



We have the legal right of way.

April 22, 2020

Mike Abrams, President and CEO
Ohio Hospital Association
155 East Broad Street, Suite 301
Columbus, OH 43215-3640


Mr. Abrams:

We thank the Ohio Hospital Association and its member hospitals and health systems for your efforts navigating the current health crisis. COVID-19 has certainly tested Ohio's health infrastructure, and hospitals and their staff have performed admirably during these difficult times. Even so, we would like to set up a phone call with representatives of your Association and its members to discuss our concerns with the Association's Guidelines for Allocation of Scarce Medical Resources released earlier this month.

In many ways the guidelines are better than those created in other states. For example, we appreciate that the guidelines remind health care professionals that applicable federal civil rights laws—and basic human decency—prohibit discrimination against individuals with disabilities when making healthcare decisions. And we agree that your members' healthcare decisions must be "guided by an individualized assessment of the patient and his or her circumstances, based on the best available objective medical evidence," and that people with disabilities "should not be denied medical care on the basis of stereotypes, quality of life, or judgments about a person's relative 'worth' based on the presence or absence of disabilities or age." ⁱ

Even so, several provisions of the guidelines jeopardize the lives of people with disabilities, including, without limitation, the following:

- The CSC Exclusion Criteria, which impermissibly and illegally rely on pre-existing diagnoses.ⁱⁱ
- The requirement for a patient to show evidence of improvement within a specified amount of time, which discriminates against individuals with disabilities who might need a longer time to recover.ⁱⁱⁱ



Disability Rights Ohio
200 Civic Center Dr., Suite 300
Columbus, Ohio 43215-4234

614-466-7264 or 800-282-9181
FAX 614-644-1888
disabilityrightsohio.org

**Ohio Disability Rights Law
and Policy Center, Inc.**

- The focus on saving “the most lives possible in the shortest period of time” and the strategy of reallocating ventilators to patients who will use fewer resources, both of which could discriminatorily impact individuals with disabilities.^{iv}

Further, the guidelines are missing key items that would protect individuals with disabilities. For example, although the triage tools and tables direct healthcare professionals to check for underlying disability conditions before scoring patients,^v they lack direction on how professionals should adjust scoring based on those conditions so as to avoid bias. The guidelines also lack a process for patients to appeal decisions—which can be an effective tool for challenging inherent bias.

We would like the opportunity to discuss our concerns with the Ohio Hospital Association and its members, as well as to review your members’ individual guidelines. We are hopeful we can amicably resolve our concerns and ensure your members comply with their obligations under federal law to avoid discrimination against people with disabilities.

The undersigned organizations advocate for individuals with disabilities to live where they choose, with the people they choose, and with the ability to participate fully in their communities. We look forward to speaking with you about these shared concerns. To that end, please contact me when you receive this letter to set up a call.

Respectfully,

Kerstin Sjoberg
Executive Director
Disability Rights Ohio

Down Syndrome Ohio Collaborative
National Multiple Sclerosis Society
Ohio Brain Injury Program
Ohio Association of Area Agencies on Aging
Ohio Developmental Disabilities Council
Ohio Statewide Independent Living Council
University of Cincinnati Center for Excellence in Developmental Disabilities

ⁱ Ohio Hospital Association, *Guidelines for Allocation of Scarce Medical Resources, Version 1.0*, p. 9 (Apr. 5, 2020).

ⁱⁱ *Id.* at p. 24.

ⁱⁱⁱ *Id.* at p. 25.

^{iv} *Id.* at p. 30, 43.

^v *See id.* at p. 37, 38.