

## Justice in Aging's Nationwide Work on Crisis Standards of Care During COVID-19

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Crisis Standards of Care (CSC) are policies used to help hospital providers ration medical care should medical resources like beds, ventilators, and medication, become scarce. Several states and hospital systems had developed crisis standards long before the COVID-19 pandemic. However, due to a surge in COVID-19 cases across the country and reports of hospitals being overwhelmed and under-resourced, many jurisdictions have developed or updated CSCs to respond to the COVID-19 crisis.

Justice in Aging has reviewed numerous CSCs across the country and found that some devalue the lives of older adults and people with disabilities due to implicit and explicit prejudice about their perceived “worth” or quality of life. Older adults and people with disabilities who are persons of color also have the added impact of systemic racism and related health care disparities. The Department of Health and Human Services guidance requires that “treatment decisions, including denials of care under crisis standards, must be made after nondiscriminatory consideration of each person, free from stereotypes and biases based on disability or age—including generalization and judgments about the quality of life, or relative value to society, concerning disabilities or age. This individualized consideration should be based on current objective medical evidence and the views of the patients themselves as opposed to unfounded assumptions.”

Our previous [fact sheet](#) describes common discriminatory CSC provisions and outlines recommendations on what should be included in states and hospitals' CSC. Through Justice in Aging's work and advocacy in partnership with other organizations, several jurisdictions have revisited their CSCs and made changes based on our recommendations. In some cases, Justice in Aging has joined with other advocates in filing complaints with the Office for Civil Rights (OCR) at the Department of Health and Human Services.

Below is a snapshot of our efforts in five states and hospital systems that have resolved and updated CSCs or CSC guidelines. The work is ongoing and advocacy for non-discriminatory CSCs for older adults, people with disabilities, and people of color remains crucial.

### UTAH

Justice in Aging advocated directly to the OCR regarding discriminatory language in their resolution to a previously filed CSC complaint by disability advocates. While their initial resolution addressed many issues in Utah's CSC, it still endorsed tiebreaker language that categorically disfavored older adults and violated the Age Act. The State returned to OCR for guidance, and new CSC guidelines were issued. The new CSC prohibits discrimination based on age or disability in the event of a tie breaker and removes age as tie breaker.

## TEXAS

Justice in Aging worked with Disability Rights Texas, the Center for Public Representation, and the Arc to file an OCR complaint regarding the CSC of South Texas. After negotiations with health care professionals and OCR review, discriminatory language against older adults and people with disabilities was removed from both the South Texas and the North Texas CSCs. Tiebreaker language specifically relying on age and age-based proxy criteria was removed. Affirmative non-discrimination language was also added to the tiebreaker. OCR approved the modifications for both north and south Texas.

The following are key changes in the revised policies to avoid discrimination against people with disabilities and older adults:

- No Exclusions or Deprioritizing Based on Resource Intensity or Diagnosis,
- Resource Decisions Based Only on Short-Term Survivability,
- Reasonable Modifications Required,
- Reallocation of Personal Ventilators Prohibited, and
- Blanket Do Not Resuscitate (DNR) Policies Prohibited

Disability and aging advocates announced the approved guidelines on January 14, 2021. See our [press release for more information](#).

## MASSACHUSETTS

Justice in Aging, in partnership with the Center for Medicare Advocacy, Greater Boston Legal Services, and the American Society on Aging analyzed the April 2020 CSC issued by the state. We partnered with disability advocates, including Center for Public Representation, for the removal of discriminatory language impacting older adults and people with disabilities. We also separately raised age-based concerns with the state and its working group.

The state issued its revised CSC in late November, which included improvements such as modification of Sequential Organ Failure Assessment (SOFA) scores to account for disabilities and prohibition on considering quality of life or reliance on intensive treatment as a basis for denial of care. However, age is still not listed as a protected class and remains a characteristic of short-term survival in a tiebreaker situation.

## OREGON

Justice in Aging joined the state's Protection and Advocacy System on an OCR complaint last summer, but OCR did not act. Oregon pulled its CSC in September 2020 following complaints. On December 7, 2020, Oregon released its [Principles in Promoting Equity](#) when resources are constrained, and a formal CSC will follow.

This initial document lists age as a characteristic covered by nondiscrimination law; discusses the use of the "life years" approach as inequitable; and states that people cannot be denied care due to underlying conditions or disability, life expectancy, resource utilization or quality of life measures.

## FLORIDA

Justice in Aging partnered with Disability Right Florida, DREDF, and the Arc of the United States (the Arc) to assess and improve the CSC developed by the Broward Health System. The new draft CSC removes discriminatory language against older adults and people with disabilities.

**National Academy of Medicine** has similarly urged states and health systems to fairly allocate resources. Their [recommendations](#) that address age-based discrimination include: “[making] resource allocation decisions based on individualized assessments” and prohibiting the use of “*categorical exclusion criteria* on the basis of disability or age” in individualized assessments. We are encouraged that the language significantly narrows the circumstances when age can be considered, though Justice in Aging also remains concerned about the lack of clarity and guidance around when age may be used to inform allocation decisions.

Justice in Aging continues to work with advocates in **Arizona**, **Connecticut**, and **Maryland** to address age-based discrimination in their state and hospital systems’ CSCs. We are hoping these jurisdictions will release updates soon and are further anticipating **Oregon** to release an official CSC following their [Principles in Promoting Equity](#).

Continued action across the nation is needed as COVID-19 cases and deaths continue to grow, especially to protect older adults from discriminatory criteria in care rationing. We encourage other state health departments to review their CSC policies and ensure they do not discriminate against older adults as the nation continues to deal with the post-holiday surge in cases, hospitalizations, and deaths.