

Restrictions on Undocumented Immigrants' Access to Health Services: The Public Health Implications of Welfare Reform

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 greatly restricts the provision of many federal, state, and local public services to undocumented immigrants. These restrictions have prompted intense debates about the provision of free and discounted primary and preventive health care services and have placed significant burdens on institutions that serve large undocumented immigrant populations. Intended to serve as a tool for reducing illegal immigration and protecting public resources, federal restrictions on undocumented immigrants' access to publicly financed health services unduly burden health care providers and threaten the public's health. These deleterious effects warrant the public health community's support of strategies designed to sustain provision of health services irrespective of immigration status. (*Am J Public Health*. 2003;93:1630–1633)

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Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 greatly restricts the provision of many federal, state, and local publicly funded services to undocumented immigrants. Many public health and health care institutions have wrestled with the legal, administrative, and ethical conflicts generated by these limitations. The debate has been most visible in the state of Texas, where the legality of several public hospitals' provision of free primary and preventive health care to undocumented immigrants has been challenged.

Instead of serving their intended purpose of reducing illegal immigration and conserving public resources, PRWORA's restrictions on undocumented immigrants' access to publicly financed health services unduly burden health care providers and threaten the health of the community at large. These deleterious effects warrant the public health community's support of strategies to both repeal these restrictions and sustain the provision of health services irrespective of immigration status.

INTENT AND SUBSTANCE OF PRWORA'S RESTRICTIONS

The enactment of PRWORA in 1996 went further than simply ending welfare as we knew it. The law also broke significant new ground in immigration policy by declaring that “current eli-

gibility rules for public assistance and unenforceable financial support agreements have proved wholly incapable of assuring that individual aliens not burden the public benefits system” and that “it is a compelling government interest to remove the incentive for illegal immigration provided by the availability of public benefits.”¹ To these ends, the law outlines standards in regard to legal and undocumented immigrants' eligibility for—and the provision of—services supported by the federal government and by state and local governments.

With respect to state and local public benefits, PRWORA declares that undocumented immigrants are ineligible for “any retirement, welfare, health, disability . . . or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of a State or local government or by appropriated funds of a State or local government.”¹ Exceptions include “assistance for health care items and services that are necessary for the treatment of an emergency medical condition” and “public health assistance for immunizations with respect to immunizable diseases and for testing and treatment of symptoms of communicable diseases whether or not such symptoms are caused by a communicable disease.”¹ PRWORA also allows provision of public benefits to undocumented immigrants if states enacted legislation after August 22, 1996, that “affirma-

tively provides for such eligibility” or if the US attorney general declares additional services exempt from the law's restrictions.¹

UNDOCUMENTED IMMIGRANTS' HEALTH AND ACCESS TO SERVICES

The 300 000 to 500 000 undocumented immigrants that enter the United States each year arrive bearing a disproportionate burden of undiagnosed illness—including communicable diseases such as tuberculosis and HIV—and frequently lack basic preventive care and immunizations.^{2–5} The adverse circumstances under which some undocumented immigrants enter the country, and the substandard conditions in which many live following their arrival, only exacerbate poor health.⁶

These health burdens are sustained and magnified by language barriers, lack of knowledge about the US health care system, and fear of detection by immigration authorities, all of which limit undocumented immigrants' ability to effectively access health services.^{4,5,7} Undocumented immigrants are also frequently limited in their ability to access care by a lack of both health insurance and sufficient financial resources to pay for services.⁵

The consequences of undocumented immigrants' health burdens and barriers to accessing services extend beyond the individual to the entire community.

The agricultural and food service settings in which many undocumented immigrants work, for example, can facilitate the spread of communicable diseases to other segments of the population.⁶ Johns and Varkoutas also suggest that fear of detection has driven undocumented immigrants to pursue treatments through underground channels, which may have helped fuel the emergence of drug-resistant microbes.⁸

RESPONSES TO PRWORA'S RESTRICTIONS

For the most part, PRWORA's limitations on the provision of health services to undocumented immigrants have not been embraced by state and local officials. In light of the threats that undocumented immigrants' health conditions pose to communities, relatively few local jurisdictions have established policies explicitly limiting provision of health services based on immigration status.⁹ Many publicly supported health care institutions in Texas, for example, have long provided free and discounted nonemergency care to all residents, even after the enactment of welfare reform legislation.¹⁰ There are, however, a few notable exceptions to this trend, including institutions in San Diego, Albuquerque, and Fort Worth.^{9,11}

