



April 6, 2020

Treatment Guidelines Relating to Non-Discrimination in Medical Treatment for COVID-19

State health officials have heard concerns from disability rights advocates that health care providers might consider an individual's disability status when determining which patients to treat if health care facilities experience a shortage of resources due to a surge of patients needing life-saving care. At this time, Oregon health care providers are not facing difficult care rationing decisions, due to Governor Brown's early and extensive social distancing executive orders. State health and human services officials, hospital system administrators and health care providers are working to prevent Oregon's health care system from being overwhelmed by COVID-19 hospital admissions and from facing the tragic health care decisions that care providers have confronted in other states and in other countries. (To find out more about how the state is responding to the COVID-19 emergency, visit the [Oregon Health Authority's novel coronavirus web page](#).)

Whether during the COVID-19 pandemic or a future health crisis, the Oregon disability community is protected from discrimination in care by clear federal and state statutes and guidance frameworks, including the [Oregon Crisis Care Guidance](#), (published in 2018), which state public health officials, health care leaders and experts in public health, law and ethics, collaborated to develop in preparation for a pandemic. These treatment guidelines remind all of Oregon's health care providers, facilities, and insurers: it is illegal for health care providers to ration care based on a person's disability status, under both federal and state law.

Federal Guidance

The federal Office for Civil Rights at the U.S. Department of Health and Human Services issued guidance on March 28, 2020, reminding covered entities (health care providers and health insurers) of their federal legal obligations and responsibilities under Section 1557 of the Affordable Care Act and Section 504 of the Rehabilitation Act which "**prohibit discrimination on the basis of race, color, national origin, disability, age, sex, and exercise of conscience and religion in HHS-funded programs.**" Health care providers may not deny medical care to persons with disabilities "on the basis of stereotypes, assessments of quality of life, or judgments about a person's relative 'worth' based on the presence or absence of disabilities. Decisions by covered entities about treatment should be based on an individualized assessment of the patient based on the best available objective medical evidence."¹

¹ <https://www.hhs.gov/sites/default/files/ocr-bulletin-3-28-20.pdf>.

Oregon Prohibits Discrimination Based on Disability

It is unlawful in Oregon to discriminate against an individual on the basis of disability, with regard to access to public accommodations, like a hospital.²

Treatment of Oregon Health Plan (OHP) Members

OHA recognizes that every member's medical needs are unique and OHP providers, members and their authorized representatives, and their care team make individualized, clinically appropriate decisions that are based on medical necessity. No person, on the basis of mental, developmental, intellectual, or physical disability or a perceived disability, may be unlawfully denied full and equal access to the benefits of OHP services, including COVID-19 treatment, in the event of limited hospital or other health care facility resources and/or capacity.

Oregon Crisis Care Guidance

OHA has participated with Oregon's health care organizations and systems, in issuing Oregon's Crises Care Guidance. The Guidance contains an ethical framework for health care in times of healthcare resource shortages. The Guidance seeks to ensure that the "way limited healthcare resources are used in a crisis is fair and * * * [that] it is essential that decisions about 'who receives what' are made in a reasonable and ethical manner."³ The Guidance specifically states:

Decisions about who should receive critical care and other medical services should be based on clinical experience using objective clinical information, just as they are in non-crisis situations. **Care decisions should not be based on non-clinical factors such as race, ethnicity, clinician-perceived quality of life, profession, social position, or ability to pay.** As an example, stable patients who use a ventilator on a long-term basis would not lose access to their ventilators as a consequence of implementing crisis care.⁴

American Medical Association (AMA) Code of Medical Ethics

The AMA Code of Medical Ethics offers foundational guidance for health care professionals and institutions responding to the COVID-19 pandemic. The guidance provides direction for appropriate allocation of limited resources.

These guidelines are issued pursuant to the authority granted OHA under ORS 433.443(2)(a)(B).

Resources

Any individual who believes he or she is being discriminated against, can get help at:

Bureau of Labor and Industries, Civil Rights Division:

<https://www.oregon.gov/boli/CRD/pages/index.aspx>

Phone: 971-673-0764

² ORS 659A.103 to 659A.145.

³ Oregon Crisis Care Guidance, page 4 (June 2018), <https://www.theoma.org/CrisisCare>.

⁴ Guidance, at 7.

Email: <mailto:mcrdemail@boli.state.or.us>

Oregon Health Authority, Office of Equity and Inclusion:

<https://www.oregon.gov/OHA/OEI/Pages/Employee-Rights.aspx>

Oregon Health Authority, Health Facility Licensing and Certification:

<https://www.oregon.gov/oha/PH/PROVIDERPARTNERRESOURCES/HEALTHCAREPROVIDERSFACILITIES/HEALTHCAREHEALTHCAREREGULATIONQUALITYIMPROVEMENT/Pages/complaint.aspx>

Email: mailbox.hcl@state.or.us