

## DISABILITY RIGHTS NEW MEXICO

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Gary Housepian, Chief Executive Officer

*Promoting and Protecting the Rights of Persons with Disabilities*

April 22, 2020

*Via email and U.S. first-class mail to:*

Governor Michelle Lujan Grisham  
490 Old Santa Fe Trail, Room 400  
Santa Fe, NM 87501

Governor Lujan Grisham:

Disability Rights New Mexico (DRNM) is our state's Protection & Advocacy System, a federally-authorized nonprofit organization serving to protect, promote, and expand the legal rights of people with disabilities. As you know, our constituents are particularly vulnerable to the COVID-19 virus. DRNM is grateful for the proactive leadership you and your administration have shown in protecting New Mexicans from this pandemic.

Our hope remains that your administration's early actions, such as your executive and public health orders, will prevent the type of surge in hospital care that would require the extremely difficult decisions some states face in rationing medical treatment and equipment. We are unaware of current guidance for hospitals on rationing in New Mexico. Our understanding is that an effort has been underway to develop these recommendations for our state.

DRNM would emphasize to your administration that any guidance on rationing care or equipment must not discriminate against people with disabilities. This requirement is clear within Section 504 of the Rehabilitation Act, the Americans with Disabilities Act, Section 1557 of the Affordable Care Act, as well as other federal and state laws. As you know, COVID-19 continues to impact the daily life of people with disabilities, just like every other New Mexican. But unlike other New Mexicans, these individuals also carry the fear that their disabilities will be held against them when it comes to determining what level of care they will receive during this crisis—particularly if New Mexico or its hospital systems start rationing medical services or equipment.

These fears are not unfounded. Some other states have already established rationing protocols that discriminate against individuals with disabilities. These protocols fail to recognize the humanity and dignity of people with disabilities by devaluing their lives. On March 28, 2020, the Office for Civil Rights ("OCR") at the U.S. Department of Health and Human Services issued a

bulletin to remind covered entities of legal obligations under these federal civil rights laws that prohibit discrimination against people with disabilities.<sup>1</sup>

Specifically that OCR guidance states:

In this time of emergency, the laudable goal of providing care quickly and efficiently must be guided by the fundamental principles of fairness, equality, and compassion that animate our civil rights laws. This is particularly true with respect to the treatment of persons with disabilities during medical emergencies as they possess the same dignity and worth as everyone else.

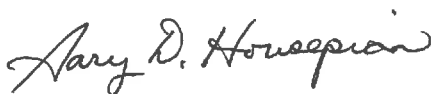
It is critical that any rationing of care that New Mexico and covered entities develop related to the COVID-19 crisis complies with the non-discrimination requirements of those laws. Failure to do so puts the lives of New Mexicans with disabilities at risk, as too often their lives are devalued by those in the medical profession.

We are ready to offer any input we can provide in the development of directions for managing hospital treatment rationing, to ensure that the policies stay focused on a nondiscriminatory and individualized assessment of the patient's ability to benefit from treatment.

We ask that any guidance on rationing care or equipment be broadly publicized. Throughout New Mexico our hospitals and heroic hospital staff on the front lines of this pandemic will benefit from your administration's leadership in this area. The affirmation of the commitment to individualized patient assessments, and the rejection of discriminatory practices that would endanger people with disabilities, will send a strong and critical message during this perilous time.

Thank you in advance for your consideration; please do not hesitate to contact me at 505-256-3100 or [ghousepian@DRNM.org](mailto:ghousepian@DRNM.org).

Sincerely,



Gary Housepian  
CEO

CC: Kathyleen Kunkel, Secretary, Department of Health  
Dr. David Scrase, Secretary, Human Services Department  
Jane Wishner, Executive Policy Advisor for Health and Human Services  
Jason Cornwell, Acting Deputy Secretary, Department of Health  
Matthew L. Garcia, General Counsel to Governor Michelle Lujan Grisham

<sup>1</sup> HHS Office for Civil Rights in Action, *BULLETIN: Civil Rights, HIPAA, and the Coronavirus Disease 2019 (COVID-19)* (Mar. 28, 2020, updated: Apr. 3, 2020) <https://www.hhs.gov/sites/default/files/ocr-bulletin-3-28-20.pdf> (last visited Apr. 22, 2020).