



January 12, 2022

Jan Malcolm  
Commissioner  
Minnesota Department of Health  
P.O. Box 64975  
St. Paul, MN 55164-0975

Dear Commissioner Malcolm:

This letter serves as notice of potential legal action related to the blatantly unconstitutional, immoral, and racist policies of the Minnesota Department of Health that direct the rationing of medicine based on race and self-selected ethnicity.

Your Department has issued [guidance](#) to all medical providers, updated as recently as December 23, 2021, entitled “Ethical Framework for Allocation of Monoclonal Antibodies during the COVID-19 Pandemic.” The guidance tells medical providers how to allocate potentially life-saving medical treatments for patients who have been diagnosed with COVID-19. It claims that responses to COVID-19 “should focus on the overall benefit to the population, to try to save the most lives possible while also respecting rights and promoting fairness across our population.” And it further states that the “[a]llocation of scarce resources should maximize the number of lives saved, taking into account both risk and expectation of benefit, while respecting individuals and groups and protecting against inequity.”

It then does the opposite, directing medical providers to expressly consider a patient’s race and ethnicity alone, apart from other underlying health conditions, in determining whether to provide life-saving treatment. Rather than directing medical providers to assess underlying medical conditions that could heighten a patient’s risk of progression to severe COVID-19—regardless of their race or ethnicity—your Department lumps all non-white people into one monolithic block and makes blanket assertions about their underlying medical vulnerabilities. This does not promote fairness across your population, it does not respect individuals, and it does not protect against inequity. Instead, it subjects an entire class of citizens to unequal treatment based on the color of their skin.

You must immediately rescind these unconstitutional, unlawful, and un-American policies. They violate the Constitution and numerous federal statutes—including Title VI and section 1557 of the Affordable Care Act.

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Washington, DC 20005

Using a patient's skin color or ethnicity—rather than the unique and specific medical circumstances of an individual patient—as a basis for deciding who should obtain lifesaving medical treatment is appalling. The color of one's skin is not a medical condition akin to hypertension, heart disease, or obesity, which are known to aggravate the risk of death or severe illness among those infected with COVID-19. Directing medical professionals to provide or deny medical care based on immutable characteristics like skin color, without regard to the particular health conditions of the individual patients who are seeking these life-saving antiviral treatments, is nothing more than an attempt to establish a racial hierarchy in the provision of life-saving medicine.

Rescind these egregious policies now or prepare for legal challenges.

Sincerely,

A handwritten signature in black ink, appearing to read "G P Hamilton".

Gene Hamilton  
Vice-President and General Counsel  
America First Legal Foundation

cc: State of Minnesota, Office of the Governor  
cc: State of Minnesota, Office of the Attorney General  
cc: U.S. Department of Health and Human Services, Office for Civil Rights  
cc: U.S. Department of Justice, Civil Rights Division