March 25, 2020

The Honorable Gary R. Herbert
Governor of Utah
350 North State Street, Suite 200
PO Box 142220
Salt Lake City, Utah 84114-2220

Dear Governor Herbert,

First, thank you and the many state agency and department leaders and staff for the massive efforts and coordination undertaken to provide leadership and mobilize state resources to confront the COVID-19 pandemic.

I write to urge you to use your leadership and vision to take steps to protect the welfare of all Utahns, but especially those with disabilities, during this crisis. The Disability Law Center (DLC) is Utah’s congressionally-mandated protection and advocacy (P&A) agency. The DLC also hosts the state’s HUD-designated fair housing initiatives program for Utah. Our mission is to enforce and strengthen laws that protect the opportunities, choices and legal rights of Utahns with disabilities. As you are aware, adults and children with disabilities are among those at the greatest risk in this crisis because so many are in institutions or incarcerated, homeless, seniors or medically compromised, or dependent on others for care.

Below are steps we believe necessary to protect Utahns with disabilities. Some are disability-specific, but others are universal measures. Although people with disabilities will be disproportionately affected by the loss of services and benefits during the pandemic, protecting everyone in this crisis is the best public policy. Utah must ensure that all our residents have access to a safe living situation, medical care, and other supports. Not only are these measures necessary to ensure Utahns with disabilities are served appropriately, they will help ensure Utah is meeting its obligations under federal laws that protect the rights of Americans with disabilities.

Planning Considerations

1. Act to ensure swift and comprehensive implementation of the Families First Coronavirus Response Act and provide clarification and implementation assistance to all state agencies.

2. Issue a directive to all medical care providers prohibiting discrimination against people with disabilities in offering COVID-19 treatment via rationing of care or treating the lives of people with disabilities, the elderly, or the poor as less valuable than others. Also, prohibit the unnecessary placement of people with disabilities in nursing facilities and other institutions.
2. (Continued) If such a temporary move is unavoidable, maintain a list of these individuals so the placement does not unintentionally become permanent. Additionally, the state should apply Centers for Medicare and Medicaid Services (CMS) nursing home COVID-19 standards to other facilities, as well as home and community-based settings, where those who are medically vulnerable are receiving care.

3. Many individuals (especially those with cognitive or intellectual disabilities) require assistance with communications and special consideration in pandemic preparedness planning. Provide accessible forms of communication to individuals—such as telephone or text messaging, accessible webpages (large, high-contrast fonts, minimal color, and file formats that can be read by screen readers), and language considerations—for real-time updates of the state’s emergency guidelines and response.

4. Direct local government bodies and your own department heads to include Utahns with disabilities and those who are aging, along with disability and aging experts, at all levels of planning.

5. Require administrators and service providers of congregate facilities, including hospitals correctional institutions, and residential facilities to have policies and protocols for maintaining staffing and continuity of services for individuals at their facilities or provide for alternative means of care and placement. Where particular services and activities have been suspended due to public health concerns, such as in-person visitation, require such administrators and service providers to ensure reasonable modifications to enable remote alternatives, such as no-cost video and telephone visitation.

6. Require insurers to cover telehealth visits for all kinds of medical care, including phone calls. In providing telehealth for patient and resident visits, ensure equity by providing access to the appropriate equipment and training in the use of telehealth by the patient or participant in all settings, including community residential settings.

7. Prioritize the direct support workforce and people with chronic conditions for access to COVID-19 testing, especially those who reside or receive services in an institution or institution-like environment.

8. Make preventative and protective measures, such as hand sanitizer, freely and widely available, in all congregate, institutional, and the institution-like settings.

9. Assure immigrants, whether documented or not, that they may access testing, care, and other public services without fear of immigration consequences.

10. Deploy the national guard and military personnel to expand testing and hospital capacity by turning empty college dorms and other unused facilities into makeshift hospitals, as may become necessary.

**Criminal and Juvenile Justice**

1. Call on local government to reduce county jail and juvenile detention populations by suspending the pre-trial or pre-disposition detention of people arrested for non-violent offenses, releasing early (at least on furlough) all those convicted of nonviolent offenses, and releasing outright all those scheduled for release within the next 60 days.
2. Call on the Department of Corrections (UDC) and local government to adopt **improved screening and precautions** in all state and county correctional facilities for COVID-19.

3. Direct the UDC and all county sheriffs to **release or parole prisoners and detainees who are over age 60 or have disabilities and others at elevated risk** from jail, prison, and juvenile facilities, including by informing them of the means to request parole.

