Statement of principles regarding allocation of critical care resources to combat COVID-19

In response to the pandemic, our healthcare providers (HCPs) and first responders are engaged daily in acts of valor. We commend them and are deeply grateful for their heroic service.

During these very difficult circumstances, we support prevention efforts through education, resource sharing, social distancing and other evidence-based methods to mitigate the virus and to handle surge capacity. Similarly, we support the development of transparent Mass Critical Care Guidelines based on sound bioethical principles that prioritize the protection of all people. As the HHS Office of Civil Rights and FEMA have advised, in keeping with federal law, such guidelines should reject rationing of healthcare resources based on race, color, national origin, disability, age, sex or exercise of conscience and religion.[i] Accordingly, we urge that any policies and guidelines incorporate the following principles:

- Every person has the right to receive healthcare and control illness.
- The values of charity, fairness, justice, and the common good should inform all treatment and resource decisions.
- No one should be denied care and *especially those who are most vulnerable*. In this crisis, every Virginian should have the equal opportunity to access treatment, pain management and palliative care. This includes adequate allocation of hospital beds and medical personnel for every health district and without discrimination based on degree of disability, age, race, color, national origin, sex, exercise of conscience and religion, or economic status.
- Virginia should continue to prioritize supportive, compassionate, person-centered care. Active interventions that intend to hasten or produce death are wrong and should never be used.
- Every available step should be taken to secure the resources necessary to provide life-preserving treatment to patients who need it, including access to ventilators and other life-sustaining measures, as well as sufficient personal protective equipment for HCPs.
- Rationing jeopardizes *the unique, irreplaceable value of each human being including people with disabilities, veterans, those with mental illness, the elderly and those unable to afford healthcare -- and undermines our core values as a society.*
- If there is no alternative but to employ triage practices because the need for life-sustaining measures exceeds their availability: judgments about who gets treatment, including efforts at resuscitation must always be based on the *prognosis for near-term survival* -- not on stereotypes or assessments of quality of life. Any DNR or triage policy must treat each person as a unique irreplaceable human being.

6767 Forest Hills Avenue, Suite 304 Richmond, VA 23225 804-560-8745 info@vshl.org www.vshl.org

- When the prognosis for survival from hospitalization is equivalent among more people than there are medical treatments available, determinations should be made without discrimination or bias, e.g., through a “first come, first served” or random method of allocation.[ii]
- We reject any form of nonconsensual reallocation of life-sustaining resources.[iii]
- To the greatest extent possible: 1) Persons in danger of death should be provided information necessary to help them understand their condition and have the opportunity to discuss it with their family and caregivers; and 2) mental health services, faith-based counseling and language assistance should be made available (e.g., through telehealth/virtual services).

Definitions (for background only):

Justice: "Fairness in distribution" or "what is deserved." An injustice occurs when some benefit to which a person is entitled is denied without good reason or when some burden is imposed unduly. In sum, equals ought to be treated equally. “For a right to be called human entails all humans have it equally.” [Kilner, J. (1990). Who lives? Who dies? Ethical criteria in patient selection. New Haven: Yale University Press, p. 194.]

Charity: 1. Provision of help or relief to the poor; almsgiving. 2. Something given to help the needy; alms. 3. An institution, organization, or fund established to help the needy (such as a non-profit hospital).

Common Good: The shared welfare of ordinary people – ordinary citizens working together for public ends. As Virginians, “we are all in this together” and we are essentially one human family whatever our national, racial, ethnic, economic, and ideological differences.

Triage: The sorting out and classification of patient or casualties to determine priority of need and proper place of treatment. During infectious disease outbreaks, triage is particularly important to separate patients likely to be infected with the pathogen of concern. (Triage is not the same as patient assessment – it is an assignment of resources based on the initial patient assessment and consideration of available resources.)

Resource Allocation: The process of prioritizing resources when it is difficult or impossible to provide everyone with all the services that they might want, need, or perceive they need.)

Resource Reallocation: A procedure during crisis medical surge situations when scarce life-sustaining resources are removed from a patient to whom they have been initially

allocated when that patient's condition has subsequently deteriorated or now has a worsening expected short-term survival. These life-saving resources are then reassigned to other patients with a more favorable prognosis or higher potential for benefit.

Non-Consensual Reallocation of Life-Sustaining Resources: In the absence of a properly executed advance directive or the decision of a properly authorized surrogate, the active, intentional, and direct taking of life-sustaining resources from a vulnerable patient incapable of resisting.

Surge Capacity: The ability to evaluate and care for a markedly increased volume of patients—one that challenges or exceeds normal operating capacity. Requirements may extend beyond direct patient care to include other medical tasks, such as extensive laboratory studies or epidemiologic investigations.

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[i] For example, ACA, 42 USC § 42 USC 1320(e)(1)(c)(1).

[ii] Either approach recognizes the intrinsic equality of all human beings. However, other non-biased, non-discriminatory methods based in charity, justice and the common good could be ethically sustainable.

[iii] AMA Council on Ethical and Judicial Affairs (Opinion 2.03): The treating physician must remain a patient advocate and therefore should not make allocation decisions.