



Center for Public
Representation

April 11, 2020
By Electronic Mail

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We write to as a follow-up to our April 1, 2020 letter, and to share our organizations' response to the Baker Administration following its release of the Massachusetts Crisis Standards of Care: Planning Guidance for the COVID-19 Pandemic. Through the attached recommended changes, we intend to ensure that the Massachusetts' Standards comport with federal antidiscrimination laws, the US Health and Human Services' Office of Civil Rights Bulletin, and the Administration's intention to avoid inequities in the allocation of care based on disability, age, race, or other protected status.

Among the most problematic aspects of the proposed triage process are its consideration of "life-limiting co-morbidities" and "long term prognosis" in the scoring process, regardless of how these underlying conditions impact short term survival or the ability to benefit from treatment.

Public response to the Standards has highlighted their potential for discriminatory impact on people with disabilities, aging adults, and communities of color. Congressman Joseph Kennedy and State Representative Jon Santiago have urged the Baker Administration to abandon the Standards as currently drafted, particularly their focus on comorbid illnesses. Kennedy and Santiago argued that these triage guidelines would prioritize white patients at the expense of patients of color.¹

The American College of Physicians has also rejected the use of long term prognosis or "number of life years," instead recommending that hospitals make resource allocation decisions "based on patient need, prognosis (determined by objective scientific measures and informed clinical judgment) and effectiveness (i.e., the likelihood that the therapy will help the patient recover). Allocation of treatments must maximize the number of patients who will recover, not the number of "life-years," which is inherently biased against the elderly and the disabled."²

¹ See, <https://www.boston.com/news/local-news/2020/04/10/massachusetts-lawmakers-ventilator-bed-guidelines-race-coronavirus>

² <https://www.acponline.org/acp-newsroom/internists-say-prioritization-allocation-of-resources-must-not-result-in-discrimination> -

As we noted in our previous letter, reliance on criteria like comorbidity and projected longevity increase the likelihood that disabled individuals, and those more likely to have underlying chronic conditions, including aging adults and people of color, will be denied lifesaving care. If implemented as written, these Standards reinforce current and historical inequities in access to health care, and risk importing quality of life criterion or unconscious bias into the triage process. Similarly, attempts to predict and score patients based on long term prognosis will lead to inconsistent and subjective decision-making, higher rates of clinical error, and discriminatory allocation of care.

We recognize that this is a time of extraordinary demands and pressure on our health care system, and we thank you and your members for their efforts to provide all needed care and to avoid potential rationing. The weeks ahead will be a time of life and death decisions for many, and the stakes could not be higher. We also encourage hospitals and providers to ensure there is transparent monitoring of equity issues in the triage process. Without deliberate efforts to perform real-time data collection, providers will lack the tools necessary to evaluate the efficacy of their efforts. Further, we also request that providers commit to publicly sharing their data for the benefit of all. Government agencies, the public health academy, and ordinary citizens all stand to gain from greater access to accurate information as we navigate this crisis together.

We remain willing to speak with you and members of your associations involved in triage protocol development. You can reach us by contacting Kathryn Rucker, Center for Public Representation, at krucker@cpr-ma.org or Rick Glassman, Disability Law Center, at rglassman@dlc-ma.org.

Sincerely,

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