

Resolution 6, introduced at the 1993 Annual Meeting by the Medical Schools Section and referred to the Board of Trustees, called upon the AMA to review various options to enhance the availability of transplantable organs. The Council responds with this report and with a companion report on mandated choice and presumed consent for organ donation.

It is widely recognized that the chronic shortage of organs available for transplantation results in a large number of potentially preventable deaths.¹⁻³ A number of policy changes have been proposed to try to alleviate this shortage. In this report, the Council examines the use of financial incentives to encourage cadaveric organ donation. Proponents of financial incentives argue that incentives to donate would both increase the supply of organs and extend individuals' control over their own bodies. While the Council feels that an open, unregulated market for organ donation could lead to serious ethical abuses, other forms of financial incentives may be ethically permissible.

FINANCIAL INCENTIVES FOR ORGAN DONATION

Proposals involving financial incentives vary widely in their provisions for the use of living donors versus cadaveric donors, the size and type of financial incentive, the recommended degree of market regulation, and in other areas. Some proposals favor an open, unregulated market governing both the supply and distribution of organs.⁴ In an open market, those needing transplants would be able to buy organs directly from living donors or the families of cadaveric donors; the price would be determined by the law of supply and demand. Others have suggested using financial incentives to encourage donations while outlawing the outright purchase of organs by needy individuals.^{5,6} In this scheme, the supply of organs would increase but transplant recipients would continue to be selected according to ethically appropriate criteria relating to medical need, not ability to pay.

To many, the idea of any kind of incentive for donation is inherently unsavory and subject to serious ethical abuses. Many fear that financial incentives to donate would undermine altruism in society, be coercive to the poor, jeopardize the quality of the organ supply, and dehumanize society by viewing human beings and their parts as mere commodities.⁷⁻¹⁰

All of these concerns are important, but it is not clear that they justify a ban on all forms of financial incentives. It may be that the possible risks of certain kinds of incentives would be outweighed by the incentives' effectiveness in increasing the organ supply and saving lives. In addition, many of the objections to a "market for organs" do not apply equally to all forms of financial incentives; some types of incentives could be effective and relatively free of risk. As James Childress writes, "it may be possible to accommodate some types of transfer of some kinds of tissues for valuable consideration without major ethical costs."¹¹ Some financial incentives, such as future contracts for cadaver donors, may be effective in saving lives while avoiding the ethical pitfalls of other forms of incentives.

FUTURE CONTRACTS FOR CADAVER DONORS

Perhaps the most promising form of financial incentive for organ donation is a modest payment for cadaveric donation at the time the organs are retrieved. In this plan, an adult could agree while still competent to donate his or her organs after death. In return, a state agency would agree to give some financial remuneration to the donor's family, estate, or designated beneficiary at the time of actual donation. Thus, under such an agreement, called a future contract, the financial benefit from donation would go to the family after the donor's death, when organs are retrieved, but the decision to donate would have been made by the competent donor while still living. Decisions to accept financial incentives

could not be made by the decedent's family or other third party. The Council would not view such a system as a violation of *Opinion 2.15: Organ Donation*, which states in part that "it is not ethical to participate in a procedure to enable a donor to receive payment, other than for the reimbursement of expenses necessarily incurred in connection; with removal, for any of the donor's non-renewable organs."¹²

The amount and form of valuable consideration in a system of future contracts could vary. Some suggest a government mandated price per usable organ (for example, \$5000);⁵ others favor a price set by market forces;⁶ and still others propose that payment be limited to burial or funeral expenses, perhaps up to \$1000.¹³ Future contracts could be offered to individuals in a variety of ways: through their insurance companies, through the state (for example, when applying for or renewing a driver's license), or through independent companies.

Organ procurement under a system of future contracts could function as follows. When a dead patient is a candidate to be an organ donor, the hospital would contact a computerized donor registry to find out if that patient had contracted to donate his or her organs. If there was a contract, then the appropriate organ procurement organization transplant team would retrieve the organs, just as in the current system. After the organs are removed and judged suitable for transplantation, the appropriate agency would fulfill the contract by paying the specified amount to the family or designated beneficiary. Organs for transplantation could then be allocated under the current system set up by the Organ Procurement and Transplantation Network; that is, financial incentives would play no part in the equitable distribution of organs to patients who need them.

