

## How Discrimination on the Basis of Disability Shows Up in Perinatal Care

Pregnant people with disabilities experience an increased risk of complications and poorer outcomes compared to able-bodied pregnant people because they receive different perinatal care. This includes pregnant people living with substance use disorder (SUD). The Department of Health and Human Services' Office for Civil Rights acknowledges that discrimination on the basis of disability has intersectional dimensions and that many harms do not fit neatly into the categories of current nondiscrimination protections. This means that people's experiences of discrimination are often based off of multiple identities that they hold (intersectionality) and that the legal system is structured to respond to discrimination based on protected characteristic ignores this intersectionality. When you receive perinatal care that is different than other people because of your disability, you may have experienced discrimination "on the basis of disability."

### What is Discrimination on the Basis of Disability:

- Examples of common discriminatory practices from medical professionals
  - Failing to provide information, medical equipment, or materials to accommodate for people with auditory or visual disabilities or learning or developmental disabilities
  - Conducting sterilizations, cesarean surgery, or drug testing without informed consent
  - Reporting the results of drug testing to Child Protective Services or law enforcement without informed consent
  - Removing infants at birth and other policies that penalize pregnant people for substance abuse during pregnancy

### Who is Affected

Disability during pregnancy is as diverse as the people who are pregnant. Groups that may be particularly vulnerable are:

- *Pregnant and birthing people with auditory or visual disabilities*
- *Pregnant and birthing people with intellectual or developmental disabilities*
- *Pregnant and birthing people with substance use disorder*

Discrimination on the basis of disability is grounded in paternalistic attitudes and stereotypes that people with disabilities should not be or cannot be sexually active or have children. Disability-based discrimination is a consequence of structural inequality, discrimination, patriarchy, and disrespect for equality and human rights. It is also a symptom of how many medical providers are ignorant of the reproductive abilities and needs of pregnant people with disabilities.

### Why it Matters

Pregnant people of all abilities have a right to give birth without discrimination. When a pregnant person's disability limits the care available to them or influences the way the care they receive is delivered, it is unjust. Inaccessible care, ableism, and social stigma associated with disability create barriers for disabled pregnant people to receive equal perinatal care and keep custody of their children. As a result, pregnant people with disabilities are more likely to avoid prenatal care and receive incomplete information or no information at all, including about fertility, birth control, and lactation. This increases the potential for post-birth complications, such as

drug withdrawal. Disability-based discrimination also disproportionately hurts Black, Indigenous, and People of Color (BIPOC) with disabilities and Queer and Trans people with disabilities due to systemic racism, homophobia, and transphobia.

### Legal Protections

Receiving (or not receiving) perinatal care that is different than other people because of a disability is disability-based discrimination. Health care facilities and providers in the United States that receive government funding (as most do) have to give patients equal access to care, regardless of disability status. In practice, this means that an organization cannot refuse to treat, deny benefits, or discriminate against a person based only on their disability if they receive money from the federal government. Section 504; 42 U.S. Code § 18116. The Office of Civil Rights in the US Department of Health and Human Services (HHS) has the legal authority to enforce this law. Section 1557 of ACA.

### How to File an OCR Complaint

You can file a complaint **through OCR's [online portal](#)** or by mail, fax, or e-mail. OCR provides free language assistance services and services are accessible to persons with disabilities.

You will need to:

- Name the health care or social service provider that discriminated against you,
- Describe what happened,
- Explain why you believe what happened was discrimination (were you treated differently than other people on the basis of race, color, national origin, sex, age and/or disability? Does the facility or institution have a practice or policy that applies to everyone, but that has a discriminatory impact on a protected group?).
- File the complaint through the portal within 180 days of when the act or omission complained of occurred, or if that time has already passed, explain why you had “good cause” to need more time.

Elephant Circle can assist you with filing an OCR complaint. Sign up [here](#) to schedule a consultation with a member of our team.