Congress of the United States
Washington, DC 20515

March 25, 2020

The Honorable Alex M. Azar
Secretary
Department of Health and Human Services
200 Independence Avenue, S.W.
Washington DC 20201

The Honorable William Barr
Attorney General
Department of Justice
950 Pennsylvania Avenue, NW, Room 1145
Washington, DC 20530

Dear Secretary Azar and Attorney General Barr:

As COVID-19 spreads across our communities, medical resources, including hospital beds, supplies, and personnel, have been overwhelmed. With media reports suggesting that rationing of care may be inevitable, we urge the Department of Health and Human Services (HHS) to remind States of their obligation to adhere to existing anti-discrimination laws when responding to COVID-19.

In Italy, which is further along in its experience with widespread COVID-19 infection, the rationing response has been borne in part by the population of people with disabilities. This is true even in instances in which those people with disabilities are well-positioned to benefit from being treated.[1] Media reports in both *The Washington Post* and *The New York Times* have suggested that states around the U.S. are already considering similar decision-making formulas.[2]

The National Council on Disability, an independent federal agency specializing in policy matters affecting the lives of people with disabilities, recently released a series of reports demonstrating that, even in the absence of a crisis, examples abound of disability bias and discrimination within medical decision making.[3] Several of these reports call on the HHS Office for Civil Rights (OCR) to issue guidance clarifying the applicability of existing disability nondiscrimination laws to instances of such bias and discrimination.

In light of the COVID-19 pandemic, we urge your Department to act quickly to notify states that as they review and create their "crisis standards of care,"[4] they must not authorize or promote any form of disability discrimination that would violate the Americans with Disabilities Act and Section 504 of the Rehabilitation Act. This would include incorporating denials of care,

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[1] Marco Vergano et al., "IN CONDIZIONI ECCEZIONALI DI SQUILIBRIO TRA NECESSITÀ E RISORSE DISPONIBILI," March 6, 2020. http://www.siaarti.it/SiteAssets/News/COVID19%20-%20documenti%20SIAARTI/SIAARTI%20-%20Covid19%20-%20Raccomandazioni%20di%20etica%20clinica.pdf

[2] Ezekiel J. Emanuel, James Phillips, and Govind Persad, "Opinion: How the Coronavirus May Force Doctors to Decide Who Can Live and Who Dies," The New York Times (March 12, 2020). Accessed on March 17, 2020. https://www.nytimes.com/2020/03/12/opinion/coronavirus-hospital-shortage.html.
Ariana Eunjung Cha, "Spiking U.S. Coronavirus Cases Could Force Rationing Decisions Similar to Those Made in Italy, China," Washington Post (March 15, 2020). Accessed on March 17, 2020. https://www.washingtonpost.com/health/2020/03/15/coronavirus-rationing-us/

[3] National Council on Disability, Bioethics and Disability report series. Accessed March 16, 2020, https://ncd.gov/publications/2019/bioethics-report-series.

[4] Thomas D. Kirsch, "The nightmare of rationing health care," Washington Post (March 15, 2020). Accessed March 16, 2020, https://www.washingtonpost.com/opinions/2020/03/15/nightmare-rationing-health-care/.

lower prioritization of care, or denial of or limitation of healthcare resources on the basis of one's disability, severity of disability, need for resource-intensive services and supports, or the perception of a lower quality of life on the basis of disability.

Our letter comes to you at a time in which we recognize that the COVID-19 outbreak is placing mounting strain on our nation's healthcare system. While we recognize that it may be appropriate for healthcare providers to delay non-essential care, life-sustaining treatments should not be denied from people with disabilities. We urge you to remind States that their obligations under existing disability nondiscrimination laws are not waiveable during the outbreak.

Thank you for all your Departments are doing during this healthcare crisis.

Sincerely,

James Lankford
United States Senator

Christopher H. Smith
Member of Congress

Kirsten Gillibrand
United States Senator

James Langevin
Member of Congress

Steve Daines
United States Senator

Don Young
Member of Congress

Maggie Hassan
United States Senator

Mike Doyle
Member of Congress

Richard Blumenthal
United States Senator

Ann Wagner
Member of Congress

Brian Babin, D.D.S.
Member of Congress

Jim Banks
Member of Congress

Earl Blumenauer
Member of Congress

Michael Cloud
Member of Congress

Gerald E. Connolly
Member of Congress

Ted Deutch
Member of Congress

Brian Fitzpatrick
Member of Congress

Jeff Fortenberry
Member of Congress

Russ Fulcher
Member of Congress

Mark E. Green, M.D.
Member of Congress

Jody Hice
Member of Congress

Ro Khanna
Member of Congress

Dave Loebsack
Member of Congress

Sean Patrick Maloney
Member of Congress

Cathy McMorris Rodgers
Member of Congress

Joe Neguse
Member of Congress

Ralph Norman
Member of Congress

Cedric L. Richmond
Member of Congress

Lisa Blunt Rochester
Member of Congress

Phil Roe, M.D.
Member of Congress

John H. Rutherford
Member of Congress

Darren Soto
Member of Congress