

## ***The Domestic and International Ethical Debate on Rationing Care of Illegal Immigrants***

Brandon Sultan

### **Introduction:**

The millions of illegal immigrants in the United States have created a significant burden on the country's healthcare system. The passage of the Affordable Care Act will lead to a significant reduction in uncompensated care this year, which will force hospitals to ration, and perhaps ultimately limit or stop, care of illegal immigrants.<sup>[1]</sup> This issue is even greater on a global scale. As medical tourism in Europe increases, healthcare costs in Europe will increase as well. European Countries may have to follow in the footsteps of the U.S. and limit treatment for illegal immigrants. Thus, debate about whether to limit illegal immigrant healthcare services in the U.S. may serve as a model for future debate and policy in Europe.

### **Regulations on Hospitals:**

The Emergency Medical Treatment and Active Labor Act (EMTALA) requires hospitals that receive Medicaid funding to provide any patient with emergency medical care. It does not matter whether a patient is uninsured, in the country illegally, or unable to pay for care- hospitals have to treat them.<sup>[2]</sup> Under EMTALA hospitals are required to provide two types of services. The first is a free medical screening examination to determine the type of care needed. Then, based on the evaluation, the second is treatment to stabilize patients with an emergency condition. Heart attacks, severe bleeding, and asthma attacks are examples of services mandated under EMTALA. Life-preserving treatment that is not urgent, such as chemotherapy, is not covered. Traditionally, uninsured or undocumented individuals have received additional services from hospitals. Low-cost clinical care is an example of non-urgent medical care that hospitals sometimes provide if patients are uninsured and can't pay. The costs incurred by the hospital traditionally have been offset by Disproportionate Share Hospital funds (DSH) and, to a lesser extent, donations from charities and non-profits. DSH funds are federal funds given to hospitals to support uncompensated care. However, many times DSH funds are not sufficient, and hospitals will close their emergency rooms partially or completely if they accumulate too much uncompensated care debt.<sup>[3]</sup>

Under the Affordable Care Act (ACA), U.S. citizens must purchase health insurance or pay a penalty. The resulting increased pool of insured patients and money received from penalties of uninsured legal residents, as well as certain non DSH related ACA funding will result in US Citizens and legal residents receiving more comprehensive medical services than they did previously when EMTALA was the law of the land. However, the individual mandate and additional care provided will not be applicable to illegal immigrants. Moreover, under the Affordable Care Act, 75 percent of DSH funding is being cut, leading to an even greater financial burden on hospitals to treat illegal immigrants.<sup>[4]</sup> With many hospitals in financial trouble, they will likely cut uncompensated non-emergency medical services. More importantly, many believe that hospitals will start refusing to treat costly emergency medical procedures for illegal immigrants and instead opt to pay a potential fine. The result will be a significant and dangerous gap in healthcare coverage for illegal immigrants, which raises many ethical issues. Some scholars and legislators have argued that healthcare is a social good every human being is entitled to. Therefore a just government should provide healthcare even for illegal immigrants to ensure a baseline level of health.<sup>[5] [6]</sup>

#### **The U.S. Healthcare System's Treatment of Illegal Immigrants as a Global Ethics Issue:**

The medical treatment of illegal immigrants is a global ethics issue for two reasons. First, illegal immigrants who come to the U.S. are citizens of other countries engaging in a type of medical tourism, thus deflecting healthcare costs from their country to the U.S. This limits the ability of this country to help its own legal residents. Second, any action the U.S. and its hospitals take to deal with medical tourism and uncompensated care will be a model for how other countries and hospitals handle the issue. In the past 40 years, the U.S. has had a significant influx of illegal immigrants from developing countries, more than many of its European contemporaries. Many of these immigrants are of a lower-socioeconomic status and create a large financial burden on the country's healthcare system. Recently, the numbers of immigrants illegally entering European countries have risen; as the health disparities gap between developing and non-developing countries increases, medical tourism of illegal immigrants will only increase in Europe. Traditionally, in countries such as England, which have publicly funded health insurance systems, international patients are covered at minimal or no cost to the patient. Uncompensated cost has not been a huge issue in the past. However, as the financial burden begins to increase, European nations will need to start making policy decisions about whether to provide uncompensated care to international patients who are in their country illegally. Because this has been a long-term problem in the United States, it is reasonable to expect that the future policies taken by European countries will mimic those of the United States. Therefore, the lessons learned from the ethical argument in the United States about coverage of illegal immigrants will lay the groundwork for how dozens of other countries treat illegal immigrants.

