Rights of People with Disabilities in an Emergency: Access to Healthcare, Social Services, and Recovery Services

Many individuals, regardless of disability, may find themselves in need of healthcare, social services, and recovery services following natural, manmade, or healthcare disasters or other types of public emergencies. Yet, individuals with disabilities are disproportionately affected by such emergencies. For instance, they may be at risk of denial of scarce resources based on stereotypes or misperceptions of “quality of life.” Or they may be unable to access necessary assistance due to architectural or communication barriers or the failure to provide reasonable modifications. Moreover, historically, emergency preparedness operation plans have not recognized and adequately addressed the needs of the disability community.

This fact sheet provides: (1) a practical guide to locating healthcare, social services, and recovery services during and after a public emergency, and (2) an overview of the role of anti-discrimination laws on access to such services.

For comprehensive information on the Rights of People with Disabilities in an Emergency, see Disability Rights Pennsylvania’s complete series on this topic: 1) Evacuation Plan Inclusion and Accessibility; 2) Effective Notification and Communication For People with Disabilities; 3) Access to Shelter and Temporary Housing; and 4) Access to Healthcare, Social Services, and Recovery Services.
Locating Healthcare, Social Services, and Recovery Services During a Public Emergency or Disaster

The method of locating health care and social services depends on many factors such as the specific health issue or the level of urgency. For immediate attention to an urgent individual medical need, dial 911 to access the local emergency assistance providers. In addition, many government agencies have emergency information and alert systems in place to provide assistance in locating and accessing healthcare and social services.

The Pennsylvania Department of Human Services ("DHS") coordinates the Commonwealth's response to disaster-caused human needs, including disability related needs and behavioral health services. DHS also coordinates social services such as the provision of food, shelter and supplies related to mass care. DHS' website contains contact information for various human and social services, https://www.dhs.pa.gov/Services/MassCare/Pages/default.aspx. DHS also is responsible to administer Pennsylvania's Medicaid program, which offers healthcare and home and community-based services to many Pennsylvanians with disabilities. In emergency situations, DHS may seek federal approval to modify its Medicaid program to allow more flexibility in the provision of services.

The Pennsylvania Emergency Management Agency ("PEMA") is the lead agency responsible for coordinating emergency preparedness, response and recovery, https://www.pema.pa.gov/About-Us/Pages/default.aspx.

Each Pennsylvania county has an Emergency Management Coordinator ("EMC") who may be contacted for information during an emergency. A listing of each county's EMC can be located at https://www.pema.pa.gov/County-EMC/Documents/EMC%20Website%20List.pdf.
Pennsylvania also has an Emergency Preparation Guide, www.ready.pa.gov, which allows individuals to sign up for alerts that may provide important information in preparation for an emergency, in response to an emergency, and in recovery from an emergency.

The American Red Cross (“Red Cross”) provides health and social services during an emergency or disaster, https://www.redcross.org/about-us/our-work/disaster-relief.html. The Red Cross operates an alert system through an emergency mobile app which provides information and assistance during an emergency.

The Pennsylvania Department of Health (“DOH”) is the lead agency for the provision of emergency medical services in the Commonwealth, https://www.health.pa.gov/topics/prep/Pages/Preparedness.aspx. DOH oversees the Bureau of Emergency Preparedness and Response (“BEPR”), which protects the public health during an emergency or disaster. BEPR deals with pre-emergency preparedness, live-emergency response, and post-emergency recovery, and operates a Health Incident Management System (“HIMS”) used by hospitals and other healthcare organizations to share information about incidents. During a mass casualty emergency, the HIMS tracks patients and resources. DOH also coordinates emergency training, preparedness and response by state and local organizations, as well as private healthcare organizations (such as hospitals). DOH provides qualified personnel to meet public health and medical needs. DOH’s website contains contact information for various types of inquiries, https://www.health.pa.gov/topics/prep/Pages/Preparedness.aspx

The Federal Emergency Management Agency (“FEMA”) is the agency which provides national assistance to individuals during an emergency or disaster, https://www.fema.gov/about/contact. FEMA’s assistance includes healthcare and other social services. FEMA’s information and services may be accessed by telephone, website, text alert system https://www.ready.gov/alerts, and by FEMA’s emergency mobile app.
The Joint Commission (“JC”) provides oversight for healthcare organizations. The JC requires accredited health care organizations to have emergency plans and response procedures. The plans must include: methods of communication; vulnerability assessments; patient care during an emergency; and other safety/security measures. Plans should include preparation for man-made emergencies such as active shooters, and the strategy for protecting persons with disabilities who may not be able to move as quickly as others or may not be able to understand sudden instructions.

