



December 11, 2020

The Honorable Steve Bullock
Governor of the State of Montana
The Capitol, 1301 East Sixth Avenue
Helena, MT 59601

Dear Governor Bullock:

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 request the state of Montana 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 Montana residents, including the patients we 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 700 in Montana.¹ Furthermore, over the last seven days, more than 5,700 cases in Montana have been reported to the Centers for Disease Control and Prevention (CDC). Unfortunately, the state recently reached a new record for the number of Montana hospitalized with COVID-19, creating concern that we may reach a point where the need begins to outstrip capacity.^{2,3} As the spread of the virus shows no signs of slowing down, the capacity of our health care system will continue to be stressed.

During these unprecedented times, it is important that health care workers have access to state-wide guidance on how to equitably allocate scarce medical resources – guidance that, to our knowledge, has not yet been adopted by the state of Montana. We fear that without such resources, providers on the front lines will not be adequately equipped to make equitable choices about which patients receive life-sustaining care during the ongoing pandemic.

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, OCR states, “decisions by covered entities concerning whether an individual is a candidate for treatment

¹ <https://www.cdc.gov/covid-data-tracker/>

² <https://missoulacurrent.com/montana-today/2020/11/montana-covid-hotspot/>

³ https://www.bozemandailychronicle.com/coronavirus/gallatin-county-tops-300-covid-19-cases-in-single-day/article_1eb55da7-7ff4-51b3-a75e-af70263f10c5.html

should be based on an individualized assessment of the patient based on the best available objective medical evidence.”

As Montana continues to experience a surge in COVID-19 cases, it is imperative that the state develop and implement guidelines for how health care providers can protect patients from discriminatory practices and ensure equitable allocation of scarce medical resources. We urge you to work with our organizations, as well as disability rights organizations in Montana, to develop guidance in accordance with the OCR bulletin that ensures all patients are evaluated on a case-by-case basis and that decisions about who receives treatment are based on current clinical presentation – regardless of underlying health condition or disability. Several of our groups have endorsed additional guidance, written by disability rights professionals, on how to implement the bulletin in states.⁴ 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 to develop a plan for our state that safeguards the health and affirms the rights of Montanans 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.

Sincerely,

American Diabetes Association
American Kidney Fund
Arthritis Foundation
Cystic Fibrosis Foundation
Epilepsy Foundation
National Multiple Sclerosis Society
National Organization for Rare Disorders
Rocky Mountain Hemophilia and Bleeding Disorders Foundation

⁴ https://www.centerforpublicrep.org/wp-content/uploads/2020/04/Guidance-to-States-Hospitals_FINAL.pdf