

Covid-19, epidemiological tracing and medical ethics

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The containment exit phase, which will be gradually implemented in a few days, will have to be monitored with the utmost vigilance to detect any possible resurgence of the Covid-19 epidemic. The draft legislation extending the state of health emergency foresees the creation of a specific information system "*for the sole purpose of fighting the Covid-19 epidemic*"¹. Identifying data on infected persons and their contacts may be shared in this system. It is also envisaged to adapt the existing information systems for the time necessary to fight the epidemic, or at the latest for one year from the publication of the text of the law, as the data thus collected cannot be kept beyond this term. The purpose of this new information system would be to identify infected persons and those who have been in contact with them, to put them in quarantine for 14 days and provide them with a medical follow up. The text mentions the authorities involved in this epidemiological surveillance who will be able to have access to "*only the data needed for their intervention*", in particular regional public health agencies or also "*a health insurance organization*".

From an epidemiological point of view, such a monitoring of infected persons or those at risk of infection can be effective since it will make it possible, in addition to a medical follow up of infected people, to track and isolate those who may have been contaminated at their contact.

However, it should be emphasized that the proposed system infringes two fundamental rights: on the one hand, it allows the circulation of personal health data, "*where appropriate without the consent of the parties concerned*", creating an exception to the free will of people ; on the other hand, it introduces a new exemption to medical confidentiality. However, medical confidentiality is a major principle of human rights, a component of human dignity and respect for privacy, a fundamental element of the doctor-patient trust relationship.

Can a state of healthcare emergency justify an exceptional measure that flouts two major rights of our healthcare system? Such an approach is only possible if it is proportionate to the risks incurred. Several ethical and legal conditions must therefore be guaranteed:

1. a wide communication will have to precede the implementation of this system, with precise, factual, understandable by all and fair information on the systems set up and the transmission circuit of personal data;
2. it should be possible for anyone informed of his or her Covid-19 infection to object to the transmission of information concerning him or her, without this choice having any consequence on his or her own medical care;
3. all data transmitted for processing must be strictly limited to what will have to be necessary for the fight against the epidemic and to be protected by an anonymity code;
4. the authorities and employees having access to this information will have to be precisely listed, each of those people having access only to the data useful for their intervention;
5. any person thus coming into possession of personal information on infected patients will be bound to the utmost respect for the professional secrecy;

¹ Senate, Bill extending the state of health emergency and supplementing its provisions, No. 414, May 2, 2020

6. the information systems set up will have to be highly protected and operate for a limited period of time, in no case exceeding the time necessary to fight the epidemic; a maximum term should be stated;
7. all measures will have to be taken so that none of the personal data thus collected is retained beyond this term.

Subject to the full compliance with these 7 prerequisites, the National Academy of Medicine:

- gives a favorable opinion to the temporary setting up of an information system and to the temporary adaptation of existing information systems, aimed at controlling the Covid-19 epidemic;
- recommends an ongoing and final evaluation to verify the strict observance of these seven conditions and to ensure that the temporary nature of this authorization, fixed by a deadline, has avoided any perpetuation.