

FEMA and HHS Civil Rights Stakeholder Call Summary – COVID

I. Transcript (Corrected)

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[Captioner on standby waiting for event to begin. If there has been a change, please contact Vitac at 800-590-4197 or cc@captionedtext.com. Thank you] [Captioner on standby waiting for event to begin. If there has been a change, please contact Vitac at 800-590-4197 or cc@captionedtext.com. Thank you]

Jo Linda Johnson, FEMA OER: Good afternoon, everyone. We have two minutes before we get started. Thank you for joining us. Good afternoon, everyone. Welcome to the FEMA HHS stakeholder call to discuss civil rights issues around COVID-19. Today is April 16th, we greatly appreciate you joining us. My name is Jo Linda Johnson, I am the director of the Office of Equal Rights and I want to welcome you. Joined together with me today on the call, I have individuals from other FEMA offices to include Linda Mastandrea from the Office of Disability, Integration and Coordination, Stephanie Fell from OER, and Zachary Usher from the Mass Care program within FEMA. Additionally, our partners at HHS are joining us on the call and we appreciate it. We have Roger Severino from the Office for Civil Rights as well as his Deputy, Robinsue Frohboese.

Welcome to everyone and we will go ahead and get started. I want to just give an overview of why we are having the call and talk about the agenda and expectations for the call, as well as our path forward. First, why we are having this call? We are in a time of great difficulty in the country dealing with the COVID-19 outbreak. Every community around the country, every state, every locality, and each of you are dealing with it in your own way. This has raised lots of issues surrounding civil rights and FEMA and HHS want to make sure that we are being responsive to the concerns that have come up, and being as proactive as we can to address any future concerns. It is critical that the whole community has access to the information, programs and services during this time, and that's part of the reason why we are having this call to help facilitate that.

FEMA, for those of you who don't know, we operate with a set of core values. Our core values are compassion, fairness, integrity and respect. That is woven through everything we do. We are approaching our responsibilities with those core values in mind. Civil rights laws remain in effect when we are responding to emergencies and providing disaster relief assistance. Civil right laws remain in effect for our state, local tribal and territory (SLTT) partners. We have done some things to share expectations with them and we will talk about that as we go through. FEMA and other federal partners are working to ensure civil rights are being respected during COVID-19 response.

We are working with program offices, coordinating with all our federal partners and chief among those is HHS. FEMA also have civil rights advisors (CRADs) who have been deployed to our 10 regions, to address issues that come up in the field. We are also providing as much public education through community and stakeholder outreach, to spread information effectively. With that, I want to give you a brief agenda for the call; we have four speakers who have joined us to respond to the questions we received. We were pleased at the number

of questions we got: over 70 questions were received. Some of them overlapped one another. Thank you for the questions, thank you for your input and please keep them coming, we look forward to your feedback after the call and we look forward to additional questions that we can maybe answer in a future call. We value the input of our stakeholders.

The structure of our time together today will be first having speakers give you a brief welcome as well as outline their roles and responsibilities, and exactly what issues are coming up in their realm that they want to talk about. We will go through the questions. We have framed the questions into broad categories, as I said we received over 70 questions. They fall into roughly nine big areas, and I will outline what those areas are shortly. At the end, we will talk about our next steps. Because we only have an hour together, we won't have an opportunity to have back and forth with participants. We have quite a few folks on the line. As we published in the notice, there were 500 lines available. I believe all 500 have been taken so that means we have a fantastically large crowd, and we are glad to have it. This size on a phone call makes communication with individual attendees difficult. So, we will look to figure out new and better ways to interact with our stakeholders as we go forward with additional calls. On this call, we will share information and answer questions that we received. With that, I want to turn it over to our partners at HHS first to offer their own introduction to you about what OCR is working on.

