



April 17, 2020

Patrick Allen  
Director, Oregon Health Authority  
500 Summer Street, NE, E-20  
Salem, OR 97301-1097

**RE: OHA Visitation Guidance Revisions to Protect Patients with All Disabilities**

Dear Director Allen:

Disability Rights Oregon (DRO) urgently requests that you modify the Oregon Health Authority's (OHA) Visitation Guidelines. We know that health care providers are working tirelessly to stop the spread of COVID-19 and to save lives. But a COVID-19 response should not result in people with disabilities losing their right to effectively communicate or receive reasonable accommodations from hospitals providing medical care. A life-threatening pandemic only heightens the need for proper accommodations so that people with disabilities can safely have their needs met during this emergency. We urgently request the Oregon Health Authority modify the Revised COVID-19 Guidance for Entry into Acute Care Facilities ("guidance")<sup>1</sup> that currently limits caregivers for "patients with altered mental status or intellectual disabilities" to either facilitate treatment or ensure safety. Instead, we ask that broaden the list of "essential individuals" to include necessary caregivers to all people with disabilities, not just those with intellectual disabilities.

#### Healthcare Providers Must Continue to Accommodate People with Disabilities

As you are aware, the Americans with Disabilities Act (ADA),<sup>2</sup> Section 504 of the Rehabilitation Act, Section 1557 of the Patient Protection and Affordable Care Act, and their implementing regulations ("Acts") apply to essentially every healthcare provider in the State. These Acts prohibit discrimination on the basis of disability and require reasonable accommodations to ensure people with disabilities have equal access to care. There are no exceptions in federal law that suspend these requirements and authorize discrimination during a public health emergency.<sup>3</sup> The federal Office for Civil Rights within the U.S. Department of Health and Human Services (OCR) issued a bulletin with guidance for states

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<sup>1</sup> Revised April 11, 2020, available here: <https://sharedsystems.dhsoha.state.or.us/DHSForms/Served/le2282.pdf>

<sup>2</sup> 42 U.S.C. §§ 12132; 12182(a).

<sup>3</sup> United States Department of Justice, *Emergency Management Under Title II of the Americans with Disabilities Act*, at 1 (July 26, 2007) available at <http://www.ada.gov/pcatoolkit/chap7emergencymgmt.htm> ("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.").

that made it clear that these Acts remain in effect.<sup>4</sup>

### OHA's Current Visitation Guidance Has Created Unequal Access to Essential Caregivers of Patients With Physical Disabilities

OHA recently revised visitation guidance on April 11, 2020. This guidance requires hospitals to adopt and enforce policies that limit entry to essential individuals. This guidance includes among essential visitors the following:

“Guardians or caregivers of patients with altered mental status or intellectual disabilities if in-person visitation is necessary to: facilitate treatment [or] ensure the safety of the patient or facility staff.” Guidance, p. 2.

The guidance goes on to require screening to:

“Refuse visitation of any essential individual if a patient is being treated for COVID-19 (however, exceptions may be made on a case-by-case basis for end-of-life care as determined by the medical provider in charge of patient’s care).” *Id.*

Legal protections against disability discrimination apply equally to people with disabilities regardless of a particular diagnosis or disability status.<sup>5</sup> The ADA defines an individual with a disability as a person who has a physical or mental impairment that substantially limits one or more major life activities, a person who has a history or record of such an impairment, or a person who is perceived by others as having such an impairment.<sup>6</sup> Generally, the ADA states, “no individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation.”<sup>7</sup>

DRO has already received multiple complaints about this guidance and its limitation to only apply to patients with intellectual disabilities’ caregivers. For example, a local Portland hospital—acting consistently with OHA’s guidance—denied a patient with physical disabilities her request to either visitation by her Personal Care Attendant or have the

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<sup>4</sup> HHS Office for Civil Rights in Action, *Bulletin: Civil Rights, HIPAA, and the Coronavirus Disease 2019 (COVID-19)* (March 28, 2020). On March 31, 2020, the OCR updated its bulletin, leaving in the quoted language above, but adding explicit language regarding healthcare providers’ obligation to provide effective communication to individuals who are deaf, hard of hearing, blind, low vision, or have speech disabilities and to address the needs of individuals with disabilities in emergency planning.

<sup>5</sup> See 42 U.S.C. §§ 12132; 12182(a).

<sup>6</sup> 42 U.S.C. § 12102(1).

<sup>7</sup> 42 U.S.C. § 12182(a); see also *Alexander v. Choate*, 469 U.S. 287, 301, 105 S. Ct. 712, 83 L. Ed. 2d 661 (1985) (Individuals with a disabilities are entitled to have meaningful access including reasonable accommodations to ensure equal access to the public program or benefit.)

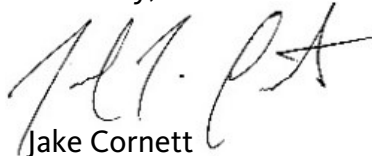
hospital provide the hourly, intermittent care services she needs to remain safe. Just yesterday, DRO received another complaint from a patient's treating physician who was told by the hospital administrator that he could not allow his patient's mother to visit the hospital as his patient has cerebral palsy which is not an "intellectual disability" or an essential visitor addressed in OHA's guidance. Yet, this patient was nonverbal and her mother was the only adult familiar with her daughter's communication needs and preferences in order to provide informed consent.

While the failure to consider other disabilities in this guidance may have been unintentional, **DRO asks that you immediately revise the guidance to include any caregiver to a person with any covered disability in the list of essential individuals.** For an example of a visitation policy that balances both the public health concerns with COVID-19 and the rights of patients with disabilities, you may want to review the Rush Hospital policies.<sup>8</sup> While they have very similar guidance as OHA, they go on to provide the following exception:

"Patients with disabilities who need assistance due to the specifics of their disability may have one designated support person with them. This could include specific needs due to altered mental status, intellectual or cognitive disability, communication barriers or behavioral concerns. If a patient with a disability requires an accommodation that involves the presence of a family member, personal care assistant or similar disability service provider, knowledgeable about the management of their care, to physically or emotionally assist them during their hospitalization, this will be allowed with proper precautions taken to contain the spread of infection."

I do understand that we are in a state of emergency. It is precisely because of this emergency that I seek your support in protecting the rights of people with disabilities who are at disproportionate risk of harm during this crisis. Thank you for your consideration of this urgent request. As always, Disability Rights Oregon offers to be your partner as we face the days ahead, but must see immediate action related to these requests.

Sincerely,



Jake Cornett  
Executive Director  
Disability Rights Oregon

cc: Lilia Teninty, Office of Developmental Disability Services  
Rosa Klein & Dustin Buehler, Office of Governor Kate Brown

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<sup>8</sup> Available here: <https://www.rush.edu/patients-visitors/covid-19-resources/coronavirus-patient-visitor-updates-covid-19-patient>.