



September 16, 2020

Via E-mail

Roger Severino
Director, Office for Civil Rights
U.S. Department of Health & Human Services
200 Independence Avenue, S.W.
Washington DC 20201

Re: Unlawful disability discrimination regarding MedStar Health's COVID-19 Visitation Policy

Dear Mr. Severino:

Disability Rights DC at University Legal Services (DRDC) is the federally designated protection and advocacy agency (P&A) that represents individuals with disabilities to ensure their equal access to health care, among other services. Along with the undersigned organizations, please accept this letter as a complaint against MedStar Health, including MedStar Washington Hospital Center (MWHC) and the MedStar National Rehabilitation Hospital (MNRH), for failing to ensure that persons with disabilities who are hospitalized receive reasonable accommodations from hospitals during the COVID-19 public health emergency, in violation of Title III of the Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act (Section 504), Section 1557 of the Affordable Care Act (ACA), and the DC Human Rights Act.

MedStar Health is discriminating against W.K., a former patient at MWHC and a current patient at the MNRH, through its implementation of MedStar Health's COVID-19 "no-visitor" policy. On June 9, 2020, in response to a federal complaint challenging discriminatory hospital "no-visitor" policies, the Office for Civil Rights (OCR) at the U.S. Department of Health & Human Services (HHS) announced an early case resolution¹ making clear that federal law requires hospitals and the state agencies overseeing them to modify policies to ensure patients with disabilities can safely access the in-person supports needed to benefit from medical care during the COVID-19 pandemic. This complaint also seeks to remedy MedStar Health's repeated failure to provide reasonable accommodations to W.K. by denying him reasonable in-person access to individualized communication supports and services, including a trained support person familiar with his communication needs, and other auxiliary aids and services, such as

¹ HHS OCR, "OCR Resolves Complaints after State of Connecticut and Private Hospital Safeguard the Rights of Persons with Disabilities to Have Reasonable Access to Support Persons in Hospital Settings During COVID-19", available at <https://www.hhs.gov/about/news/2020/06/09/ocr-resolves-complaints-after-state-connecticut-private-hospital-safeguard-rights-persons.html>.

amplification devices, for his hearing disability to ensure effective communication and equal access to medical care and treatment.

Individuals with disabilities, including Black District residents with disabilities, are far more vulnerable to COVID-19 than the population at large, resulting in a disproportionately high death toll and hospitalization rate.² People with disabilities, including W.K., also need other treatment in hospitals and other health care settings during the pandemic. Accordingly, it is critical that MedStar Health and its providers adhere to the communication needs and other civil rights of individuals with disabilities during this unprecedented time.

As a consequence of failing to provide these reasonable accommodations, W.K. and likely other people with disabilities receiving treatment at MedStar Health are: (1) being denied effective and equal communication; (2) at substantial risk of receiving inadequate medical care and having poorer health outcomes than patients without disabilities; (3) being deprived of their right to make and effectively communicate informed consent; (4) being subjected to the unnecessary use of harmful physical and chemical restraints; and (5) at risk of experiencing substantial and lasting emotional harm. We urge you to immediately investigate and take prompt action to remedy this disability discrimination complaint.

Background

The District lacks clear, mandatory District-level guidance and policy to prevent discrimination against patients with disabilities. Instead, it allows health care entities like MedStar Health to set their own policies regarding in-person supports and other communication-related accommodations during the pandemic and gives these entities significant discretion to implement its policies. These myriad policies allow facilities like MWHC and MNRH to unlawfully deny patients with disabilities access to in-person supports and other communication-related accommodations they may need to equitably access health care.

At the end of April 2020, the District of Columbia Hospital Association (DCHA) revised its “Guidance for Hospital Visitor Restrictions for COVID-19” to recommend hospitals make exceptions to allow for a “designated support person for patients with developmental disabilities” and “patients with dementia and/or related diagnosis,”³ and other, non-disability related categories. However, the guidance was explicitly framed as “voluntary” in nature and stated that: “[i]ndividual hospitals may make modifications to the recommendations . . . based on situational changes and the needs and precautions necessary to protect patients, staff and visitors.” It also did not expressly apply to all people who may need a designated supporter in the hospital with them because of their disability – e.g., people with aphasia, stroke-related impairments, mental health and behavioral health support needs, traumatic brain injuries, cognitive disabilities, or those with speech, hearing, and other communication-related disabilities. In addition, it did not provide detail on how hospitals should implement the recommendations on a practical level.