There has been some debate over the wisdom of establishing a computerized donor registry to assist in the identification of potential donors. The initiation of such a registry has been largely successful in the United Kingdom¹⁴ and may not be overly difficult to introduce in the U.S. It may even be feasible to incorporate the donor registry into the existing motor vehicle database. The development of a computerized donor registry would greatly aid in the identification of potential donors and would make their preferences regarding organ donation, as well as the existence of a future contract, easily accessible to hospital personnel. The development of such a registry should be pursued, in accordance with Policy 370.999 of the American Medical Association House of Delegates.¹⁵

ARGUMENTS IN FAVOR OF FUTURE CONTRACTS

One point in favor of future contracts is that they address all of the usual actors involved in organ donation: the individual donor, the family, and the physicians and hospital personnel involved.⁵ Future contracts could overcome the psychic costs of agreeing to donate, reduce the need for bedside requests to grieving families to consent to the harvesting of their loved one's organs, enhance donor autonomy, and meet the requirements of justice. Below, each of these advantages is addressed in detail.

Overcoming the Psychic Costs of Organ Donation

Many supporters of organ donation do not sign donor cards because of their reluctance to consider their own mortality and the idea of being operated on after death.^{16,17} Though adoption of mandated choice, in which individuals would be required to make a decision regarding donation, might help address this issue,¹⁸ it in itself would provide no motivation to respond affirmatively. For individuals who favor organ donation but are uneasy or reluctant about identifying themselves as donors, an additional incentive may be all it takes to convince them to donate.

Easing Pressure on Physicians and Families of Cadaveric Organ Donors

In a majority of cases, potential organ donors have not made their preferences regarding donation clear before death. The imposition of required request laws to obtain the family's permission for donation have created a stressful situation both for physicians and other hospital personnel, who must make the requests, and for families who may resent having to make such a decision in the midst of their grief.^{19,20}

Future contracts for cadaveric donation can ease this situation by encouraging individuals to become donors and to discuss their decision with their families, who would be the designated beneficiaries of future contracts. Thus, future contracts can help ease the pressure on families and physicians created by required request laws.

Enhancement of Donor Autonomy

Future contracts, by encouraging individuals to identify themselves as organ donors, would promote individual autonomy and lessen the possibility of a family veto. Families who oppose the decision to donate would not only have to argue against the donor's clearly expressed wishes, but also against a third party, the payer of the incentive, who would have a contractual interest in making sure that the individual's decision to donate is respected.^{5,6,21} By making it more difficult to oppose or ignore the individual's wishes, a future contract transfers decision making power from the family back to the individual donor, as the Uniform Anatomical Gift Act intends.

Some advocate offering financial incentives directly to families of decedents rather than to individuals in advance of death.¹³ While such an approach might be effective in encouraging families to donate the organs of their loved ones, it is ethically problematic. Allowing the family to decide to donate in return for payment clearly emphasizes the family's decision making power over the preferences of the individual serving as the source of the organs, thereby suggesting that the family has proprietary rights over the relative's body.⁷ Future contracts, in contrast, would encourage individuals to make the donation decision themselves and would increase the likelihood that those decisions would be respected.

Justice

Some advocates of future contracts and other financial incentives point out that under the current system the donor is the only party involved in transplantation who does not benefit from the procedure. The recipients of donated organs clearly benefit the most of all the parties involved, and transplant teams are well paid for their services. It seems unfair that the donor, who makes the whole process possible, is the only one who is not rewarded²² but is expected to act out of altruism alone. Justice, it is argued, requires that financial remuneration for the donor or the donor's family be allowed to reward the party most responsible for a successful transplant procedure. With a system of future contracts, the donor would be rewarded with the knowledge that their donation would benefit not only the recipient of their organs, but the donor's own family as well.

OBJECTIONS TO THE USE OF FINANCIAL INCENTIVES.

There are four widely identified ethical pitfalls of proposals involving the use of financial incentives in general: (1) the dilution of altruism in society, (2) the risk that the quality of donated organs would decrease, (3) doubts about the voluntariness of those who accept financial incentives for donation, and (4) the treatment of human beings and their parts as commodities. Though these ethical pitfalls strongly argue against offering financial incentives to living donors, they would not preclude offering incentives through a carefully regulated system of future contracts.