Roger Severino, HHS OCR: Thank you, I want to start with a personal story and how this has impacted me. I have a sister on the front lines who is an ER nurse and two parents approaching 80 with underlying health conditions. An in law who is a polio survivor who was close to death and on oxygen days ago due to COVID-19 and thank God looks to have turned the corner. My story is a microcosm of what's going on to rule the country. This has impacted so many people. In similar ways. The point I have been trying to make as head of the Office for Civil Rights at HHS, is that this is no time for us to forget our foundational values that every life is precious. Regardless of age or disability or other protected status. That point has to be reiterated, especially on the questions of crisis standards of care or triaging. So far, we have not reached a point where we have had to triage things like ventilators. The governor of New York has said they will send ventilators to other states; so hopefully, it will not have to be put in place. However, we have to prepare for the worst and the most pressing issue we have had to deal with in my office is making sure that if it ever comes to it, people with disabilities, are treated as equal and protected, and that they and older Americans, will not be put at the end of the line in life and death decisions. It would not be fair to the medical professionals, to not have proper guidance and especially for the patients who would be potentially denied care for discriminatory reasons. On March 28th we put out a bulletin that laid out our principles, first being medical decision-making should not be based on stereotypes about disability or age, or on quality of life judgments that value some lives more worthy of care than others. We should not be guided by a utilitarian calculus but one that is steeped in ethics guided by civil right laws that ensure vulnerable populations are protected when they are needed most. And any decision with respect to resource allocation must be based on relevant objective medical evidence. We have taken actions quickly after we issued the bulletin, first with the state of Alabama. Their crisis standard of care used an exclusion criteria that took into account "profound mental retardation." That is pretty blatant. Thankfully, they took the policy down and made sure older Americans as well would not be subject to discrimination and exclusion from life-

saving care. We announced that resolution within days of starting the investigation and just today, we announced another resolution with the state of Pennsylvania where they had taken into account things like long-term survivability and called out specific disabilities with respect to that question. That is opening the door for disability discrimination in treatment, because it opens the door for stereotypes to come into play. We recommend states have crisis standards of care because putting first responders or triage teams in a position of making a snap judgment without guidance opens the door to bias but those guidelines must be within the bounds of the law. We are pleased so far with the results we have achieved with states. We have looked at guidance from the state of New York, which is sensitive to civil rights concerns, which thankfully has not had to be put in effect and they are not rationing care. If you move beyond the immediate crisis standards of care, we are concerned about limited English proficiency and access to persons who are deaf and hard of hearing, as well. As well as physical impairments, to make sure they get the care they need. We had an urgent case of a hospital that was short on qualified translators. Apparently, they were not able to use language translations lines and they said “we have medical students who are bilingual, who know medicine and are fluent, can we use them?” and we said yes. Under the circumstances, they don't need to be certified to meet the qualifications so we are using every flexibility to make sure no one is left behind. My parents are Colombian, I speak Spanish to them and I know what it's like when I've had to translate for my parents for medical care, and this is no time to forget non-English speakers when they are entitled to access just like everyone else. We also enforce HIPAA and have provided additional flexibility for telehealth so people with mobility impairments or for some reason cannot leave the house, can receive telehealth, telemedicine wherever they are. We are talking about things like religious accommodations so people can have access to clergy on their deathbeds, which underscores the need to focus on our common humanity during this crisis and making sure all civil rights laws are enforced.

Johnson: Thank you for that, I couldn't agree more. I want to underscore that it is imperative in emergencies that we do look for the common ground of our shared humanity more than we look for differences. Thank you for that. Next up, I would like to give Linda Mastandrea an opportunity to address the group.

Linda Mastandrea, FEMAODIC: Good afternoon, my name is Linda Mastandrea, and I am the Director of the Office of Disability Integration and Coordination within FEMA.

A. **Linda Mastandrea, FEMAODIC**

1. FEMA's role is helping people before, during and after disasters. ODIC has a part of that role—helping people with disabilities before, during and after disasters.

a) At Headquarters

Building capacity across program areas. Detailing disability subject matter experts to program areas to improve their knowledge, and to bring program specific knowledge back to ODIC. Providing technical assistance and advisory services to FEMA senior leadership to improve services to people with disabilities. Creating data driven decision making through

implementation of Disability Demographics and Program Utilization Report and other data tools. Staffing the Disability Integration Desk at the National Response Coordination Center to ensure information on the needs of people with disabilities are communicated from the ground to senior leadership.

b) In the Regions

There are ten Regional Disability Integration Specialists who engage with emergency managers, government agencies and NGOs to understand what the issues and concerns are around people with disabilities. They advise the Regional Administrator and regional leadership on those issues and conduct outreach with their state, local, tribal and territorial partners. During disasters, they staff their Regional Response Coordination Centers.

c) In the Field

Disability integration advisors staff disasters across the nation, providing senior field leadership with advice and counsel to facilitate integration of the needs of people with disabilities into response and recovery activities.