² Centers for Disease Control, “People with Disabilities”, available at <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-disabilities.html> (last accessed on September 16, 2020); *see also* “Report of the WHO-China Joint Mission on Coronavirus Disease (COVID-19)”, <https://www.who.int/docs/default-source/coronaviruse/who-china-joint-mission-on-covid-19-final-report.pdf> at 12.

³ DCHA, “Guidance For Hospital Visitor Restrictions for COVID-19”, available at https://higherlogicdownload.s3.amazonaws.com/D.C.HA/751f0cb7-ab59-4ad3-8e48-c9a6ec516cea/UploadedImages/Documents/D.C.HA_COVID-19_Guidance_for_Hospital_Visitors_-_FINAL.pdf

At the end of June 2020, the DCHA issued updated “ReOpen D.C. – Phase II – Guidance for Hospitals and Health Systems”⁴ that addressed visitor restrictions. Under this version of the guidance, “one visitor or support person should be allowed per day whenever possible” for certain categories of people, including “[p]atients with intellectual and/or developmental disabilities and/or altered mental status.” However, “[n]o visitors should be allowed for patients with confirmed or suspected COVID-19, except for end of life situations.” Again, the guidance is not characterized as mandatory for hospitals and does not apply to people with all types of disabilities who may need in-person supports while in the hospital. It also could be read as recommending that hospitals refuse to allow an in-person supporter for a COVID-19-positive patient with disability who needs one. The guidance cross references DC Health Phase Two Guidance for Elective Surgery,⁵ which recommends screening of visitors, ensuring visitors are wearing face coverings, providing those facemasks “if supplies are available,” and “limit[ing] visitors to the facility to only those essential for the patient’s well-being and care.”

MedStar Health’s policy updated July 20, 2020 specifically states:

Patients with disabilities may designate one support person to accompany, visit and stay with them in the hospital. A support person is defined as someone who is legally authorized to make decisions for the individual with disabilities, a family member, a personal care assistant, or a disability service provider. In this situation, the support person will be permitted to visit even in the instance that the support person is a household contact of the patient. Other reasonable accommodations for individuals with disabilities may be approved by the VPMA and/or CNO, provided the accommodations comply with all infection prevention policies.⁶

As described below, MedStar Health used this policy to prevent W.K. from accessing the in-person supports he requires to communicate effectively with his health care providers, to provide informed consent, and to otherwise benefit from the same medical treatment provided to patients without disabilities, violating his civil rights and jeopardizing his quality of care.

On September 9, 2020, MedStar Health further revised its policy as follows:

All patients with disabilities may designate one guardian/caretaker to accompany them throughout all care settings.⁷

This policy eviscerates the reasonable accommodations process outlined in prior policy, removes any reference to a support person, and significantly narrows whom a person with a disability may

⁴ DCHA, “ReOpen DC–Phase II –Guidance for Hospitals and Health Systems-FINAL”, available at https://higherlogicdownload.s3.amazonaws.com/DCHA/751f0cb7-ab59-4ad3-8e48-c9a6ec516cea/UploadedImages/Documents/6_26_20_ReOpen_DC_Phase_II_-_final_200629.pdf

⁵ DC Health, “Phase Two Guidance Coronavirus 2019 (COVID-19): Guidance for Elective Surgery”, https://coronavirus.dc.gov/sites/default/files/dc/sites/coronavirus/publication/attachments/COVID-19_DC_Health_%20Guidance_for_Elective_Surgery_2020.07.29_FINAL.pdf

⁶ Exhibit A, MedStar Health, “Temporary Visitor Restrictions and Guidance During COVID-19”, updated July 20, 2020.

