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What you need to know about anti-discrimination and COVID-19 care

HHS issues civil rights bulletin on medical care rationing

BY POLICY STAFF

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Medical professionals and healthcare providers battling the COVID-19 pandemic are facing a surge of patients that could overwhelm their capacity and resources. Many states are drafting protocols for rationing care during the coronavirus outbreak, even while engaging private manufacturers (<https://www.fastcompany.com/90483109/inside-the-mad-rush-to-produce->

ventilators-and-emergency-gear-to-fight-covid-19) and volunteer organizations (<https://www.samaritanspurse.org/our-ministry/covid-19-response/>) in heroic ways to produce additional medical supplies and to help heal the sick.

There is a concern that such rationing protocols could lead to discrimination of people based on disability and age. For example, disability rights advocates have filed complaints arguing that rationing plans in Alabama and Washington state are discriminatory.

Christians affirm that all people are created in the image of God, giving every life inherent dignity and value. Russell Moore, president of the ERLC, weighed into this ethical dilemma with a Christian response with an opinion piece in *The New York Times*

(<https://www.nytimes.com/2020/03/26/opinion/coronavirus-elderly-vulnerable-religion.html>) last week. Moore notes how “this pandemic will change us, change our economy, our culture,” and that we should remember that “one day we will tell our grandchildren how we lived, how we loved, during the Great Pandemic. Let’s respect human life in such a way that we will not be ashamed to tell them the truth.”

Concern about care rationing was raised by members of Congress in a bipartisan, bicameral letter (https://chrissmith.house.gov/uploadedfiles/2020-03-25_bipartisan_bicameral_letter_to_hhs_and_doj_-_covid-19_and_disability_discrimination.pdf) sent on March 25 to Secretary Alex Azar of the Department of Health and Human Services and Attorney General Bill Barr. The letter was led by Senators Kirsten Gillibrand (D–N.Y.) and James Lankford (R–Okla.), and Representatives Jim Langevin (D–R.I.), and Chris

Smith (R-N.J.). In the letter, members urged Sec. Azar to “remind States of their obligation to adhere to existing anti-discrimination laws when responding to COVID-19.”

On March 28 the HHS Office for Civil Rights (OCR) issued a [bulletin](https://www.hhs.gov/sites/default/files/ocr-bulletin-3-28-20.pdf) (<https://www.hhs.gov/sites/default/files/ocr-bulletin-3-28-20.pdf>) that reaffirms the obligation of health care providers to abide by civil rights obligations during this national emergency. The bulletin seeks to ensure that entities covered by civil rights authorities do not unlawfully discriminate against people on the basis of race, color, national origin, disability, age, sex, and exercise of conscience and religion when making decisions about their treatment during the COVID-19 emergency. Roger Severino, the director of OCR stated that “civil rights laws protect the equal dignity of every human life from ruthless utilitarianism. HHS is committed to leaving no one behind during an emergency and helping health care providers meet that goal. Persons with disabilities, with limited English skills, and older persons should not be put at the end of the line for health care during emergencies.”

Russell Moore praised these guidelines, “Even in a time of emergency, every human life is worth living. The temptation, in a time like this, is for some to seek to discriminate in health care against the elderly or those with disabilities. Such devaluing of human life is wrong. I am grateful that this guidance from the HHS Office of Civil Rights stands against such discrimination and for the dignity of every life. Our country has tremendous challenges ahead. We can meet them while still affirming the dignity of every human life, including the most vulnerable among us.”

The ERLC welcomes this guidance and urges states and health care providers to ensure their protocols and policies respect the fundamental principles of fairness, equality, and compassion. Each human life deeply matters to God and ought to be protected and treated equally under our laws.

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