

Allocating medical resources fairly: the CSG bioethics guide

Ruth Macklin, PhD.⁽¹⁾

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Abstract

On April 12, 2020, a bioethics guide for allocating scarce hospital resources during the current Covid-19 pandemic was posted on the website of the *Consejo de Salubridad General* (CSG) of the Government of Mexico. The guide, entitled *Guía bioética para asignación de recursos limitados de medicina crítica en situación de emergencia*, was intended as a preliminary document, but the website posting did not describe it as a first step in the process. The publicity resulted in a wide array of comments and criticisms. That first version posted on the CSG website contained an age-based criterion for breaking a tie between two or more medically eligible patients who needed of a ventilator: younger patients would have preference over older ones. The final version of the guide eliminated that criterion and instead, relied on the leading public health principle, “save the most lives”, without regard to personal characteristics other than the possibility of benefitting from the scarce medical resources.

Keywords: ethics; social justice; pandemics

Resumen

El 12 de abril de 2020, se publicó en el sitio web del Consejo de Salubridad General (CSG) del Gobierno de México una guía de bioética para asignar recursos hospitalarios escasos durante la actual pandemia de Covid-19. La guía titulada *Guía bioética para asignación de recursos limitados de medicina crítica en situación de emergencia* pretendía ser un documento preliminar, pero la publicación en el sitio web no lo describió como un primer paso en el proceso. La publicación resultó en una amplia gama de comentarios y críticas. La primera versión publicada en el sitio web del CSG contenía un criterio basado en la edad para romper el empate entre dos o más pacientes médicamente elegibles que necesitaran un ventilador: los pacientes más jóvenes tendrían preferencia sobre los de mayor edad. La versión final de la guía eliminó ese criterio y, en cambio, se basó en el principio principal de salud pública, “salvar la mayoría de las vidas”, sin tener en cuenta las características personales que no sean la posibilidad de beneficiarse de los escasos recursos médicos.

Palabras clave: ética; justicia social; pandemias

On April 12, 2020, a bioethics guide for allocating scarce hospital resources during the current Covid-19 pandemic was posted on the website of the *Consejo de Salubridad General* (CSG).¹ Although the guide, entitled *Guía bioética para asignación de recursos limitados de medicina crítica en situación de emergencia*, was intended as a preliminary document, the website posting did not describe it as a first step in the process.

The publicity resulted in a wide array of comments and criticisms from physicians, philosophers, human rights advocates, and others.

This brief communication does not provide details of those criticisms, but focuses instead on one feature of the first version of the guide: the use of an age-based criterion in case two (or more) patients need a ventilator at the same time and meet the specified medical crite-

(1) Albert Einstein College of Medicine, Bronx, New York, USA

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Corresponding author: Ruth Macklin, Albert Einstein College of Medicine,
3671 Hudson Manor Terrace 10B, 10463 Bronx, New York, USA.
email: ruth.macklin@einsteinmed.org

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ria for ventilator assistance. The guidance document acknowledged two main sources used to develop its recommendations.^{2,3}

Breaking a tie with an age-based criterion

The first version of the CSG guide listed an array of criteria that should not be taken into account for allocating resources (political affiliation, religion, to be the head of the family, perceived social value, nationality or migratory status, gender, race, sexual preference, disability, among others). The guide used the age-based criterion in only one situation: where two patients are in immediate need of a ventilator and meet all of the specified medical criteria for the treatment. The guide cited the “complete-lives” principle in support of this criterion, explained as follows: *“la muerte priva a los jóvenes de un número mayor de bienes que a aquellas personas que ya han pasado por dicha etapa vital”*. Another term often used in this context is “the life-cycle” principle.^{2,3} But the CSG guide also endorsed a leading principle of justice: “all persons have the same value”. This principle of justice conflicts with the age-based criterion for breaking a tie between patients eligible for ventilator assistance.

In the week after the guide was posted, the writing group conducted interviews with people who had submitted proposals to revise the document, along with other key stakeholders, after which the authors revised the guidance document.¹ The revised guide abandoned age as a tie-breaking criterion for patients in need of ventilator assistance. This version of the guidelines was approved and published on the CSG website on April 30, 2020, following comments from numerous professional, academic, governmental, and human rights organizations. The guide does not provide specific arguments for abandoning the age-based criterion; it simply lists age among the factors that should not be taken into account when allocating resources. The arguments presented briefly below should serve as a justification for rejecting age as a tie-breaker for allocating a scarce resource in the current pandemic.

