

Dr John Chisholm
Chair, Medical Ethics Committee
British Medical Association
BMA House, Tavistock Square
WC1J 9JP
By email

Our ref: 611Chisholm

Thursday 23 April 2020

Dear Dr. Chisholm,

Subject: BMA ethical guidelines

The Equality and Human Rights Commission is Great Britain's national equality body and human rights institution, mandated by Parliament to independently challenge discrimination and protect and promote human rights.

Firstly, we are deeply saddened to hear of any loss of life or illness among your membership. Doctors and other healthcare professionals deserve our full support and protection as a society.

However, we have been in discussion with our counterparts at the Care Quality Commission (CQC) regarding the equality and human rights implications of

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COVID-19 in the health and social care systems, and are particularly concerned about the possibility of discrimination in access to critical care for older and disabled people.

You will be aware that concerns have been raised that some clinical and decision-making guidance puts individuals with non-pertinent health conditions or impairments at a disadvantage where resources are scarce and difficult decisions have to be made about access to treatment. The [NICE COVID-19 rapid guideline on critical care](#) was recently amended to address these concerns, by making clear that an individualised assessment of frailty should be conducted for people with learning disabilities, autism and other stable long-term disabilities, instead of applying the Clinical Frailty Scale.

However, we are concerned that the BMA's guidance on '[COVID-19 – ethical issues](#)' does not make clear, as it does with regard to older people, that non-pertinent health conditions or impairments must not play a part in decision-making with regards to disabled people. Furthermore, as acknowledged in the guidance, the application of a 'capacity to benefit quickly test' would be indirectly discriminatory, as disabled people with certain underlying health conditions could have unequal access to critical care as compared to non-disabled people, even when they are assessed as likely to respond well to treatment. This requires careful justification, and we are concerned that this may not take place in busy clinical settings.

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We entirely understand that doctors will be making unprecedented and difficult decisions under extreme pressure. However, we think that it is essential that the guidance is clearer in stressing that such decisions must be made in line with equality and non-discrimination duties under the Equality Act 2010.

We would be grateful if you could clarify this position, including by amending the framework accordingly or consider removing it from circulation so that clinicians regards the NICE guidelines as definitive on these issues.

I look forward to hearing from you.

Yours sincerely,

Rebecca Hilsenrath

Chief Executive

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