

**Testimony of Eileen Healy
Public Health Committee
March 17, 2021**

S.B. No. 1 AN ACT EQUALIZING COMPREHENSIVE ACCESS TO MENTAL, BEHAVIORAL AND PHYSICAL HEALTH CARE IN RESPONSE TO THE PANDEMIC

Health inequities are a serious problem in CT, as the pandemic has clearly illustrated. The inequities that people who are Black, Brown, Indigenous and Asian face must be addressed. In general, I support SB 1 as a critical step to reduce and eliminate these disparities.

However, SB 1 is missing critical language mandating that the Department of Public Health issue long overdue written and uniform guidance prohibiting discriminatory rationing of healthcare in hospital settings. The potential for discriminatory rationing, should that ever become needed, impacts people with disabilities, elders, Black, Brown, Indigenous and Asian people.

In March 2020, advocates asked the Governor and DPH to issue statewide guidance to all hospitals but DPH failed to do so. Instead, several CT hospitals drafted their own seriously flawed and discriminatory guidelines, and many other hospitals had no guidance at all, allowing implicit bias to possibly drive decision-making in crisis situations. Some of the discriminatory provisions adopted by CT hospitals included: (1) the application of tests to determine the likelihood of survival for **five years** after discharge, a test directly discriminating against older people and Black and Brown people with inherently shorter lifespans; and (2) the addition of extra points to triage scores (higher scores meaning lower priority to receive life-sustaining treatment) because an adult needed assistance with all activities of daily living or had a severe and irreversible neurological condition, or a child had a progressive neurological disorder.

Despite repeated requests from a 39 member Connecticut coalition of advocacy groups, DPH continues to refuse to issue clear, consistent, uniform guidelines to prevent discrimination if rationing of life-sustaining care becomes necessary due to a variants of COVID-19, other pathogens or natural disasters. Before or shortly after the start of the pandemic, most other states **had** issued the kind of statewide guidance advocates are requesting of DPH. While DPH suggested last summer that some statewide guidance would be issued in March 2021, DPH now is merely suggesting the possibility of getting to it by the “end of 2021.” The reasons provided by DPH for refusing to act have been inconsistent including stating that it would not be “rushed” to create the needed guidelines - 10 months after DPH was first asked to act.

It is clear that, without legislative action, DPH will continue to delay issuance of statewide guidance ensuring that uniform, anti-discrimination protections are adopted by all Connecticut hospitals. I have attached proposed language that the coalition has been advocating for since March 2020 and it includes protections already adopted in other states and by one of CT's leading hospitals. I urge you to add this language to S.B. 1.

Finally, I also urge you to strike Section 2 of S.B. 1 regarding peer support services and instead, please support the passage of H.B. 6588 which will permit a meaningful and representative process that will further enhance the development of the peer workforce in Connecticut.

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New Language for SB 1 Requiring Department of Public Health Guidance Prohibiting Discriminatory Rationing of Healthcare by Hospitals

Proposed New Sections:

Section 1. The Department of Public Health shall, *no later than July 1, 2021*, issue guidance to all Connecticut hospitals which shall require each hospital to promptly develop and place on its website within 15 days thereafter hospital-wide guidelines providing, in the event rationing of life-saving healthcare should become necessary for any reason, that:

- a) consideration of disability, age, race or ethnicity is prohibited, independent of its impact on immediate survivability, as a factor in triage scoring protocols or in deciding who receives treatment.
- b) age may not be used as a tie-breaker in considering such decisions.
- c) consideration is only allowed regarding imminence of mortality in the hospital following treatment for the immediate acute crisis, with consideration of likely survival after discharge from the hospital prohibited.
- d) all individuals must be deemed qualified for, and eligible to receive, lifesaving care, regardless of pre-existing medical conditions, disabilities or co-morbidities which do not bear on immediate survivability.
- e) criteria that erect extra burdens on the ability of people with disabilities to access care, on the basis of their diagnosis or need for assistance with activities of daily living, are prohibited.
- f) consideration of “quality of life” or “worth” of people with disabilities, or any other group of patients, is prohibited.
- g) all decisions based on a Sequential Organ Failure Assessment (SOFA) or other triage scoring protocols must result from individualized assessments based on available objective medical evidence.
- h) the SOFA or other triage scoring protocols must include reasonable accommodations/modifications of the protocols for people with disabilities in order to ensure that they are evaluated based on their actual immediate mortality risk
- i) resource-intensity and duration of need on the basis of age or disability may not be used as criteria for the allocation or re-allocation of scarce medical resources
- j) removal of medical equipment belonging to a patient upon admission, for reallocation to another patient, is prohibited.
- k) patients may not be steered into agreeing to the withdrawal or withholding of life-sustaining treatment as a condition of receiving services; patients shall receive information on the full scope of available life-saving treatments; and hospitals may not impose blanket “Do Not Resuscitate” policies for reasons of resource constraints.
- l) there shall be a well-publicized appeals process available for any patient or their representative in disagreement with the results of a treatment rationing determination made with respect to that patient, with life-saving treatment provided during the pendency of any appeal, and a decision rendered within three days of the filing of the appeal.
- m) the patient and known representative of the patient shall be notified immediately whenever a determination to deny treatment is made pursuant to the SOFA or any other triage scoring protocols, which notification shall include information about the means to access the appeals process.

Section 2. Prior to issuing the guidance provided for in the above section, the Commissioner of Public Health shall review guidance issued by the U.S. Department of Health and Human Services' Office for Civil Rights and by other states for best practices and shall consult with advocates for older adults, people with disabilities and Black, brown, indigenous and Asian health consumers in the state for input on the details of the guidance document.