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The Honourable Doug Ford
Premier of Ontario
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The Honourable Christine Elliott
Deputy Premier of Ontario
Minister of Health
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May 26, 2020

Dear Premier Ford and Minister Elliott:

RE: Need for Urgent Revisions to Provincial Recommendations Regarding Essential Supports for Persons with Disabilities in Hospitals and Health Care Settings

I write to raise an issue of deep concern to persons with disabilities in Ontario and their families. During the COVID-19 pandemic, Ontario hospitals and other health care settings have imposed visitation bans which prevent all except “essential visitors” from entering these facilities. These bans are in place following strong recommendations from the Chief Medical Officer of Health that hospitals only allow essential visitors. The Ministry of Health has defined as “...those who have a patient who is dying or very ill or a parent/guardian of an ill child or youth, a visitor of a patient undergoing surgery or a woman giving birth.”¹

Visitation bans are important safety measures to limit the spread of COVID-19. However, they have had a discriminatory impact on persons with disabilities who require the presence of essential supports to access health care services on an equal basis as others.

Many persons with disabilities require disability-related accommodations in order to access health care services. Support persons, attendants and communication assistants provide essential disability-related accommodations, without which some people with disabilities cannot communicate effectively with health care staff about current symptoms, pain and health concerns; cannot make informed decisions about health care treatment;

¹ Memorandum from Dr. David Williams, Chief Medical Officer of Health to all public and private hospitals, dated March 19, 2020, online:
http://www.health.gov.on.ca/en/pro/programs/publichealth/coronavirus/docs/memos/CMOH_Memo_Hospital_Visitors_Acute_Settings%20COVID-19_March_19_2020.pdf

cannot give or refuse consent to treatment; and cannot access health care services. Support persons include paid support workers and chosen supports like family, close friends or members of a support circle or network.

When these in-person essential supports are denied, persons with disabilities are denied equal access to health care services. As a result of hospital visitation bans, some persons with disabilities have not received medical services they needed; other people with disabilities and their families have had to bear a tremendous burden to advocate for their support person, attendant or communication assistant to be granted entry; still others have decided that in the event of a medical emergency they will not contact 911 or go to hospital due to the fear of being there alone without the essential supports they require. Failure to allow persons with disabilities to have their essential supports when they are in hospital or other health care settings can lead to much poorer health outcomes.

For many persons with disabilities, using technologies like video calling, telephone or other means of remotely connecting with essential supports is not possible. For example, having a physical, cognitive, intellectual and/or developmental disability, or a speech, language and communication disability may prevent people from using these technologies. For people with communication disabilities, some forms of communication can only be interpreted effectively in person.

Simply put, visitation bans and the essential visitor definition and recommendations are being implemented in a way that prevents some people with disabilities from accessing health care services. This is unacceptable, especially during a pandemic when many persons with disabilities have heightened needs for health care services.

A number of disability groups, organizations and family groups, including Autistics for Autistics Ontario, Communication Disabilities Access Canada², and Family Alliance Ontario³ have expressed serious concerns about the impact of these bans on people with disabilities who need hospital and health care services.

ARCH Disability Law Centre requests that you urgently revise the essential visitor definition and recommendations to ensure that hospitals and other health care settings uphold the rights of persons with disabilities to equal access to health care.

Persons with disabilities have legal rights to accessible health care services

Ontario's *Human Rights Code* provides that persons with disabilities have a right to be free from discrimination in the provision of services⁴, and this includes health care services. In order to prevent discrimination, hospitals and other health care service providers have a duty to accommodate a person's disability-related needs, unless doing so would cause undue hardship. If a disability accommodation creates a real risk to health and safety, then a hospital may refuse to provide that accommodation.⁵

² <https://www.cdacanada.com/resources/covid-19/government-relations-to-advocacy/>

³ <https://family-alliance.com/equitable-access/>

⁴ *Human Rights Code*, RSO 1990, C.H.19, s. 1.

⁵ *Human Rights Code*, RSO 1990, C.H.19, s. 11.

As applied to hospital visitation bans, Ontario human rights law provides that if a person with a disability requires a support person, attendant or communication assistant with them during their hospitalization in order to support their health care access and/or assist with essential communication, this should be allowed, provided that health and safety measures can be taken to limit the spread of COVID-19. It is notable that some Ontario hospitals are permitting essential support persons, attendants and communication assistants to accompany patients with disabilities, and these hospitals have done so in a safe manner.

Similarly, section 15 of the *Canadian Charter of Rights and Freedoms* guarantees the right to equal benefit of the law without discrimination based on physical or mental disability. In *Eldridge v British Columbia (Attorney General)*⁶, the Supreme Court of Canada applied section 15 in the context of the delivery of health care services. The Court found that effective communication is critical when delivering medical services, and consequently disability accommodations in the form of sign language interpreters had to be provided for deaf patients so that they could communicate effectively with health care providers.⁷

Also of note is Ontario's *Health Care Consent Act*, which requires health care practitioners take reasonable steps to ensure that health care treatment is not given unless the person or their substitute-decision maker consents.⁸ Consent must be informed and given voluntarily.⁹ Many people with communication disabilities, intellectual and/or developmental disabilities, autism, and cognitive disabilities need a support person or communication assistant with them in order to facilitate communication and provide informed consent to treatment.

