watch) (forthcoming March 2021), <https://www.publichealthlawwatch.org/covid19-policy-playbook>
- Nicole Agaronnik, Elizabeth Pendo, Julie Ressalam, Eric Campbell and Lisa I. Iezzoni, *Knowledge of Practicing Physicians about Their Legal Obligations When Caring for Patients with Disability*, 38(4) Health Affairs 545 (2019)
- Nicole Agaronnik, Elizabeth Pendo, Tara Lagu, Christene DeJong, Aixa Perez-Caraballo & Lisa I. Iezzoni, *Ensuring the Reproductive Rights of Women with Intellectual Disability*, J. of Intellectual & Developmental Disability (2020), DOI: [10.3109/13668250.2020.1762383](https://doi.org/10.3109/13668250.2020.1762383)
- Elizabeth Pendo and Lisa I. Iezzoni, *The Role of Law and Policy in Achieving Healthy People's Disability and Health Goals*. Rockville (MD). Dept. of HHS, ODPHP (Mar. 12, 2020), <https://www.healthypeople.gov/2020/law-and-health-policy/topic/disability-and-health>. Supported by the CDC, ODPHP, and the CDC Foundation through a grant from the Robert Wood Johnson Foundation.