



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
MICHIGAN
DEVELOPMENTAL DISABILITIES COUNCIL
LANSING

BONNIE GONZÁLEZ
CHAIRPERSON
VENDELLA M. COLLINS
EXECUTIVE DIRECTOR

April 2, 2020

The Honorable Gretchen Whitmer
State Governor
George W. Romney Building
P.O. Box 30013
Lansing, Michigan 48909

Re: Rationing of medical care and equipment for persons with disabilities

Dear Governor Whitmer:

The Michigan Developmental Disabilities Council (DD Council) advocates with, and on the behalf of, people with developmental disabilities (DD). During this critical healthcare crisis, it is imperative that people with disabilities (PWDs) retain equitable access to medical care and equipment.

The COVID-19 pandemic is confronting hospitals, physicians as well as other healthcare providers with difficult, life and death decisions, surrounding the distribution of healthcare services and supplies. Over the course of this public health emergency, there is a great concern among the disability community that critically needed healthcare services may be rationed and PWDs will be not deemed as deserving equitable treatment as those without a disability.

We must not discriminate against people with cognitive or physical disabilities in administering access to life saving treatments or services. Equity within healthcare rests in the hands of the providers who have the power to make these life and death decisions based on "best judgment" decisions. However, these decisions cannot, and must not, be calculated on an implicit bias that people with disabilities are unable to live long and valuable lives if provided treatment. Equitable distributions of healthcare must be the primary focus of all healthcare facilities and providers; now during this time of crisis, as well as moving forward in times of prosperity.

Michigan's Department of Community Health (currently Michigan Department of Health and Human Services) released *Guidelines for Ethical Allocation of Scarce Medical Resources and Services During Public Health Emergencies in Michigan*. Within this guidance, it discusses acceptable and unacceptable allocations of medical services and supplies. Listed under unacceptable criteria:

"Social characteristics, including but not limited to race, ethnicity, gender, national origin, sexual orientation, religious affiliation, and disability unrelated to immediate medical prognosis, should not be used as criteria in making resource

or service allocation decisions during public health emergencies. These characteristics serve no meaningful purpose in differentiating between people in the context of allocation decisions. Moreover, categorization of people according to these types of characteristics is often used as pretext for favoritism, discrimination, and reduced access for minority groups. Therefore, use of social characteristics as allocation criteria is unacceptable.”¹

Federal laws also prohibit discriminatory actions by public entities against people with disabilities and many other populations, the healthcare industry is not immune to this. In a recent bulletin released by Health and Human Service Office of Civil Rights in Action states:

“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 evidence²... 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.”³

As we continue to work to protect and serve all the people of Michigan through this pandemic, the DD Council strongly encourages the Medical Service Administration (MSA) to maximize use of existing waiver authority and continue to seek emergency authority under appropriate sections of the Social Security Act (such as Section 1135, emergency state plan amendments, or other appropriate authority as directed by federal authorities)-that allow the state to protect rights and provide increased access to needed medications as well as enhanced/expanded coverage to the people of Michigan.

We applaud the work currently underway during this crisis, however, it is imperative that “no stone is left unturned” and we continuously work to improve the healthcare options and outcomes to Michigan’s most vulnerable population. The Council is committed to assisting the administration, as well as all other departments, in addressing the needs of people with DD through these difficult and tenuous times.

In the words of science journalist, Laurie Garrett, *“Without equity, pandemic battles will fail. Viruses will simply recirculate, and perhaps undergo mutations or changes that render vaccines useless, passing through the unprotected populations of the planet.”*

¹ <https://int.nyt.com/data/documenthelper/6857-michigan-triage-guidelines/d95555bb486d68f7007c/optimized/full.pdf#page=1>

² Civil Rights, HIPAA, and the Coronavirus Disease 2019 (COVID-19). BULLETIN: March 28, 2020.

³ Severino, Roger. Director, Office of Civil Rights

We ask you to stand with us in denouncing and condemning this practice in Michigan as well as nationwide.

Should you have any questions or wish to discuss further, please reach out to me at CollinsV1@michigan.gov or 517-284-7292.

Sincerely,

Vendella M. Collins

Vendella M. Collins
Michigan Developmental Disabilities Council-Executive Director

Cc:

Dr. Joneigh S. Khaldun, Chief Medical Executive and Chief Deputy Director for Health,
Michigan Department of Health and Human Services

Robert Gordon, Director Michigan Department of Health and Human Services

Mary Engelman, Interim Director Michigan Department of Civil Rights

Stacie Clayton, Chairperson Michigan Civil Rights Commission

Kate Massey, Senior Deputy Director Medical Services Administration

Allen Jansen, Senior Deputy Director Behavioral Health Developmental Disabilities
Administration.