4. Direct County Sheriffs and municipal law enforcement to **bypass jail admission in all possible cases**, particularly when responding to non-violent allegations.

5. **Prohibit the use of solitary confinement as a means of social distancing.**

6. Direct the Utah State Hospital to **prioritize the mental health needs of its patients** over calls for social distancing.

7. Urge private youth residential treatment facilities to **return any residents at elevated risk to their homes** or guardians wherever possible and to enact policies allowing for social distancing and routine cleaning/disinfection.

8. Urge the Chief Justice and the Administrative Office of the Courts (AOC) to make emergency **modifications to state court procedures** in order to extend timelines, permit easy continuances, immediately recognize the legitimacy of electronic signatures, expand the use of telephonic/virtual appearances, and increase the public’s awareness and use of drop off boxes and self-scanned/emailed documents.

**Medicaid**

1. Dedicate more money to **public awareness, outreach, and enrollment assistance**.

2. Place **more eligibility workers** in community health centers, hospitals, and other locations.

3. **Maximize use of presumptive eligibility**, including hospital presumptive eligibility, through expansion of qualified entities, including the Department of Health (DOH), community health centers, and other community sites. Adopt presumptive eligibility for all eligible populations including children, pregnant women, and other adults. Develop a plan for follow-up to ensure eligibility of individuals beyond the presumptive eligibility period.

4. **Minimize verification of income** required from applicants by relying on self-attestation and electronic data sources to the maximum extent possible. Enroll people based on their self-attestation and follow up with verification requests only when the attestation is not compatible with electronic data sources. Assist applicants in providing any documents they need after exhausting attempts to verify citizenship or status through electronic verification.

5. **Take advantage of overlapping eligibility** for Supplemental Nutrition Assistance Program (SNAP) and Medicaid by using SNAP income data in determining and renewing Medicaid eligibility. Also implement express lane eligibility (ELE) for children, which allows states to rely on findings from other programs such as SNAP, school lunch and Temporary Assistance for Needy Families (TANF) in determining eligibility at application and renewal.

6. **Suspend periodic eligibility checks** during the year, including quarterly wage checks, or avoid acting on mid-year checks.
7. **Temporarily delay renewals** in affected areas under authority to exceed time limits in emergency situations.

8. **Maintain coverage** for people temporarily residing out of state due to the coronavirus.

9. **Fully implement continuous eligibility** for children through a state plan amendment (SPA) and adults through an 1115 waiver.

10. **Increase eligibility for existing populations** above current levels, at the state’s regular match rate, through a SPA.

11. **Decrease or eliminate asset limits** for Utahns with disabilities and those who are aging.

12. **Cease seeking or implementing premiums, work requirements, etc.** that make it harder for Utahns to enroll and stay enrolled.

13. Ensure all necessary treatment and preventive services, including vaccines, are covered for all adults without cost-sharing through a SPA. The option includes a 1% increase in the state’s match rate.

14. **Reduce limits** and allow 90-day supplies of maintenance medications, allow advance refills, and cover home delivery of prescription drugs.

15. **Suspend or automatically extend** prior authorization and utilization management controls.

16. **Add COVID-19--specific services** through selected CMS’ 1915 waiver template, a 1915(i) state plan option, or an 1115 waiver, e.g nutrition counseling, physical and mental health checks, and/or housing supports, etc).

17. **Expand optional benefits** and/or the amount, duration, and scope standard for mandatory and optional services.

18. **Open managed-care networks.**

**Housing**

1. Impose an emergency **moratorium on the filing of new evictions**, including a general order that all Utah state court judges issue an automatic “stay” of any in-process unlawful detainer actions. This should include the suspension of any normally accruing “treble damages” and attorney fees available under Utah’s unlawful detainer statute. Similarly, state-court supervised foreclosures or locally-administered terminations of housing subsidies should be suspended (including a statewide suspension on the issuance of writs of possession or execution).

2. Direct public utilities to **halt all shut-offs** and require them to restore services to all customers who currently lack water, electric, gas or other essential services.

3. Call on local government to **halt all homeless encampment sweeps**, set up hygiene stations at every encampment, and increase cleaning without seizing the possessions that people need to isolate in place.

4. Call on local government to **end all ticketing, arrests and vehicle impoundments of people living in vehicles** for vehicle habitation and related parking violations.
Food

1. Request permission from the federal government to suspend SNAP terminations and redeterminations, including all job search and work requirements.

