



**CONSORTIUM FOR CITIZENS
WITH DISABILITIES**

June 16, 2020

Hon. Mitch McConnell
Majority Leader
U.S. Senate
Washington, DC 20515

Hon. Chuck Schumer
Minority Leader
U.S. Senate
Washington, DC 20515

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 members of the Consortium for Citizens with Disabilities (CCD) Rights Task Force write to express our strong support for key provisions of the HEROES Act and to urge their prompt passage in the Senate. 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 HEROES Act will help to bring much needed relief for people with disabilities, who have been dramatically and disproportionately affected by COVID-19. It is important that the Senate act quickly, as some of the provisions of this legislation are urgently needed to save lives. We highlight below key provisions of specific importance to the Rights Task Force:

Expanding home and community-based services to enable people with disabilities to avoid institutionalization: The provisions of the bill authorizing enhanced federal Medicaid reimbursement rates for home and community-based services for people with disabilities are a critically important response to the COVID-19 pandemic. States' overreliance on institutional settings to serve people with disabilities reflects widespread non-compliance with the civil rights mandates of the Americans with Disabilities Act and the Supreme Court's *Olmstead* decision, but in addition, it has jeopardized the health and lives of millions of people with disabilities across the country during the current pandemic. In many states nearly half of those who have died from COVID 19 are residents of nursing homes, congregate facilities for people with intellectual and developmental disabilities, and psychiatric facilities. Nationally, approximately forty percent of COVID deaths have been residents of nursing homes and assisted living

facilities alone.¹ Without reducing the census of these facilities, in many cases 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 and 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. Thus, the increased federal Medicaid match for home and community-based services in the HEROES Act is a key measure.

In order to ensure that these services will be targeted to help people with disabilities leave institutions or avoid admission to them, as well as to enable institutions to reduce their census to enable physical distancing—measures needed to save lives—the permissible purposes listed in the HEROES Act should include a specific provision in the listed permissible purposes for the funding that includes facilitating discharge from, or diversion from, nursing homes, facilities for people with intellectual and developmental disabilities, and psychiatric facilities in order to reduce census and ensure adequate safety measures. In addition, the definition of home and community-based services should specifically include “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;” otherwise these services may be largely excluded.

Data Collection: Importantly, the HEROES Act includes the impact of disability in field studies to better understand health inequities not currently tracked by HHS (Section 30576) and includes disability disparities in the provisions to support modernization of data collection methods for the purpose of increasing data collection related to health inequities (Section 30573). In light of the particular vulnerability of people with disabilities to COVID 19 due to comorbidities as well as to the congregate living arrangements described above, we believe it is urgent that disability also be included in the data collection and August 1, 2020 report with respect to testing, hospitalization, intensive care admissions, and mortality rates associated with COVID 19 (Section 30577). Even if disability data is not currently tracked by HHS for certain purposes, at a minimum Medicaid claims data for people in various types of disability services could be used to look at how people with disabilities are impacted.

Accessible Voting: We strongly support the provision in the HEROES Act affirming that states must ensure that absentee ballots and related voting materials in federal elections are accessible to individuals with disabilities in a manner that provides the same opportunity for access and participation (including with privacy and independence) as for other voters. (Section 160003). We believe it is also important, however, to clarify that any signature verification requirements for absentee ballots include reasonable modifications to allow for alternative means of verification, such as a mark or other method, by individuals who cannot make a signature due to a disability.

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/>.

Ensuring Appropriate Reasonable Modifications to Mask Requirements: We support measures to prevent transmission of COVID 19 by ensuring appropriate use of personal protective equipment, such as masks. Nevertheless, the CDC has recognized that certain populations should not wear masks, including individuals who have difficulty breathing and individuals who cannot independently remove the mask. Others, such as people with intellectual or developmental disabilities and those with epilepsy, may also be unable to safely wear a mask. We recommend that language in Sections 200009, 190601, and 190505 be modified to clarify that mask requirements are subject to the requirement to make reasonable modifications under the Americans with Disabilities Act and the Air Carrier Access Act.

Accessible Testing: We support the requirement in Section 30541 requiring HHS to submit specific plans to ensure that COVID testing is accessible to people with disabilities, older adults, and those with underlying health conditions or weakened immune systems. This provision is critically important to address accessibility problems that our constituents have experienced in seeking testing for the virus.

Nondiscrimination: We support non-discrimination provisions that bar programs and services receiving funding under this legislation or earlier COVID relief legislation from excluding or otherwise discriminating against individuals based on non-merit based factors such as age, disability, sex, race, color, national origin, immigration status, or religion.

We look forward to working with you as the legislation progresses.

Sincerely,

The Arc of the United States

American Foundation for the Blind

American Dance Therapy Association

American Physical Therapy Association

American Therapeutic Recreation Association

Association of University Centers on Disabilities

Bazelon Center for Mental Health Law

Center for Public Representation

CommunicationFIRST

Council of Administrations of Special Education

Disability Rights Education and Defense Fund

Easterseals

Epilepsy Foundation

National Association of Councils on Developmental Disabilities

National Council on Independent Living

National Disability Rights Network

National Down Syndrome Congress

Paralyzed Veterans of America

United Spinal Association