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The Honorable Jared Polis
Colorado State Capitol
200 East Colfax Room 136
Denver, CO 80203

Re: Survival of People with Disabilities during COVID-19 Pandemic

Dear Governor Polis,

We want to start this letter by thanking you for your extraordinary leadership during this crisis. Unlike our peers in other states, we are being included in policy decisions and working closely with members of your team (like Elisabeth Arenales) and your cabinet (Kim Bimestefer, Michelle Barnes, Jill Hunsaker-Ryan, and others). We appreciate being involved and allowed to help your administration make the best possible decisions in a horrible situation.

People with disabilities and chronic health conditions are doubly vulnerable during the COVID-19 crisis: they are vulnerable to acquiring the virus and to suffering more severe effects, and they are vulnerable to healthcare discrimination that may deny them necessary care. As a result, Coloradans with disabilities and chronic health conditions are experiencing escalating fear and anxiety, on top of any physical effects of viral illness. We need your continued leadership to communicate and ensure that Colorado will protect the rights and access to care of disabled people of all ages.

Colorado has a strong and united disability community that includes ADAPT, Centers for Independent Living, Arc Chapters, Disability Law Colorado, numerous organizations representing specific disability groups such as the Colorado Metal Wellness Network, the National Federation of the Blind Colorado chapter, and the Colorado Commission for the Deaf, Hard of Hearing, and DeafBlind. The Colorado Cross-Disability Coalition (CCDC) is the largest statewide organization run by and for people with all types of disabilities and we are working to coordinate with this amazing community to help with ongoing information dissemination and input to your team on policy issues. We are lucky to have

such a strong and united community. This letter is written on behalf of many of these organizations, we wanted to get it out quickly so did not put extended time into sign-ons, but please note the organizations signed on below.

CCDC and others thanks you for the swift and decisive actions that you have taken to protect the people of Colorado from COVID-19, reduce community spread, and flatten the curve. Your leadership will protect people with disabilities and their families from the virus's accelerating spread, including daily increases in the deaths. Our community now asks that you take the following actions to ensure that people with disabilities receive equitable and effective healthcare in Colorado which will, in turn, help maintain the health of all Coloradans.

Prevent and Prohibit Medical “Rationing” Based on Disability

The prospect of shortages of medical staff and equipment for treating those made severely ill by COVID-19 has triggered discussion of “rationing” medical care.

While the coronavirus crisis poses serious challenges to our social and health care systems, federal laws including the ADA, Section 504, Section 1557 of the ACA, and the Colorado Anti-Discrimination Act (CADA) prohibit any “rationing” measures by public or private entities which discriminate on the basis of disability. Denying care to disabled individuals who are likely to benefit from care is unlawful.

Moreover, swift and efficient action now may prevent or ameliorate the need for untenable rationing decisions. There are additional reserves of ventilators and other medical equipment and supplies maintained by hospitals and the U.S. Department of Defense and the Centers for Disease Control and Prevention.¹ Colorado must follow its own policy statements to ensure that these stockpiles are allocated based on objective need – and distributed throughout the state of Colorado so that health care workers have them on site.² If existing numbers are projected to be insufficient, Colorado must procure additional equipment and supplies.

People are looking for factual information, honestly, and assurances. As Governor, you are the best person to speak out about the state's efforts to alleviate widespread fear and anxiety among vulnerable populations, including Coloradans with disabilities.

¹ .Dan Lamothe, “Pentagon offers respirators, ventilators and labs in expanding coronavirus response,” Washington Post (Mar. 17, 2020) (describing release of 5 million masks and 2,000 ventilators from military stockpile), <https://www.washingtonpost.com/national-security/2020/03/17/pentagon-offers-respirators-ventilators-labs-expanding-coronavirus-response/>;

² Surge Standards, Foundational Knowledge, § 8.4.3, Allocation of Ventilators for Pandemic Influenza, http://www.cidrap.umn.edu/sites/default/files/public/php/258/258_foundation.pdf (“[T]he allocation of ventilators from State and federal stockpiles must take into account the ratio of local populations to available resources, designating appropriate resources for the most vulnerable who are most likely to suffer the greatest impact in any disaster.”).

We further urge the Governor and state agencies to swiftly issue a directive to health plans and insurers, hospitals, and other medical providers on maintaining their obligations under state and federal disability nondiscrimination laws during the coronavirus crisis, including in the allocation of scarce medical resources. Such guidance should include the following basic principles:

- The presence of a disability, including a significant disability, is not a permissible basis for denying people access to care or giving them a lower priority for care.
- The fact that a disabled person may have a lower likelihood of survival is not a permissible basis for denying care or allocating the person a lower priority for care. If the person will benefit from care, then they are entitled to access care on an equal basis as others.
- The fact that a person with a disability may require reasonable accommodations during treatment, or more intensive treatment, is not a permissible basis for denying care or allocating the person a lower priority for care.
- All medical decisions about providing care must be based on current objective medical evidence, and not based on generalized assumptions about a person's disability. Treatment decision shall not be made based on misguided assumptions that people with disabilities experience a lower quality of life.

Covered entities should be permitted to prioritize those with a greater urgency of need, and delay non-urgent care. They need not allocate scarce resources to individuals with no reasonable chance of survival. But people with disabilities should not face discrimination in seeking life-sustaining care that they will benefit from. The lives of people with disabilities are equally valuable to those without disabilities, and healthcare decisions based on devaluing the lives of people with disabilities are discriminatory. Benefit should be derived solely based on medical evidence, not a belief about the life of the patient.

