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NEWS RELEASE

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Disability Advocacy Organizations File Federal Complaints Against CT

Cite Gov. Lamont's Refusal to Address Needs of People with Disabilities and Individuals in State Custody by Broadly Promising COVID Test Kits and N-95 Masks on First Come, First Served Basis

Disability Rights CT, the statewide protection and advocacy system for individuals with a range of disabilities, and CLRP, a nonprofit law firm representing people with psychiatric disabilities, today filed two federal complaints against the State of Connecticut with the U.S. Department of Justice and the U.S. Department of Health and Human Services' Office for Civil Rights.

The complaints allege violations of various federal anti-discrimination laws requiring equal access. DRCT and CLRP allege that Governor Lamont's refusal to **require** that towns and cities distributing the state's essential supplies of COVID-19 test kits and N-95 masks during the Omicron wave prioritize individuals who are at high risk, either because of their health status or because of living in congregate settings, for the limited supplies available, violates federal law.

In a letter to the Governor from the two groups on New Year's Eve, before the first round of distribution through the towns was underway, they called on him to go beyond merely *suggesting* priority for high-risk individuals and to *require* priority for high-risk individuals, as he clearly has the authority to do. They objected to the first come, first-served basis for distribution of these essential supplies in limited supply and urged him to instead require prioritization of individuals with disabilities which put them at enhanced risk of severe disease, including those who are immune-compromised, or at increased risk of infection because they live in settings where infection from the highly contagious Omicron variant is very likely.

They also requested that the Governor and the Department of Public Health provide DRCT and CLRP, by January 4, with a written plan setting forth a means by which DPH and any other relevant state agencies, including DMHAS, DOC, DCF, and DDS, will ensure that those who live in high-risk state-operated or funded institutions or programs, like prisons, inpatient psychiatric facilities and group homes, will immediately be provided with these supplies.

The Governor wrote back on January 5 to the two organizations but did not commit to the demands regarding directives either to municipalities to prioritize distribution to high-risk individuals in the community, or to state agencies requiring that all individuals in state custody or state-funded facilities receive the same high-protection N-95 masks being offered for free to the general public.

Although the Governor cited in the letter "guidance" issued to the municipalities which stated "Here are *some guidelines* for the community-based distribution of COVID-19 self-tests," and that "Distribution should prioritize vulnerable populations and provide access to self-test kits after traditional work hours," that was largely undercut by the other statement in the same guidance that "*Cities and towns have discretion to develop the distribution model that best fits their community.*" (emphasis added).

The Governor removed any possibility that this would be seen as a requirement for cities and towns by issuing his own press release on 12/28 which said, with no reference to vulnerable populations, that “The at-home tests and N95 masks are being distributed by the state to municipalities and school districts. Each municipality and school district will then determine how best to provide them to people who live in their respective cities and towns.”

Further public statements confirmed that the guidance was only recommended. As has been widely [reported](#) in the media, “[Governor] Lamont urged cities and towns to give these first tests to those in need as a priority, along with teachers and first responders, but he said they were free to ignore that guidance and hand out the tests as they saw fit.”

The municipalities clearly got the message from the Governor that there is no obligation whatsoever to prioritize high risk individuals and that first come, first served distribution is perfectly acceptable: Based on research through media reports, DRCT and CLRP readily found **45 cities and towns** which are distributing the test kits entirely on a first come, first served basis, as authorized by the Governor, including: Andover, Bethlehem, Bolton, Branford, Brookfield, Coventry, Cromwell, Danbury, Darien, Derby, East Haven, East Windsor, Ellington, Farmington, Glastonbury, Hamden, Manchester, Milford, Monroe, New Fairfield, Milford, New London, North Branford, North Haven, Norwalk, Orange, Redding, Rocky Hill, Southington, Stafford, Stamford, Stratford, Suffield, Tolland, Torrington, Vernon, Wallingford, Waterbury, West Hartford, West Haven, Weston, Westport, Wethersfield, Willington, and Windsor Locks. There are many more municipalities doing the same, based on their own websites. See, e.g., Meriden (<https://www.meridencct.gov/announcements/city-of-meriden-covid-19-home-self-test-kit-distribution/>)

The Governor has abdicated responsibility for ensuring the distribution of these limited supplies in an equitable manner consistent with state and federal law.

