

March 31, 2020

Governor Steve Bullock
State Capital, Room 232
P.O. Box 200801
Helena, MT 59620-0801

Dear Governor Bullock:

First, thank you and the many state agency leaders and staff for the efforts that you have undertaken to provide leadership and mobilize state resources to confront the COVID-19 pandemic.

I write to urge you to use your leadership and vision to take additional steps to protect the welfare of all Montanans, especially those with disabilities, during this crisis.

As you are aware, adults and children with disabilities are among those at the greatest risk in this crisis because so many are in institutions or incarcerated, homeless, seniors or medically compromised, or dependent on others for care.

Below, I provide steps that we believe are necessary to protect Montanans with disabilities. Some are disability-specific but others are universal measures, such as moratoria on utility shutoffs, evictions, and Medicaid terminations. Although people with disabilities will be disproportionately affected by the loss of services and benefits during the pandemic, protecting everyone in this crisis is the best public policy.

Avoiding Disability Discrimination in Medical Services

We have had extensive experience in reviewing deaths of persons with developmental disabilities in Montana through participation on DPHHS's Mortality Review Committee. Unfortunately, we have seen cases where medical professionals have demonstrated discriminatory attitudes about the abilities of people with developmental disabilities, as well as a negative assessment of their quality of life. We are concerned that these attitudes will inform decisions regarding medical rationing as COVID-19 becomes more prevalent in Montana. It is for this reason that we ask the following:

1. Issue a directive to all medical care providers prohibiting discrimination against people

with disabilities in offering COVID-19 treatment via rationing of care or treating the lives of people with disabilities, the elderly, and the poor as of less value than others.

2. Urge providers to prioritize individuals with a greater urgency of need and delay non-urgent care and clarify that protocols for addressing the use of scarce resources must not employ disability-based assessments. The Americans with Disabilities Act, the Rehabilitation Act and the Affordable Care Act all prohibit health care providers from discriminating against individuals in the providing of medical care based on their disabilities.

3. Ensure that any protocol that is created to address rationing medical/health resources in Montana's hospitals is free of discrimination of people with disabilities and has been created in consultation DPHHS's Mortality Review Work Group.

Quarantine Capacity

Given that many people with disabilities receive their services in congregate care settings, it is likely that they will need remote quarantine services sooner than the general population. Those in nursing homes and assisted living, group homes, state institutions and other disability services settings must be separated quickly if they are exposed to the COVID-19 virus to avoid infecting other residents, staff and others.

We strongly recommend that the state:

1. Urge disability services providers to develop quarantine plans and then provide their quarantine plans to the state, including where they could quarantine on their premises and to actively work with state officials to identify alternative settings if no such spaces are available so quarantine capacity is available the moment it is needed;
2. Immediately identify state, county and city-owned buildings that could be used or retrofitted for this purpose;
3. Enter agreements for quarantine capacity with private entities such as motels and owners of shuttered or low use commercial spaces.

Congregate Care Settings, including group homes, nursing homes, assisted living, state facilities, etc.

1. Ensure that disability services providers adopt screening and precautions for COVID-19, including universal access to sanitizer for residents and increased and free video and telephonic visiting for all facilities that have suspended family visits.
2. Establish a program to release residents who are over age 60 or have co-occurring disabilities

and others at elevated risk from state congregate care institutions such as the Montana State Hospital and the Montana Mental Health Nursing Care Center in Lewistown to non-congregate settings. Work with community service providers to incentivize them to provide services for those to be released including fair reimbursement for not only those services but for intermediate placements like motels or other temporary shelter which may be required to establish a placement or for quarantine.

