



June 19, 2020

Hon. Douglas A. Ducey, Governor, State of Arizona
Dr. Cara Christ, Director, Arizona Department of Health Services
Jami Snyder, Director, Arizona Health Care Cost Containment System
Zane Garcia Ramadan, Acting Assistant Director, Arizona Department of Economic Security-Division of Developmental Disabilities

RE: Hospital Visitor Policies During COVID-19 for Individuals with Disabilities

Dear Gov. Ducey, Director Christ, Director Snyder, and Acting Assistant Director Garcia Ramadan:

We write this letter seeking an Executive Order – or, at a minimum, statewide guidance – on hospital visitation policies for Arizonans with disabilities. To date, the Arizona Department of Health Services’ guidance for hospitals has not addressed this issue directly. As a result, many hospitals throughout Arizona have broad visitation bans for which no reasonable modifications are granted, a violation of the Americans with Disabilities Act (ADA) provision for reasonable modifications. 42 U.S.C. § 12182(b)(2)(A)(ii). An Executive Order is necessary to ensure that patients with disabilities can safely access the in-person supports needed to benefit from medical care during the COVID-19 pandemic.

The Need For An Executive Order

Hospitals in Arizona have enacted strict and narrow policies prohibiting any visitors without considering the implications placed on individuals with disabilities. These policies have prevented patients with disabilities from receiving support from family members or staff necessary for them to effectively communicate with medical personnel or otherwise receive equal access to medical treatment, deprived them of their right to make informed decisions and provide informed consent, and resulted in harms such as unnecessary physical and chemical restraints. The Arizona Center for Disability Law continues to receive numerous complaints from people with disabilities and their families and companions about the existence of broad visitation bans that provide no exceptions for people with disabilities who need a support person as a reasonable accommodation. These broad bans are creating a hardship on people with disabilities and resulting in violations of federal civil rights laws.

Other states have acted to assure that visitation bans are modified to accommodate the needs of patients with disabilities. For example, the Office for Civil Rights at the U.S Department of Health and Human Services (OCR) recently commended the issuance of an Executive Order that resolved complaints concerning the State of Connecticut’s narrow visitation policy. The OCR lauded the Executive Order, which established “a statewide policy requiring hospitals and other acute care settings to permit the entrance of a designated support person for a patient with a disability and permitting family members, service-providers or other individuals knowledgeable about the needs

of the person with a disability to serve as a designated support person [during the COVID-19 pandemic].”¹ A similar Executive Order is needed in Arizona.

Legal Framework

The United States Department of Justice (DOJ) has instructed that Title II of the ADA applies to emergency preparedness efforts of state and local governments, stating:

One of the primary responsibilities of state and local governments is to protect residents and visitors from harm, including assistance in preparing for, responding to, and recovering from emergencies and disasters. State and local governments must comply with Title II of the ADA in the emergency and disaster-related programs, services, and activities they provide.²

Broad bans prohibiting visitors without making reasonable accommodations for those with disabilities violates federal civil rights law. Section 504 of the Rehabilitation Act bans disability discrimination by recipients of federal financial assistance, including state agencies and most hospitals and health care providers. 29 U.S.C. § 794(a). The breadth of Section 504’s prohibition on disability discrimination is co-extensive with that of the ADA including failing to make reasonable modifications in policies, practices or procedures when necessary to avoid discrimination. Allowing visitors for patients with disabilities is a necessary modification to existing hospital visitation policies.

Section 1557 of the Affordable Care Act (ACA) provides that no health program or activity that receives federal funds may exclude from participation, deny the benefits of their programs, services or activities, or otherwise discriminate against a person protected under Section 504 of the Rehabilitation Act, 42 U.S.C. § 18116; 45 C.F.R. §§ 92.101(a) and 92.101(b)(2)(i). This includes an obligation to make reasonable modifications in policies, practices, and procedures necessary to avoid discrimination. 45 C.F.R. § 92.205.

The OCR Bulletin referenced above specifically discusses the obligations of entities covered under federal disability laws to ensure equal access to medical treatment. This includes providing effective communication, meaningful access to information, and making reasonable modifications to address the needs of individuals with disabilities.³

¹ U.S. Health and Human Services, *OCR Resolves Complaints after State of Connecticut and Private Hospital Safeguard the Rights of Persons with Disabilities to Have Reasonable Access to Support Persons in Hospital Settings During COVID-19* (June 9, 2020), available at <https://www.hhs.gov/about/news/2020/06/09/ocr-resolves-complaints-after-state-connecticut-private-hospital-safeguard-rights-persons.html>. The Connecticut Executive Order is available at: <https://portal.ct.gov/-/media/Coronavirus/20200609-DPH-Order-regarding-patients-with-disabilities-in-health-care-facilities.pdf>

² Title II of the ADA prohibits public entities (such as state and local governments) from excluding people with disabilities from their programs, services, or activities, denying them the benefits of those services, programs, or activities, or otherwise subjecting them to discrimination. 42 U.S.C. §§ 12131-12134. Unlawful discrimination under Title II includes: using eligibility criteria that screen out or tend to screen out individuals with disabilities, *failing to make reasonable modifications to policies and practices necessary to avoid discrimination*, and perpetuating or aiding discrimination by others. 28 C.F.R. §§ 35.130(b)(1)-(3), 35.130(b)(7)-(8) (emphasis added).

