



FAVORABLE - HOUSE BILL 903
NONDISCRIMINATION IN HEALTH CARE COVERAGE ACT

Laura Bogley, J.D.
Legislative Director, Maryland Right to Life

Dear Chairperson Pendergrass and Honorable Members of the Committee,

On behalf of the tens of thousands of Marylanders who are persons with disabilities, persons with chronic health conditions, and older individuals we support the *Nondiscrimination in Health Care Coverage Act* and respectfully ask for your favorable report. We urge the state to ensure that all citizens have equal access to life-saving medical care and treatment and that care is not denied based on disability, age, race, ethnicity, or other categories prohibited by law.

One of the most important lessons that we have learned through the COVID-19 pandemic is that the state of Maryland is woefully underprepared to effectively and ethically manage a medical crisis and related scarcity. But medical scarcity is not a legal or moral justification for discrimination against people based on age, disability or any number of subjective scoring criteria. Any crisis standard of care protocol that discriminates based on disability is in violation of federal law and our state Constitution.

It is incumbent upon the state to require that all state and private entities regulated by or doing business with the state, that provide medical care or coverage, make non-biased treatment decisions consistent with the non-discrimination requirements of the Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act, and Section 1557 of the Affordable Care Act.

The National Council on Disability (NCD)² and the Consortium for Citizens with Disabilities (CCD)³ have proposed important principles for the delivery of care. In addition to enacting HB1167, we urge the state to immediately adopt and disseminate statewide guidelines which clarify the following:

- 1) that the ADA and Section 504 require government decisions regarding the allocation of treatment/life-saving resources to be made based on *individualized* determinations, using current objective medical evidence, not rating systems or generalized assumptions about a person's disability;
- 2) that the ADA and Section 504 prohibit treatment allocation decisions based on misguided assumptions that people with disabilities experience a lower quality of life, or that their lives are not worth living;
- 3) that the ADA and Section 504 prohibit treatment allocation decisions based on the perception that a person with a disability has a lower prospect of survival;
- 4) that the ADA and Section 504 prohibit treatment allocation decisions based on the perception that a person's disability will require the use of greater treatment resources; and
- 5) that a person is "qualified" for purposes of receiving treatment if he or she can benefit from the treatment (that is, can recover) and the treatment is not contraindicated.

It is critical for the state to address these and several other important issues, including guidelines and criteria for allocating life-saving resources, the processes for rendering and appealing these decisions, the provision of reasonable accommodations to address the needs of persons with disabilities, and methods to address the unique health inequities affecting communities of color and older adults.

Maryland has an opportunity to be a national leader on these issues, by acting to establish equitable, democratic and nondiscriminatory standards of care rather than allowing scarcity to drive medical decisions across the state. The state must adopt a more inclusive and transparent process for developing medical standard of care triage protocols to ensure that the State's guidance to healthcare personnel and facilities lives up to the State's commitment to protect *all* of Maryland's residents.

For these reasons we respectfully urge your favorable report of House Bill 903. Thank you for your consideration of this important legislation.

Sincerely,

Laura Bogley, J.D.
Director of Legislation
Maryland Right to Life

¹ See, Letter of National Council to Roger Severino, Director, Office for Civil Rights, U.S. Department of Health & Human Services, March 18, 2020, available at <https://ncd.gov/publications/2020/ncd-covid-19-letter-hhs-ocr>

² CCD is the largest coalition of national organizations working together to advocate for federal public policy that ensures the self-determination, independence, empowerment, integration and inclusion of children and adults with disabilities in all aspects of society.

³ See, Consortium of Citizens with Disabilities, letter to Secretaries of EOHHS and the Office of Civil Rights, March 20, 2020, available at <http://www.c-c-d.org/fichiers/Letter-re-COVID-19-and-Disability-Discrimination-final.pdf>