



December 11, 2020

The Honorable Michelle Lujan Grisham
Governor of the State of New Mexico
The Capitol, 490 Old Santa Fe Trail
Santa Fe, NM 87501

Dear Governor Lujan Grisham:

On behalf of the undersigned organizations representing people with chronic conditions and disabilities, thank you for your considerable efforts to address the coronavirus (COVID-19) crisis. We write today to comment on the state's draft document entitled "New Mexico Triage Protocol for the Allocation of Scarce Resources Under COVID-19 Crisis Standards of Care"¹ and to request the state of New Mexico adopt a policy that clearly directs health care providers across the state to refrain from discriminating against people with pre-existing chronic conditions and disabilities in the provision of treatment during the COVID-19 emergency.

COVID-19 continues to present serious risk to New Mexico's residents, including the patients our organizations represent. As of December 11, 2020, over 291,000 people in the United States have died as a result of COVID-19, including more than 1,800 individuals in New Mexico.² Furthermore, over the last seven days, nearly 12,000 cases in New Mexico have been reported to the Centers for Disease Control and Prevention (CDC). As the spread of the virus shows no signs of slowing down, the capacity of our health care system will continue to be stressed. Unfortunately, New Mexico is nearing a point where need outstrips capacity; we have had recent reports of hospitals in the state running out of intensive care beds to treat COVID-19 patients.^{3, 4} It is critical that our response not be based on discriminatory and outdated ideas about quality of life or the value of people with disabilities and chronic conditions to society.

As described in a March 28, 2020, bulletin issued by the U.S. Department of Health and Human Services (HHS) Office of Civil Rights (OCR), all allocation determinations must be based on individualized patient assessment rather than on the mere presence of an underlying condition or disability. In the bulletin,

¹ https://cvmodeling.nmhealth.org/wp-content/uploads/sites/4/2020/05/NMMATAssessmentTriageProtocol2020_05_22.pdf

² <https://www.cdc.gov/covid-data-tracker/>

³ <https://www.kob.com/albuquerque-news/covid-surge-pushes-new-mexico-hospitals-one-step-closer-to-rationing-care/5943765/#.X88KxWrO0u4.mailto>

⁴ https://www.washingtonpost.com/national/new-mexico-activates-crisis-care-standards-for-hospitals-overwhelmed-by-covid/2020/12/10/77300c20-3b36-11eb-98c4-25dc9f4987e8_story.html

OCR states, “decisions by covered entities concerning whether an individual is a candidate for treatment should be based on an individualized assessment of the patient based on the best available objective medical evidence.”

During these unprecedented times, it is important that health care workers have access to state-wide guidance that ensures all patients are evaluated on a case-by-case basis and decisions about who receives treatment are based on current clinical presentation – regardless of underlying health conditions. We are concerned that New Mexico’s guidelines use the mere presence of existing health conditions as a determining factor in deciding which patients receive ventilators in the event that there is an inadequate supply. The mechanical ventilation allocation guidelines recommend assessing patient prognosis of long-term survival and list lung transplant, dementia with function less than or equal to 6 on FAST Scale, end-stage renal disease on dialysis and more as examples of comorbidities associated with significantly decreased long-term survival. Additionally, the use of the Sequential Organ Failure Assessment (SOFA) in the guidelines may have an unintended discriminatory impact against people with disabilities if reasonable modifications are not made to account for those with a baseline level of impairment prior to the acute care episode. Such provisions could result in the denial of life-saving care for patients who seek treatment solely based on their underlying conditions.

We urge you to work with our organizations, as well as disability rights organizations in New Mexico to ensure that the state’s guidelines are centered on individual assessments of each patient and in accordance with the OCR bulletin. Several of our groups have endorsed additional guidance, written by disability rights professionals, on how to implement the bulletin in states.⁵ This should serve as additional assistance toward writing a plan that is equitable, just, and does not discriminate against the people we represent.

We look forward to working with you on revised state guidelines that safeguard the health and affirm the rights of New Mexicans living with disabilities and pre-existing conditions. If you have any questions regarding this letter, or if we may provide further information, please don’t hesitate to contact Adam Kellermann with the Cystic Fibrosis Foundation at akellermann@cff.org. Thank you for your consideration.

Sincerely,

American Diabetes Association
American Kidney Fund
Arthritis Foundation
Cystic Fibrosis Foundation
Epilepsy Foundation
National Multiple Sclerosis Society
National Organization for Rare Disorders

⁵ https://www.centerforpublicrep.org/wp-content/uploads/2020/04/Guidance-to-States-Hospitals_FINAL.pdf