



Disability Rights Connecticut "Connecticut's protection and advocacy system"

**846 Wethersfield Avenue
Hartford, CT 06114**

March 30, 2021

Robin Frohboese
Acting Director, Office for Civil Rights
U.S. Department of Health & Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201
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Re: Disability Rights Connecticut Second Supplemented Complaint Regarding Unlawful Disability Discrimination Concerning Distribution of COVID-19 Vaccine in Connecticut

Via Electronic Mail and U.S. Mail

Dear Director Frohboese:

Please accept this letter as a second supplement to the Complaint that Disability Rights Connecticut (DRCT) filed on February 24, 2021 against the State of Connecticut and Governor Ned Lamont for discriminating against persons with disabilities in its development and implementation of policies and procedures with respect to the distribution of the novel Coronavirus (COVID-19) vaccine.

On March 25, 2021, the Governor announced additional changes to Connecticut's COVID-19 vaccine policy including that all residents aged 16 and older would become eligible for the vaccine by April 1, 2021. That same day, Governor Lamont also announced that people who fell into one of a select group of people with certain disabilities and/or underlying medical conditions would be prioritized for the COVID -19 vaccine starting on April 1, 2021. On March 29, 2021, the Governor announced that individuals with the following types of disabilities and/or medical conditions would be prioritized for the COVID -19 vaccination:

- Sickle cell disease
- End-stage renal disease on dialysis
- Active cancer treatment
- Solid organ transplant
- Down syndrome
- All patients of Connecticut Children's and Yale New Haven Children's Hospital

The Governor's and Connecticut's modified COVID-19 vaccine policy fails to sufficiently address the needs of people with disabilities in Connecticut. Specifically, contrary to the Center for Disease Control and Prevention (CDC) Guidance, the modified policy does not address the needs of all people who are at high risk for infection with COVID-19 and serious and potentially long-term symptoms. For example, the list does not include people with chronic lung diseases such as chronic obstructive pulmonary disease, asthma, interstitial lung disease, cystic fibrosis, and pulmonary hypertension; dementia or other neurological conditions; diabetes; heart conditions (such as heart failure, coronary artery disease, cardiomyopathies or hypertension); HIV and AIDS; liver disease, and other high-risk conditions identified by the CDC. See [Certain Medical Conditions and Risk for Severe COVID-19 Illness | CDC](#).

The Governor's Chief of Operating Officer, Josh Geballe, reported that the decision to prioritize the selected medical conditions was based upon determinations made by the chief medical officers at the hospitals responsible for providing the vaccines as to which they felt were the "most worthy of prioritization." See Lamont News Conference video available at [As CT Opens COVID-19 Vaccines to Residents 16+, Priority On Those With High-Risk Conditions \(msn.com\)](#). In turn, their decision to cover only a small fraction of individuals with CDC-identified co-morbidities appears to be based solely on simplicity of administration for only hospital officials. The Governor's officially constituted Vaccine Advisory Group and its Vaccine Allocation Subcommittee, which he had charged with making these decisions, was not even consulted. By excluding numerous high-risk conditions on the CDC's list from prioritization, the Governor and the State continue to discriminate against people with disabilities with respect to the provision of the COVID-19 vaccine in violation of Title II of the Americans with Disabilities Act (ADA), 42 U.S.C. §12131, *et seq.*; Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794(a) and their respective implementing regulations.

Further, except for people with intellectual and/or developmental disabilities (IDD) who are clients of Connecticut's Developmental Disabilities Services (DDS), the Governor and the State have offered no specific plan to ensure that the vaccination is made promptly available to those people with disabilities and medical conditions on their list. To the contrary, the Governor and the State have left these decisions to the administrators at the individual hospitals responsible for providing the vaccines. Mr. Geballe has specifically stated that "[d]ifferent hospitals are going to handle this differently. I think some will do outreach directly to the patients in their system, give them some reserved appointment slots at their mass vaccination sites, some others may do a dedicated clinic, and some others may just look to vaccinate patients as they come through for their normal appointments over the next week or two" See Lamont News Conference video available at [As CT Opens COVID-19 Vaccines to Residents 16+, Priority On Those With High-Risk Conditions \(msn.com\)](#).

Consequently, there is no uniform directive, or even guidance, to healthcare providers or affected persons as to how the prioritization of the provision of the vaccine will be implemented. And it appears, based on the Governor's statements, that even the people with the few designated co-morbidities selected by hospital officials are completely on their own if not connected to a hospital or having IDD and enrolled to receive DDS services, *i.e.*, no priority at all. This will engender just the kind of chaos, undermining trust in the system, about which even hospital officials warned.

Additionally, there continues to be no information provided as to how a person with a disability can obtain a reasonable modification to the Connecticut's current COVID-19 vaccine policy in violation of Title II of the ADA and Section 504. The Governor has consistently, and incorrectly, viewed these basic federal law requirements as somehow suspended during the public health emergency- he has no such authority.

In order to remediate these issues, we respectfully request that OCR take the following steps:

- 1) Immediately conduct an expedited investigation of this Complaint and find that the Governor and the State of Connecticut have unlawfully discriminated against people with disabilities in violation of Title II of the ADA and Section 504 of the Rehabilitation Act.
- 2) Direct the Governor to expand the list of categories of people with disabilities and/or underlying medical conditions to include other groups who are at high risk for COVID-19 as identified by, and consistent with, the CDC in its Guidance.
- 3) Direct the Governor to address social and racial inequities as they intersect with disabilities when expanding the list of people with disabilities and/or underlying health conditions who are at high risk of COVID-19, consistent with the CDC Guidance.
- 4) Direct the Governor and the State to specifically articulate a plan for how the prioritization of the vaccine will be implemented for individuals with underlying medical conditions who are at high risk of COVID-19 consistent with the CDC guidance and of prolonged and dangerous symptoms of the virus.
- 5) Direct the Governor and the State to provide accessible and meaningful information to the public on how to request and obtain the vaccine on a priority basis if they have one of the CDC-identified medical conditions.
- 6) Direct the Governor and the State to provide a process for people with disabilities to request reasonable modifications of Connecticut's current COVID-19 vaccine policy.

Thank you for your prompt consideration of this urgent matter. If you have any questions or need additional information, please do not hesitate to contact us at the number and email addresses set forth below.

Respectfully submitted,

/s/ Deborah A. Dorfman

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