⁷ Exhibit B, MedStar Health, “Temporary Visitor Restrictions and Guidance During COVID-19,” revised September 9, 2020 for implementation on September 14, 2020.

designate to accompany them throughout all healthcare settings. On September 15, 2020, MedStar Health again revised its policy, but did not change the language regarding patients with disabilities.⁸ This change in policy further underscores the need for clear, mandatory guidance and policy to prevent discrimination against patients with disabilities.

Individual Complainant

Patient W.K.

W.K. is a 72-year-old man who is hard of hearing, has acute brain dysfunction, has cognitive disabilities (chronic microvascular ischemic changes and cortical volume loss, axonal neuropathy, and carotid artery disease), chronic obstructive pulmonary disease (COPD), chronic neck pain, depression, and anxiety. Collectively, W.K.'s disabilities cause memory loss, disorientation, confusion as well as problems with speaking, thinking, learning, understanding, and decision-making.

W.K. has been a patient of the Heart Failure team at MWHC since March 2020. On July 27, 2020, he had open-heart surgery at MWHC for his stage 4 congestive heart failure to implant a Left Ventricular Assist Device. After the procedure, he required a ventilator. That same day, MWHC chemically and mechanically restrained W.K. with antipsychotic medication and “soft restraints” because he was pulling on his medical equipment. On July 29, 2020, MWHC removed him from the ventilator, however, MWHC continued to chemically and mechanically restrain him due to severe agitation. On July 30, 2020, W.K. was confused, delirious, and agitated. He was unable to sleep and attempted to get out of bed to go home. On July 31, 2020, W.K. was confused and pulled out his arterial line. MWHC mechanically restrained him and diagnosed him with hospital delirium.

On August 1, 2020, MWHC put him back on the ventilator and inserted a pig-tail catheter in his chest to drain fluid. He was unable to communicate due to a breathing and feeding tube. MWHC also prescribed W.K. Seroquel, an antipsychotic medication. On August 3, 2020, MWHC removed him from ventilator support and continued to administer chemical restraints to keep him calm. On August 4, 2020, W.K. experienced breathing problems and was put back on the ventilator. He also had to undergo emergency surgery on August 5, 2020. During the almost seven weeks in-patient at MWHC, W.K. has experienced delirium, sundown syndrome, confusion⁹, disorientation in time and place¹⁰, depression¹¹, fear¹², and self-removal of his

⁸ MedStar Health, “Temporary Visitor Restrictions and Guidance During COVID-19,” revised September 15, 2020, available at https://www.medstarhealth.org/mhs/about-medstar/covid-19-info/visitor-restrictions-and-guidance-during-covid-19/?opt_id=oeu1600223860962r0.12624597890290612&_ga=2.31517182.1963228398.1600223861-1618983064.1600223861 (last visited September 15, 2020).

⁹ Valerie Turnquist, W.K.'s daughter, reports that on August 13, W.K. did not recognize his surroundings and he did not recall that his family had visited him through a no-contact visit the day before.

¹⁰ On August 14, MWHC staff reported to Ms. Turnquist that W.K. could not remember his birthday and he thought that he was home.

¹¹ According to Ms. Turnquist, on August 9, W.K. expressed to Ms. Turnquist that if she cannot help him in the hospital, he wants to give up on life. He also threatened to remove his trach and unplug his LVAD pump from the wall. MWHC temporarily provided a hospital sitter. On August 15, he expressed suicidal ideation and a hospital sitter was provided.

¹² On August 8, W.K. called Ms. Turnquist via his cell phone begging for her help. He reported that he was afraid that staff is trying to kill him. According to Ms. Turnquist, he wrote on paper, “call 911, they are trying to kill me.”

arterial lines. On September 11, 2020, W.K. was transferred to the MedStar National Rehabilitation Hospital for rehabilitation services.

Because of his disabilities, he needs communication supports and services, including a support person who is familiar with his individualized communication support needs, and other auxiliary aids and services such as amplification devices for his hearing disability¹³ to ensure effective and equal communication between him and his treatment team, and to help with orientation, self-regulation, medical decision-making support, and personal and behavioral support needs.

