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Broad Statewide Coalition Calls On Department of Public Health to Immediately Issue Statewide Guidance to Hospitals to Prevent Discriminatory Rationing of COVID-19 Care

A broad and growing statewide coalition of 37 advocacy organizations in Connecticut is calling on the Lamont Administration to take formal action immediately to ensure that the rights of people with disabilities, older adults, and Black, brown, indigenous and Asian people are protected from discrimination amidst the continuing COVID-19 public health crisis. They urged the Department of Public Health to end its almost year-long refusal to issue essential uniform guidance to all Connecticut hospitals regarding protections to prevent discrimination in the event of any necessary rationing of life-sustaining treatments, and urged state legislators and the public to speak out to encourage the issuance of uniform guidance.

Efforts to have the Department of Public Health issue guidelines for all Connecticut hospitals have been underway since last spring, as the pandemic was first intensifying. At that time, the CT Cross Disability Lifespan Alliance and Disability Rights CT wrote to Governor Lamont (and DPH) urging him to issue Standards of Care guidelines to all providers following the model of other states which acted quickly in the spring of 2020 (letters dated March 25 and April 2, 2020, respectively). Since then, many other state health departments, including in [Utah](#) and [Tennessee](#), have provided this kind of essential statewide guidance.

With no action taken in Connecticut, several hospitals issued their own highly problematic guidelines, which effectively discriminated against people with disabilities, older adults, and Black, brown, indigenous and Asian people (e.g., applying tests of likely survival for five years after discharge, a test directly discriminating against older people and people of color with inherently shorter lifespans), triggering broader involvement by other advocacy organizations.

Despite repeated calls for urgent action and increasing concerns about the lack of responsiveness, the Department has repeatedly refused to issue uniform statewide guidance, invoking a variety of varying excuses. Those concerns have intensified in recent weeks as the incidence of COVID-19 in Connecticut again climbed dramatically, and federal public health officials have warned of heightened infection rates due to new strains of the virus and colder weather forcing people indoors.

The advocates wrote to Acting DPH Commissioner Deidre Gifford on November 23, 2020 and December 23, 2020, renewing their urgent call for the issuance of state guidelines, but limited to hospitals, seeking action within weeks. The advocates provided DPH with a list of 11 specific areas of protection that should be addressed in uniform state guidelines. Instead of issuing specific guidance to hospitals, DPH has continued to indicate – as it has since last summer - that it was only willing to revise decade old, outdated guidelines through a “comprehensive” review on a slow timeline (initially, it indicated that would be completed by March 2021, a goal which has apparently since been abandoned). It has just recently asked hospitals to describe their respective internal guidelines.

“We have been imploring the state for nearly a year to get ahead of this, to put guidelines in place to prevent discriminatory practices should rationing of care become necessary. Their stubborn refusal to do so is unconscionable, even more so as the numbers continue to climb. There should be one uniform statewide policy. Period. It is long past time for the state to step up and act to prevent discriminatory practices,” said Stephen Byers, attorney with Disability Rights Connecticut.

During the past month, 166 of Connecticut's 169 towns have been at the highest alert level for COVID-19, the state reported the highest number of deaths in a single day since May, and the daily positivity rate has fluctuated. Many hospitals are reporting capacity at nearly 90%, with some intensive care units already exceeding 90% this month, according to recent data.

While DPH had asked the hospitals, in response to the coalition's November 23 letter, to address whether they have rationing policies, and, if so, if they are consistent with the 11 protections the coalition has asked for, the responses of the hospitals have been inconsistent and in many cases they continue to perpetuate discrimination. In almost all cases, they provide no documentation to support their claimed compliance with these protections.

"There is no consistency among hospitals, and prohibited discrimination is in some cases endorsed and justified, and in other cases not prohibited within their policies," DRCT, the CT Coalition on Aging, Unidad Latina en Accion and Black and Brown United In Action wrote to Acting DPH Commissioner Gifford on December 23, 2020, on behalf of the larger coalition. "These discriminatory hospital criteria are applied directly at the expense of people of color and older adults, and some people with disabilities."

"The inconsistent and problematic responses from the hospitals confirm the urgent need for uniform guidance from DPH to all hospitals prohibiting the affirmative discrimination that it turns out several hospitals have adopted as unwritten policy, and requiring the inclusion of basic protections to ensure that explicit or implicit bias by individual providers does not result in discrimination," the letter states.

DPH, in a January 5, 2021 letter in response, indicated the advocates should "rest assured that DPH has the ability to respond in a timely fashion if circumstances require it to do so," adding that "DPH is initiating this week the process for drafting of a DPH Crisis Standards of Care policy statement." In an email to a representative of the coalition a few days later, however, it confirmed no intention to act any time soon.

"What are they waiting for? They've been asked to get started for almost a year. There's no good reason to ignore the imperative to protect every Connecticut resident from discriminatory practices in COVID-19 care. Black and brown people have seen what happens when proper care is delayed or denied. Why is DPH risking waiting until it is too late?," said Catherine John of Black and Brown United in Action.

"Some hospitals have developed discriminatory guidelines and others have failed to issue any guidelines, contributing to inequitable health outcomes for older adults, Black, brown, indigenous and Asian people, and people with severe disabilities. The arguments for inaction are no longer defensible," said Marie Allen of the Connecticut Area Agencies on Aging. "The people of Connecticut need to know when uniform guidelines will be issued to hospitals so they can feel confident that hospital decisions and appeals processes are transparent and shared with patients and caregivers."

DPH also indicated earlier this month that the agency has made a "request" to hospitals in Connecticut that they "create a policy using the Hartford HealthCare (HHC) and Yale New Haven Health (YNHHS) protocols as examples of model policies." While the revised HHC document does address all of the advocates' concerns, the YNHHS does not - specifically, it fails to guarantee an appeal process concerning the matter of withholding or withdrawing life-sustaining care. More to the point, there is no state mandate so, predictably, there is no uniformity among the hospitals, with some refusing to adopt the HHC standards: whether you are provided life-sustaining treatment may literally depend upon which hospital you go to.

"A written document binding on (hospitals) from your agency is essential to ensuring these protections exist in a time of crisis," member organizations in the coalition wrote to the DPH Acting Commissioner in December, reiterating yet again the position taken since the pandemic hit.

Accompanying Documents

- **HOSPITAL STATUS UPDATE (PDF)**
- **LIST OF ORGANIZATIONS PARTICIPATING IN COALITION (PDF)**
- **11 PROTECTIONS TO PREVENT DISCRIMINATION (PDF)**