



April 8, 2020

Via E-mail

Mr. Mayor Carlos A. Giménez
mayor@miamidade.gov
Stephen P. Clark Center
111 NW 1st Street,
29th Floor
Miami, FL 33128

Ms. Abigail Price-Williams
apw1@miamidade.gov
County Attorney
111 NW 1st Street; Suite 2810
Miami, Florida 33128-1930

Re: Accessible Mobile COVID-19 Testing for Persons with Disabilities

Dear Mayor Giménez and Ms. Price-Williams,

This letter is on behalf of individuals with disabilities who cannot travel to drive thru COVID-19 testing sites and wait in lines. For the reasons detailed below, Disability Rights Florida (DRF) and Disability Independence Group DIG are requesting accessible mobile COVID-19 testing for persons with disabilities who cannot travel to and access the drive thru centers with the same ability as persons who do not have disabilities.

DRF is the designated protection and advocacy system for individuals with disabilities. 42 U.S.C. § 15043. DIG is a non-profit organization whose mission includes expanding opportunities for individuals with disabilities. DRF and DIG advocate for public health response plans that are accessible for persons with disabilities. Collectively, we have analyzed and reviewed Miami-Dade County's drive thru COVID-19 testing procedures. Considering our review, we have determined that Miami-Dade County's significant reliance on drive thru testing violates Title II of the American's with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act. The failure to ensure that a mobile COVID-19 testing program is available to persons with disabilities constitutes discrimination under the ADA and Section 504 of the Rehabilitation Act. Even during a crisis, Miami-Dade County must ensure implementation and compliance with both the Rehabilitation Act and the ADA, which prohibit discrimination on the grounds of disability.

Miami-Dade County's drive thru COVID-19 testing program fails to provide testing for individuals with disabilities who cannot travel to testing sites and wait in lines. Some people with disabilities might be at higher risk of infection or severe illness because of their underlying health issues. Individuals with underlying health conditions are at higher risk of infection or severe illness from COVID-19. Many individuals with disabilities may not have access to non-emergency transportation to allow them to travel in person to a testing site. Further, many individuals with disabilities have complex self-care needs or require assistance with their activities and instruments of daily living which prevents them from travel or waiting in long lines. These and other issues are preventing individuals with disabilities from accessing a drive thru testing site. Miami-Dade County has failed to put modifications in place to reasonably accommodate qualified individuals with disabilities from the opportunity to participate in COVID-19 testing. Miami-Dade County's exclusion of individuals with disabilities from testing constitutes discrimination based on disability, in the design, approval and implementation and administration of COVID-19 testing.

The County's COVID-19 testing policies are contrary to recent guidance from the Office of Civil Rights at the U.S. Department of Health and Human Services (HHS) regarding the rationing of health care to persons with disabilities. On March 28, 2020, the HHS issued a Bulletin entitled "Civil Rights, HIPAA, and the Coronavirus Disease 2019 (COVID-19)," which prohibits methods of rationing that discriminate against persons with disabilities. "HHS is committed to leaving no one behind during an emergency, and this guidance is designed to help health care providers meet that goal...Persons with disabilities...should not be put at the end of the line for health services during emergencies. Our civil rights laws protect the equal dignity of every human life from ruthless utilitarianism." As part of the guidance, HHS stated that "government officials, health care providers, and covered entities should not overlook their obligations under federal civil rights laws to help ensure all segments of the community are served."

Individuals with disabilities are entitled to accessible COVID-19 testing. This includes mobile testing for persons with disabilities who cannot go to the drive thru testing centers with the same availability as those who do not have disabilities. It is incumbent on local government to provide meaningful access to COVID-19 testing for individuals with disabilities.

To facilitate the resolution of this issue without a resort to litigation and to more quickly address the immediate needs of individuals with disabilities in Miami-Dade County, we recommend the County take immediate action to enhance its capacity for mobile COVID-19 testing. Specifically, Miami-Dade County must take following immediate actions:

- Issue a directive that individuals with disabilities who are unable to travel to COVID-19 testing sites will be provided with COVID-19 testing.

- Expand COVID-19 testing capacity to meet the needs of individuals with disabilities.
- Implement policies and procedures to ensure that persons with disabilities have equal opportunity to access COVID-19 testing.
- Coordinate COVID-19 testing directives, policies and procedures so that persons with disabilities have access to COVID-19 testing.
- Ensure effective communication and accessibility to individuals with disabilities that is just as effective as communication with persons who are not disabled.

Individuals with disabilities rely upon the fair and just application of the ADA and the Rehabilitation Act to remain free from discrimination. We are interested in discussing immediate actions that the County must take to implement this commitment and to remedy the violation of federal law. Finally, DRF and DIG request that Miami Dade's testing policies are remedied, and that Miami-Dade County provide a reasonable accommodation to individuals with disabilities. For this purpose, we ask that you respond to this letter by Monday, April 13, 2020. Please contact me at jenniferh@disabilityrightsflorida.org or peters@disabilityrightsflorida.org.

Thank you for your attention.

/s/ Jennifer T. Harley

Jennifer T. Harley
Director of Systems Reform
Disability Rights Florida

/s/ Peter Sleasman

Peter Sleasman
Interim Executive Director
Disability Rights Florida
peters@disabilityrightsflorida.org

and

/s/ Matthew Deitz

Matthew W. Deitz
Litigation Director
Disability Independence Group, Inc.
mdietz@justdigit.org

cc: (Via E-mail)

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