The Centers for Medicare and Medicaid Services (“CMS”) is an agency under the U.S. Department of Health and Human Services which administers healthcare programs such as Medicaid, Medicare, and the Children’s Health Insurance Program (“CHIP”). CMS has established emergency preparedness requirements for recipients of Medicaid and Medicare funding (both providers and suppliers). The list of recipients includes facilities such as hospitals, outpatient rehabilitation facilities, home health agencies, long-term care facilities, intermediate care facilities for persons with intellectual disabilities, etc. The facilities must have emergency preparedness plans as well as procedures in place to carry out the plan (such as training). The plans must cover issues such as: provision of patient daily needs; tracking of patients; sheltering in place; evacuation/transfers; communication; emergency standby power backup systems; and the handling of surges in patients. CMS is committed to ensuring that emergency preparedness plans exist in healthcare facilities and social programs and that the necessary accommodations and modifications are made to ensure accessibility to programs and services is a reality for individuals with disabilities before, during, and after a public emergency.
The Role of Anti-Discrimination Laws in Ensuring Equal Access to Healthcare, Social Services, and Recovery Services During a Public Emergency

Title II of the Americans with Disabilities Act (“ADA”), 42 U.S.C. §§ 12131-12134, prohibits disability-based discrimination by public entities (state, county, and municipal governments). Title III of the ADA, 42 U.S.C. §§ 12181-12189, prohibits disability discrimination by places of public accommodation, which are private entities that provide certain services and businesses that are open to the public. Public accommodations can include many places and businesses that provide services, facilities, or benefits during a public emergency, such as social service providers, healthcare providers, places of lodging, convention centers and arenas, shelters, and food banks. Section 504 of the Rehabilitation Act (“RA”), 29 U.S.C. § 794, prohibits disability discrimination by recipients of federal funding, which includes most public entities and many public accommodations. Section 1557 of the Patient Protection and Affordable Care Act (“ACA”), 42 U.S.C. § 18116, bars disability discrimination in healthcare programs and activities.

Titles II and III of the ADA, Section 504 of the RA, and/or Section 1557 of the ACA and their implementing regulations broadly define disability discrimination. Discrimination includes not only actions that result in different treatment of people with disabilities (whether intentional or not), but also the failure to make reasonable modifications in policies, practices, and procedures when needed to prevent disability discrimination, the failure to ensure that public entities' programs are accessible, and the failure to ensure effective communication (including provision of auxiliary aids and services) necessary for people with disabilities.

There are a multitude of ways in which these non-discrimination requirements can impact the provision of healthcare, social services, and recovery services
in a public emergency. Some of these are addressed in Disability Rights Pennsylvania’s *Rights of People with Disabilities in an Emergency* fact sheets relating to communications in emergencies, evacuation in emergencies, and sheltering in emergencies (see page 1 for full titles). This fact sheet addresses a few other issues where emergency healthcare, social services, and recovery services might intersect with disability rights under the ADA, RA, and/or the ACA.

- **Healthcare Rationing** – During an emergency when there is a high demand for healthcare services and limited resources, there might be efforts to deny those resources to people with disabilities based on stereotypes or perceptions about their quality of life. Individuals with disabilities have a right to receive healthcare and cannot be denied treatment because of their disabilities. Decisions about treatment should be based upon individual assessments and objective medical judgments. Categorical exclusions based on disability cannot be used to allocate healthcare. Healthcare providers cannot make allocation decisions based on perceived life expectancy or quality of life. If scoring systems are used to forecast efficacy of treatment, healthcare providers must make reasonable modifications to those systems. Healthcare providers may not steer people with disabilities or their families into withholding or withdrawing treatment. Reasonable steps must be taken so that individuals with disabilities have equal opportunity to access and benefit from health care and social services during an emergency or disaster. This standard of care applies even when providers begin the process of triaging life-saving health care services. See HHS’ FAQs for Healthcare Providers, [https://www.hhs.gov/civil-rights/for-providers/civil-rights-covid19/disability-faqs/index.html](https://www.hhs.gov/civil-rights/for-providers/civil-rights-covid19/disability-faqs/index.html); HHS’ Civil Rights and COVID, [https://www.hhs.gov/civil-rights/for-providers/civil-rights-covid19/index.html](https://www.hhs.gov/civil-rights/for-providers/civil-rights-covid19/index.html).
• **Reasonable Modifications and Accommodations** – Providers of healthcare, social services, and recovery services must make reasonable modifications to allow individuals with disabilities to access their programs, benefits, and services. For example, these providers generally must allow individuals with disabilities to be accompanied by their service animals. Providers must also modify any restrictions on visitation for individuals with disabilities who require assistance to communicate or function due to personal care needs or behavioral issues. Providers may also need to adjust how services are delivered, such as offering vaccines in the home of a person with a disability who cannot travel. For individuals with mental illness or cognitive challenges that may make it difficult to navigate applications for services or benefits, providers should offer assistance.

