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Prioritizing the Treatment of Critically Ill Patients During the Corona Crisis: Constitutional, Legal and Practical Aspects

In this article we address the legal and ethical aspects of prioritizing medical care (respirators) in the face of extreme shortages. Due to dramatic events around the world as a result of the COVID-19 pandemic, in which the collapse of health systems has been observed (or predicted), it is necessary to examine the legal and regulatory landscape in Israel in a situation where the need to prioritize respirators and decide on an allocation shall arise.

Alongside constitutional principles (the right to life and the sanctity of life; the right to health; the right to human dignity; the right to equality), several laws regarding the treatment of patients in emergencies are implicated (Patient Rights Law; National Health Insurance Law; Public Health Ordinance; or the Dying Patient Act).

The purpose of this article is to create a practical roadmap that implements constitutional principles and guiding law provisions for prioritization decisions. Our aim is to guide the practice of those responsible for allocation of respirators, enhancing public confidence in the decision-making processes and its implementation in times of crisis.

The article seeks to draw attention to the fact that, although physicians' organizations around the world have published guidelines for prioritizing respirators during the Corona pandemic, it is of paramount importance to adapt the proposed medical outline to the existing legal and ethical infrastructure in Israel, taking full account of Israel's autonomous and unique bioethics and health law - "Blue and White bioethics".