3. Reimburse all providers for quarantine measures, including additional staffing, temporary placements like motels, which may be required.
4. Establish protocols for all providers of services in congregate care settings, including state institutions, to test individuals who have been off-site before they are re-admitted to the program and establish procedures for isolating those individuals while waiting for test results.
5. Do not allow private and state disability service providers to waive Department of Justice background checks for new employees. As we understand, DOJ background checks take only one day and do not pose a substantial obstacle to an efficient employment process.
6. Clarify that all disability service providers must continue to provide their services if a person they serve becomes sick. This includes situations where a person has been hospitalized for COVID-19. If the provider cannot determine a manner to safely return the person to previous services, the provider is obligated to find them another safe setting, and the state will ensure fair reimbursement for the alternative setting.
7. Direct providers not to impose unnecessary restrictions to movement or rights of residents. Require providers to regularly assess any limitations to ensure they are providing services in the least restrictive setting. Ensure that even with social distancing and quarantine procedures, residents can exercise, have time outside, engage in quality activities and are regularly assessed for their mental health status and their mental health needs. Direct state quality assurance entities as well as other state disability oversight of providers identify unnecessary or unjustified seclusion or restraint as abuse. This includes seclusion or restraint for the convenience of staff.
8. Require providers demonstrate they have trained their staff to use safety equipment properly.

Medicaid Services

1. Services provided in the home.

- a. Ensure those receiving Medicaid-funded home services have assistance if their care providers are sick or must self-quarantine by (i) creating emergency registries for back-up services and contracting with nursing agencies to provide back-up home care workers, (ii) allowing recipients to hire replacement providers without

verifying citizenship to eliminate any unnecessary delay, (iii) suspending overtime limits so that available home care workers can fill unmet needs;

- b. Provide funding to community service providers to establish or expand expedited recruitment processes for emergency back-up assistance for all formal and informal, government and non-government supports and services and,
- c. If public health and medical resources or volunteers are needed to fill extreme gaps in services to service recipients, provide immediate training and technical assistance to these personnel on self-directed assistance, optimizing health, safety, dignity, and independence as imperatives for maintaining the civil rights of people with disabilities and older adults.

2. Medicaid eligibility

- a. Halt all terminations and redeterminations of Medicaid eligibility including eligibility for Medicaid waiver slots;
- b. If DPHHS is requesting a waiver of timelines around hearings and appeals, temper such measures with protections for beneficiaries who are appealing to reinstate services that have been denied or withdrawn. In these cases, please create a policy to continue to provide the services that are at issue in the appeal and pledge to forgo the state's right to seek repayment of those funds expended during the length of the delay should the beneficiary be ultimately unsuccessful.
- c. For prescriptions, relax "refill-too-soon" rules, provide maximum extended day supplies, and ensure home or mail delivery.

Developmental Disability Services

1. Clarify operational protocols for day programs that remain open and mitigation measures for those that close.
2. Urge providers to make it a priority to consider and review clients for services who are leaving the Intensive Behavioral Unit (IBC) or other larger congregate care settings.
3. Direct Developmental Disabilities Program (DDP) to stop allowing individuals to port between community services providers unless it is occurring to address abuse or neglect in the current placement. Direct that all porting must be approved by the DDP Bureau Chief.
4. Direct DDP to inform providers to scrutinize home visit requests given the risk of exposure to the novel corona virus.

5. Direct DDP, in its discretion, to temporarily allow proctoring of medication management exams by employees of disability services providers.
6. Direct DDP to identify those situations where changes in day programs and other usual activities have been required, and adjust reimbursement, where possible, to support decisions to help people comply with social distancing and meet people's needs at home.

Mental Health Services

1. Support expansion of crisis services for individuals with mental illness by reaching out to psychiatric service providers to determine how to best serve individuals while maintaining social distancing.
2. Along with allowing children's mental health providers to treat children and families effectively by telehealth and telephonic services, ensure that other measures are implemented when accessibility issues prevent telehealth from being effective/an appropriate treatment approach.
3. Along with suspending requirements that mental health services, including Community-Based Psychiatric Rehabilitation Services, Targeted Case Management, Home Support Services, etc. be provided face-to-face within the home or community to allow telehealth or telephone consultations, authorize other effective means of providing these services, which are specific to the person's disability and other personal circumstances.
4. During school closures, permit payment for Comprehensive School and Community Treatment through telehealth, phone or other means that are specific to the disability and personal circumstances of the youth.
5. Address the issues caused by school closures, which have caused youth to remain in group homes for much longer periods of time than originally planned. Reimbursement for providers much change to address this new reality.