In response to the ambiguity generated by this seemingly pervasive disconnection between policy and practice, administrators of the Harris County Hospital District, which includes the city of Houston and constitutes the third-busiest public health care system in the United States, sought guidance from Texas Attorney General John Cornyn in

late 2000 to ascertain whether its proposed payment policy revisions (which would have permitted the district to provide free or discounted care to anyone who could show county residency and financial need) violated PRWORA and to determine the possible penalties for any such violations.¹² Attorney General Cornyn's subsequent opinion concluded that the welfare reform law prohibits the district from providing free or discounted nonemergency health care to undocumented immigrants, even if they reside within the district's boundaries, and that no state laws enacted since 1996 "expressly state the legislature's intent that undocumented aliens are to be eligible for certain public benefits."¹³ With respect to potential penalties, the attorney general decided that, while PRWORA does not explicitly describe a penalty for providing public benefits to undocumented immigrants, "there may be sanctions to the district pursuant to conditions attached to federal funding" and that "there may also be legal consequences pursuant to state law for spending public funds for an unauthorized purpose."¹³

Cornyn's opinion has stirred an intense debate both in Texas and around the nation. Some of the state's local advocates and district attorneys have pressed for public inquiries into the activities of jurisdictions that choose to continue to provide free and discounted services; in Harris County, the local district attorney initiated a criminal investigation of the hospital district and its leadership.¹⁴ Fearful of similar investigations in their own jurisdictions, some health care institutions in Nueces County, which includes Corpus Christi, and

Montgomery County, just outside of Houston, have chosen to limit the services provided to undocumented individuals rather than leave their organizations and administrators exposed to prosecution.^{9,10} Other parties that support hospitals' long-standing policies have obtained alternative legal interpretations of applicable state and federal laws that they claim justify the continued provision of discounted services to all residents irrespective of immigration status.¹⁵

While Harris County's district attorney has withdrawn his criminal investigation in an effort to achieve a workable compromise with health administrators, and calls for the initiation of similar inquiries around the state appear to have subsided, Attorney General Cornyn's opinion still stands to shape public health policy regarding undocumented immigrants not only in Texas but across the country.¹⁶ Attorneys general and local prosecutors in other jurisdictions may draw on the opinion to initiate legal action against institutions that provide discounted services irrespective of immigration status. Should a court uphold Cornyn's opinion and related legal challenges, institutions that have not amended their policies to accommodate PRWORA's restrictions may face increased scrutiny.

Institutions in states such as California and New York, which have relatively large undocumented populations but so far appear to have been spared from legal inquiries, could conceivably be the next targets. Even if other jurisdictions' policies are not contested in court, the Cornyn opinion itself may have a chilling effect by discouraging undocumented immigrants from accessing health care as

well as discouraging individual institutions from providing discounted services to undocumented populations.

HOW THE RESTRICTIONS JEOPARDIZE PUBLIC HEALTH

The divergent reactions to Cornyn's opinion, the differing responses of health care providers, and the absence of definitive guidance from any level of government leave many publicly supported institutions in a state of legal and administrative uncertainty. The public health community should recognize, call attention to, and press for resolution of the threats posed to community health and welfare by this uncertainty and PRWORA's limitations on provision of health services.

First, these restrictions fail to consider the power and responsibility of state and local governments, and the institutions they fund, to protect the health, safety, and welfare of all who reside within the state's borders. While regulation of immigration has traditionally been a federal responsibility, Gostin notes that "part of the constitutional compact of our Union was that states would remain free to govern within the traditional sphere of health, safety, and morals."^{17(p48)} Indeed, PRWORA's restrictions on the provision of health care infringe on states' "police power" and limit their ability to protect the health of their residents.^{17,18}

Second, prohibiting the provision of discounted health care endangers access to services among undocumented immigrants' children, many of whom are born in the United States and are therefore eligible for publicly funded health care programs.¹⁹

Findings of the Kaiser Commission on Medicaid and the Uninsured suggest that immigrants are often confused by state and federal eligibility restrictions and are intimidated by the threat of being discovered and deported.²⁰ As a result, even though PRWORA allows for provision of discounted immunizations and emergency services—and children born in the United States are eligible for government-funded health coverage—fear of immigration authorities or beliefs that their children do not qualify for services may prevent undocumented parents from seeking health care for their native-born children. A similar argument—that improving adults' access to services will improve children's access to care—has been offered as a rationale for expanding public health insurance coverage to parents of children enrolled in state Children's Health Insurance programs.²¹

Third, PRWORA's restrictions on the provision of health care services contradict the long-standing ethical obligations of clinicians by requiring providers to assume responsibilities traditionally reserved for federal immigration officials.^{5,18} Ziv and Lo note that physicians who comply with mandates to deny services to undocumented immigrants “forgo the ethical ideal that patients' medical needs should be attended to without regard to their social, political, or citizenship status.”^{22(p1097)} In addition, while PRWORA does not place as great a burden on health professionals as Proposition 187, the ballot initiative that sought to deny many public services to undocumented immigrants and require clinicians to report undocumented individuals to the Immigration and Naturalization

Service, a legislative order to deny services leaves the door open for further, more invasive intrusions on the confidentiality that facilitates trust between patients and providers.