³ U.S. Department of Health and Human Services, *Bulletin: Civil Rights, HIPAA, and the Coronavirus Disease 2019 (COVID-19)* (Mar. 28, 2020), available at <https://www.hhs.gov/sites/default/files/ocr-bulletin-3-28-20.pdf>.

Ensuring the Rights of Arizonans with Disabilities

On behalf of the community of Arizonans with intellectual, developmental, behavioral, emotional, and physical disabilities, we write to urge the State of Arizona to issue an Executive Order, stating in clear and unequivocal terms the need to make appropriate accommodations for persons with disabilities in the event they require inpatient or outpatient medical care.

While we are cognizant of the many safety concerns associated with this pandemic, we also know that in many cases individuals with disabilities have severe cognitive and communication challenges, experience great emotional difficulty in unfamiliar environments and with unfamiliar people, and require the assistance of a caregiver or companion to aid in advocating for the best and most appropriate care.⁴

Specifically, we advocate for a directive from the State that, at a minimum:

- Requires all hospitals and other health care facilities to allow a designated person (a family member, staff, or other person) to support any disabled patient that may need such support for their disability related needs, which may include (but not be limited to) altered mental status, intellectual or cognitive disability, communication barriers, or behavioral concerns. Any support person suspected of having been exposed to COVID-19, may be denied access where attendant risks of such access cannot be reasonably mitigated;
- Requires hospitals to provide available personal protective equipment (PPE) to support persons to keep them safe. If the Facility does not have PPE for the support person, PPE supplied by the support person that the Facility finds adequate may be used;
- Includes procedures for screening support persons for COVID-19 symptoms and for supporters to safely take breaks and leave and re-enter the hospital; and
- Encourages hospitals to mitigate the risk associated with support persons supporting COVID-19-positive patients.

In addition, it is critically important the provider agencies licensed by the State of Arizona to serve individuals with disabilities through the Arizona Long Term Care System and other Medicaid-funded mechanisms be provided the latitude to utilize staff members, as needed and on a reimbursable basis, to act as support persons for members in their care. Providing this support as a reimbursable service is consistent with Section 3715 of the CARES Act so long as the support does not duplicate or substitute for services provided in the hospital setting. In the vast majority of cases, supports provided by service provider personnel are unique to their roles and not within the expertise of healthcare workers.

When strict policies prevent a companion or caregiver from accompanying an individual with a disability into a healthcare setting – a situation we have seen all too often over the past three months – the person with a disability is placed at a distinct disadvantage and is far more likely to experience adverse health outcomes than would otherwise be the case. As mentioned in the HHS-OCR resolution, this is in violation of federal law. Moreover, it is unnecessary, as has been

⁴ See Shaprio, Joseph, *Hospital Visitor Bans Under Scrutiny After Disability Groups Raise Concerns Over Care*, NPR (May 17, 2020), available at <https://www.npr.org/2020/05/17/857531789/federal-government-asked-to-tell-hospitals-modify-visit-bans> (discussing a Boston hospital's refusal to allow visitors for a woman with Down Syndrome and Alzheimer's and the difficulties individuals with disabilities face when communicating with hospital staff).

demonstrated in other states during this pandemic. [Policies and procedures can be established](#) that allow for the presence of a support person while reducing or eliminating any risk posed by support persons to healthcare workers or other patients.

As organizations serving and representing Arizonans of all ages and with a wide array of disabilities, we are committed to working with the State to develop and implement necessary accommodations for our constituents so they are afforded the best available healthcare during this challenging time. Arizona's most vulnerable residents need – and deserve – the same access to high quality medical treatment available to the general population. The only way to assure this is to provide appropriate protections, including the presence of essential support persons within healthcare settings, as required by law.

We thank you for your timely action on behalf of all Arizonans with disabilities. Please provide a response no later than June 25, 2020.

Respectfully,



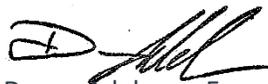
Jon Meyers, Executive Director
The Arc of Arizona



Wendy Shaw, Chair
Arizona Association of Providers for People with
Disabilities



Sey In, Staff Attorney
Arizona Center for Disability Law



Danny Adelman, Executive Director
Arizona Center for Law in the Public Interest



Will Humble, Executive Director
Arizona Public Health Association