2. COVID Response

FEMA has disability integration advisors deployed to assist in the response to COVID. We are engaging in regular coordination calls with our Regional Disability Integration Specialists, sharing resources and information so that they are able to keep their stakeholders informed as well as gaining situational awareness from them, understanding what the issues, concerns and impacts are on people with disabilities in their states. We are staffing the NRCC to ensure the needs of people with disabilities are integrated into planning and implementation of the COVID programs and services, and we are coordinating with our federal interagency partners to share information and resources. We've developed fact sheets to inform stakeholders on the availability of public assistance dollars for accessible communications efforts, as well as some best practices on how to make information accessible to and available for everyone.

Zach Usher, FEMA, Branch Chief, Mass Care/VAL/Community Services, Individual Assistance Division: Good afternoon, my name is Zachary Usher, and I serve as the Branch Chief for Mass Care, Voluntary Agency Coordination, and Community Services in FEMA's Individual Assistance Division. Within the Branch, we provide program management for human services programs such as Crisis Counseling; Disaster Case Management; and FEMA's support to sheltering, feeding, and other mass care services.

Stephanie Fell, FEMA OER: Good afternoon, my name is Stephanie Fell and I work in FEMA's Office of Equal Rights, Civil Rights Unit with a focus on disability access and other external civil rights requirements in FEMA conducted, and FEMA funded programs.

II. Questions

A. **Johnson:** We categorized the questions received into the following

categories: health disparities, age discrimination, language access, and safe access for immigrants, disability access, public assistance eligibility, sex/gender identity/religion concerns, housing and shelters, and dispelling myths.

B. Health Disparities and Age

1. **Severino:** CDC has posted information based on demographics and race on coronavirus showing health disparities. It's a very real issue. African American, Latino, and Native American communities are being disproportionately impacted. Structural issues of our response and their relation to disparities need to be addressed, but this also highlights the need to address the underlying conditions causing these disparities. HHS has an Office of Minority Health for cultural competency, and CDC and NIH are on the statistical side. HHS OCR can act through complaints. Please know that it is the fastest way for us to get involved.

C. Age

1. **Severino:** Regarding Crisis Standards of Care. Age cutoffs are problematic. Under the Age Discrimination Act, age may be a factor under certain circumstances, but a categorical age cutoff is problematic. Alabama agreed not to use age in this way. Many older Americans are in lockdown and need services wherever they are without strict age cutoffs.

D. Language Access

1. **Johnson:** Many groups sent in questions on language access.

2. **Fell:** For language access, FEMA issued a [civil rights bulletin](#), which includes best practices on language access. Members of public can call 800-621-3362. FEMA can also translate into 12 languages, but this can be expanded to accommodate other languages. OER is also promoting language access among FEMA program offices and working with its website team to translate materials into these languages. Public can always file a complaint too.

3. **Severino:** OCR enforces Title VI and Section 1557 of the Affordable Care Act. Section 1557 lays out requirements for language access. Healthcare providers shouldn't rely on family as translators especially in medical situations. They should use qualified interpreters. OCR's regulation relaxes standards in certain situations –if resources are not available at that particular moment. If the system is overwhelmed, some translation is better than none. Providers should get ahead of the problem before it is a problem. Have language lines ready. Even consider FaceTime.

4. **Robinsue Frohboese, HHS OCR:** One of OCR's important functions is working with HHS partners and other federal agencies to provide technical

assistance. Including on LEP issues. CDC was the initial focal point on the COVID-19 response, and they made all of their information available in Spanish and Chinese at the outset. Since then, CDC has continued to translate information into other languages, and has made individual fact sheets and consumer information available in dozens of languages and is continuing to add languages. These translations are available at www.cdc.gov/pubs/other-languages and on the hhs.gov/OCR website. HHS OCR has passed on requests to CDC for additional languages, as it is an important focal point to make sure HHS is getting information out to various populations. The OCR call center is also hooked up to a language line and can accommodate any language: (1-800-368-1019, TTY: 1-800-537-7697). We also are in the process of translating OCR bulletins and guidance into Spanish.

