



**CONSORTIUM FOR CITIZENS
WITH DISABILITIES**

July 30, 2020

Hon. Mitch McConnell
Majority Leader
U.S. Senate
Washington, DC 20510

Hon. Chuck Schumer
Minority Leader
U.S. Senate
Washington, DC 20510

Hon. Nancy Pelosi
Speaker
U.S. House of Representatives
Washington, DC 20515

Hon. Kevin McCarthy
Minority Leader
U.S. House of Representatives
Washington, DC 20515

Dear Leaders McConnell, Schumer and McCarthy and Speaker Pelosi:

The undersigned co-chairs of the Consortium for Citizens with Disabilities (CCD) Rights, Health, and Long-Term Services and Supports Task Forces write to express our strong opposition to the SAFE TO WORK Act and deep concern about critically important measures that are not included in other portions of the Senate's COVID-19 relief package. 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.

The SAFE TO WORK Act Strips Important Protections from People with Disabilities

First, we oppose the SAFE TO WORK Act because it undermines important protections for people with disabilities by limiting liability for a wide variety of unlawful conduct, placing the lives and safety of people with disabilities and others at needless risk. We are frankly shocked that a COVID-19 relief bill would seek to make such dramatic changes, including to civil rights laws such as the Americans with Disabilities Act (ADA), the Genetic Information Non-discrimination Act, Title VII of the Civil Rights Act of 1964, as well as to other health and safety protections.

The Act would significantly weaken protections under these laws in ways that are wholly inappropriate and unnecessary. For example, if the bill were enacted:

- An employee who is particularly vulnerable to COVID-19 due to a respiratory disability might be unable to seek redress for her employer's refusal to make reasonable

accommodations to enable her to work remotely even if doing so would not interfere with her ability to perform her job, if the employer merely “explored options to comply” with CDC guidance;

- The families of nursing facility residents who contracted and died from COVID-19 due to a facility’s failure to take basic safety measures to protect residents might be unable to obtain relief if the nursing facility said that it failed to take these safety measures due to a staff shortage, even if the shortage was caused by the nursing facility;
- A blind college student who chose to take an online version of a course for safety reasons rather than attending in person might find himself without recourse if the college refused to provide a screen-reader or other effective accommodation and instead offered only to have another student explain material once a month.

Not only would the SAFE TO WORK Act cause great harm; it is also unnecessary. The ADA and other civil rights laws, for example, already take into account the needs of employers and other covered entities and provide them with appropriate protections for the types of situations that this bill purports to address. Further, the Equal Employment Opportunity Commission has issued [guidance](#) on the ADA and COVID-19, clarifying a wide range of measures that employers are permitted to take to keep workplaces safe during the pandemic. It is unacceptable that people with disabilities, older adults, people of color, and others should be stripped of civil rights and other protections that are more important than ever during the COVID-19 pandemic.

The Senate’s COVID-19 Package Fails to Include Key Measures Needed to Save Disabled Lives

Second, we are extremely concerned that a number of measures essential to the safety and well-being of people with disabilities are not part of the current Senate package. We have written previously to highlight measures we believe must be included, but we highlight below two key items that are essential to save disabled lives:

- (1) Expanding home and community-based services to enable people with disabilities to avoid placement in dangerous institutions:** The HEROES Act passed by the House contained crucial provisions authorizing enhanced federal Medicaid reimbursement rates for home and community-based services for people with disabilities and older adults. These provisions are key to expand the availability of these services that enable people with disabilities and older adults to stay safe in their own homes and communities and out of institutions and to transition out of institutions back to the community. In addition to concerns about overreliance on institutional settings in violation of the Americans with Disabilities Act and the Supreme Court’s *Olmstead* decision, the pandemic has ravaged institutional settings, jeopardizing the health and lives of millions of people with disabilities and older adults. As you are aware, more than forty percent of the nation’s deaths from COVID-19 have been people with disabilities and older adults living in

nursing homes and other congregate settings.¹ Without reducing the census of these facilities, it is virtually impossible to implement adequate safety measures.

Expanding home and community-based services is a crucial step needed to address these concerns. Ensuring that community service providers have sufficient PPE, telehealth equipment and training are also critical, as is ensuring that housing subsidies are allocated for people with disabilities transitioning out of or diverted from institutions. The HEROES Act provisions, with the inclusion of “behavioral health services authorized under paragraph (13) of Section 1905(a)” to clarify the intent to cover all community mental health and substance use disorder services, would go a long way in accomplishing these goals.

In addition to the specific enhanced rates for home and community-based services, we urge you to support the 14 percentage point general Federal Medical Assistance Percentage (FMAP) increase included in the HEROES Act, while continuing maintenance of effort (MOE) protections such as those included in the Families First Act. As states face budget crises, they are responding by making cuts to Medicaid, particularly for optional services like HCBS, even as enrollment increases due to high unemployment. Due to increased costs across their Medicaid programs, states are already cutting benefit rates for providers of HCBS and behavioral health services, or delaying long-planned and necessary rate increases. During a pandemic, federal Medicaid funding must increase across the board to maintain the stability of the program. While a general FMAP enhancement is not a substitute for the dedicated funding stream offered by the targeted FMAP enhancement also included in the HEROES Act, it remains a necessary ingredient.

(2) Data Collection: We need to understand and respond to the way that COVID-19 is disproportionately impacting people with disabilities and older adults, particularly Black, Latinx, Indigenous and other people of color. Therefore, it is tremendously important that the legislation require data collection and reporting of numbers and rates of COVID-19 testing, numbers and rates of hospitalizations, numbers and rates of intensive care admissions, and numbers and rates of deaths associated with COVID 19 in the following settings: nursing homes, psychiatric hospitals, intermediate care facilities for individuals with intellectual and developmental disabilities, and assisted living facilities (including any licensed, registered, certified, listed, or state-regulated residence, managed residential community, building, or part of a building that provides, or contracts to provide, housing with supportive services on a continuing basis to one or more older adults or individuals with mental health, developmental, or physical disabilities who are unrelated to the owner or operator, with “supportive services” including supervision of residents along with some level of personal care and services, such as assistance with activities of daily living or instrumental activities of daily living). This information should include race, ethnicity,

¹ Marisa Kwiatkowski et al., ‘A national disgrace’: 40,600 deaths tied to US nursing homes, U.S.A. Today, June 1, 2020, <https://www.usatoday.com/story/news/investigations/2020/06/01/coronavirus-nursing-home-deaths-top-40-600/5273075002/>.

primary language, disability status, age, and other demographic characteristics to ensure that these intersectional disparities are identified and addressed.

We look forward to working with you to ensure that these priorities are addressed.

Sincerely,

Jennifer Mathis
Bazelon Center for Mental Health Law

Kelly Buckland
National Council on Independent Living

Stephen Lieberman
United Spinal Association

Allison Nichol
Epilepsy Foundation

Samantha Crane
Autistic Self Advocacy Network

Co-Chairs, CCD Rights Task Force

Alison Barkoff
Center for Public Representation

Jennifer Lav
National Health Law Program

Julia Bascom
Autistic Self Advocacy Network

Nicole Jorwic
The Arc of the United States

Co-Chairs, CCD Long-Term Services and Supports Task Force

David Machledt
National Health Law Program

Rachel Patterson
Epilepsy Foundation

Natalie Kean
Justice in Aging

Erin Shea
Center for Public Representation

Co-Chairs, CCD Health Task Force