W.K.'s daughter, Valerie Turnquist, is his primary caregiver/caretaker and power of attorney for general and health care decisions. Over the last three years, Ms. Turnquist accompanied W.K. to his doctors' appointments, including at the MWHC Heart Failure Clinic and facilitated communication between W.K. and MWHC staff. Since March 2020, Ms. Turnquist remained at the hospital during prior hospitalizations with W.K. and facilitated communication between W.K. and the staff. To help facilitate communication due to his disabilities, Ms. Turnquist makes direct eye contact and recognizes non-verbal cues and gestures signaling when W.K. is tired, in pain, agitated or depressed. W.K. often communicates and responds to medical personnel even if he cannot fully hear or understand what is being communicated, and Ms. Turnquist is able to determine if W.K. is having trouble hearing or understanding. Due to his chronic pain, he does not communicate new pain or symptoms well. Ms. Turnquist takes him to all medical appointments to help W.K. understand the treatment being offered to help him participate in his health care decisions. According to his primary treating physician, W.K. currently needs an in-person supporter (Ms. Turnquist) to ensure effective communication and comprehension in treatment because he does not communicate effectively via hearing aids or other amplification devices alone, and he also needs communication support to express his needs and symptoms, understand his treatment, follow his doctors' orders, and give informed consent.¹⁴

He pleaded for his daughter to come to the hospital to help him. That evening, he dialed 911. On August 9, he called his grandson and reported the same fears. On August 22, W.K. informs the hospital staff again that he needs his daughter to be his supporter at all times because when he cannot reach the call bell or his suction tube, he panics. According to Ms. Turnquist, instead of meeting his needs, MWHC gave him Seroquel and Trazadone to help him sleep.

¹³ W.K. relies on audio amplification devices, hearing aids, and other auxiliary aids and services to communicate with health care staff. W.K. and Ms. Turnquist report that his hearing aid does not fit and he needs an updated model.

¹⁴ Exhibit C, *Reasonable Accommodations Letter from Dr. Leonard Kinland to MedStar Health*, September 4, 2020 (“[Ms. Turnquist] has developed a method of in person communication with [W.K.] that is needed for effective communication. She recognizes based on his expression when [W.K.] cannot hear, is confused, or cannot understand communication between him and medical providers and can facilitate communication and help him participate in his treatment. [W.K.] has difficulty expressing all his symptoms and prior medical history, and she can recognize changes in his mood or behavior and when he is experiencing fatigue, pain, and discomfort through various non-verbal cues, gestures, body language, physical appearance, and facial expressions. She also needs to stay with him in the hospital when he meets with his doctors and staff because she can recognize and assist him with communicating what he does not remember from his prior communications with his doctors and hospital staff.”). A copy of this reasonable accommodations letter was provided to MWHC attorney, Jennifer Clarke, on September 4, 2020. Ms. Clarke has failed to respond to this correspondence. Exhibit D, *Emails between Lyndsay Niles and Jennifer Clarke*, September 4, 2020.

On information and belief, four of W.K.’s treating physicians at MedStar – the surgeon who performed his open-heart surgery and three ICU doctors¹⁵ – agree, and submitted requests on or around August 10 on his behalf to hospital administrators to allow his daughter to provide the disability-related supports he needed. MWHC denied each of these requests. Since his admission to the hospital, W.K. and his daughter have repeatedly requested that MWHC allow her to provide disability-related supports.¹⁶ On September 14, 2020, MNRH also denied W.K. access to in-person disability-related supports from his daughter.

