

Is Age-based Rationing Evil?

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Novartis now has the the most expensive drug ever after getting US approval

- Swiss pharmaceutical company Novartis on Friday announced it had received US regulatory approval for a gene therapy that treats a rare childhood disorder and has a price tag of \$2.1 million, making it the most expensive drug in history.
- 25 May 2019



headquarters of Swiss pharmaceutical giant Novartis. Photo: SEBASTIEN BOZ

Outline

- Understanding Health Care Rationing
- Rationing and Human Rights
- Age-based rationing: Ethics & Law
- Conclusion

Understanding Health Care Rationing

- Defining Health Care Rationing
- Who decides?
- What criteria?

Ezra

Rationing and Human Rights

- Human Rights
- Legitimacy
- Liability

The Controversy: Age-based Rationing

- Excluding elderly patients from *specific* life-extending treatment options for cost constraints
- Age level as a threshold: “fair-innings” argument
- Discriminatory by nature or justified for specific reasons?
- *CESCR General Comment no. 20* Non-discrimination (E/C12/GC/20)

Weaknesses

- Arbitrariness
- “Too close to call” cases
- ...

Conclusions

- Rationing unavoidable and necessary
- Rationing litigation: Need for public debate on fair rationing: democratic deliberation (L. Fleck) (plea for explicit rationing)
- Incorporating HTA in rationing debate
- Role of the courts: triggering that debate and holding health rights justiciable