The Ethics and Politics of Vaccine Procurement

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While much has been written about prioritizing individual vaccine allocation by the states (mainly on ethical principles or economic grounds), far less attention has been paid to prioritizing vaccine allocation to the states and foreign nations. And not surprisingly, we see efforts made at all levels trying to cut ahead in line or manipulate the system.

The Problem

Recently, one New York clinic was accused of misrepresenting itself to the state’s department of health to fraudulently obtain vaccine doses – which it then dispensed to people otherwise not eligible. Governor Cuomo wants to stop that practice at all costs, recently proposing a law making it illegal to “cut in line.”

On an international level, there is concern that money will grease the way to vaccine-ability, meaning that rich countries will procure more vaccines than poor ones. Some groups, like COVAX, a coalition of 172 countries (not including the United States), are fighting this trend; others are providing ethical guidance. One such group analyzed four global allocation paradigms: the ability to develop or purchase, reciprocity, ability to implement, and distributive justice. Nevertheless, it is feared that global demand will outpace supply – and that the
competitive market and temptation to jump to the front of the line will spark a bidding war [4].

Given all this, Governor Cuomo’s latest initiative is perplexing. Last week, the Governor asked Pfizer to sell its Covid-19 vaccine directly to New York state, “a rare attempt to bypass the federal government and get a state its own supply of vaccine.” (Pfizer is waiting on governmental approval before deciding). Of course, this doesn’t seem “fair,” one of the hallmarks of ethical systems.

Israel finds a path

Interestingly, Israel jumped to the international line's head, apparently offering Pfizer a premium of 40%, $28.00 for each of the two shots. But, when Israel needed more than the initial allotment, they didn’t up the financial ante. Instead, they went back to Pfizer and, this time, traded epidemiological evidence. In exchange, Pfizer agreed to provide enough vaccine to inoculate the entire adult population that can be vaccinated as quickly as Israel can succeed in using the doses. The agreement, called The Real World Epidemiological Evidence Collaboration Agreement, was signed on January 6, some three weeks after the first shipment arrived (although the exact dates of specific provisions are redacted from public purview).

Although assurances were given that Israel would provide Pfizer only publicly available information, many claim Israel’s actions breach ethical and legal rules of confidentiality. Interestingly, not all the terms of the agreement are being made transparent. Most likely, Israel is providing data that, while anonymized, are not yet publicly available (otherwise, why would Pfizer be interested?) The information, though, is likely to be of critical importance to Pfizer, health authorities, and the state of medical knowledge in general. This data might include correlates of vaccine reactions with the vaccine’s comorbidities and efficacy before the second dose. Because of the highly digitalized health system, vaccine distribution and correlation with adverse incidents, health condition, age demographics, and persons diagnosed with COVID-19 before the second dose are easily obtainable. Indeed, recent reports confirm such information has already been compiled, and statements by the Israeli virus czar suggested the Israeli experience after the first vaccine may be less effective than Pfizer initially reported. (The statement has since been walked-back by the Health Ministry, although confirmed by others – the shared data per the agreement will undoubtedly resolve matters for Pfizer).

While such data is invaluable to Pfizer, it is also a useful contribution to global knowledge. On this basis, an ethical argument could be made that Israel is giving back – reciprocating - in exchange for receiving. One might also argue that the vaccine is being efficiently utilized, a claim most American states can hardly muster.

Back in New York

Examining the ethicality of Israel’s actions is a reasonable basis upon which to evaluate Cuomo’s initiative seeking to bump New York ahead of its sister states and secure more doses for his constituents.

What, perchance, is Cuomo offering to give back? What rationale does he provide for “most favored state status” – other than New York is a rich state and can afford it – the exact opposite of
a social justice approach that we, and that includes the Governor, might wish to foster. Instead, Cuomo’s suggests Pfizer should sell New York the vaccines—just because it legally can.

“The company’s decision to opt out of Operation Warp Speed, which the Biden administration plans to overhaul, puts it in a unique situation that could help us save lives right here in New York,” Cuomo wrote. [15]

Now, this is undoubtedly true. But Cuomo fails to identify why New Yorkers’ lives matter more than those of, say, Mississippi—or any other state. He might consider donating some New York factories to manufacture the vaccine, making a better case, at least ethically.

Perhaps Cuomo could argue that the entire allocation scheme of HHS should be questioned. Perhaps state allocation should be based, not on population, but on age demographics, on nursing home residency, or even on racial lines—given that race is undoubtedly correlated with COVID-19 deaths, if not directly, then as a surrogate for socioeconomic status or health care availability. But the effort depending purely on the ability to pay doesn’t seem like a good—or ethical—reason to bypass the vaccine queue.

Liability (and Compensation Costs)

Another feature that should be considered when weighing where and how vaccines should be allocated: the cost—i.e., liability issues and compensation for harm. The less cost involved, the more people that can be vaccinated, a statement of classic utilitarian ethics. Among costs are damages for vaccine-related injuries. Although in emergencies and where immunization is considered a public good (childhood vaccines), the government provides protection to manufacturers—it’s not absolute—and there are circumstances where manufacturers can be held liable.

Recently, three legal bioethicists [16] penned a piece bemoaning the unavailability of the more robust governmentally funded vaccine compensation scheme (National Vaccine Injury Compensation Program (VICP)) for COVID vaccine injuries. Instead, during this emergency phase, the COVID vaccine’s injuries are to be compensated under the Countermeasures Injury Compensation Program (CICP), which they claim is “far less generous … than the VICP.” This provision, of course, is enacted to motivate vaccine manufacturers to make the vaccine available promptly. To be sure, the public assumes some risk of harm and lesser compensation for vaccine-injuries—in exchange for vaccines.

But these authors claim that the Black population has less choice in deferring vaccination (many being less able to work at home). They claim compensation under the CICP puts Black people at a disadvantage because they can’t afford to defer vaccination until the emergency is over, when greater coverage under the VICP becomes available. If all COVID-19 vaccine claims were administered under the broader VICP, they argue, it would avoid “long-standing inequities based on income and race and ethnic group.”

Surely, if people are considering deferring vaccination—not because of fear of adverse reactions
or lack of data - but because of fear of lower compensation for adverse reactions, the country, as a whole, has a larger problem than I can address here.

Significantly, however, it should be noted that in the agreement between Israel and Pfizer, the liability section is redacted. I can only imagine that Israel is promising to hold Pfizer harmless in the event of vaccine injury and reducing or eliminating claims against the company. That means probably less recovery in the event of injury - but more data for everyone – faster – and at less cost to the world.