On August 19, 2020, DRDC sent a letter to MWHC attorney, Jennifer Clarke, renewing W.K.’s request for reasonable accommodations and requesting that MedStar remedy its repeated failure to provide reasonable accommodations by denying him reasonable in-person access to a support person as well as technical auxiliary aids and services to ensure his equal access to medical care and treatment. Ms. Clarke denied this request for a support person relying on MedStar’s July 2020 “Temporary Visitor Restrictions and Guidance During COVID-19” and failed to provide its reasons for denial in writing as requested.¹⁷ The hospital’s denial of each of those requests has resulted in W.K. being denied effective communication; being placed at substantial risk of receiving inadequate medical care and having poorer health outcomes than patients without disabilities; being deprived of his right to make and effectively communicate informed consent; being subjected to the unnecessary use of physical and chemical restraints; and being placed at risk of experiencing substantial and lasting emotional harm. MWHC also denied W.K. his requested¹⁸ technical auxiliary aids and services, including an amplification device, until September 1, 2020, and only after DRDC intervened. This device has only functioned intermittently. MWHC has also failed to conduct an individualized assessment and engage in an interactive process regarding his reasonable accommodation needs. According to his treating

¹⁵ Ms. Turnquist reports that Drs. Sugeir, Molina, Anastacio, and Jausurawong submitted requests for Ms. Turnquist to be W.K.’s support person beginning on or around August 8, 2020.

¹⁶ W.K. reports that he routinely requests that the hospital allow his daughter to accompany him in the hospital. For example, on August 25, he told a nurse that he wants his daughter in-person when staff speak with him because he has problems with his short-term memory. He also told staff that he has problems understanding and needs support to help him understand and hear. He also informed staff that his hearing aids do not fit him. On August 10, Ms. Turnquist sent a request to the patient advocate at MWHC to intervene to allow her to be his support person, but the patient advocate failed to respond. She also sent a request to the MedStar Health Institute for Quality and Safety requesting help, and that request was forwarded to the Chief Medical Officer and Chief Nursing Officer at MedStar. As of this date, MWHC has failed to respond to that request.

¹⁷ On August 27, 2020, DRDC asked MWHC to reconsider its denial, citing to the recent OCR Early Case Resolution in Connecticut, and requested W.K.’s medical records on his behalf with a HIPAA compliant authorization. Exhibit D, *Emails between Lyndsay Niles and Jennifer Clarke*, August 27, 2020. That same day, Ms. Clarke inexplicably denied our request for records, stating: “I will send your medical records request to the Health Information Department but they will not be able to get you a hard copy as the patient is still inpatient and the medical records will not be *authorized as final at this time.*” *Id.* (emphasis added). On September 1, 2020, DRDC requested access to these records consistent with its P&A access authority, which also allows us to access records in draft form and requested the records be provided within three business days. Exhibit D, *Emails between Lyndsay Niles and Jennifer Clarke*, September 1, 2020. MWHC has failed to respond to this request and continues to deny W.K. and DRDC access to his medical records in violation of his patient rights and DRDC’s rights.

¹⁸ For example, on August 15 and 17, Ms. Turnquist specifically requested amplification devices from Drs. Brown and Pratt. On August 26 and 27, Ms. Turnquist requested hearing devices, in part, because he would be receiving training on his LVAD equipment soon. On August 28, Ms. Turnquist asked the hospital staff about the status of an assessment of his reasonable accommodation needs for his hearing disability, but was informed that assessment is usually provided on an outpatient basis and that staff would inquire about hearing devices with audiology and nursing. On September 4, MWHC followed up by conducting a hearing test, which found that W.K. has moderate to severe hearing loss.

physician, MWHC's ongoing denial of a support person in his recovery from his surgery at MWHC and MNRH continues to deny him effective and equal communication.¹⁹

Legal Standards

Title III of the ADA, 42 U.S.C. § 12182(a), prohibits disability-based discrimination in places of public accommodation, including hospitals such as MWHC. 42 U.S.C. §§ 12182, 12181(7)(F); *see also* D.C. Code § 2-1402.31(a)(1) (prohibiting public accommodations from denying persons with disabilities full and equal access to services). Moreover, the ADA requires hospitals to provide individuals with disabilities equal access to health care services and make reasonable modifications to policies, practices, and procedures when necessary. The federal regulations implementing Title III of the ADA specifically require MedStar Health facilities to provide communication supports and auxiliary aids and services, including support people to facilitate communication, CART, hearing aids, and amplification devices. 28 C.F.R. §§ 36.302, 36.303(b)(1), (c)(3)(ii).

