



U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
Office for Civil Rights

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Via Electronic Mail

May 6, 2020

Rhonda Brownstein, Esq.
Alabama Disabilities Advocacy Program
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Tuscaloosa, AL 35487
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Dr. Scott Harris
State Health Officer
Alabama Department of Public Health
RSA Tower, 201 Monroe Street
Montgomery, AL 36104
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OCR Transaction Number: 04-20-378604
Alabama Disabilities Advocacy Program v. Alabama Department of Public Health

Dear Ms. Brownstein and Dr. Harris:

The United States Department of Health and Human Services (HHS), Office for Civil Rights (OCR) has completed its review of a complaint received on March 24, 2020 by the Alabama Disabilities Advocacy Program and the Arc of the United States (Complainants), alleging that the Alabama Department of Public Health (ADPH) is not in compliance with Section 504 of the Rehabilitation Act, 29 U.S.C. § 794 (Section 504),¹ Title II of the Americans with Disabilities Act, 42 U.S.C. §§ 12131-12134 (Title II),² and Section 1557 of the Affordable Care Act, 42 U.S.C. § 18116 (Section 1557).³ Specifically, the complaint alleged that ADHR 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 that allowed for denying ventilator services to individuals based on the presence of intellectual disabilities, including “profound mental retardation” and “moderate to severe dementia.”

OCR enforces federal civil rights laws which prohibit discrimination in the delivery of health care and human services based on race, color, national origin, disability, age, sex, religion, and

¹ The regulation implementing Section 504 is codified at 45 C.F.R. Part 84.

² The regulation implementing Title II is codified at 28 C.F.R. Part 35.

³ The regulation implementing Section 1557 is codified at 45 C.F.R. Part 92.

the exercise of conscience, and also enforces the Health Insurance Portability and Accountability Act Privacy, Security and Breach Notification Rules.

Jurisdiction

OCR opened a review of the complaint against ADHR pursuant to its authority under the following Federal civil rights laws: Section 504 and its implementing regulation, which apply to disability discrimination by recipients of Federal financial assistance (FFA); Section 1557 and its implementing regulation, as they apply to discrimination on the basis of disability or age by health programs and activities that receive FFA; and Title II and its implementing regulation, as they apply to disability discrimination by public entities providing health care and social services.

Because the 2010 Criteria appeared to reference age as a potential category for exclusion, OCR also reviewed potential issues concerning age discrimination pursuant to its authority under the Age Discrimination Act of 1975, 42 U.S.C. § 6101 (Age Act).⁴ The Age Act prohibits discrimination on the basis of age by recipients of FFA. As a state health agency and a recipient of FFA from HHS, ADHR is required to comply with the requirements of Section 504, Section 1557, Title II, and the Age Act.

Legal Authority

Title II of the ADA provides that no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by such entity. 42 U.S.C. § 12132. See also 28 C.F.R. §35.130(a).

Section 504 provides that no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of any entity that receives FFA, or be subjected to discrimination by such entity. 29 U.S.C. § 794. See also 45 C.F.R. §84.4(a).

Section 1557 provides, among other things, that no person may be discriminated against on the basis of disability in health programs or activities that receive FFA. 42 U.S.C. § 18116. See also 45 C.F.R. § 92.101(2)(i).

The Age Act provides that no person may be discriminated against on the basis of age, 42 U.S.C. § 6101. See also 45 C.F.R. § 91.11.

Resolution

During the course of OCR's review, ADPH took several steps to address civil rights concerns raised in the review. Specifically, ADHR agreed to: remove the 2010 Criteria from its websites and clarify publicly that the 2010 Criteria are not in effect; not include provisions singling out certain disabilities for unfavorable treatment or use categorical age cutoffs in future Crisis Standards of Care (CSC) guidelines; and not interpret current CSC guidelines in such a manner.

⁴The regulations implementing the Age Discrimination Act are codified at 45 C.F.R. Part 90 and 45 C.F.R. Part 91.

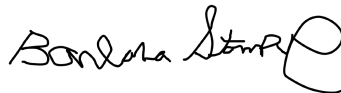
These actions satisfactorily resolve OCR's review. Accordingly, OCR is closing its review. This closure is not intended, nor should it be construed, to cover any issues regarding ADPH's compliance status with any issues or authorities not specifically addressed in this letter nor does the determination preclude future compliance determinations based on subsequent investigations.

Advisements

Under the Freedom of Information Act, OCR may be required to release this letter and other information about this case upon request by the public. In the event OCR receives such a request, we will make every effort, as permitted by law, to protect information that identifies individuals or that, if released, could constitute a clearly unwarranted invasion of personal privacy.

We appreciate the cooperation and efforts of ADPH in taking prompt corrective steps to resolve this matter. If you have any questions or concerns, please contact me at (202) 734-9887 (voice), or via email at Barbara.Stampul@hhs.gov.

Sincerely,

A handwritten signature in black ink that reads "Barbara Stampul". The signature is written in a cursive style with a large, looping "P" at the end.

Barbara Stampul
Acting Regional Manager
Southeast Region