DRM Monitoring of Service Delivery

1. Ensure that safety equipment is available for two Disability Rights Montana staff for facility visits.
2. DRM must be provided access to all abuse and neglect reports from state operated facilities, including MSH, Lewistown, and IBC. DRM has the federal and state mandate to monitor rights

and safety of individuals with disabilities in facilities and investigate allegations of abuse and neglect. Under state and federal law, DRM has the right to access reports prepared by an agency in investigating reports of abuse, neglect, injury and death involving an individual with a disability, and the steps taken to investigate these reports. At this time of limited on-site monitoring, access to these reports is essential to allow DRM to ability to meet with responsibility. DRM is required to keep this information confidential.

3. Allow DRM temporary access to All General event Reports (GRE's) and Behavior Event Reports (BER's) through Therap.

4. Continue the state's active monitoring of conditions in congregate care settings that serve people with disabilities by all oversight entities, even if that must shift from site visits to distance monitoring. Ensure that state quality assurance staff and Board of Visitors representatives are deemed "essential" employees. Encourage state disability services staff to reach out to advocacy groups, long term care ombudsman staff, resident and peer councils, and other advocates to explore ways to improve monitoring abilities in these new circumstances.

Housing

1. Impose a moratorium on evictions, foreclosures and termination of housing subsidies, a suspension of existing eviction filings and proceedings and other measures. We urge you not to limit this moratorium to those whose wages have been affected by the pandemic; our public health requires that no additional people lose housing, whatever the reason.

2. Direct every public utility to halt all utility shut-offs and also require them to restore services to all consumers who currently lack water, electric, gas or other essential services.

3. Call on local government to work with homeless shelters and services to set up hygiene stations. Use your authority to enter agreements with motel owners and other private entities to provide housing for homeless individuals who are at risk per CDC guidelines.

4. Call on local government to suspend all ticketing, arrests and vehicle impoundments of people living in vehicles for vehicle habitation and related parking violations.

Planning Considerations

1. Many individuals with disabilities require assistance with communications and special consideration in pandemic preparedness planning. Thank you very much for providing ASL interpretation at your press conferences. Please also consider live-captioning as well as providing microphones to members of the press so questions can be understood.

In addition, when providing information please also, where appropriate, provide accessible forms of communication to individuals – such as telephone or text messaging, ASL interpreters, live-captioning, accessible webpages (large, high-contrast fonts, minimal color, and file formats that can be read by screen readers, and language considerations – for real-time updates of the State's emergency guidelines and response.

2. In moving to telehealth for patient visits, ensure equity by providing access to the appropriate equipment and training in the use of telehealth by the patient. Ensure that people who have accessibility issues with telehealth are provided an alternative way to meet with their provider.

3. Create a state-level team to maximize communication with vulnerable populations that are at risk per CDC guidelines, learn about emerging problems, prioritize the most widespread and urgent concerns, and respond to them promptly and in a manner that saves lives and protects people's civil rights and dignity. Prioritize the direct support workforce and people with chronic conditions for access to COVID-19 testing.


4. Assure immigrants, whether documented or not, that they may access public services and testing without fear of immigration consequences.

5. Explore federal resources, such as the Army Corps of Engineers to expand hospital capacity.

Thank you again for your continuing leadership, and for considering the additional steps outlined above.

Sincerely,

DISABILITY RIGHTS MONTANA



Bernadette Franks-Ongoy
Executive Director

cc: Children, Families, Health, and Human Services Interim Committee
Law and Justice Interim Committee
Wendy McKamey, Chair, SAVA Committee