April 24, 2020

Mark Ghaly, MD, MPH
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California Health and Human Services Agency
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Sonia Y. Angell, MD, MPH
State Public Health Officer & Director
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Dear Drs. Ghaly and Angell,

We are California-based academic researchers whose work focuses on preserving the health and improving the lives of people with disabilities and seniors. As such, we are writing to express our strong opposition to the Health Care Surge Crisis Care Guidelines issued by Dr. Angell on April 19.

Our primary objection is to the "save the most life-years" principle for triaging scarce healthcare resources expressed in Appendix A. This principle is an open invitation to discriminate. Emanating from a 36-page document that will be skimmed by many but studied by only a few, the two stated principles will likely be all that clinicians consider as they struggle to make lifesaving or life-ending decisions under chaotic circumstances. It will be these principles, rather than any examples, justifications, or caveats surrounding them, that will determine who lives and who dies in the present crisis. And the callous disregard for the lives of seniors and people with disabilities that these principles express will immeasurably damage their future standing in healthcare settings, and in society as a whole.

Of the two guiding principles—"save the most lives" and "save the most life-years"—the latter is by far the more ethically and legally objectionable. It forces hospital personnel to guess at a patient's probable longevity, assuming recovery from the current acute episode, and then apply those guesses in deciding to treat one person and leave another to die. While it might be reasonable to deny scarce resources to someone who would soon die regardless, such a decision is very different from deciding to provide life-saving care to one patient rather than another, because the former is 50 and more likely to live 20 more years than the latter, who is 70. Although the discussion of the "life-years" principle mentions chronic health conditions that might shorten life, the later "tie-breaker" guidance (p. 23) explicitly encourages age discrimination, albeit dubiously claiming that it does not "rely on considerations of one's intrinsic worth or social utility."

For people with disabilities, clinicians will feel free to guess at a person's longevity based not only on their diagnosed chronic health conditions but also on the decider's perception of the patient's disability and its impact on their life. Such decisions will unavoidably be influenced by overt prejudice and unconscious bias. Although there is no explicit mention of the *quality* of the life years to be saved, such considerations will no doubt enter the minds of the decision makers. Historically, uninformed misconceptions as to the quality of a typical disabled person's life have led to decisions by healthcare providers and family members to terminate care or force the person to be institutionalized. Other considerations being equal, clinicians must be prohibited from using factors related to a person's disability status as a triage criterion.

Expected longevity and qualify-of-life arguments will be used, as they often have been in the past, to deny treatment to people who don't take care of their health, abuse substances, live on the streets, or have serious mental health diagnoses found to often shorten lives. Members of underserved racial and ethnic minority groups, who on average have shorter lifespans due largely to access issues, structural racism, and poverty, might also be subject to treatment denials by biased providers for the same reasons.

We also object to the way in which the other principle, "save the most lives," is implemented in the allocation framework. While the probability of success of any treatment must be considered, the specific use of the Sequential Organ Failure Assessment (SOFA) score, in the absence of consideration of the patient's baseline condition prior to the acute episode, is likely to also introduce discriminatory practices. For example, by incorporating the Glasgow Coma Score, the SOFA score substantially penalizes non-speaking people with developmental, intellectual, and speech disabilities, as well as people with paralysis and other disabilities affecting movement.

We urge you to rescind the surge crisis triage guidance before decisions are made that unethically, immorally, and illegally result in denial of treatment to some of the most vulnerable Californians.

Sincerely,

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