



COVID-19 Hotspots Arizona and Texas Crisis Standard of Care Plans Challenged by State and National Groups in Federal Complaints

A coalition of state and national disability and civil rights advocacy groups have filed complaints with the U.S. Department of Health and Human Services, Office for Civil Rights (OCR) challenging the crisis standard of care plans in Arizona and Texas, two states hit hard by the COVID-19 pandemic. These crisis plans are used to decide who receives life-saving treatment. Along with state partners, the national groups—The Arc, the Center for Public Representation, Disability Rights Education and Defense Fund, the Autistic Self Advocacy Network, the Bazelon Center for Mental Health Law, and Justice in Aging—argue that the plans discriminate against people with disabilities, older adults, and people of color, placing these communities at risk of substantial and imminent harm—and the real risk of being denied basic and emergency treatment—during the pandemic.

The COVID-19 situation in both states is dire. Arizona is ranked at the top of the list for the highest number of confirmed COVID-19 cases per million residents in the world. In Texas, COVID-19 cases continue to set new records with each passing day, with Dallas County recently reporting over 1,000 new cases for six days in a row. Based on the unprecedented spread of the virus, medical officials in both states have warned that some hospitals have reached capacity and the crisis plans have been activated. While decision-making in these scenarios is bound to be challenging, it is unacceptable and illegal for the guidelines for decision-making in life-or-death situations to be discriminatory.

Since Texas has never adopted statewide crisis standards despite repeated requests from the disability community, the [Texas complaint](#) challenges the [North Texas Mass Critical Care Guidelines](#) issued by the North Central Trauma Regional Advisory Council. This Regional Advisory Council is responsible for overseeing the provision of emergency medical services for 8 million Texans or 30% of the state. The [Arizona complaint](#) challenges the statewide [Crisis Standard of Care guidelines](#) along with the recently-issued [COVID-19 Addendum](#).

The complaints allege that, among other things, the plans categorically exclude people with certain disabilities from life-saving treatment; fail to modify policies and procedures that discriminate against people with disabilities, including no-visitor policies and the use of assessment instruments; and fail to prohibit treatment decisions that are based on discriminatory assumptions regarding future medical resources the patient may require. In addition, denying life-saving treatment to people who have certain illnesses or underlying conditions, as well as those with life-expectancy of less than five years will inevitably have a further discriminatory impact on Black, Native, and Latinx communities who are more likely to have certain underlying conditions and a shorter life expectancy than whites. These communities also face a disproportionate risk of COVID-19 infection and hospitalization, putting them at greater risk of being subject to these discriminatory plans. As such, the plans reinforce current and historical inequities in access to health care, and risk importing quality of life criteria and unconscious bias into the triage process, which will inevitably lead to inconsistent and subjective decision-making, higher rates of clinical error, and discriminatory allocation of care.

“People with intellectual and developmental disabilities are at higher risk of contracting COVID-19 and at a higher risk of dying from it than people without disabilities,” said Peter Berns, Chief Executive Officer, The Arc. “As states like Texas and Arizona see alarming new surges in the spread of the virus, it is imperative that the civil rights of people with disabilities be at the forefront. People with disabilities must have equal access to health care under federal law and cannot be left behind during a life-threatening public health crisis.”

“Right now, given the limited supply of hospital beds and life-saving equipment, the medical rationing plans in Arizona and Texas could result in a death sentence for some persons with disabilities, older adults, and people of color. They are clearly discriminatory in light of OCR’s recent guidance and resolutions,” said Steven Schwartz, Legal Director of the Center for Public Representation. “We call on OCR to take urgent action to protect the lives of people with disabilities, whose lives are at imminent risk as these discriminatory plans are being activated.”

In addition to filing complaints with OCR, the national disability organizations have created resources at **Center for Public Representation** and **The Arc** to assist stakeholders across the country in evaluating and advocating for non-discriminatory medical rationing plans.

For more information about these complaints, contact:

Kristin Wright, The Arc of the United States
wright@thearc.org or 202-617-3271

Alison Barkoff, Center for Public Representation
abarkoff@cpr-us.org or 202-854-1270