EDITORIAL

The law and vaccine resistance

Last week, the Centers for Disease Control and Prevention announced that more than 100 cases of measles, spanning 10 states, had been reported in the United States since the beginning of the year. This news came on the heels of the World Health Organization's estimate of over 200,000 cases of measles in 2018. These numbers signal the reemergence of a preventable, deadly disease, attributed in significant part to vaccine hesitancy. Communities and nations must seriously consider leveraging the law to protect against the spread of this highly contagious disease.

In the United States, measles was deemed "eliminated" in 2000 because of vaccination success. Since then, its reemergence has been associated with a resistance to vaccination. This also reflects the fact that unvaccinated U.S. residents visit countries that have seen large measles outbreaks (such as Ukraine, the Philippines, and Israel), become infected, and bring the disease back home.

"...societies should...not hesitate to use the law to prevent deadly diseases from spreading."

Outbreaks in the United States are still fewer than in, say, Europe because of unique U.S. policies and laws that maintain high vaccination coverage. All 50 states and the District of Columbia have laws requiring vaccinations for school and daycare attendance. School mandates have proven very effective: The stronger they are, the higher the vaccination rate, and the lower the risk of outbreaks. The Vaccines for Children Program is a broad federal initiative that funds vaccines for children whose families cannot otherwise afford them. There is, however, more that the United States can do. There are "hotspots" where vaccination rates are low, and these are where outbreaks appear. Recent measles outbreaks—including those in Washington state and New York—occurred when an unvaccinated individual, after visiting an area where measles is endemic, returned to a U.S. community with low vaccination rates and infected others (primarily unvaccinated children).

What can be done? States have extensive leeway to protect public health, and courts have consistently upheld strong school immunization mandates. Thus, states could tighten nonmedical exemptions (for example, by requiring consultation with a doctor) or remove these exemptions completely from school mandates. Valid medical exemptions are important, but it is less clear whether nonmedical exemptions are appropriate. Some scholars are concerned that eliminating nonmedical exemptions may generate resentment among parents and interfere with parental autonomy. Others—including professional medical associations—disagree, because mandates protect children, and a parent's freedom to send an unvaccinated child to school places classmates at risk of dangerous diseases. There is a strong argument for removing nonmedical exemptions, and at the least, they should be hard to get, to further incentivize parents to vaccinate. In many states, however, getting an exemption is as easy as checking a box. States and localities could also require schools to provide their immunization rates to parents at the start of the school year.

Beyond school mandates, states can consider other legal tools that have not yet been used. States could implement workplace mandates for those working with vulnerable populations, such as health care workers, teachers in schools, and providers of daycare. States could impose tort liability (civil law damages for harm) when unexcused refusal to vaccinate leads to individuals becoming infected unnecessarily or worse, to a large outbreak. States could permit teenagers to consent to vaccinations without parental approval. And states could mandate vaccinations to enroll in institutions of higher education.

Vaccine hesitancy is a problem with many components. In handling it, societies should improve public understanding of vaccinations but also not hesitate to use the law to prevent deadly diseases from spreading.

–**Dorit Rubinstein Reiss**

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