Section 504 of the Rehabilitation Act similarly prohibits disability discrimination by recipients of federal financial assistance, including District agencies and most hospitals and health care providers. 29 U.S.C. § 794(a); 45 C.F.R. §§ 84.4, 84.52 (health care facilities required to provide communication supports). Section 504's prohibition on disability discrimination is co-extensive with that of the ADA including failing to make reasonable modifications in policies, practices or procedures when necessary to avoid discrimination. *See Southeastern Community College v. Davis*, 442 U.S. 397 (1979); *Henrietta D. v. Bloomberg*, 331 F.3d 261, 273-76 (2d Cir. 2003).

Section 1557 of the ACA provides that no health program or activity that receives federal funds may exclude from participation, deny the benefits of their programs, services or activities, or otherwise discriminate against a person protected under Section 504 of the Rehabilitation Act, 42 U.S.C. § 18116; 45 C.F.R. §§ 92.101(a) and 92.101(b)(2)(i). This includes an obligation to make reasonable modifications in policies, practices, and procedures necessary to avoid discrimination. 45 C.F.R. § 92.205.

The Centers for Disease Control and Prevention published guidelines on accommodating essential visitors, recognizing the necessity of support persons in hospital settings.²⁰ What is more, MWHC's actions directly violates MedStar's own July 2020 and September 2020 policies which were updated in response to the pandemic to allow for the designation of a support person (or currently a caretaker) for people with disabilities in a manner consistent with public health.

The U.S. Department of Health and Human Services, Office for Civil Rights' (OCR) March 28, 2020 guidance also emphasizes health care providers' obligations under federal law to ensure equal access to medical care and treatment and "effectively address[] the needs of at-risk populations" and to "provide effective communication with individuals who are deaf, hard of

¹⁹ Exhibit C, *Reasonable Accommodations Letter from Dr. Leonard Kinland to MedStar Health*, September 4, 2020.

²⁰ Centers for Disease Control and Prevention, "Interim Infection Prevention and Control Recommendations for Patients with Suspected or Confirmed Coronavirus Disease 2019 (COVID-19) in Healthcare Settings," updated July 15, 2020, available at: <https://www.cdc.gov/coronavirus/2019-ncov/hcp/infection-control-recommendations.html> (last visited September 16, 2020).

hearing, blind, have low vision, or have speech disabilities through the use of qualified interpreters, picture boards, and other means.”²¹ This includes providing effective communication, meaningful access to information, and making reasonable modifications to address the needs of persons with disabilities.²²

The District of Columbia Hospital Association (DCHA) guidance does not meet the requirements of the federal laws and non-discrimination guidance outlined above. MedStar Health’s July 2020 policy, on its face, allows for all people with disabilities, regardless of the nature of their disability, to have one in-hospital support person. But in practice this policy has a discriminatory effect of denying people like W.K. access to familial support people when they need them. MedStar Health’s current September 2020 policy is more restrictive and does not meet the requirements of federal laws and the non-discrimination guidance outlined above but allows for “guardians” or “caretakers” to accompany all people with disabilities throughout all care settings. Even if the guidance by DCHA passed legal muster, which it does not, it is not mandatory and is therefore unenforceable, and thereby perpetuates the ongoing discriminatory conduct by the hospitals like MWHC, MNRH, and other health care entities.

Requested Relief

To remedy these allegations of discrimination, DRDC and the undersigned organizations request that the Office for Civil Rights (OCR) immediately investigate this matter and issue findings that the actions taken by MedStar Health unlawfully discriminate against persons with disabilities in the District of Columbia. We further request that OCR advise MedStar Health that they must eliminate their discriminatory policies and practices and instead develop revised, mandatory, uniform, standards for allowing patient support providers within hospital settings and other health care settings during this public health emergency consistent with the elements outlined below:

- MedStar Health must immediately approve and designate Valerie Turnquist as W.K.’s support person and immediately allow Ms. Turnquist to accompany, visit and stay with W.K. in the hospital consistent with MedStar’s COVID-19 policy.
- MedStar Health must engage in an interactive process between W.K., Ms. Turnquist, and his treatment team to assess all his reasonable accommodation needs to ensure effective and equal communication with MNRH staff.
- The MedStar Health policy must make clear that disability support persons are allowed for patients with any kind of disability who need them, including patients with physical, communication, mental and behavioral health, cognitive, traumatic brain injuries, and developmental disabilities. MedStar Health policy must make clear that need for a disability support person is based on the patient’s functional limitations and not a particular disability diagnosis.

