

Crisis Standards of Care: Legal Decision Factors (as of Sept. 7, 2021)

Throughout the COVID-19 pandemic, health care providers have experienced series of patient surges and corresponding resource shortages leading to implementation of [crisis standards of care](#) (CSC). CSC is defined by the National Academy of Medicine (NAM) as a “substantial change in usual health care operations and the level of care it is possible to deliver” in emergencies. Avoiding CSC through advance, preventive measures is key. However, when critical decisions need to be made about allocations of care or services involving specific patients, health care providers must consider an array of medical, ethical, social, and legal factors. Profound confusion exists over which factors can – *and cannot* – be used legally to render CSC decisions. While specific legal bases for critical decisions directly impacting patient outcomes may vary across jurisdictions, this memo identifies (1) factors or criteria generally interpreted or viewed as “unlawful” for purposes of CSC decision-making; and (2) remaining lawful bases for which CSC decisions may be made.

1. Factors/Criteria Interpreted or Viewed as Unlawful for CSC Decisions Impacting Specific Patients:

- [Race/color](#)
- [Ethnicity](#)
- [National Origin](#)
- [Sex](#)
- [Gender](#)
- [Age](#) (as a purely categorical factor)
- [Veteran Status](#)
- [Marital Status](#)
- [Religion/Exercise of Conscience](#)
- [Limited English Proficiency](#)
- [Long-term Mortality or Life Expectancy](#)
- [Assumptions of Perceived Health Status](#)
- [Disability - Physical or Mental](#)
- [Quality of Life](#)
- [Individual’s Relative Worth](#)
- [Inequitable Clinical Assessment Scores](#)
- [Resource Intensity Due to Disability/Age](#)
- [Duration of Need Due to Disability/Age](#)
- [Income](#)
- [Ability to Pay](#)
- [Advanced Planning/Steering Decisions](#)
- [Categorical Exclusions](#)
- [Blanket Applications](#)
- [Stereotypes](#)

2. Factors/Criteria Which May Lawfully Be Used for CSC Decision-making Impacting Specific Patients:

- Specific Resource Limitations or Suitability
- Current Medical/Public Health Information
- Individualized Patient Assessments
- Objective Medical Evidence
- Equitable Clinical Assessment Scores
- Short-term Survival
- Age (as a limited prognostic factor)
- Patient/Surrogate Consent and Choices
- Health Care Worker Status
- Reasonable Modifications to Assure Equal Access for Disabled or Aged Patients
- Appeals

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