• **Accessibility** – Providers of healthcare, social services, and recovery services must ensure that their programs are accessible to people with disabilities. Sites should be physically accessible to people with mobility disabilities or, if they cannot be made accessible, alternatives should be offered so people with disabilities can access the programs.

**Enforcing Rights Under the Anti-Discrimination Laws**

During an emergency or disaster, if you think that a healthcare provider, social service provider, or recovery service provider has not complied with the anti-discrimination laws, you should consider the following options:

**Dialogue:** Speak with the program representative, informing them of your concerns about compliance with the anti-discrimination laws. Be specific about your concerns and your needs (including any needed modifications). If your disability is not obvious, you may be asked to provide information about it.
Document: Document in writing your interactions with providers, including any requests for a reasonable accommodation. Be sure to retain copies of correspondence, emails, or other papers relating to the issue (either a photocopy made by the facility or a picture taken from a cellphone).

Contact Advocacy/Legal Organizations: If dialogue does not resolve the issue, seek assistance from an advocacy/legal aid organization.

Filing an Administrative Complaint: You can file a complaint with governmental agencies if you think that you were subject to disability discrimination. You can file a complaint relating to violation of Title II or Title III of the ADA with the U.S. Department of Justice, [https://www.ada.gov/file-a-complaint/](https://www.ada.gov/file-a-complaint/). Complaints under Title II of the ADA (relating to state and local governments) must be filed within 180 days of the discriminatory act. Efforts to resolve the dispute generally will not delay the time for filing the complaint. There is no specific timeline to file a complaint under Title III involving public accommodations. You can file a complaint for a violation of Section 1557 of the ACA with the U.S. Department of Health and Human Services’ Office for Civil Rights, [https://www.hhs.gov/civil-rights/filing-a-complaint/complaint-process/index.html](https://www.hhs.gov/civil-rights/filing-a-complaint/complaint-process/index.html). Generally, such complaints should be filed within 180 days of the date of the discrimination.

Filing a Judicial Lawsuit: You have the right to file a lawsuit in federal court if you think your rights under Titles II and III of the ADA, Section 504 of the RA, and/or the Section 1557 of the ACA have been violated. You are not required to file an administrative complaint before doing so. In Pennsylvania, such complaints must be filed within two years of the discriminatory actions. The two-year timeline for filing a federal ADA or RA lawsuit operates even if administrative complaints are pending.
If you need more information or need help, please contact Disability Rights Pennsylvania (DRP) at 800-692-7443 (voice) or 877-375-7139 (TDD). Our email address is: intake@disabilityrightspa.org. DRP's live intake line is open Monday - Friday from 9:00 a.m. to 3:00 p.m.

The mission of Disability Rights Pennsylvania is to advance, protect, and advocate for the human, civil, and legal rights of Pennsylvanians with disabilities. Due to our limited resources, Disability Rights Pennsylvania cannot provide individual services to every person with advocacy and legal issues. Disability Rights Pennsylvania prioritizes cases that have the potential to result in widespread, systemic changes to everyone, we do seek to provide every individual with information and referral options.

**IMPORTANT:** This publication is for general informational purposes only. This publication is not intended, nor should be construed, to create an attorney-client relationship between Disability Rights Pennsylvania and any person. Nothing in this publication should be considered legal advice.

**PLEASE NOTE:** For information in alternative formats or a language other than English, contact Disability Rights Pennsylvania at 800-692-7443 (voice) or 877-375-7139 (TDD). Our email is: intake@disabilityrightspa.org.

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