

United States Senate

January 11, 2022

The Honorable Janet Woodcock, M.D.
Acting Commissioner
U.S. Food and Drug Administration
10903 New Hampshire Ave
Silver Springs, MD 20993-0002

Dear Acting Commissioner Woodcock:

I write today requesting information regarding the criteria used for determining an individual's eligibility for Covid-19 therapeutics.

The *Washington Free Beacon* reported that the Food and Drug Administration (FDA) issued a fact sheet suggesting race should be used to determine who qualifies for the monoclonal antibody treatment Sotrovimab.¹ The Centers for Disease Control and Prevention (CDC) also issued a fact sheet indicating that "systemic health and social inequities" have put minority populations at increased risk of contracting severe Covid-19.

These life-saving therapeutics are in short supply both in Arkansas and nationwide. While we are aware these fact sheets are non-binding, state health departments look to the FDA and other federal agencies for guidance when selecting which individuals receive Covid-19 therapeutics and treatments.

Data show that factors like age, pre-existing medical conditions, and comorbidities affect the toll this virus takes on an individual. These risk factors are already assessed when determining whether a person is eligible to receive Covid-19 treatment.

Using race as a factor will lead to unjust and racist outcomes, where young, healthy individuals who qualify for treatment are prioritized over at-risk individuals because of the color of their skin. This racist policy will lead to additional deaths.

The FDA's race-based rationing is also blatantly illegal. Race-based rationing of care violates the Constitution and our civil rights laws, just as it runs afoul of our values as a nation.

¹ *Fact Sheet for Healthcare Providers Emergency Use Authorization (EUA) of Sotrovimab* <https://www.fda.gov/media/149534/download>

Please answer the following questions about the FDA's decision to use race as a factor in prioritizing care:

1. Why should a healthy 18-year-old non-white individual be prioritized over a 64-year white American with high blood pressure? What are the death rates for each person with those characteristics?
2. What legal basis is the FDA relying on that justifies using race as an independent factor for receiving a Covid-19 therapeutic or treatment?

I look forward to receiving your response and working to ensure that life-saving therapeutics are distributed to individuals who need them most.

Sincerely,



Tom Cotton
United States Senator

CC:

Xavier Becerra, Secretary, United States Department of Health and Human Services
Rochelle Walensky, M.D., Director, Centers for Disease Control and Prevention