Ensure Access to Home-and Community-Based Services and Related Services

Individuals with various disabilities who rely on personal care assistance face a dilemma during the COVID-19 crisis. No person with a disability should have to choose between catching a potentially deadly new virus and receiving the assistance needed to perform critical activities of daily living such as toileting, eating, dressing, etc. Personal care assistants whether paid or unpaid, should not be required to perform their duties without proper protective equipment to ensure both their own well-being as well as the continued well-being of their own families and other clients with disabilities, or face the ethical dilemma of rendering necessary duties while beginning to feel sick.

The following measures are needed to preserve the well-being of people with disabilities while they shelter in place:

- Fund paid sick leave for any personal care worker unable to work regularly scheduled shifts because of illness or the need to quarantine due to exposure. This

must also cover any Medicaid consumer-directed or private pay client. Grants to small home health agencies should be made available to allow them to pay their workers. Larger agencies should be required to do the same.

- Fund and establish backup personal care assistant (PCA) registries, for both public and private pay PCAs, and establish streamlined on-call emergency back-up alternatives to ensure PCA services when scheduled PCAs are unavailable.
- Place a moratorium on Medicaid LTSS reassessments that could lead to service hour reductions and consider revising overtime rules.
- Provide and efficiently distribute protective gear for paid and unpaid PCAs, including family, friends, and volunteers who are providing personal attendant services. To the extent that shortages make this impossible, provide funding for substitute items such as cleaning gloves, industrial respirators, scrubs, garbage bags, etc.
- Continue to include disability-specific providers (whether formal or not, paid or not) within guidance on categories of “essential business” and “essential personnel,” such as public and private personal care attendants, public transit and paratransit, privately contracted Non-Emergency Medical Transportation (NEMT) providers, durable medical equipment providers/repairers, and veterinarians.

Even short gaps in coverage of personal care attendants and related services can lead to worsened health and unnecessary hospitalization or institutionalization, contrary to the integration principles adopted by the U.S. Supreme Court in *Olmstead v. L.C.*, 527 U.S. 581 (1999). These risks are sharply heightened by the dangers posed by the coronavirus.

CCDC and the signatories below urge the following additional steps to ensure that disabled Coloradans are safe in their homes and communities with supports during the COVID-19 crisis:

Ensure that accurate and up-to-date information about the progression of COVID-19 within Colorado is fully accessible in alternative print and online formats.

- We appreciate seeing the sign language interpreters at all of your press conferences. Please make sure videos are always captioned properly (just turning on You Tube captioning does not work). We appreciate the remarkable responsiveness of your staff, especially the Lt. Governor’s Chief of Staff Crestina Martinez, Maria De Cambra on your Communications team and Theresa Montano in OIT, when there has been an error in document accessibility. We hope that process improvements to assure no document goes up that is not fully accessible to people that use screen reading technology are prioritized.
- We also urge that essential documents are quickly translated into threshold languages, adapted for people with lower reading abilities, and made available in American Sign Language and captioned videos. This must apply not only to Executive Orders but to instructions that are

important including how to apply for unemployment, testing protocols, prevention protocols, etc.

- Require all private insurers operating in Colorado to provide fully accessible, current, clear, and readily available information about in-network and out-of-network coverage of COVID-19 testing and treatment.
- Require public utilities and internet providers to maintain gas, electricity, water, telephone, and internet services for seniors and people with disabilities sheltering in place.
- Ensure that public and private insurance prioritization of healthcare procedures consider not only the category of procedure before cancelling or delaying it as “elective/non-urgent,” but also the underlying conditions and cross-disability needs of the person who will be undergoing a scheduled procedure.
- Continue provision of ADA paratransit, NEMT, and accessible on-demand service for passengers, including trips to the grocery store, medical facilities, and COVID-19 testing sites. Maintain ADA paratransit service areas even where bus routes are cut or reduced like areas such as Summit and Gunnison.
- Protect passengers and workers by ensuring provision of adequate protective gear and cleaning supplies for transit workers, including NEMT providers and janitorial support staff.
- Place a comprehensive state-wide moratorium on evictions and a hold on termination of public benefits, including all administrative actions that result in individuals being cut off from public benefits. We also ask that any fraud investigations be suspended as this is not a good use of money or resources and could endanger at risk individual.

Ensure Legal Services and Prompt Affirmative Responses to the Potential Violations of Rights of Disabled Coloradans.

We ask that Colorado take steps to bolster financial and human resources in Colorado’s legal service organizations to ensure that they have - the capacity to provide timely representation for individuals who face unlawful medical “rationing” based on disability, any unnecessary and involuntary institutionalization, evictions, benefits issues and other forms of discrimination in COVID-19 treatment and testing.

From past disasters, we know that legal services needs tend to peak 2-12 months after the disaster “ends”. Additional legal services support will be required for the next year. Specifically Disability Law Colorado, Colorado Legal Services, Colorado Cross-Disability Coalition, Civil Rights Education and Enforcement Center, and The Colorado Center for Law and Policy will need support to meet the legal needs of low-income Coloradans with Disabilities.

We further ask that you ensure that Colorado and its agencies respond immediately and effectively to any reports or complaints indicating that the rights of people with disabilities are being violated. While this must include prioritization and streamlining

of administrative complaint procedures at all relevant agencies to respond affirmatively and forcefully to any formal or informal report.

Our state has long been a leader in many aspects of healthcare, accessibility, and civil rights protections for people with disabilities. Colorado, as the home of the Atlantis Community, the organization that created ADAPT is the birthplace of the internationally-known disability rights movement. Help us to maintain our reputation as a leader in preserving the rights of people with disabilities. We would welcome the opportunity to continue to work with your administration on ensuring that people with disabilities in our state receive equal and effective healthcare during the COVID-19 crisis under the priorities detailed above.

Sincerely,

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