

The logo for Mental Health Advocacy Services features the text "MENTAL HEALTH ADVOCACY SERVICES" in a bold, blue, serif font. The text is arranged in three lines: "MENTAL HEALTH" on the top line, "ADVOCACY" in the middle, and "SERVICES" on the bottom. The background of the logo is a light blue and yellow gradient with a stylized sunburst or starburst pattern behind the text.

# MENTAL HEALTH ADVOCACY SERVICES

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*A nonprofit organization protecting and advancing the legal rights of people with mental disabilities.*

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March 27, 2020

The Honorable Governor Newsom  
Governor of California  
California State Capitol  
1303 10<sup>th</sup> Street, Suite 1173  
Sacramento, CA 95814

Dear Governor Newsom:

Californians with disabilities and our advocates are horrified by reports from Italy and now Washington State about rationing access to Coronavirus (COVID-19) care via medical treatment triage criteria that will openly exclude people with disabilities from life-saving care. As California readies for the COVID-19 surge, we call upon your office and all California's policy makers to act now to stop deadly discrimination against people with disabilities before it starts.

Guidance distributed by the Washington Department of Health last week recommends that triage teams consider transferring hospital patients with "loss of reserves in energy, physical ability, cognition, and general health" to outpatient or palliative care, rather than continuing to treat them. In addition to discriminating against people with physical disabilities, the COVID-19 triage policy for the University of Washington Medical Center discriminates against people with mental health disabilities, who may experience lack of energy or cognitive challenges as symptoms of their mental health conditions, or side-effects of the medications they take to manage their conditions. Moreover, because many people with mental disabilities experience barriers to receiving adequate physical care, including lack of health insurance and lack of appropriate treatment by medical providers, they are more likely to develop chronic physical conditions that impair their general health.

The COVID-19 triage policy for the University of Washington Medical Center instructs doctors to not do what is best for their individual patients with disabilities and instead deny them treatment in favor of a younger, healthier person in the region, although that patient may arguably need it less. This leaves those who have mental or physical disabilities, or who are older, to die.

This is illegal disability discrimination, plain and simple, based on the biased assumption that seniors and people with disabilities have less value and experience a lower quality of life. We call upon California to reject discriminatory rationing of healthcare and instead ensure that our health care providers adopt equitable triage criteria that affirm our bedrock principles of fairness, non-discrimination, and the value of every life, whatever age, race, nationality, or disability status. People who need life-saving care should not get it based on an assessment of whether they are worth saving. This means that care should be allocated based on an individualized assessment of urgent need and whether the patient will benefit, without regard to pre-existing mental disabilities.

On Monday, our friends at Disability Rights Washington filed a federal discrimination complaint against the Washington State policies, asking the U.S. Department of Health and Human Services to step in. One of those affected in Washington is Ivanova Smith, a person with an intellectual disability who is the parent of a young child, a homeowner, and an experienced and effective disability rights advocate. But if she falls ill with COVID-19, she may have a hard time accessing scarce medical resources given the reliance on baseline functional status (including cognition) at multiple steps in Washington State triage protocol. Another person described in the Washington State discrimination complaint is Rose, a young woman with Cystic Fibrosis who has good lung function but fears that her diagnosis alone may exclude her from care.

Let's not forget that people with disabilities have historically experienced rampant discrimination in the provision of medical treatment. Long-standing triage protocols in other states such as Alabama and Colorado already exclude many people with developmental disabilities or neuromuscular disease. Studies collected by the National Council on Disability document that a large segment of the medical community refuses even to treat patients with disabilities; a quarter of doctors in one study refused to schedule an appointment with potential patients who used wheelchairs. Patients with disabilities "experience health care disparities, such as lower rates of screening and more difficulty accessing services, compared to people without disabilities."

People with mental health disabilities are particularly vulnerable to healthcare discrimination. According to a review in *The Lancet*<sup>1</sup>, people with severe mental health illness in developed countries experience a mortality gap of around 15 to 20 years compared with the general population, "which puts mental illness at the top of the list of variables associated with physical health inequality."

Neil Romano, the Chair of the National Council on Disability, made this point in an open letter to federal authorities on March 18, 2020, "The lives of persons with disabilities continue to be devalued in the medical profession due to pervasive negative biases and inaccurate assumptions. The belief that people with disabilities have a lesser quality of

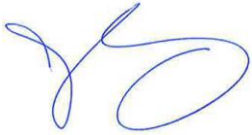
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<sup>1</sup> Henderson, C., et al., *Mental health-related stigma in health care and mental health-care settings*, 1 *Lancet Psychiatry* 6, Nov. 2014, at 467-482.

life and are less valuable to society has led to deadly consequences - physicians choosing to provide medically scarce resources to non-disabled or healthier people – [which is] a violation of human rights, civil rights and a reinforcement of the belief that people with disabilities are lesser-than and less deserving of life itself.”

We appreciate your tremendous leadership during this time and ask you to make clear and ensure that hard-pressed medical providers understand: Hospitals may prioritize patients with a greater urgency of need and delay non-urgent care. Do not allocate scarce resources to individuals with no chance of survival. But they may not discriminate against people with disabilities who seek life-sustaining care from which they will benefit, even if they may require more or longer treatment or have underlying conditions that complicate care. During this time of crisis, we need to stand together and protect and value equally the lives of all Californians.

Sincerely,

A handwritten signature in blue ink, appearing to read 'JF', with a stylized flourish at the end.

Jenny Farrell, Esq.  
Executive Director  
MENTAL HEALTH ADVOCACY SERVICES