



Disability Groups File Discrimination Complaint Challenging Kansas' COVID-19 Treatment Rationing Policy Guidance

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As COVID-19 cases increase, the experience in other countries and predictions of U.S. health officials is that there will not be enough acute care services or equipment, such as ventilators, to meet the demand of patients with the virus who require intensive treatment. Health care professionals in the United States are already developing protocols for responding to COVID-19, including treatment rationing that will determine who will and will not have access to life-saving treatment. Kansas has recently developed a protocol for rationing care in their Toolkit for COVID-19.

Today, Disability Rights Kansas, Topeka Independent Living Center, Tessa Goupil and other legal advocacy partners filed a [complaint](#) with the U.S. Department of Health and Human Services' Office of Civil Rights (OCR) raising grave concerns that Kansas' ventilator rationing plan in their "Toolkit for COVID-19" discriminates against people with disabilities, in violation of federal disability rights laws, including the Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act (Section 504) and Section 1557 of the Affordable Care Act (ACA), and places their lives at serious risk.

Kansas' "Toolkit for COVID-19" offers guidance for health care providers addressing ventilator rationing in the event of a health emergency, which will presumably be put into effect, if

necessary, as a result of the COVID-19 pandemic. Under the Plan, hospitals would take away the ventilators of patients receiving care, including individuals who use regularly use their own ventilators. The Plan specifically excludes from life-saving treatment people based on their disability diagnosis – without an individualized assessment of their prospects for recovery – including people with “advanced untreatable neuromuscular disease,” people with “advanced or irreversible immunocompromise,” and people with some forms of cancer.

Tessa Goupil is an example of how Kansas’ ventilator rationing policy will impact people with disabilities. Tessa is a 49-year-old mother who has a neuromuscular disorder and uses a ventilator. She would be specifically covered by the Kansas exclusion policy, notwithstanding that she has been a ventilator user for nearly a decade. When Tessa learned of the State of Kansas’ health care rationing policies for ventilators, she was understandably devastated, “The message from the State of Kansas in this policy is painfully clear to me. The message is that my life is not important. My role as a mother, and as a person, is less valuable to the state because I have muscular dystrophy. It is so de-valued that if I need help, my ventilator would be taken away from me by the very medical professionals I would be turning to for help.”

“Unless it is significantly changed, Kansas’ ventilator rationing policy will relegate members of the Kansas disability community to die. We are asking for the federal government to rein in this unfortunate policy by providing critical guidance to Kansas and its health care professionals,” said Rocky Nichols, Executive Director of the Disability Rights Center of Kansas, the state of Kansas’ Protection and Advocacy Agency for people with disabilities. “At the same time, we call upon the state of Kansas to act immediately to set aside its fatally flawed policy and instead protect the lives of all its citizens, including those with disabilities. One way or another, this portion of the policy must be stopped from going into full effect. If not, there will be no way to undo the lethal damage caused by Kansas’ ventilator rationing plan.”

“It is completely unacceptable to have the State of Kansas pre-determine the value of the lives of people with disabilities when guiding how life-saving equipment and services should be given, and how they can be taken away. This is discrimination in its most outrageous form. It is urgent that the federal government make very clear right now that it will swiftly enforce federal laws that protect against medical rationing plans discriminating against people with disabilities. The

lives of millions of people with disabilities across the nation are at stake – and their lives have value,” said Ami Hyten, Executive Director of the Topeka Independent Living Resource Center.

The complaint calls on OCR to take immediate action to address this discrimination and assist local jurisdictions and providers to develop non-discriminatory approaches before there are lethal consequences to application of these illegal policies.

In addition to counsel from the Disability Rights Center of Kansas and the Topeka Independent Resource Center, complainants are also represented by:

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Complaint online at: <https://www.centerforpublicrep.org/wp-content/uploads/2020/03/Kansas-OCR-complaint-3.27.20-final.pdf>