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Expanding Opportunities for Persons with Disabilities

January 21, 2021

Email - OCRComplaint@hhs.gov

Centralized Case Management Operations
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Room 509F HHH Bldg.
Washington, D.C. 20201

Re: Failure to Provide Access to Covid-19 Vaccine Program to Persons with Disabilities in Florida

To whom this may concern:

The undersigned wishes to file a complaint against the State of Florida Department of Health as well as Broward County for the failure to provide access to the COVID-19 program for individuals with disabilities who may need accommodations.

As of December 23, 2020, the Vaccine Priority Groups are the following:

- Health care personnel with direct patient contact
- Long-term care facility residents and staff
- Persons 65 years of age and older
- Persons deemed extremely vulnerable to COVID-19 by hospital providers

The Department of Health's current vaccine distribution plan had vaccines were sent to the county department of health to distribute to hospitals and long-term care facilities. In addition, vaccines are going to be sent to Publix supermarkets and Walgreens or CVS pharmacies. The State of Florida are in the process of vaccinating individuals at 4,000 long term care facilities. Out of the over four million persons over 65 in Florida, only 70,000 reside in skilled nursing facilities. Currently, there are lines of persons over 65 in front of testing centers, even when persons get appointments.

There are no procedures for persons with disabilities, apart from everyone else, to get assistance or accommodation for any part of the vaccination process.

The State of Florida as well as each county have not provided any procedures or methods to provide accommodations for persons with disabilities to provide vaccinations and are providing no accommodations to persons with disabilities.

The issue is not new for the state of Florida as well as South Florida counties, and the same issue occurred with the roll-out of accommodations for testing in March and April of last year. In March and April, Disability Rights Florida and Disability Independence Group advocated to get accommodations in testing in South Florida (Miami, Broward, Palm Beach) in which each of the counties agreed to provide in-home testing to persons with disabilities who could not go to the centralized testing areas. After three months of advocating and threatening with litigation, Miami-Dade, Broward, and Palm Beach Counties implemented testing-at-home regimens for persons who would like to be tested but could not go to testing areas because of a disability.

However, the state of Florida and the individual counties are well aware of their obligation to provide accommodations for persons who need vaccines.

The accommodations needed are basic, and most are less than the accommodations previously provided for the testing program:

- a. Provide a method to request an accommodation, including an email and phone number.
- b. Provide information in a format other than internet based.
- c. Accommodation 1: Provide a fast-pass method to get a vaccine where the line is shorter, or it is appointment only.
- d. Accommodation 2: Provide a method where a person who is immunocompromised can obtain a vaccine and without waiting in line or going into a hospital or vaccination center (in car or outdoor vaccination)
- e. Accommodation 3: Contract with STS (Paratransit) or Uber/Lyft to deliver a person and wait for a person while they get vaccinated and wait for a reaction and deliver them home.
- f. Accommodation 4: Provide in-home vaccinations.

Furthermore, the accommodations provided for the November general elections by voting advocacy groups and communities were to have paratransit, Uber or Lyft drive a person to the polls, the person would be expedited at the polls to vote, and the driver would deliver them home.

County's responses to accommodation requests:

On January 5, 2021, I was called by Help Me Howard, which is a legal help segment on WSVN-7. Georgia Rogers is a 95-year-old woman from Lauderhill who is immunocompromised, has edema in her ankles and has other issues that makes it difficult to sit or stand for an extended period of time. She can not stand or wait to be vaccinated and wanted her son to be able to bring her to a vaccination point to be given the vaccine, wait for the time for adverse reaction and be taken home. Because there are no formal methods to request accommodations for any of the COVID-19 vaccination procedures. The first response after consulting the county commission was as follows:

Notwithstanding that this is a State run vaccination program, Broward County has an interest in ensuring that all its residents, especially its vulnerable and disabled residents are protected. To that end we are currently in discussions with the Florida Department of Health to provide additional avenues for disabled individuals over the age of 65 to be vaccinated, including that Broward County will establish a method/location solely for disabled residents over the age of 65. As the discussions progress, we will be able to provide you with a more detailed explanation.

I responded, "Providing a location to serve persons with disabilities at some time in the future is plainly inadequate and violates the ADA and Section 504." After the County Commission meeting, the response was as follows:

I am not sure if you heard the Board's discussion yesterday, but the County is still in discussions with the state to try and assist them with their vaccination program. At this time, the County does not have possession or control over a single dose of the vaccine, nor does the County have the ability to control appointments, schedule appointments, or the order of who is vaccinated and when. The County will continue its discussions with the Florida Department of Health to provide additional avenues for disabled individuals over the age of 65 to be vaccinated.

Apparently, this is the same position that Broward initially had with regards to testing, until they decided to provide in-home testing.

At the same time, I contacted Miami-Dade County to see what their procedures were to administer COVID-19 Vaccines. According to the Director of Emergency Operations of Miami-Dade Fire Department:

1. All appointments for vaccines are a specified time and date, so the person would go in and out of the facility.
2. For those who are on the county's list for hurricane shelters, they are being called to see if they need their vaccines administered at home.
3. Miami-Dade County will be publishing a website with more information at some time in the future (which I have not seen)
4. City of Miami Beach is providing vaccinations at home but not publicizing the program due to the limited quantities of vaccine.

There has been no outreach at all regarding vaccinations or accommodations to persons with disabilities, and I am not sure about the effectiveness of these programs.

In addition, vaccine distribution at pharmacies in Publix Supermarkets, Walgreens and CVS do not benefit either the community of persons with disabilities or provide accommodations. Instead, they are less convenient than community-based social service centers. Most of these establishments are in wealthier communities, have no provision for waiting or isolation for those who have immunodeficiencies, transportation or expedited services for persons who cannot wait in line.

Since the report, the following persons have communicated with me regarding their inability to get a vaccination -

R.W. – 86 years old and lives in Boynton Beach Florida (Palm Beach). She had a knee and hip replacement and cannot stand or wait in lines. She is willing to take an Uber or other method to get to the site but would not like to wait in line. She called and emailed many times to get a vaccine and she is advised that all vaccines have been distributed.

G. M. and his wife A.M. - They are both 83 and live in Miami-Dade. G.M. is low vision and cannot drive, and his wife is in cognitive decline. They cannot travel and have not been able to make an appointment. I gave the Miami-Dade authority his information hoping that they would put him on their list with those who are otherwise on their contact list.

G. B. – G. is in her 70's and from Miami-Dade, has lung disease and immunocompromised, and cannot get an appointment to get a vaccine and is concerned about going to a vaccination center.

J.N. – Her 98-year-old aunt cannot get a vaccine.

Georgia Rogers – she was the person on the WSVN report. After seeing the segment, the City of Doral (Miami-Dade) provided her with the vaccine in their facility.

C. P. – 91 years old and lives in Miami-Dade - Disability – Physical and Autoimmune Disease (she uses walker/wheelchair, can't walk or stand for too long, and doesn't drive)

E. S. – 94 Years old and lives in Miami Dade - she uses walker, can't walk or stand for too long, and doesn't drive.

M. M. – She is 88 years old and lives alone in Miami. She cannot stand in line because of back pain.

E. F. – She is 82, lives alone and She suffers from Diabetes and Asthma and is recovering from back surgery and walks with a walker. She lives in Delray Beach and she is not able to get the vaccine.

Thank you for your attention to this matter and we look forward to hearing from you.

Very Truly Yours,

s/ Matthew W. Dietz

Matthew W. Dietz, Esq.

MWD/ym