



## Protecting and Promoting the Rights of Kentuckians with Disabilities

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December 14, 2020

VIA US FIRST CLASS MAIL AND EMAIL

Governor Andy Beshear  
Governor of Kentucky  
700 Capitol Avenue, Suite 100  
Frankfort, Kentucky 40601

Dr. Steven J. Stack, MD, MBA, FACEP  
Commissioner, Department for Public Health  
Cabinet for Health and Family Services  
275 E. Main Street  
Frankfort, Kentucky 40621

Eric Friedlander  
Secretary, Cabinet for Health and  
Family Services  
Cabinet for Health and Family Services  
275 E. Main Street, 5W-A  
Frankfort, Kentucky 40621

RE: COVID-19 Vaccination Plan

Dear Gov. Beshear, Secretary Friedlander, and Dr. Stack:

Kentucky Protection & Advocacy (P&A) greatly appreciates the efforts you and the administration have taken to keep Kentuckians safe during the pandemic and your efforts to fully include individuals with disabilities thus far. While Kentucky is in the midst of another wave of infection, we are heartened by news that the Pfizer COVID-19 has been issued an emergency use authorization and release is now occurring, and that the Moderna vaccine will likely be approved and released just a few weeks later. We write to ensure Kentucky continues your legacy of protecting Kentucky's most vulnerable citizens through vaccine prioritization.

Kentucky's Draft COVID-19 Vaccination Plan (Draft Plan), released by the Kentucky Department of Public Health (KDPH) in October 2020, details the state plan for achieving the goal of vaccinating all Kentuckians who wish to be vaccinated. Draft Plan, p. 2. The Draft Plan notes that "as additional information and guidance are available, *including through stakeholder engagement*, [it] will evolve and be updated to meet the needs of all Kentuckians." *Id.* (Emphasis added). The Draft Plan adopts the National Academies of Sciences, Engineering, and Medicine's Committee on Equitable Allocation of Vaccine for the Novel Coronavirus' *Framework for Equitable Allocation of COVID-19 Vaccine*, which sets forth a preliminary framework for vaccine distribution. The KDPH identifies "candidate groups that will be given serious consideration as priority groups", but stops short of making specific recommendations. Draft Plan, p. 48.

P&A is a federally mandated program that receives funding from the U.S. Department of Health and Human Services, the U.S. Department of Education and the Social Security Administration.

We are not aware of any engagement thus far with any stakeholder groups which included persons with disabilities, their family members, associations, or representative groups, despite the statement in the Draft Plan on page 7 that the KDPH would tap into the Kentucky Health and Medical Preparedness Committee (HMPAC) whose membership allegedly includes “individuals with disabilities and others with access and functional needs.” We believe the voices of individuals with disabilities must be heard where, as here, they are disproportionately affected and prioritization decisions will have life and death consequences.

We write to request that your administration continue to affirm the value of individuals with disabilities by including those individuals more directly in the continued work on Kentucky’s allocation plan as well as solidifying the DPH’s priority groups and specifying the order of priority. We were copied on the Kentucky Association of Private Providers’ (KAPP) December 1, 2020 letter to you and KDPH Commissioner Dr. Steven Stack. We agree with and adopt the reasoning set forth in that document regarding the priority groups and their recommendations. We believe that these recommendations are within the Draft Plan’s prioritization of “Medically Vulnerable Population” to receive vaccinations during Phase 1a.

We write to ensure that the “Medically Vulnerable Population”, currently identified in Kentucky’s Draft Plan to receive the vaccination during Phase 1a, is defined broadly to include all individuals who, by virtue of a medical condition, are at an increased risk of morbidity and mortality and who are living in a congregate care setting. Defining this term broadly would result in prioritizing not only individuals with Intellectual Disabilities and Developmental Disabilities (ID/DD), but also those with Severe Mental Illness (SMI) living in Long-Term Care Facilities and other types of congregate care.

As the KAPP letter noted in its December 1, 2020 letter, persons with developmental disorders have the highest odds of dying from COVID-19 and they are three times more likely to die if they contract COVID-19.<sup>1</sup> In comparing 15 comorbidity risk factors for COVID-19 mortality across age groups—including lung cancer, leukemia, Alzheimer’s disease, and heart failure—individuals with developmental disabilities are most likely to die from COVID-19.<sup>2</sup> Intellectual disabilities presented the third highest mortality rate, with only a slightly lower odds ratio than for lung cancer.<sup>3</sup> This increased mortality rate is

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<sup>1</sup> Kentucky Association of Private Providers, December 1, 2020 Letter to Governor Beshear and Dr. Stack, p.1.

<sup>2</sup> White Paper on Risk Factors for COVID-19 Mortality in Private Insurance Claims, <https://s3.amazonaws.com/media2.fairhealth.org/whitepaper/asset/Risk%20Factors%20for%20COVID-19%20Mortality%20among%20Privately%20Insured%20Patients%20-%20A%20Claims%20Data%20Analysis%20-%20A%20FAIR%20Health%20White%20Paper.pdf>, p. 11.

