

## **Critical Care Triage for Major Surge in the COVID-19 Pandemic – The Role of the Ontario COVID-19 Bioethics Table**

The purpose of this document is to provide background on the Ontario COVID-19 Bioethics Table and its role in developing an Ontario approach to critical care triage in the event of a major surge in demand for critical care services during the COVID-19 pandemic.

### **What is the Ontario COVID-19 Bioethics Table?**

The Ontario COVID-19 Bioethics Table (“Bioethics Table”) was established at the request of the Ontario Ministry of Health and began its work during the first week of March 2020. The Bioethics Table is an advisory body comprising independent bioethics experts from health institutions, universities, and non-governmental organizations. The purpose of the Bioethics Table is to provide ethics input and guidance to support decision-making at the Ministry of Health COVID-19 Command Table, Ontario Health COVID-19 Oversight Table and other Tables as appropriate. It provides expert advice on bioethical issues at the request of, and in consultation with, the Ministry of Health and Ontario Health. Over the course of the pandemic, it has developed a partnership with the Indigenous Primary Health Care Council and expanded its membership to include those with expertise and/or experience in the areas of human rights and anti-racism. The University of Toronto Joint Centre for Bioethics is the lead institution of the Bioethics Table. Contrary to recent media reports, the Bioethics Table’s Charter and Terms of Reference and membership have been publicly available since May 2020 on the University of Toronto Joint Centre for Bioethics’ website. Over the course of the pandemic, the Bioethics Table has developed policy briefs/ethical frameworks on a number of issues ranging from drug shortages to allocation of personal protective equipment to ramping down elective surgeries to vaccine prioritization to paid sick leave. These documents are also available on the University of Toronto Joint Centre for Bioethics website. It is important to note that all documents produced during the pandemic by the Bioethics Table are considered green documents and subject to modification as new information emerges or conditions change.

### **Critical Care Triage Protocol for Major Surge in the COVID Pandemic**

One of the most complex and ethically challenging issues that the Bioethics Table was asked to provide advice around was that of critical care triage. Critical care triage is the process for making decisions about who ought (and who ought not) receive critical care services (e.g., life support such as a ventilator). Critical care triage is *only* initiated if the demand for critical care services is greater than the supply and all possible measures to increase capacity have been exhausted. Across the world, there is general agreement that the goal of critical care triage is to save the most lives. However, while saving the most lives, there is a need to ensure that the process of triage occurs in the most ethical way and concurrently respects, protects, and fulfills legal and human rights obligations.

In March of 2020, news reports from around the world told alarming stories about healthcare systems in places like Italy and New York being overwhelmed by the number of critically ill patients and that there were not enough resources to treat all. Refrigerator trucks were brought in to house the dead. As we appeared to be facing a similar tsunami, an initial draft protocol entitled *Clinical Triage Protocol for Major Surge in COVID Pandemic* that built upon work done during earlier pandemics including SARs and H1N1 was quickly developed and circulated to hospitals by Ontario Health. Fortunately, Ontario was able to flatten the curve and critical care triage was never required.

### **Engagement and Consultation to Develop a Revised Document:**

After the release of the initial Clinical Triage Protocol, disability organizations including ARCH Disability Law Centre and Accessibility for Ontarians with Disabilities Act (AODA) Alliance expressed significant concerns that the protocol that had been circulated was discriminatory towards

persons with disabilities and that use of the protocol would result in disabled individuals being disproportionately and unfairly denied access to critical care. As Wave 1 of the pandemic was receding, from April to August, members of the Bioethics Table Critical Care Triage Working Group embarked on an engagement and consultation process with a number of stakeholder groups and individuals including ARCH and AODA Alliance and human rights experts including the Ontario Human Rights Commission (OHRC) to better understand these concerns. As a result, a revised document entitled *Critical Care Triage during Major Surge in the COVID-19 Pandemic: Proposed Framework for Ontario* was submitted to the Ministry of Health on September 11, 2020. The content of that document was agreed to by all Bioethics Table members at that time (one member has since rescinded their support for this document). This document included a set of recommendations for next steps including release of the document to the public for consultation and feedback. The proposed framework sought to address the concerns raised through the engagement and consultation process. Some, but not all of the recommendations put forward by the Bioethics Table were acted upon by the government. One of those recommendations was to rescind the original March 28, 2020 document and this occurred on October 29, 2020.

Stakeholder feedback on the September 11<sup>th</sup> document was sought through a facilitated round table held in December 2020. Although there was an acknowledgement that the document was much improved and had addressed many of the concerns that had been raised, there remained several unresolved issues. As a second wave was fast approaching and the threat of the critical care system being overwhelmed was once again very possible, the Bioethics Table incorporated feedback from the roundtable and submitted a revised version of the *Proposed Framework* to the Ministry of Health on January 12, 2020. Not all Bioethics Table members supported all aspects of this revised version. The Ontario Critical Care COVID-19 Command Centre (OCCCCC) also released a document to hospitals at about this same time entitled *Emergency Standard of Care*. This document developed by OCCCCC relied heavily on the content of the *Proposed Framework*. Since that time, the Bioethics Table has continued to work with the OHRC to further refine the *Proposed Framework*. Once these refinements are complete, an updated version of the recommendations and *Proposed Framework* will be submitted to the Ministry. The recommendations will again emphasize the need for transparency and public engagement and consultation on the issue of critical care triage. The Bioethics Table believes this is essential to build public trust.

