



April 28, 2020

Mr. Roger Severino
Director of the Office for Civil Rights
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, DC 20201

Dear Director Severino:

On behalf of all of the members of Kidney Care Partners (KCP), I want to thank you and the team at the Office for Civil Rights (OCR) for the March 28, 2020, guidance reminding providers of “their obligations under laws and regulations that prohibit discrimination on the basis of race, color, national origin, disability, age, sex, and exercise of conscience and religion in HHS-funded programs.”¹ KCP is an alliance of more than 30 members of the kidney care community, including patient advocates, health care professionals, providers, and manufacturers to advance policies that support the provision of high quality care for individuals with chronic kidney disease (CKD), including those living with End-Stage Renal Disease (ESRD).

Our members who are battling on the frontlines of the COVID-19 pandemic to provide access to high quality care for patients with kidney disease/kidney failure applaud OCR for reminding all providers of the need to “respect to the treatment of persons with disabilities during medical emergencies as they possess the same dignity and worth as everyone else.” We are concerned that some hospitals and providers in their efforts to address scarce resources could implement historic policy to triage access to life-saving ventilators, other equipment, drugs, and services in a manner that would discriminate against people with disabilities, including those living with kidney failure who require dialysis.

Our members have identified written policies (developed prior to the pandemic) that if implemented would result in patients who require dialysis being discriminated against in several ways, including being denied admission to hospitals or access to ventilators.² While we

¹OCR, “Bulletin: Civil Rights, HIPAA, and the Coronavirus Disease 2019 (COVID-19),” March 28, 2020 (*available at*: <https://www.hhs.gov/sites/default/files/ocr-bulletin-3-28-20.pdf>).

²*See, e.g.*, Tennessee Altered Standards of Care Workgroup, “Guidance for the Ethical Allocation of Scarce Resources during a Community-Wide Public Health Emergency as Declared by the Governor of Tennessee” 21 & 37 (*available at*: <http://www.shelbytnhealth.com/DocumentCenter/View/847/2016-Guidance-for-the-Ethical-Allocation-of-Scarce-Resources?bidId=>) (excluding dialysis patients from hospital admissions and ventilators) July 2016; “Annex to ESF 8 of the State of Alabama Emergency Operations Plan,” 6-8, April 9, 2010, (*available at*: https://adap.ua.edu/uploads/5/7/8/9/57892141/alabamas_ventilator_rationing_plan.pdf) (indicating that anyone on or requiring dialysis should not be offered mechanical ventilation).

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have not seen a specific instance of discrimination, these standing policies create significant concern. We appreciate the swift action that OCR took to address a similar issue in Pennsylvania and ask that OCR remain vigilant during this time to protect dialysis patients. Dialysis patients who develop COVID-19 and require hospitalization, oxygen, ventilators, or other treatments should have the same access to them as those patients who do not have a disability.

Again, on behalf of KCP, I want to thank you for your efforts to protect patients with disabilities, including those who require dialysis, from discriminatory practices that, if implemented, would likely result in their death.

Please do not hesitate to contact our counsel in Washington, Kathy Lester, who can be reached at (202) 534-1773 or klester@lesterhealthlaw.com if you have any questions or would like to discuss our concerns in more detail.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Butler', with a long, sweeping flourish extending to the right.

John Butler
Chairman

cc: Robinsue Frohboese, Principal Deputy Director

Appendix: Kidney Care Partner Members

Akebia Therapeutics
American Kidney Fund
American Nephrology Nurses' Association
American Renal Associates, Inc.
Ardelyx
American Society of Nephrology
American Society of Pediatric Nephrology
Amgen
AstraZeneca
Atlantic Dialysis
Baxter
Board of Nephrology Examiners and Technology
BBraun
Cara Therapeutics
Centers for Dialysis Care
DaVita
DialyzeDirect
Dialysis Patient Citizens
Fresenius Medical Care North America
Fresenius Medical Care Renal Therapies Group
Greenfield Health Systems
Kidney Care Council
Medtronic
National Kidney Foundation
Nephrology Nursing Certification Commission
National Renal Administrators Association
Renal Physicians Association
Renal Support Network
Rockwell Medical
Rogosin Institute
Satellite Healthcare
U.S. Renal Care
Vertex