#### **The Four Principles of Bioethics:**

James Childress and Thomas Beauchamp were immensely influential in forming the structure of American bioethics. In their book *Principles of Biomedical Ethics* they detail the four pillars of bioethics: *beneficence*, *nonmaleficence*, *justice*, and *autonomy*. The principle of autonomy dictates that individuals should be able to make voluntary and informed healthcare decisions. Nonmaleficence means that no unnecessary harm should be done to the patient; the cause of harm can result from action or inaction. Beneficence requires healthcare providers to do “good” in society. Justice sets out standards for fairness in the treatment and care of patients and research subjects. These principles lay the foundation for evaluating the ethics of treating illegal immigrants.<sup>[7]</sup>

### **The Plight of Patient X:**

The financial restraints on hospitals in the wake of the ACA will lead to difficult and possibly unethical decisions for hospitals. A potential dilemma could go as follows: DSH restrictions have been implemented. Person X is an illegal immigrant who came to this country in 2007. He is an agricultural laborer with a wife and three kids at home. While driving his truck, he is hit by another car, causing severe and acute brain trauma, in addition to other serious injuries. The ambulance takes Person X, who is now Patient X, to the emergency room of the local community hospital. Hospital Y is in a poor rural area of Arizona. The hospital, already poorly funded and in financial trouble, is struggling even more after the large cuts in DSH funding. While diagnosing Patient X, Doctor Z realizes that if he survives, there’s the possibility he will either be in a persistent vegetative state or need months of recovery; however, an almost full recovery is also a possibility. After speaking to the family of the patient, the doctor learns that the family cannot pay for X’s care, and that they are illegally in this country. The cost of care for Patient X will be tens of thousands, if not hundreds of thousands, of dollars. Under pressure from hospital administration, a decision is made later that day to not treat Patient X, and he dies. In this case, under the ACA, the doctor and the hospital are not legally liable. However, under EMTALA the hospital would have been fined, and be at risk of losing Medicaid funding.<sup>[8]</sup>

### **The Ethical Dilemma of Denying Care to Illegal Immigrants:**

#### ***Unethical Behavior by the Government***

In the case of Patient X, there are two ethical questions. First, are the policies taken by the U.S. to limit illegal immigrant healthcare ethical, and are the actions taken by the individual hospital ethical? If an individual like Patient X is denied care, has there been a violation of autonomy? Some may argue that autonomy has been violated since the decision to accept or refuse care was taken out of the patient’s and/or family’s hands. If a patient is incapacitated at admission, the family members usually become the healthcare decision-makers. In Patient X’s case, following the principle of autonomy would mean giving family members a say in whether he should receive treatment or not.

When Person X came to the country in 2007, he was most likely under the impression that if he were severely hurt, he could receive emergency medical care. Many immigrants come to this country to engage in dangerous work, and many may be aware of the safety net of emergency medical services that traditionally have been available to them. The ACA has reduced DSH funding, limiting treatment options for illegal immigrants. Since these reductions have not been highly publicized, most people (especially illegal immigrants) would not have been fully informed of the consequences of their decision to continue residing in the U.S.

If more illegal immigrants knew that care might not be provided in an emergency, they might choose to leave the country, fearing they might not be treated. Patient X and his family, for example, were not fully informed on how Patient X would be treated by the hospital in an emergency. Therefore the hospital's actions violated Patient X's autonomy, because neither he nor his family chose to forgo treatment. The United States' actions led to the ethical violation of patient autonomy because it created financial restrictions that don't allow certain patients to receive care.

The government's restrictions on DSH funding also create a situation in which individuals are harmed, a violation of the principles of non-maleficence and beneficence on both policy and hospital levels. Traditionally the majority of funding for uncompensated care have gone to illegal immigrants but the ACA's large reduction in DSH funding clearly results in harm of illegal immigrants because no additional funding will be provided for their care. The ACA did not override EMTALA; it is still law, and it mandates the legal duty to treat all patients in an emergency situation. Doctors have a professional obligation to treat a patient in need of care (beneficence). No matter what the law says, doctors have an ethical obligation to treat a patient. The ACA violates the principles of non-maleficence and beneficence because it results in harm of patients and potentially inhibits physicians from providing care for their patients. The hospitals and physicians are forced to act unethically due to financial restraints.

The government's actions also violate the justice principle because the outcome of the ACA funding cuts and hospitals' reduction in care result in an unfair distribution of goods in society. A merit-based analysis would show that many illegal immigrants have the same right to healthcare services as many Americans. Both illegal immigrants and some uninsured citizens of the U.S. pay sales tax: Both parties pay equally into the system. Paying taxes is a strong component of the social contract that justifies providing healthcare to those who pay. Thus, just based on taxes, both parties should receive equal treatment. However, under the ACA regulations, the U.S. citizen would receive care and the illegal immigrant may not. Furthermore, the principle of justice requires that every patient who enters into a hospital should be treated equally, regardless of ability to pay. The hospital did not act according to this principle in the case of Patient X.

