

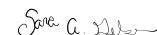
Subject: RE: Urgent, Time Sensitive Request for Technical Assistance in Oregon

Date: Saturday, June 5, 2021 at 5:21:34 PM Pacific Daylight Time

From: Sen Gelser

To: Sen Gelser

From the Desk of
Senator Sara Gelser



From: "Frohboese, Robinsue (HHS/OCR)"

Date: Thursday, June 3, 2021 at 8:25 PM

To: Sen Gelser

Cc: "Ne'eman, Ari (HHS/OCR) (CTR)" , "Leoz, Michael (HHS/OCR)" , "Baker, Michael (OS/IEA)"

Subject: RE: Urgent, Time Sensitive Request for Technical Assistance in Oregon

Dear Senator Gelser,

Thank you again for your outreach to the HHS Office for Civil Rights, as well as to our Pacific Regional Office, and the work you have been doing to promote disability rights, both while serving in the Oregon Senate and with the National Council on Disability. As a Departmental policy, we typically do not participate in state legislative activities, whether through written statement, in person, or via conference call. On occasion, HHS provides advanced, scientific technical assistance, although it is generally not on draft legislation. I am connecting you with Michael Baker in the HHS Office of Intergovernmental and External Affairs, who can provide additional information about the permissible scope of HHS activities should you have any questions.

It appears that you are well familiar with OCR's work on Crisis Standards of Care, but I wanted to make sure you are aware of the guidance we issued at the beginning of the pandemic stating that [civil rights laws remain in effect during disasters or emergencies, including the COVID-19 pandemic - PDF](#). Our website also contains the following best practices about Crisis Standards of Care and disability based on OCR's work with states and other entities:

1. "Resource allocation decisions should be based on individualized assessment of each patient using best available objective medical evidence concerning likelihood of death prior to or imminently after hospital discharge."
2. "Such assessments should not use categorical exclusion criteria on the basis of disability or age; judgments as to long-term life expectancy; evaluations of the relative worth of life, including through quality of life judgments, and should not deprioritize persons on the basis of disability or age because they may consume more treatment resources or require auxiliary aids or supports."
3. "When using prognostic scoring systems with patients with underlying disabilities, reasonable modifications may be necessary for accurate use."
4. "Healthcare providers should not "steer" patients into agreeing to the withdrawal or withholding of life-sustaining treatment or require patients or their families to consent to a particular advanced care planning decision in order to continue to receive services from a facility. Patients must be given information on the full scope of available alternatives."
5. "Providers should not consider for re-allocation a ventilator or other piece of life-sustaining equipment that is brought to the hospital by a patient whose life is dependent on that equipment."

You can find these best practices and examples of states that have changed their practices to incorporate these best practices on our website at: <https://www.hhs.gov/civil-rights/for-providers/civil-rights-covid19/index.html>.

Our website also lists other guidance on these topics, including by the Interagency Healthcare Resilience Hospital Task Force, which published [Information on Crisis Standards of Care and Civil Rights Laws - PDF](#) and by the National Academies: <https://nam.edu/national-organizations-call-for-action-to-implement-crisis-standards-of-care-during-covid-19-surge/>.

Thank you again for reaching out and all you are doing to advance the rights of persons with

disabilities.

Best wishes,
Robinsue Frohboese, J.D., Ph.D. (she/her)
Acting Director and Principal Deputy
Office for Civil Rights
U.S. Department of Health and Human Services