

April 17, 2020

Bill McBride
Executive Director
National Governors Association
444 North Capitol Street NW, Suite 267
Washington, DC 20001

Tim Storey
Executive Director
National Conference of State Legislatures
444 North Capitol Street NW, Suite 515
Washington, DC 20001

Dear Mr. McBride and Mr. Storey:

On behalf of the 37 million Americans with kidney disease and the health professionals who care for them, the American Society of Nephrology (ASN) and the National Kidney Foundation (NKF), thank you for your leadership in the face of the COVID-19 pandemic.

As COVID-19 continues to challenge the capacity of healthcare systems across the country, attention has been focused on the scarcity of ventilators to support the needs of patients and the possibility of rationing ventilators in the wake of a shortage. Guidance has been issued in healthcare settings to determine allocation of scarce resources through a variety of validated medical ethics decision-making frameworks, including a fair chance system, estimates of short-term survival, estimates of long-term survival, and age.¹

However, in preparation for a shortage of ventilators in the fight against COVID-19 some health systems and state governments are considering crisis-management policies that would deprive certain categories of patients – including Americans with kidney failure – of life-saving interventions such as ventilation. While ASN and NKF recognize that the COVID-19 pandemic has created unprecedented circumstances, our organizations are deeply troubled that health systems and state governments are considering policies that would arbitrarily deny any American treatment due to a pre-existing health condition or disability. ASN and NKF urge your members to ensure that their states, and the healthcare systems within their states, do not tolerate this type discrimination.

Currently, more than 500,000 Americans rely on dialysis to replace their kidney function. For many patients, dialysis is a temporary treatment as they await a kidney transplant. Thanks to the miracles of dialysis and transplant, kidney failure is not a terminal condition and should not be treated as such. Every American with kidney disease is a unique individual whose health requires a thoughtful and individualized care plan, particularly those who are also affected with COVID-19.

A one-size-fits-all category that denies care to all patients with kidney failure is short-sighted, arbitrary, unethical, and discriminatory. Blanket policies that categorically restrict the access of kidney patients, and other vulnerable populations, to critical care are scientifically unfounded

¹ White, DB and Lo, B, "A framework for rationing ventilators and critical care beds during the COVID-19 pandemic." *JAMA* 2020. Published online March 27, 2020.


and inappropriately interfere with the trusted patient-physician relationship as well as disregard basic principles of medical ethics. Such policies could deny care to entire categories of individuals who can recover from COVID-19 and go on to live long, productive lives. ASN and NKF note that our organizations' position is consistent with the position of the Office for Civil Rights at the U.S Department of Health and Human Services (HHS). HHS is taking enforcement actions against states that have discriminatory ventilator rationing guidelines.²

ASN and NKF are advocating for efforts to accelerate the manufacture and distribution of critical medical supplies, including ventilators. However, as health systems find themselves without adequate supplies, we ask that you ensure your state and local hospital systems to develop decision-making protocols that treat each patient as an individual and determine treatment plans that reflect each patient's unique medical circumstances. Unilateral guidance should never outweigh sound, individualized medical judgment.

ASN and NKF appreciate your attention to this issue, and we urge you to take these additional steps to protect our most vulnerable citizens. More than 37 million Americans depend on your action concerning this important issue.

Thank you. If the kidney community can assist in any way, please contact ASN at rmeyer@asn-online.org or NKF at miriam.godwin@kidney.org.

Sincerely,



Holly J. Mattix-Kramer, MD, MPH
President
National Kidney Foundation



Anupam Agarwal, MD, FASN
President
American Society of Nephrology

² <https://www.hhs.gov/about/news/2020/04/08/ocr-reaches-early-case-resolution-alabama-after-it-removes-discriminatory-ventilator-triaging.html>