



Center for Public Representation



COVID-19 Hotspots Arizona and Texas Crisis Standard of Care Plans Challenged by State and National Groups in Federal Complaints

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A coalition of state and national disability and civil rights advocacy groups have filed complaints with the U.S. Department of Health and Human Services, Office for Civil Rights (OCR) challenging the crisis standard of care plans in Arizona and Texas, two states hit hard by the COVID-19 pandemic. These crisis plans are used to decide who receives life-saving treatment. Along with state partners, the national groups—The Arc, the Center for Public Representation, Disability Rights Education and Defense Fund, the Autistic Self Advocacy Network, the Bazelon Center for Mental Health Law, and Justice in Aging—argue that the plans discriminate against people with disabilities, older adults, and people of color, placing these communities at risk of substantial and imminent harm—and the real risk of being denied basic and emergency treatment—during the pandemic.

The COVID-19 situation in both states is dire. Arizona is ranked at the top of the list for the highest number of confirmed COVID-19 cases per million residents in the world. In Texas, COVID-19 cases continue to set new records with each passing day, with Dallas County recently reporting over 1,000 new cases for six days in a row. Based on the unprecedented spread of the virus, medical officials in both states have warned that some hospitals have reached capacity and the crisis plans have been activated. While decision-making in these scenarios is bound to be challenging, it is unacceptable and illegal for the guidelines for decision-making in life-or-death situations to be discriminatory.

Since Texas has never adopted statewide crisis standards despite repeated requests from the disability community, the [Texas complaint](#) challenges the [North Texas Mass Critical Care Guidelines](#) issued by the North Central Trauma Regional Advisory Council. This Regional Advisory Council is responsible for overseeing the provision of emergency medical services for 8 million Texans or 30% of the state. The [Arizona complaint](#) challenges the statewide [Crisis Standard of Care guidelines](#) along with the recently-issued [COVID-19 Addendum](#).

The complaints allege that, among other things, the plans categorically exclude people with certain disabilities from life-saving treatment; fail to modify policies and procedures that discriminate against people with disabilities, including no-visitor policies and the use of assessment instruments; and fail to prohibit treatment decisions that are based on discriminatory assumptions regarding future medical resources the patient may require. In addition, denying life-saving treatment to people who have certain illnesses or underlying conditions, as well as those with life-expectancy of less than five years will inevitably have a further discriminatory impact on Black, Native, and Latinx communities who are more likely to have certain underlying conditions and a shorter life expectancy than whites. These communities also face a disproportionate risk of COVID-19 infection and hospitalization, putting them at greater risk of being subject to these discriminatory plans. As such, the plans reinforce current and

historical inequities in access to health care, and risk importing quality of life criteria and unconscious bias into the triage process, which will inevitably lead to inconsistent and subjective decision-making, higher rates of clinical error, and discriminatory allocation of care.

"The COVID-19 crisis is particularly dire in Texas and Arizona. It is urgent that HHS step in and resolve these complaints to protect people with disabilities, older adults, and people of color, whose lives are at risk due to discriminatory medical rationing plans," said Jennifer Mathis, Director of Policy and Legal Advocacy at the Bazelon Center for Mental Health Law.

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