

FAMILY ISSUE FACT SHEET

NO. 2021-07 (JANUARY 2021)

SB 1374 CRISIS STANDARDS OF CARE; REQUIREMENTS

EXECUTIVE SUMMARY

In response to the COVID-19 pandemic, on June 12, 2020, the Arizona Department of Health Services (AZDHS) issued an addendum to the Arizona Crisis Standards of Care for dealing with the emergency. The standards address triage and care management in the midst of a severe strain on resources due to a crisis such as the pandemic.

SB 1374 requires that allocation of health care resources be made on the basis of valuing all human life. Health care decisions should be made on the basis of imminent mortality, not life expectancy.

WHY LEGISLATION IS NEEDED

The Arizona Department of Health Services (AZDHS) has published a document entitled “Arizona Crisis Standards of Care Plan – Comprehensive and Compassionate Response” 3rd Edition 2020.¹ The purpose of the “CSC” plan is to “implement a compassionate and ethically-based healthcare response for catastrophic disasters.”

Essentially, Crisis Standards of Care determine which patient will receive what resource when resources are rare. On June 12, 2020, DHS published an addendum² to address the COVID-19 pandemic. On June 29, 2020, Arizona Department of Health Services Director Dr. Cara Christ authorized hospitals to activate the state’s crisis care standards if needed.³

Subsequently, the Arizona Center for Disability Law (ACDL) filed a complaint⁴ with the Office of Civil Rights, U.S. Department of Health and Human Services (HHS), on July 17, 2020, alleging that the standards illegally discriminate “on the basis of disability, age, and race, that is placing people in those protected classes in Arizona at risk of substantial and imminent harm during the COVID-19 pandemic.” The standards will “operate to deny life-saving care to people with disabilities, older Arizonans, and individuals from communities of color.”

The complaint details CSC provisions that violate the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, Age Discrimination Act of 1975, Title VI of the Civil Rights Act of 1964, and Section 1557 of the Affordable Care Act. ACDL believes life-saving care will be denied to people with disabilities, older Arizonans, and individuals from communities of color.

To date, no action has been taken in regard to the ACDL complaint by either AZDHS or HHS.

WHAT DOES THE BILL DO?

The bill's provisions are based on a Utah model recommended by the U.S. Office of Civil Rights (OCR) that was used to resolve a similar issue. SB 1374 is based on that model and the needs expressed in the ACDL complaint.

SB 1374:

- Requires allocation of health care decisions on the basis of valuing all life when demand for certain resources exceeds the supply.
- Allows health care providers to “only consider the risk of imminent mortality.”
- Establishes that the patient or the patient’s health care decision maker has the right to make the patient’s health care choices.
- Prohibits denial of medical care based on stereotypes, assessments of patient’s quality of life, or judgment about the patient’s relative worth based on age or disability.
- Prohibits health care providers from allocating treatment resources based on quality of life judgments, considerations of long-term mortality and long-term life expectancy, or the need for long-term use of the resources provided.
- Requires individual assessments to be made on the basis of best available objective medical evidence, not on assumptions about an individual’s perceived health, pre-existing conditions, or diagnosis.
- Requires reasonable modifications to ensure that patients with disabilities and the aged have equal access to medical care. This includes communication, emergency messaging, mobility issues, and religious accommodations. In addition, it requires the same access to reasonable modifications to clinical scoring instruments and assessment tools to ensure that disability-related characteristics unrelated to the short-term mortality risk do not worsen a patient’s score.
- Requires notice be given to family members regarding the right to appeal any triage decisions, and the details of the appeal process.
- Prohibits pressure or coercion of patients to sign a Do-Not-Resuscitate (DNR) order, or to make a particular decision. It affirms patients and families have the right to make health care choices.

TALKING POINTS

1. **All human life is valuable and deserving of life-saving care. SB 1374 ensures equal treatment of all, especially the disability and aging communities.**

2. **The pandemic requires a plan for managing care, but it is never okay to discriminate based on race, or against those with disabilities, or older Arizonans. They are our sisters and brothers, parents and grandparents, and their lives are as valuable as yours and mine.**
3. **COVID-19 has ravaged our elderly population, as well as many with disabilities and minorities. Crisis care should not further victimize the most vulnerable among us based on a life expectancy standard.**

CONCLUSION

SB 1374 guards against discrimination by ensuring the AZDHS's Crisis Care Standards are made according to imminent mortality, not life expectancy. It ensures the standards do not discriminate against the most vulnerable Arizonans.

¹ AZDHS, Arizona Crisis Standards of Care Plan <https://www.azdhs.gov/documents/preparedness/emergency-preparedness/response-plans/azcsc-plan.pdf> last accessed 1/13/2021.

² AZDHS, COVID-19 Addendum: Allocation of Scarce Resources in Acute Care Facilities

<https://www.azdhs.gov/documents/preparedness/epidemiology-disease-control/infectious-disease-epidemiology/novel-coronavirus/sdmac/covid-19-addendum.pdf> last accessed 1/13/2021.

³ AZDHS, COVID-19 Pandemic: Crisis Standards of Care Activation

<https://www.azdhs.gov/documents/preparedness/epidemiology-disease-control/infectious-disease-epidemiology/novel-coronavirus/sdmac/sdmac-crisis-standards-activation.pdf> last accessed 1/13/2021.

⁴ HHS OCR Complaint <http://thearc.org/wp-content/uploads/2020/07/HHS-OCR-Complaint-re-Crisis-Standards-of-Care-Arizona.pdf> Last accessed 1/13/2021.