Fourth, the administrative complexities generated by limits on the provision of services by publicly supported health care providers endanger access to care among legal residents. Guidelines issued by the US Department of Justice require that all patients be treated equally; therefore, all patients should be required to provide evidence of their immigration status.⁹ Sorting through immigration documents for each patient, and turning away those who lack sufficient documentation but are unable to pay for the full cost of services, would increase administrative costs and waiting times, reducing the efficiency of already overburdened safety-net institutions.²

Fifth, restricting access to preventive services while requiring institutions to continue to provide care for emergency conditions prevents administrators from putting public resources to their most cost-effective use. Laws such as the Emergency Medical Treatment and Labor Act require institutions to provide expensive acute health care to undocumented individuals when they present with emergency medical conditions.^{6,23} In many cases, such as management of diabetes, asthma, or hypertension, preventive care can thwart the need for costly services to treat conditions that have progressed to emergency status.²⁴ Providing prenatal care to undocumented mothers has also been shown to be cost-effective.^{25,26} Prohibiting the provision of these services prevents administrators

from managing taxpayers' resources in the most cost-effective manner and may ultimately limit the health care safety net's ability to finance both public health and individual medical services.

Finally, limiting undocumented immigrants' access to health services weakens efforts to fight the spread of communicable diseases among the general population. While PRWORA's exemptions include the treatment of infectious diseases and their symptoms, conditions such as tuberculosis are not always easily detected as communicable diseases.⁸ In addition, many cases of infectious disease are identified not when symptoms manifest themselves but when patients seek medical care for other unrelated conditions.²⁴ Consequently, identifying and treating communicable diseases in their earliest stages requires that undocumented immigrants be able to access services for all health conditions—not just those that have progressed to an emergency level or include symptoms of infectious disease—before others in the community are exposed.

STRATEGIES FOR PROTECTING ACCESS TO HEALTH SERVICES

Given the significant threats posed by limits on undocumented immigrants' access to health services, the public health community should pursue a range of strategies to circumvent the barriers erected by PRWORA and avert the spread of legal challenges to other jurisdictions. The most obvious way in which institutions could unambiguously provide free or discounted primary and preventive health services to undocumented immigrants would be

for states to “enact legislation which affirmatively provides for such eligibility.”¹ The pursuit of state legislation, however, may fail to provide a sweeping and immediate solution to the problem, in that legislative action is subject to individual states' political climates, competing demands on lawmakers' attention, and the limited schedules of many legislatures.

PRWORA also allows publicly supported health care services to be exempted from eligibility restrictions under a determination by the US attorney general. Since the terrorist attacks on New York and Washington, however, there have been demands from the public to increase border security and heighten scrutiny of individuals illegally residing in the United States, and this situation almost certainly precludes the current US attorney general from advocating for the protection of additional public benefits for undocumented immigrants.

Federal legislation provides another opportunity for a solution. Representatives Sheila Jackson-Lee and Gene Green of Texas both introduced bills in the 107th Congress to amend PRWORA to include primary and preventive care among the list of services exempted from restriction. Should Congress fail to pass these or similar pieces of legislation, reauthorization of PRWORA could offer a sweeping resolution to the debate, and public health advocates should work to ensure that this issue is not overshadowed by other policy debates as lawmakers revisit welfare reform. In advocating for legislative solutions, public health advocates should, when feasible, seek untraditional alliances. Many business leaders, for example, have supported more gener-

ous immigration policies and could be effective allies.

If Congress chooses not to lift the restrictions on undocumented immigrants' access to services, health administrators should continue to work with law enforcement officials, particularly district attorneys in their respective communities, to reach agreements that permit institutions to sustain the provision of services critical to protecting the public's health, allocate resources to their most cost-effective uses, and avoid both criminal prosecutions of administrators and reductions in public funding. Hospital districts and public health institutions should also continue to provide free and discounted primary and preventive care services regardless of immigration status and allow the judicial system to determine what a reasonable outcome for this situation might be. Finally, public health leaders should be prepared to offer expert knowledge and file amicus curiae briefs on behalf of organizations and individuals who might face criminal prosecution or civil suits as a result of providing services to undocumented immigrants.

CONCLUSIONS

The public health community has an important role to play in advocating for a resolution of this debate that is based on sound public health and public management principles. Little to no evidence exists to suggest that public benefits, particularly health care services, lure undocumented immigrants to the United States. To the contrary, significant evidence does suggest that undocumented immigrants' use of public benefits is relatively low and that job opportunities and family is-

ues are the primary factors motivating illegal immigration.^{2,18,27,28} Furthermore, restricting undocumented immigrants' access to services unduly burdens health care institutions and threatens the health of entire communities. Consequently, public health advocates should work to ensure that policymakers seeking to reduce the number of undocumented immigrants in the United States focus their attention on strengthening border control and weakening the "pull factors" that actually drive illegal immigration, instead of endangering the public's health through misguided restrictions on provision of health services. ■

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