

June 26, 2020

Honorable Douglas A. Ducey, Governor, State of Arizona
Dr. Cara Christ, Director, Arizona Department of Health Services
Jami Snyder, Director, Arizona Health Care Cost Containment System

Re: Arizona SARS-CoV-2 Pandemic: Health Care Surge Crisis Care Guidelines

Dear Governor Ducey, Director Christ, and Director Snyder:

On behalf of AARP Arizona's 900,000+ members, I am writing to raise concerns about the *Arizona Crisis Standards of Care Plan (CSC)* (3rd ed. 2020). We are grateful for your leadership in navigating Arizona through these difficult and challenging times, and urge you to act so that no point in implementing the plan will it unfairly use age as a criterion for determining who receives care.

On March 31, 2020 AARP's National Executive Vice President Nancy A. LeMond issued a statement in response to concerns of medical rationing: "This virus doesn't discriminate, and neither should those entrusted with deciding who gets access to health care to treat it. Using age or disability to categorically exclude people from accessing treatment would be discriminatory, and AARP opposes it. Policymakers must take action now to avoid putting patients, families and health care professionals in the untenable position of having to ration health care."¹

We appreciate the general language in the CSC directing that the allocation of health care in a crisis must be provided in a non-discriminatory manner. Yet there are important issues not addressed in the CSC, including guidelines and criteria for allocating life-saving resources, the processes for rendering and appealing these decisions, the provision of reasonable accommodations to address the needs of persons with disabilities, and methods to address the unique health inequities affecting communities of color and older adults.

Instead, all of these critical issues are left to the discretion of the State Disaster Medical Advisory Committee (SDMAC), which is charged with developing guidance on these issues within the general topics of:

- Triage for emergency medical services (EMS);
- Primary, secondary, and tertiary triage for healthcare facilities;
- Priorities for medical resources including space, staff, and supplies.

See CSC at 2, 16, 17, and 80.

While the SDMAC has provided pre-hospital triage guidance for COVID-19, it has not provided specific guidance regarding triage for hospitals and other healthcare facilities, or priorities for medical resources. Additionally, the provisions in the CSC addressing triage and allocation of

scarce resources could be interpreted in a manner that results in discrimination against at-risk populations, and especially persons with disabilities, older adults, and communities of color. The CSC pages 38-39 refer to “resources including ventilators, oxygen delivery devices, and medications should be allocated to patients whose need is greater or whose prognoses is more likely to result in a positive outcome.” These criteria could severely disadvantage these populations precisely because of their pre-existing conditions, disabilities, or age-related illnesses, in direct contravention to the protections afforded by several anti-discrimination laws.

In this light, we urge the state to address the following issues:

Ensure no categorical exclusion based on age. We urge the state make explicit that the CSC policy will not use age as a categorical exclusion for rationing. Health care allocation decisions should not be based on age, “life years,” life expectancy, or prognosis beyond immediate short-term survival. The CSC should explicitly state its sole decision-making criterion is saving lives without discrimination.

A March 28, 2020 Bulletin from the U.S. Department of Health and Human Services’ Office of Civil Rights makes clear that care should not be denied on the basis of stereotypes, quality of life assessments, or judgments about a patient’s relative worth based on disability or age. The bulletin also required providers to make decisions about treatment based on “an individualized assessment of the patient based on the best available objective medical evidence.”ⁱⁱ

The current CSC Code of Ethics, Section 4.2 provides:

Public health responses and allocation of scarce resources (such as vaccines, ventilators, or evacuation assistance) may not be based on factors unrelated to health status and emergency response needs. Impermissible factors include, but are not limited to: race, gender, ethnicity, religion, social status, location, education, income, ability to pay, disability unrelated to prognosis, immigration status, or sexual orientation. *See CSC at 92.*

We request age be included in the list of impermissible factors in the CSC Code of Ethics, Section 4.2 and written guidance be updated to ensure that there is no exclusion based on age, categorical or otherwise.

Communicating the allocation policy to patients and families. We are also very concerned that the CSC does not provide for clear notice from a provider to patients and their families as to whether a rationing policy is being used. Nor does there appear to be any provision for an appeals process. Transparency and clear communications are critically important for all health care consumers and their families, especially during a crisis of this magnitude when available resources may not meet the needs of all.

Given that these are often life and death decisions, patients and their family members should be given timely and understandable information about decisions to deny or withdraw care, how they can appeal such a decision, and access to a meaningful and fair appeal process. We urge you to amend the CSC accordingly.

In addition, while an appeals system can address incorrect triage decisions in the moment, it does not provide an overall view of the impact of the policy as implemented. It is therefore essential that there be an ongoing and transparent review process to verify whether there is adherence to the policy/protocols and ensure that no group has been disproportionately excluded from life-saving treatment based on any particular individual characteristic.

We ask that you take swift action to affirm that any discrimination based on age is unacceptable and reissue a revised *Arizona Crisis Standards of Care Plan* that reflects this change. Given the pressing nature of this health crisis, we look forward to your quick response to these questions and concerns.

If you have questions, please contact me via email at dkennedy@aarps.org or Brendon Blake at bblake@aarps.org.

Sincerely,

A handwritten signature in blue ink that reads "Dana M. Kennedy". The signature is written in a cursive, flowing style.

Dana Marie Kennedy, MSW
State Director AARP Arizona

ⁱ <https://press.aarp.org/2020-3-31-AARP-Statement-Against-Rationing-in-the-Distribution-of-and-Access-to-Health-Care>

ⁱⁱ <https://www.hhs.gov/sites/default/files/ocr-bulletin-3-28-20.pdf>