²¹ HHS OCR, “BULLETIN: Civil Rights, HIPAA, and the Coronavirus Disease 2019 (COVID-19),” March 28, 2020, at 2, available at: <https://www.hhs.gov/sites/default/files/ocr-bulletin-3-28-20.pdf> (emphasis added) (last visited September 11, 2020).

²² *Id.*

- The MedStar Health policy must make clear that patients with disabilities who require in-person supports to communicate or otherwise access the programs and services of MedStar Health – regardless of their COVID-19 status or suspected status – are entitled to access those supports with appropriate safety mitigation measures.
- The MedStar Health policy should acknowledge that the support person is different from a “visitor,” because access to a support person is a reasonable accommodation under federal law that is meant to ensure equal access to medical care.
- The MedStar Health policy should clarify that designated support persons may be a family member, personal care assistant, similar disability service provider, interpreter, or other individual knowledgeable about the management of their care, to physically or emotionally assist them or to ensure effective communication during their stay in the facility, provided proper precautions are taken to contain the spread of infection.
- The MedStar Health policy should allow access for an asymptomatic support person who has previously had direct contact with a COVID-19 patient, as long as the support person takes additional appropriate precautions to contain the spread of the virus.
- The MedStar Health policy should allow patients to designate more than one support person, even if the facility determines for safety reasons to allow only one to be present at a time.
- The MedStar Health policy should clarify that support persons should be allowed to reasonably leave and re-enter the facility as long as safety mitigation measures are undertaken.
- The MedStar Health policy should clarify that support persons should be permitted to safely eat, drink, and use the restroom while present in the hospital, as long as safety mitigation measures are undertaken.
- The MedStar Health policy should encourage facilities to provide appropriate Personal Protective Equipment (PPE) to be worn by designated support persons as instructed by the facility for the duration of the visit. If the facility does not have PPE for the support person, PPE supplied by the support person that the facility finds adequate may be used.
- The MedStar Health’s revised policy should be posted to Medstar Health’s main website and require facilities to clearly advertise and post notice of the policy at patient entry points in every facility, on each facility’s website, and be provided to the patient at the time services are scheduled or initiated.
- The MedStar Health policy should be available in different languages and formats to ensure access to individuals who do not speak English and those individuals with vision disabilities.

- The MedStar Health policy must remind facilities of their continuing legal obligation to ensure effective communication regardless of the presence of a support person, which may require the use of qualified interpreters or assistive technology.
- The MedStar Health policy should include a primary and back-up contact person to which questions or violations of the policy may be addressed.
- MedStar Health must provide training to all administrators and staff, including the Vice President of Medical Affairs, CMO, CNO, Patient Advocate, and the Director of Patient Experience, to ensure proficiency on the requirements under federal and local law, including Title III of the ADA, the Rehabilitation Act, the ACA, and the DCHRA for individuals with disabilities. MedStar Health facilities, including MWHC and MNRH, should revise its policy and/or issue guidance and training to clarify existing policy that patients with disabilities may designate one support person to accompany, visit and stay with them in the hospital to support their disability-related communication, decision-making, and other disability needs regardless of their disability diagnosis. Similarly, MedStar Health facilities, including MWHC and MNRH, should revise its policy and/or issue guidance and training to clarify that any requests for a patient support person is *not* a request for a visitor and should be treated as a request for a reasonable accommodation of disability.

Enforcement of communication and comprehension rights is so necessary for individuals with disabilities who are at serious risk of illness or death during this pandemic. It is in MedStar Health's best interest to resolve this matter so, at a minimum, it can ensure that it receives informed consent from W.K. We greatly appreciate your prompt consideration of this urgent matter. I can be contacted directly at 202-834-3401 or at lniles@uls-dc.org concerning any questions or responses to this Complaint.