E. National Origin

1. **Severino:** Discrimination based on immigration status/citizenship is handled by the Department of Justice. OCR's authority covers national origin, including stereotypes associated with national origin. There have been accounts of persons of Asian descent being treated differently or with extra suspicion.

2. **Johnson:** FEMA's civil rights bulletin can be found at www.fema.gov/coronavirus under best practices. The FEMA bulletin has a link to contact the Department of Justice and the Department of Homeland Security, Office for Civil Rights and Civil Liberties.

F. Disability Access

1. **Mastandrea:** We received questions centered around effective communication access and physical access. As questions are being raised in the community FEMA is passing information to relevant officials to create solutions. Examples in Alabama and Pennsylvania show how issues are being addressed after they were flagged by the community. Information from the local level is important to help raise up issues and create solutions. For example, testing sites being drive up only need to be accessible for people who don't drive, and transit systems restricting boarding busses through the rear door only, but some jurisdictions now allow persons with disabilities to board the bus at the front if needed. Additionally, we're hearing about policy changes being implemented in response to concerns being raised like at a hospital in Chicago who revised its policy of not allowing anyone in the room with a COVID patient to now reflect that if that individual has a personal care attendant or family member they need with them, that individual will be allowed in the room.

2. **Severino:** Good point about remote testing sites and people who can't drive. We need to be thoughtful about how we structure programs. Same with

HIPAA issues at remote sites. It requires thoughtfulness and public input is important. Hospitals aren't equipped to move patients from wheelchairs to beds. Hospitals need to be prepared. For example, being prepared to work with people with intellectual and development disabilities, having picture boards and sign language interpreters available, and being ready to treat immunosuppressed individuals such as HIV/AIDS. Basic legal standards remain. Reasonable modifications and reasonable accommodations remain. They may be impacted by the situation, but those standards remain to remove barriers that can be removed very easily such as planning for walk up access to mobile testing sites. This requires sensitivity.

3. **Johnson**: Is OCR planning on issuing more guidance?

4. **Severino** We are hopeful; the wheels of government are turning but can't promise anything. Religious accommodation is an issue too, including allowing access to religious clergy at a patient's last moments, and the Department of Justice has weighed in on the issue of targeting of religion for disfavor in litigation.

G. Sheltering

1. **Usher**: HUD role is important. HUD is a critical partner with FEMA with all disaster response and recovery, particularly with COVID response. FEMA is working with HUD on a daily basis, ensuring strong coordination between HHS, FEMA, and HUD regarding issues around homelessness and those precariously housed. A key collaboration area with HUD and HHS is the emergency food and shelter program, which is administered under the, McKinney-Vento Homeless Assistance Act, rather than the Stafford Act, which authorizes much of FEMA's disaster response and recovery activity. More funding was made available through a supplemental appropriation within the CARES act, and FEMA is working with HUD and other federal partners as the program funds are made available.

2. **Usher**: We received questions about the FEMA prioritization process regarding sheltering operations. I want to emphasize that FEMA, from a mass care perspective, supports state/local officials regarding their congregate and non-congregate sheltering decisions. Therefore, regarding the question of what does FEMA enforce or prioritize? FEMA does not administer shelters; these are local decisions. FEMA provides support and physical commodities if requested by our State, Territorial and Commonwealth partners. FEMA's support to sheltering follows the federally supported, state managed, and locally implemented model of emergency management. FEMA does not exercise operational control.

H. Rumors/Myths

1. **Johnson:** Rumors regarding photo IDs at community-based testing sites and individuals being denied testing in Florida if they don't have an ID. Many of the sites are limiting testing to health care officials and first responders only. Therefore, the requirement for an ID is to verify individuals are health care workers or first responders. No one has been denied. Other rumors have come up and we encourage you to visit the FEMA [Rumor Control](#) webpage.

III. Conclusion

A. **Johnson:** This will not be the last call. We had a lot of information to cover and lots of participants. We value and need your input. Want to continue this engagement.

B. Send follow-ups and feedback to FEMA-CivilRightsOffice@fema.dhs.gov.

C. We apologize that the issue with captioning wasn't resolved sooner. We will make notes available.

D. We will be publicizing the next call when available.