2. Many Utahns with disabilities have difficulty cooking independently. Consequently, those who live alone may dine out frequently. While closing restaurants is an important public health measure, the state must ensure these individuals have means to access, prepare, and eat healthy meals.

Community Integration

1. Given the current shortage of providers for individuals with disabilities in Utah, dedicate sufficient resources to provide necessary supports for these individuals during the pandemic.

2. Support caregivers by allowing more respite/childcare under home and community-based support waivers for families experiencing staffing problems. Also, allow individuals to hire replacement providers without background checks, processing documents or verifying citizenship to eliminate any unnecessary delay. Additionally, suspend overtime limits so that available home care workers can fill unmet needs.

3. Allocate funding to community organizations such as Independent Living Centers and developmental disability service providers to establish or expand expedited recruitment processes for emergency back-up assistance.

4. Remove barriers, including those in purchase of service policies, that prevent the approval of respite, personal care services, and childcare – e.g. prohibitions on paying live-in family members or roommates as respite or personal care providers, etc.

5. Clarify operational protocols and offer mitigation/support for clients whose day provider is closed.

6. If an individual underutilizes services during the pandemic because of a temporary change in circumstance or need, it should not permanently reduce their budget.

7. Require the DOH, Adult Protective Services, and Department of Human Services, Office of Licensing to create an emergency plan, and establish standards for reporting concerns, especially beyond those identified in skilled nursing facilities, to at least the long-term care ombudsman and the P&A.

8. Direct DOH to apply to amend state plans, waivers, and contracts to ensure Utahns with disabilities can access necessary services immediately.

Public & Higher Education

1. Automatic extended school year (ESY) for all students with an Individualized Education Program (IEP). ESY needs to be specific to the needs of each student.

2. Continue IEP/504 services for students with a plan during school closure, regardless of flexibility given by federal government.

3. Plan for implementation of necessary compensatory services for students with an IEP who miss prolonged periods of instruction.

4. Develop accessible (e.g. captions, CART, screen readers, etc.) online learning resources to implement IEPs.
5. Ensure parents have access to most recent IEP and/or Behavior Intervention Plan to facilitate maximum communication and coordination with a student’s school team.

6. In addition to ensuring distance learning platforms are accessible, make sure all alerts from school districts and charter schools are available and understandable to parents and students.

7. Urge the Utah State Board of Education to facilitate a uniform response to parents throughout the state concerning IEPs.

8. Direct state - and urge private - universities, colleges, and technical schools to comply with their non-discrimination obligations under federal civil rights laws, including Section 504 of the Rehabilitation Act and Titles II and III of the ADA, including ensuring online learning is accessible and students with disabilities continue to receive appropriate accommodations.

**Employment**

1. Ensure unemployment benefit applications are accessible, e.g. by phone, web, in other languages and alternative formats, etc.

2. Direct the Department of Workforce Services to extend Unemployment and Disability Insurance benefits for additional weeks and suspend job search requirements. Call on President Trump to declare a federal disaster and extend Disaster Unemployment Assistance to all those affected, as other states and members of Congress have done.

3. Suspend the Temporary Assistance to Needy Families work activity requirement and place a moratorium on the 5-year lifetime maximum for the duration of the COVID-19 pandemic.

4. Make sure employers are allowing/considering reasonable accommodations, including the option to work-from-home or take extended leave for employees with chronic health conditions.

5. Consistent with H1N1 guidance from the Equal Employment Opportunity Commission, employers should provide similar accommodations in at-home settings to those needed in the office. For example, a chair or other piece of equipment purchased for the employee to complete their job duties should be provided in the home.

6. Ensure layoffs/hour reductions do not target or disproportionately impact employees with disabilities.

7. Ensure results of any necessary health screening are kept private - and separate from an employee’s regular file.

8. Ensure local Social Security office phone line/online portals are accessible, as many Utahns with disabilities may have difficulty navigating these systems without in-person support.

9. Cease overpayment notice and collection for the duration of the pandemic.
Transportation

1. Buses and trains are the only means of transportation for many Utahns with disabilities. While social distancing is incredibly important, so too is the vital need to maintain public transit so those dependent on it can meet their needs and fulfill their obligations.

If you have questions or would like more information, please do not hesitate to contact me. Thank you for your time and consideration of the above recommendations.

Sincerely,

Adina Zahradnikova
Executive Director