### *Reconciling the Principles*

At first glance, although the government's restrictions and the hospital's actions seem to clearly represent a violation of all four bioethical principles, many will argue differently. The mode of analysis used above represents a limited scope and understanding of the principles. These principles are often understood and analyzed in the clinical context of the doctor-patient relationship; in this context, the physician should treat the patient in a way that benefits and doesn't harm him. At that same time, the patient should have the capacity to make decisions, and this care should be provided fairly to all individuals in similar situations. The prima facie duties of these four moral principles create obligations that cannot always be fulfilled. Physicians have to constantly balance these duties to try to achieve the most ethical and medically appropriate outcome. This requires that some interests be weighted more heavily than others. This weighing of interests also occurs on a larger scale in all countries.

The moral codes are often viewed in isolation within the doctor-patient relationship, instead of on a larger scale of aggregate healthcare distribution. Bioethics, medical ethics, and public health ethics are not limited to just doctors treating patients; the interests of society, not just the individual, must be considered as well. For example, in many countries, healthcare is rationed. This is because, with limited resources, they need to prioritize costs in hopes of treating more patients, more effectively. This similar mode of analysis can apply to the hospitals acting within ACA restrictions.

### ***The Ethical Justification for the Government's and Hospital's Actions***

The expenses of large-scale illegal immigrant medical tourism can limit the capacity for other members of a community to be treated, which causes an ethical violation on a larger scale. If Patient X and all illegal immigrants receive emergency medical care, hospitals could go bankrupt and be forced to close emergency rooms. If a hospital and a physician treat Patient X knowing of the potential financial risk to the hospital, then they are acting in a manner that will result in greater harm for the whole community. This represents a violation of non-maleficence, because the hospital acted in a way that would harm the hospital, which leads to the harm of patients. The hospital violates beneficence because it has not allowed its physicians to fulfill their ethical obligations. Thus, if the hospital does not treat Patient X, it may harm one individual, but, on a larger scale, it can potentially save the lives of many other patients.

In the case of justice, treating illegal immigrants may represent a fair distribution of goods. Patient X's treatment could lead to less care for legal residents either because care is stopped or patients will need to travel farther and thus may forgo care. These legal residents are acknowledged by the country as members of the population and pay federal and state taxes. Paying taxes, as well as legal residency are some of the core factors that established a social contract. In return the country has a duty to provide services to the residents who fund it. Hospitals receive significant federal funding and fall under the ethical obligation to fulfill the social contract. Even though some illegal immigrants

pay taxes, their status as members of the social contract in the U.S. is blurred because they are residing illegally. If treating illegal residents results in limiting care of legal residents, the country and the hospitals within it must ethically prioritize its legal residents first or else it violates the social contract. In the specific case of Patient X, he had a poor prognosis. Providing him services would have also rendered the hospital potentially incapable of helping patients with better prognoses.

### Conclusion:

The DSH funding restrictions that the ACA will place on the United States hospitals will be devastating. Hospitals will have to choose between which illegal immigrants to treat. In the next few years a similar debate will arise in Europe. Publicly funded systems will not be able to afford the high cost of medical tourism for illegal immigrants. These countries will be forced to ration care, and illegal immigrants are a population whose care may be rationed first. Not providing care for these illegal immigrants presents ethical questions about the role of the government, hospitals, and the illegal immigrants themselves. There are ethical justifications for and against limiting care. The best possible course of action is ethically unclear, and, unfortunately, whichever course is taken will lead to rationing of care for certain individuals.

### REFERENCES

- [1] Diamond, Michelle Nicole. "Legal Triage for Healthcare Reform: The Conflict between the ACA and EMTALA." *Columbia Human Rights Law Review* 43.215: 254.
- [2] Diamond, Michelle Nicole. "Legal Triage for Healthcare Reform: The Conflict between the ACA and EMTALA." *Columbia Human Rights Law Review* 43.215: 254.
- [3] Diamond, Michelle Nicole. "Legal Triage for Healthcare Reform: The Conflict between the ACA and EMTALA." *Columbia Human Rights Law Review* 43.215: 254.
- [4] Diamond, Michelle Nicole. "Legal Triage for Healthcare Reform: The Conflict between the ACA and EMTALA." *Columbia Human Rights Law Review* 43.215: 254.
- [5] Childress, James. "A Right to Healthcare?" *The Journal of Medicine and Philosophy* 4.2 (1979): 132-47.
- [6] Daniels, Norman. "Rights to Health Care and Distributive Justice: Programmatic Worries." *The Journal of Medicine and Philosophy* 4.2 (1979): 174-91.
- [7] McCormick, Thomas R. "ETHICS IN MEDICINE." *Principles of Bioethics*. University of Washington School of Medicine.
- [8] "Emergency Medical Treatment and Active Labor Act (EMTALA)." Ascension Health. Accessed February 9, 2014. [http://www.ascensionhealth.org/index.php?option=com\\_content&view=article&id=146&Itemid=172](http://www.ascensionhealth.org/index.php?option=com_content&view=article&id=146&Itemid=172).