“The situation is urgent--it should not wait one day longer,” said **Deborah Dorfman, Executive Director of DRCT**. “DRCT’s clients and constituents with disabilities must be immediately provided with equal access to N95-masks and test kits and other COVID protections and an opportunity to receive reasonable modifications. Each day that goes by without these protections needlessly exacerbates the risk that they will become seriously ill from COVID-19 and serves only to perpetuate disability discrimination.”

“CLRP’s clients in state-operated facilities can’t leave from behind the locked doors to wait in line for N95 masks at their local distribution sites,” said **Kathy Flaherty, Executive Director of CLRP**. “They get quarantined on their units when staff members test positive. The state must ensure that the people in its care and custody have access to N95 masks to help prevent transmission of the Omicron variant. People with mental health conditions, including depression and schizophrenia spectrum disorders, are more likely to get severely ill from COVID-19.”

Immediate Action Sought to Assure Compliance with Federal Law

The complaints filed today with DOJ and OCR urge the two agencies to take immediate action to require the Governor to explicitly require municipalities receiving millions of dollars of taxpayer-funded test kits and N-95 masks to prioritize their distribution to individuals at high risk of exposure or severe disease, and to also prioritize the distribution of N-95 masks to individuals in state custody, including prisons under the Department of Corrections, or residing in state-funded congregate settings.

The complainants also note that, while it is too late for the first round of supplies distributed through the towns and cities, it is not too late for the federal agencies to intercede to assure compliance with federal law for the next rounds, which the Governor’s January 5th letter says will be in a “few days.”

In the absence of state action directed by the Governor, a few towns and cities have on their own chosen to focus on high-risk individuals, and should be lauded for doing so, including Granby, New Britain, Canton and Middletown. For example, the instructions to the public from the Town of Granby state: “If you are in an at-risk population and have immediate need of tests and masks, please

contact Our distribution event is a stop gap measure to provide tests to those households with an immediate need until testing is readily available again.” These municipal actions are being taken haphazardly because the Governor has failed to impose a uniform requirement for such priority.

Throughout Connecticut, as has been true throughout the COVID crisis, in the absence of a state **mandate**, compliance will be spotty at best. This has been seen most recently in regards to indoor mask wearing, which is critical to slowing the spread of Omicron. While the Governor has refused the many calls from the public and elected officials to reinstate a statewide indoor mask mandate in all public places during the current crisis, an increasing number of municipalities, including the capital city of Hartford, have had to, on their own, reimpose such mandates in recognition that compliance is grossly inadequate without a mandate, as is plainly evident to residents across the state.

In their 12/31 letter and the federal complaints, DRCT and CLRP laid out several state and federal laws which prohibit discrimination and require reasonable accommodation for people with disabilities, including Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973, which protect a broad range of individuals with disabilities, respectively, in the provision of governmental services and under programs funded in whole or in part by the federal government.

The letter also noted that convicted prisoners have constitutional rights to protections under the Eighth Amendment of the U.S. Constitution and under the Connecticut Constitution, which includes protection from communicable diseases, and that individuals confined to the state’s psychiatric institutions and programs, such as Whiting Forensic Hospital and Connecticut Valley Hospital, not only have constitutional rights to treatment and protection from harm, but also are protected under state statutes.

The two complaining organizations note that the Governor’s January 5th letter did offer to have his Senior Advisor for Health and Human Services, Commissioner Deidre Gifford, meet with them to discuss this further. Because time is of the essence and the Governor’s letter pointedly refused to impose the directives they requested, they had no choice but to file the complaints to seek immediate relief. However, they have today reached out to Commissioner Gifford to accept the offer of a meeting and have proposed that the parties meet ASAP to see if an amicable resolution is possible.

DRCT’s mission is to advocate, educate, investigate and pursue legal, administrative, and other appropriate remedies to advance and protect the civil rights of individuals with disabilities to participate equally and fully in all facets of community life in Connecticut. DRCT is the Protection & Advocacy System for Connecticut, having replaced the state Office of Protection & Advocacy for Persons with Disabilities in 2017.

CLRP is a statewide legal services organization whose clients are low-income people with psychiatric disabilities. CLRP was created by a federal consent decree in 1990 to serve psychiatric inpatients in state facilities and provide them with their constitutional right to access the courts. CLRP also provides legal representation to low-income people with psychiatric disabilities who reside in the community.

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