

March 26, 2020

An Open Letter to Policy Makers Warning Against Disability Discrimination in COVID-19 Rationing Policies

As hospitals, clinics, and other medical facilities develop policies that dictate allocation of scarce medical resources during the COVID-19 pandemic, it is imperative that great care be taken to prevent those policies from adversely affecting people with disabilities. While we recognize the need to plan and be prepared for healthcare resource shortages during these extraordinary times, the guiding principles that are adopted must be consistent with federal civil rights law and must not discriminate against people with disabilities.

Disability Rights Wisconsin (DRW) is a private non-profit organization serving as the designated Protection and Advocacy System for the State of Wisconsin for residents who have physical, mental, or developmental disabilities.

Our bottom line regarding development and implementation of any “rationing” policy is this:

Any policy for resource deployment must be based on objective medical criteria that do not intentionally or inadvertently lead to people with disabilities being disproportionately denied testing or treatment. In particular, no rationing policy may include any criterion that explicitly or implicitly makes “quality of life” a consideration. “Quality of life” has long been a pretext for denying treatment, including life-sustaining treatment, to people with disability, particularly people with intellectual disabilities.

We will not detail the long history of discrimination against people with disabilities in the context of the delivery of health care. Suffice it to say that the existence of widespread discrimination against people with disabilities by the medical community when making treatment decisions is well established. In the context of the COVID-19 pandemic we have already heard of some states in which discriminatory rationing policies have been developed. This cannot and must not happen in Wisconsin.

The laws which prohibit discrimination on the basis of disability include the Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act (Section 504), and Section 1557 of the Affordable Care Act (ACA). These authorities require healthcare

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providers to take special care to ensure that COVID-19 rationing policies do not specifically, or in effect, discriminate against people with disabilities.

Under state and federal law Disability Rights Wisconsin has broad authority to take action against entities that discriminate against people with disabilities, and we will not hesitate to do so. However, we strongly encourage entities to work together with people with disabilities and their advocates in the development of any rationing policies to assure that they are equitable and just for all Wisconsin residents. There are tough choices ahead to be sure, but choosing a path that permits discrimination against people with disabilities should not be one of them. We stand more than willing to work with policy makers and healthcare providers in the development or review of any such policies to help avoid inadvertent discrimination.

Please contact me if you would like us to assist you in this effort. I can be reached at 608-267-0214 or lea.kitz@drwi.org.

Sincerely,

A handwritten signature in cursive script that reads "Lea Kitz".

Lea Kitz
Executive Director