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Disability Discrimination Complaint Filed Over Alabama’s COVID-19 Treatment Rationing Plan

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As COVID-19 cases increase, the experience in other countries and predictions of U.S. health officials is that there will not be enough acute care services or equipment, such as ventilators, to meet the demand of patients with the virus who require intensive treatment. Health care professionals in the United States are already developing protocols for responding to COVID-19, [including treatment rationing](#) that will determine who will and will not have access to life-saving treatment. The Alabama Department of Public Health’s [Emergency Operations Plan](#) for addressing ventilator rationing in the event of a health emergency, which will presumably be put into effect, if necessary, as a result of the COVID-19 pandemic, places the lives of disabled people at serious risk, in violation of federal law. Under the Plan, hospitals are ordered to “not offer mechanical ventilator support for patients” with “severe or profound mental retardation,” “moderate to severe dementia,” and “severe traumatic brain injury.” This policy also applies to children.

The Alabama Disabilities Advocacy Program and The Arc of the United States filed a [complaint](#) today with the U.S. Department of Health and Human Services Office for Civil Rights (OCR) about their grave concerns that Alabama’s ventilator rationing plan discriminates against people with intellectual and cognitive disabilities, in violation of federal disability rights laws, including the Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act (Section 504) and Section 1557 of the Affordable Care Act (ACA), and places their lives at serious risk. We

call on OCR to take immediate action to address this discrimination and assist local jurisdictions and providers to develop non-discriminatory approaches before there are lethal consequences to application of these illegal policies.

Matthew Foster is an example of how Alabama's ventilator rationing policy will impact people with intellectual and cognitive disabilities. Matthew, who lives with his family in Vestavia Hills, is 37-years-old and has Down syndrome. Because he has intellectual disability, he falls within the category of people who might be excluded from access to a ventilator in the event the Emergency Operations Plan is implemented. When Matthew was told about this policy, he responded: "I have Down Syndrome. It's not going away. But I have a right to live. I'm worth it." Matthew, who has held a job for the past twenty years, has "enormous gifts and talents *because of* his disability, not in spite of it," says his mother, Susan Ellis. "He's had a positive impact on our family and community. The idea that his life is not worthy because of his intellectual disability is devastating and wrong," she says.

"In this time of crisis, we cannot devalue the lives of others in our community based on their disabilities. It's morally wrong, and it violates the law. We implore OCR to rein in and provide urgently needed guidance to the health care professionals who are prepared to relegate members of our community to die," said James Tucker, Director of the Alabama Disabilities Advocacy Program. "If OCR fails to act swiftly to clearly and firmly articulate the violation of civil rights implicated by the Alabama ventilator rationing plan, there will be no way to undo the lethal outcome of the plan should it go into effect."

"It is cruel that our constituents in Alabama seeking medical treatment during this pandemic may not receive the care they need or they may be left to suffer or die because they are seen as less than or other. It is urgent that the federal government make very clear right now that it will swiftly enforce federal laws that protect against medical rationing plans discriminating against people with disabilities. The lives of millions of people with disabilities across the nation are at stake – and their lives have value," said Gena Richardson, Executive Director of The Arc Alabama.

Complainants are represented by their counsel who are available for comment:

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