Through implementation of many health system strategies including moving patients to hospitals with greater capacity, the need for critical care triage in Wave 2 of the pandemic was averted. However, it is important to continue to work towards the creation of an agreed upon standardized approach to critical care triage as subsequent waves of COVID-19 that might overwhelm critical care remain a possibility given the new variants and the arrival of Wave 3; it would also be prudent to have in place an agreed upon approach to critical care triage if and when future pandemic situations arise. It is our hope that Ontarians can come to a shared understanding of critical care triage that does not further reproduce and exacerbate existing inequities in health and that is respectful of the least powerful in society. The protection of fundamental human rights during an emergency is a litmus test for society, and we need to do everything in our power to avoid overriding them. This is not an easy task, but seeking broader engagement on these issues is fundamental to our democratic approach to ethical policies and practices.

### **Our Current Recommendations to Government**

The following revised and consolidated recommendations represent the Bioethics Table members' current thinking in relation to next steps regarding the Proposed Framework that should be undertaken or continued by the Ministry of Health and for which the Ministry of Health would be accountable. Transparency to the public in relation to critical care triage is an important ethical principle that should be upheld at all times in order to foster public trust.

1. **Prevention and Upstream Interventions to Avoid a Major Surge:** Sustain and continue to increase efforts to prevent and mitigate the risk of a major surge in demand for critical care

and, in particular, focus on strategies to reduce the effect that a major surge may have on the least advantaged. This includes enhanced efforts to ensure that key public health prevention and mitigation strategies (e.g., face masks, testing, social distancing, contact tracing, vaccination, paid sick leave) are widely available and strategically deployed through trusted community-based partners.

2. **Public Input and Feedback:** Make public the Proposed Framework and associated triage documents such as the Adult Critical Care Clinical Emergency Standard of Care and the Adult Critical Care Triage and Resource Allocation Protocol for Major Surge documents developed by the Ontario Critical Care COVID-19 Command Centre (OCCCCC), along with supporting Ministry documents (e.g., Frequently Asked Questions) to promote accessibility and understanding, and invite public input and feedback within a defined timeframe.
3. **Multi-Stakeholder Working Group:** Strike a multi-stakeholder working group with the goal of working toward an agreed-upon approach for major critical care surge in Ontario. This is an essential step for establishing the procedural and substantive legitimacy of the approach for major critical care surge in Ontario. The working group would integrate new learnings that arise as a result of public feedback and any other new developments, such as research from this or other jurisdictions, into the Proposed Framework and associated triage documents. It should be comprised of persons with expertise and/or lived experience from the Indigenous community, Black and racialized communities, disability community, elderly and congregate care communities, and others who have been disproportionately impacted by the pandemic due to ongoing system discrimination and health inequities, as well as experts in healthcare administration, critical care, ethics, law, anti-racism and human rights. For continuity purposes, the group should include a small subset of current members of the Bioethics Table and OCCCCC. The leadership model is important in order to centre expertise and lived experience that has been historically excluded; therefore, a co-led model with representatives having accountability to their respective communities is recommended. This working group will require secretariat support. As it is likely that there will be future pandemics, the government may wish to consider establishment of a standing body to address critical care triage that could engage in broader public and stakeholder engagement in a time of non-crisis.
4. **Data Collection and Monitoring:** Execute a plan for disaggregated data collection, driven by and accountable to affected communities, to ensure Ontario's approach to critical care triage during major surge is achieving the aim for which it is intended and is not leading to unintended adverse consequences. Data sovereignty and responsible use and control of data by Indigenous, Black and other affected communities is crucial. The purpose of collecting this data is to monitor for discrimination, identify and remove systemic barriers, and promote substantive equality. Findings from the data should be shared with the multi-stakeholder working group to inform evidence-based revisions to the approach for major critical care surge in Ontario.
5. **Legal Considerations:** Seek independent legal review of the approach to critical care triage during major surge to ensure that the Proposed Framework and any associated triage documents are in alignment with due process, relevant laws, and human rights standards. Persons involved in implementing the approved approach to critical care triage and persons that may not receive critical care services as a result of a triage decision will be deeply impacted by these decisions in a fundamental way. All of those implementing or affected by triage decisions must have their rights and interests protected to the greatest extent possible (e.g., accommodations for persons with disabilities, liability protections for clinicians who act in good faith in accordance with the approved approach to critical care triage).

Implementation of critical care triage should be understood as a **last resort** after all other viable options have been exhausted. Efforts to prevent a major surge are ongoing. However, it is important that the government prospectively puts in place a plan to manage a worst-case scenario. The Bioethics Table was asked to provide advice to the government on how to manage a worst-case scenario. This updated set of recommendations along with a revised Proposed Framework to inform an approach to critical care triage in Ontario in the event that there is a major surge in demand for critical care during the COVID-19 pandemic that overwhelms the health system. The Bioethics Table has advised government that *unless and until action on these recommendations has been taken, the Proposed Framework should not be viewed as complete or morally legitimate. Several members of the Bioethics Table do not endorse the approach to triage outlined in the Proposed Framework without these additional steps being taken.*