Canada's international human rights commitments also require that people with disabilities have equal access to health care. Article 25 of the United Nations *Convention on the Rights of Persons with Disabilities* requires states to recognize that persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability, and to act to prevent discriminatory denial of health care or health services.¹⁰ Canada ratified the *Convention on the Rights of Persons with Disabilities* in 2010. All levels of government have responsibilities to abide by and implement the rights contained in the *Convention*.¹¹

Other jurisdictions in Canada have recognized these legal rights

The Government of Canada and the Public Health Agency of Canada have recognized that special considerations, adaptations and accommodations should be provided for persons with disabilities in the health care system:

⁶ *Eldridge v British Columbia (Attorney General)*, [1997] 3 S.C.R. 624.

⁷ *Ibid.*, at paras 69, 71.

⁸ *Health Care Consent Act, 1996*, SO 1996, C 2, SA, s. 10(1).

⁹ *Ibid.*, s. 11.

¹⁰ *Convention on the Rights of Persons with Disabilities*, GA Res 61/601, UNGAOR, 61st Sess, Supp No 49, UN Doc A/61/49 (14 January 2007) 65, Art 25.

¹¹ *Ibid.*, at Art 4

“This includes ensuring that restrictions account for people with disabilities’ needs and allow essential support staff, sighted guides, interpreters and/or family members to be with them in these places. ... This applies to acute care hospitals, long-term care homes, congregated residential settings, medical clinics, other medical or paramedical appointments, grocery stores, pharmacies, other stores, family homes and individual residences. Persons with disabilities have the right to have their supportive care person (whether family, friend or paid staff) with them in public and especially so within the healthcare system.”¹²

A number of provinces have developed or revised their visitation ban and essential visitor guidelines or policies to provide specific direction to hospitals and health care settings on the need to allow essential support persons, attendants and communication assistants to accompany persons with disabilities.¹³

It is clear that the need to prevent the spread of COVID-19 must be balanced with the legal rights of persons with disabilities to equal access to health care, and that this balancing can be done safely.

Recommended urgent revisions to Essential Visitor Recommendations in Ontario

ARCH requests that you urgently revise the essential visitor definition and recommendations to ensure that hospitals and other health care settings uphold the rights of persons with disabilities to equal access to health care.

At minimum, we recommend the following revisions:

- Revise the Ministry of Health’s definition of “essential visitor” to include paid and unpaid support persons, attendants, and communication assistants authorized by the patient who provide supports that are essential to enable a patient with a disability to access health care services and communicate effectively with health care providers. It is critical that the definition be broad enough to allow all persons with disabilities who require essential supports in order to access health care services to have their supports with them. This includes people with mental health disabilities, autism, intellectual and/or developmental disabilities, cognitive disabilities such as dementia or Alzheimer’s, communication disabilities, physical disabilities, acquired brain injuries, aphasia and others.
- Use the term “essential supporter” rather than visitor. Support persons, attendants and communication assistants are not visitors. They are persons who provide disability related accommodations that enable persons with disabilities to access health care services. The term “essential supporter” more appropriately recognizes the role that these persons play and the legal rights of persons with disabilities to have supporters provide essential disability-related accommodations.

¹² Government of Canada, *COVID-19 and people with disabilities in Canada*, online: <https://www.canada.ca/en/public-health/services/diseases/2019-novel-coronavirus-infection/guidance-documents/people-with-disabilities.html#a3>

¹³ See for example, British Columbia’s Ministry of Health Policy Communique, online: <https://www2.gov.bc.ca/assets/gov/health/about-bc-s-health-care-system/office-of-the-provincial-health-officer/reports-publications/covid-19-infection-prevention-control.pdf>

- Provide directives, not recommendations, to hospitals and health care settings. Recommendations merely encourage hospitals and health care settings to adopt the measures set out. Directives require hospitals and health care settings to implement measures. Clear directives are required to ensure that all hospitals and health care settings uphold the right of persons with disabilities to have their essential supports with them. Clear directives provide for consistent implementation across the province. Without directives, it is likely that some hospitals and health care settings will continue to deny entry to essential supporters.
- Ensure that revised directives allow essential supporters for persons with disabilities who do not have COVID-19 and for those who are COVID+.
- Ensure that revised directives also apply to ambulances when transporting a person with a disability to hospital or other health care setting.
- Provide for a process whereby persons with disabilities and/or their essential supporters can request to be designated as an essential supporter who is permitted entry to the hospital or health care setting. If this request is denied, there must be a process to request an immediate review of the decision.
- Require hospitals and other health care settings to inform persons with disabilities and their essential supporters of the revised definition of essential supporters, the process to request such designation, and the process to request a review of a decision. This information must be made available in plain language, in languages commonly used in the local community, and in sign language(s) upon request.
- Urge hospital administrators to remind health care workers and hospital staff that persons with disabilities must be provided with disability-related accommodations necessary to enable them to communicate with and access health care services on an equal basis as others. These accommodations can include support persons, attendants and communication assistants. But they can also include services such as sign language or deaf interpreters; augmentative and alternative communication (AAC) aids such as tablets, smart phones, picture-and-text based communication boards and devices; and other customized tools. Some people may use AAC or tools independently, while others may require support to do so.

I thank you in advance for your prompt attention to this critically important issue. ARCH would be pleased to provide additional information and discuss this urgent request with you further.

Yours Sincerely,



ARCH Disability Law Centre
Robert Lattanzio, Executive Director

cc. Dr. David Williams, Chief Medical Officer of Health for Ontario
The Honourable Raymond Cho, Minister for Seniors and Accessibility
Raj Dhir, Executive Director, Ontario Human Rights Commission
Craig Thompson, Executive Director Ontario Patient Ombudsman
Sandi Bell, Chair Health Care Standard Development Committee