Sincerely,



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Together With:

Quality Trust for Individuals with Disabilities

(QT) is a non-profit advocacy organization that has been advancing the interests of people with developmental disabilities (DD) since 2002. QT was founded as part of a settlement in the class action lawsuit (*Evans v. Bowser*) that closed Forest Haven, the institution for DC residents with

DD. QT monitors the quality of the services provided and advocates for whatever changes or improvements are needed to enable people with DD to live full, healthy, and meaningful lives. QT has supported thousands of people with disabilities through our legal, lay advocacy, and monitoring programs, as well as systemic reform advocacy in DC and beyond. QT also is a national leader in advancing the decision-making rights of people with disabilities through the use of alternatives to guardianship, including Supported Decision Making. <https://www.dcqualitytrust.org/>

CommunicationFIRST

CommunicationFIRST is the only national, nonprofit, 501(c)(3) organization dedicated to protecting and advancing the civil rights of the more than five million people of all ages in the United States who, due to disability or other condition, are unable to rely on speech alone to communicate. Run by and for people with expressive communication disabilities, CommunicationFIRST advances its mission by educating and engaging the public, advocating for policy and practice reform, and engaging the justice system to ensure access to effective communication, to end prejudice and discrimination, and to promote equity, justice, inclusion, and opportunity for our historically marginalized community. <https://CommunicationFIRST.org>

The Center for Public Representation (CPR)

CPR is a national, nonprofit legal advocacy organization that has been assisting people with disabilities for more forty years. CPR uses legal strategies, systemic reform initiatives, and policy advocacy to enforce civil rights, expand opportunities for inclusion and full community participation, and empower people with disabilities to exercise choice in all aspects of their lives. CPR has litigated systemic cases on behalf of people with disabilities in more than twenty states and has authored amici briefs to the United States Supreme Court and many courts of appeals. CPR is both a national and statewide legal backup center that provides assistance and support to the federally-funded protection and advocacy agencies in each state and to attorneys who represent people with disabilities in Massachusetts. www.centerforpublicrep.org

The Arc

Founded in 1950, The Arc of the United States is the nation's largest community-based organization of and for people with intellectual and developmental disabilities ("I/DD"), with over 600 chapters nationwide. The Arc promotes and protects the human and civil rights of people with I/DD and actively supports their full inclusion and participation in the community throughout their lifetimes. The Arc has a vital interest in ensuring that all individuals with I/DD receive appropriate protections and supports to which they are entitled by law. <https://thearc.org/>

The Autistic Self Advocacy Network (ASAN)

ASAN is a 501(c)(3) nonprofit organization run by and for autistic people. ASAN was created to serve as a national grassroots disability rights organization for the autistic community, advocating for systems change and ensuring that the voices of autistic people are heard in policy debates and the halls of power. Our staff work to advance civil rights, support self-advocacy in all its forms, and improve public perceptions of autism. ASAN's members and supporters include autistic adults and youth, cross-disability advocates, and non-autistic family members, professionals, educators, and friends. <https://autisticadvocacy.org/>

Washington Lawyers' Committee

Founded in 1968, The Washington Lawyers' Committee for Civil Rights and Urban Affairs works to create legal, economic and social equity through litigation, client and public education and public policy advocacy. While we fight discrimination against all people, we recognize the central role that current and historic race discrimination plays in sustaining inequity and recognize the critical importance of identifying, exposing, combatting and dismantling the systems that sustain racial oppression. <https://www.washlaw.org>

Civil Rights Education and Enforcement Center (CREEC)

CREEC is a nonprofit membership organization whose goal is to ensure that everyone can fully and independently participate in our nation's civic life without discrimination based on disability or other protected status. Our scope is nationwide and we have offices in Colorado, California, and Tennessee. Through our Accessibility Project, CREEC works to ensure that people with disabilities have equal access and opportunities. <https://creeclaw.org/>