<sup>3</sup> *Id.*

consistent with other studies that have found a COVID-19 related mortality rate of 12.3% for adults with ID/DD versus a 6.7% mortality rate for the general public.<sup>4</sup>

Less attention, and less research, has been focused on COVID-19 morbidity and mortality rates for individuals who are severely mentally ill. The national Institute of Mental Health defines Serious Mental Illness (SMI) as a mental, behavioral, or emotional disorder resulting in serious functional impairment, which substantially interferes with or limits one or more major life activities.<sup>5</sup> Like individuals with ID/DD, individuals with SMI are at a significantly increased risk of both COVID-19 morbidity and mortality.<sup>6</sup> Individuals diagnosed with a mental health condition have a “highly significant” risk of infection even after adjusting for accompanying medical comorbidities.<sup>7</sup> Like individuals with ID/DD, individuals with SMI not only have an increased risk of contracting COVID-19, but they also suffer more severe complications from SMI and die at higher rates.<sup>8</sup> COVID-19 patients who had a mental health disorder had a hospitalization rate of 27.4% (compared to 18.6% among COVID-19 patients with no mental disorder,  $p < 0.001$ ) and a death rate of 8.5% compared to 4.7% for patients without the relevant comorbidity.<sup>9</sup>

As with individuals with ID/DD, individuals with SMI experience cognitive, social, economic, and behavioral factors that may impair understanding of or compliance with mitigation efforts and infection control measures.<sup>10</sup> These same factors also lead to significant numbers of individuals with SMI to also live in congregate care settings and to rely on caregivers to meet their daily living needs.<sup>11</sup> For example, freestanding personal-care homes (PCH) that are currently the focus of the Second Amended Settlement Agreement between P&A and the Cabinet, have a majority of residents with SMI. This is borne out by the most recent Annual Kentucky Long Term Care Utilization and Service Report.<sup>12</sup> These individuals’ SMI diagnosis and residence in congregate

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<sup>4</sup> Kentucky Association of Private Providers, December 1, 2020 Letter to Governor Beshear and Dr. Stack, p. 2, *citing* Spreat, Sco, Ryan Cox, and Mark Davis. “COVID-19 Case and Mortality Report” Egnyte. Temple University College of Education and Human Development, 2020.

<https://paroncloud.egnyte.com/dl/edOc3AcjMq/>, visited December 14, 2020.

<sup>5</sup> National Institute of Mental Health, Mental Illness, [https://www.nimh.nih.gov/health/statistics/mental-illness.shtml#:~:text=Serious%20mental%20illness%20\(SMI\)%20is,or%20more%20major%20life%20activities](https://www.nimh.nih.gov/health/statistics/mental-illness.shtml#:~:text=Serious%20mental%20illness%20(SMI)%20is,or%20more%20major%20life%20activities), visited December 7, 2020.

<sup>6</sup> QuanQui Wang, Rong Xu, and Nora D. Volkow, Increased risk of COVID-19 infection and mortality in people with mental disorders: analysis from electronic health records in the United States., <https://onlinelibrary.wiley.com/doi/epdf/10.1002/wps.20806>, visited December 7, 2020.

<sup>7</sup> *Id.* at 2-3.

<sup>8</sup> *Id.* at 4 and 5.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> <https://chfs.ky.gov/agencies/ohda/surveyreports/2019LongTermCareReport.pdf> Table 2A, “Personal Care Bed Resident Census by CMHC Region and Percent of SMI”, provides information on all of Kentucky’s PCHs; within that data is the subset of Freestanding PCHs that are the focus of the Second Amended Settlement Agreement.

care settings place them at a high risk of contracting and suffering severe complications from COVID-19.

Phase 1a of Kentucky's Draft Plan includes the category "Medically Vulnerable Population" and the Targeted Group/Priority Group of "Vulnerable congregate care setting resident" with the Rationale of "People at greatest risk of becoming infected and seriously ill." Draft Plan, page 48. The date cited above show that included in that group are residents of nursing facilities (NF),<sup>13</sup> Immediate Care facilities for individuals with intellectual disabilities (ICF/IID), and PCHs as the majority of residents there have ID/DD or SMI. All of those congregate settings should be included in Phase 1a.

The Draft Plan also includes in Phase 1a "Long Term Care and Assisted Living Facilities workers"; we assume this would include staff in all NFs, ICFs/IID and PCHs.

Also, we urge you to not forget those individuals living in Supports for Community Living waiver residential homes (SCL homes) as well as state-owned or operated psychiatric hospitals, not explicitly identified under the statutory definition of Long Term Care facilities. There has been a recent alarming trend in SCL homes with the number of deaths increasing over 100% in the last ten days. The KAPP letter urges inclusion of these community-based congregate settings, both residents and staff, in Phase 1a; we do as well.

In conclusion, we are asking you to ensure the following:

1. Persons with disabilities, their family members, associations, and representative groups be added to the Kentucky Health and Medical Preparedness Committee (HMPAC);
2. Individuals residing in and staff working at NFs, ICFs/IID and PCHs be included in Phase 1a of Kentucky's COVID-19 Vaccination Plan;
3. Individuals residing in and staff working at SCL residential homes be included in Phase 1a; and
4. Disability status be tracked in data regarding COVID-19 infections rates and deaths.

Due to the urgency of this matter, please let us hear from you by December 31, 2020.

Respectfully,

  
Jeff Edwards  
Director

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<sup>13</sup> NFs should include the Home of the Innocents Pediatric Convalescent Care Center, Rockcastle Regional Respiratory Care Center, and any other nursing facility that provides care to children and youth; while no vaccines are pending approval for that age group, staff at those facilities should be included in Phase 1a.

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