

OCR Finds State Hospital Has Discriminatory Ventilator Triage Guidelines – Early Resolution Reached

Amundsen Davis Health Care Alert
April 9, 2020

Eleven days after publishing a bulletin reminding covered entities that decisions concerning whether an individual is a candidate for treatment should not be based on a person's age or disability, the Office for Civil Rights (OCR) of the Department of Health and Human Services brought its first enforcement action against the State of Alabama. On April 8, 2020, OCR resolved a compliance review of the State of Alabama after the state removed ventilator rationing guidelines that allegedly discriminated on the basis of disability and age.

The compliance review stemmed from a complaint alleging that Alabama had incorporated a 2010 document called "Criteria for Mechanical Ventilator Triage Following Proclamation of Mass-Casualty Respiratory Emergency" (2010 Criteria) as an annex to its Emergency Operations Plan. The 2010 Criteria allegedly allowed for denying ventilator services to individuals based on the presence of intellectual disabilities, including "profound mental retardation" and "moderate to severe dementia."

OCR noted that the 2010 Criteria "could result in discrimination against persons with disabilities by denying or stopping ventilator services simply because an individual has an intellectual disability." Moreover, it could be used "to impose blunt age categorizations, such that older persons might automatically be deemed ineligible for life-saving care without any individualized assessment or examination and based solely on missing a strict age cutoff."

Alabama agreed to remove all links to the 2010 Criteria from its websites and to comply with applicable civil rights laws. Alabama further agreed to clarify publicly that the 2010 Criteria:

- are not in effect;
- that it will not, in future CSC guidelines, include similar provisions singling out certain disabilities for unfavorable treatment or use categorical age cutoffs; and
- that it will also not interpret the current Guidelines in such a manner.

PROFESSIONALS

Moses Suarez
Partner

RELATED SERVICES

Health Care

Additional information relating to OCR, Civil Rights, HIPAA, and COVID-19, can be found at the Health and Human Services website.

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