Several guidelines reject age as a general criterion for allocating scarce resources in a pandemic.^{3,4} Yet they propose the use of age in the specific situation where two patients of different ages who meet the medical criteria for ventilator assistance are in immediate need. Why do they invoke that criterion as a tie-breaker instead of using the same principle they recommend in general when the number of patients in need exceeds the supply: a lottery or other mechanism for selection by chance? Only in this situation do they appeal to the “complete-lives” or “life-cycle” principle.

Arguments against the “complete-lives” principle

Use of the “complete-lives” principle rests on a false presumption. It purports to be a principle of justice. The presumption is that making this specific decision in this very narrow context is a virtual guarantee of fairness in ensuring the achievement of a normal life span. Unlike other contexts in which using a principle of justice can succeed in providing fair benefits—equally or equitably—to recipients, this very specific principle in a limited context can do nothing of the kind.⁵ The preliminary version of the CSG guide used age brackets for determining who should get the ventilator in case of a tie. The age groupings were: 0-12, 12-40, 41-60, 61-75 and +75.¹ But a child between 0 and 12 may develop leukemia or die in an automobile accident. A woman under 40 may have the BRCA gene and die of invasive breast cancer at 25. A man between 41 and 50 may die from an overdose of opioids. Individuals from 65 to 75 may drop dead of a heart attack even if they do not have prior heart disease or other co-morbidities at the time they are evaluated with Covid-19. At the other end of the life span, an increasing number of people live well into their 90s and even reach 100. People’s physiological age can be lower or higher than their chronological age. In sum, the “complete-lives” principle is applied without any possible reference to real-life circumstances that can cause death at any age. The 75-year old who lives to 100 has more life years left than the 40-year old who dies in 10 years from colon cancer.

Those same age brackets for allocating a ventilator lend themselves to invidious distinctions.⁵ The categories are designed to give preference to the younger person who falls within these brackets when a tie exists: 0-12, 12-40, 41-60, 61-75 and +75. Let us assume that the two people arriving at the same time and with the same medical eligibility for treatment are age 40 and 41. The 40-year old gets the ventilator but not the 41-year old. The same holds for any age groups that cluster around the first and last ages in each bracketed group. What is suggested as a principle to save the most remaining years of life becomes no better than a lottery at the edges of these age brackets.

Strict adherence to the complete-lives principle could have some undesirable consequences. Suppose a 4-year old child arrives at the hospital at the same time as her 32-year-old mother. The guidance says give the ventilator to the child. But that child has five older siblings and the mother is the sole parent caring for all six children. She dies, and six children are without a parent and few, if any, resources. It is patently clear that

such situations could not possibly be discovered and resolved on a case-by-case basis by taking into account the various life circumstances of patients who arrive at the hospital in an emergency. Selecting the recipient by chance could, of course, have the same result: chance could favor the child as well as the mother. But that's "the luck of the draw", not some presumption of fairness, which the complete-lives principle purports to ensure.

A commendable bioethics guide

In sum, prioritizing younger over older patients when a tie exists violates a key principle of justice stated in the preliminary and final version of the CSG guide: *"un principio de la justicia social es que todas las personas tienen el mismo valor"*. The exception to this principle defended in both versions is giving priority to health care workers providing care in the Covid-19 emergency: *"El valor intrínseco del personal de salud es igual, y no mayor, al de otros miembros de la comunidad. Aún cuando esto es así, el personal de salud tiene un valor instrumental mayor durante la emergencia médica. Y es por el valor instrumental que tienen para hacer frente a la epidemia que se debe de dar prioridad a dicho personal de salud"*. This exception makes perfect sense and is well-defended in the guide, citing three instrumental reasons to justify giving priority to health workers. But the age-based criterion for breaking a tie between two patients who arrive at the same time, with the same eligibility criteria, is inconsistent with the "equal worth" principle. Therefore, the tie should be broken by a method that chooses the recipient of the life-saving emergency treatment by chance.

The final version of the CSG guide is the only one among current or recent bioethics guidelines to reject an

age-based criterion for breaking a tie between eligible individuals in need of the remaining ventilator. The document endorses the chief principle of public health: "save the most lives", without regard to personal characteristics other than the possibility of benefitting from the scarce medical resources. The various bodies that have endorsed this document to guide such decisions in Mexico are to be commended for adherence to the principle that all human beings have equal worth when it comes to saving lives.

Declaration of conflict of interests. The author declares not to have conflict of interests.

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