The Dilution of Altruism

Under the existing organ procurement system, the only motivation for donating one's organs is altruism, and perhaps the psychic rewards that accompany acts of generosity. Many commentators identify altruism as an important end in itself, worthy of protection from encroachment.^{3,7,9} Financial incentives, it is argued, would spell the end of altruistic gift-giving and add to the fragmentation and atomization of society. Several objections to this view arise.

Though it is indisputably an important social virtue, society's interest in the ethic of altruism must be weighed against the pressing claims of individuals to life itself. Financial incentives, by increasing organ donation, could save a great number of lives. Furthermore, altruism in society is not expressed exclusively (or even most effectively) through organ donation.²³ The fear that altruism will be significantly diminished may be exaggerated.

More importantly, there is nothing intrinsic to future contracts that would prohibit altruistic gift giving. It may be true that most donors would prefer to accept a financial benefit for their families if it is available, but this does not mean their motivations are strictly selfish. Rather, financial incentives could be seen as "a tangible expression of societal gratitude for the act of donation."²⁴ Some commentators argue that incentives for donating organs are similar to tax incentives for donating to charity.²³ In both cases, the presence of incentives is not compatible with motivations of compassion and altruism.

Concerns About the Quality of Donated Organs

Some have expressed a fear that financial incentives would encourage individuals to donate organs even if they are of questionable quality. An analogy is often drawn to the practice of selling blood.⁷ Though the evidence is disputed,²⁵ some have argued that paying blood donors lessened the overall quality of the blood supply, at least initially, because it encouraged prospective donors to conceal disease, drug use, or other factors that would make their blood medically unacceptable.²⁶

This objection is an important concern for some kinds of financial incentives. For instance, an open market for organs from living donors could result in a large number of private, unregulated exchanges of organs for dollars. Quality control in such a scenario would be extremely difficult. However, the use of financial incentives through future contracts is not incompatible with the routine screening of organs for suitability for transplantation. In blood donation, routine donor and laboratory screening tests have largely eradicated any quality differences between blood from unpaid versus paid donors.²⁵ Similar screening techniques for organ donation would maintain the high quality of the organ supply regardless of incentives. Incentives could even enhance the quality of the organ supply if payments were made only after the organs had been judged medically suitable.⁵ Payers of incentives would have a strong interest in making certain donated organs were in good shape before payment was made. Incentives could also be centrally administered so that a single payer, such as a state agency, would be responsible for ensuring quality and paying benefits. In short, quality concerns most likely can be avoided with appropriate regulations governing the use of incentives.

Questions of Voluntariness

This objection to financial incentives holds that they would be unduly influential on the poor, who because of dire financial need could be induced into making undesirable choices.²⁷ In addition, financial incentives that result in the poor becoming the majority of organ donors and the rich the majority of recipients would seriously undermine society's egalitarian ideals.^{7,9,10} Though this is a formidable problem for proposals offering financial incentives to living donors, it is much less of a problem for future contracts for cadaveric donors.

Some commentators reject the whole concern about voluntariness as paternalistic.^{8,21} They argue that the poor are already disadvantaged in our society and have few options for raising their standard of living. Without taking other measures to provide the poor with needed opportunities, it is argued, it would be unjust to deny the poor one of the few options they do have - accepting money for organ donation - merely because others (usually in more comfortable positions) feel uneasy with it. Furthermore, the risks for living donors, though significant, are probably not as great as the risks attending other situations in which payment is expected and appropriate, such as employment in the military or police force. If society is willing to pay people to accept the risks of hazardous jobs, then it should tolerate payment for accepting the risks of organ donation.

However, the concern over exploitation and coercion cannot truly be reduced to paternalism. Rather, the Council recognizes the dangerous possibility that the poor could be made even more vulnerable by the pressure to donate created by incentives. This concern is one of the most convincing arguments for continuing to prohibit the offering of financial incentives to living donors, especially in light of the significant medical risks involved in undergoing surgery to remove one's organs. However, the potential for exploitation of the poor is minimized if financial incentives are limited to future contracts for cadaveric donors only. An individual selling his or her kidney for cash on an open market is vastly different from the family of a cadaveric donor receiving a small payment to help cover funeral expenses.¹³ Ensuring the voluntariness of donations is crucial and should be a prime consideration of any form of financial incentive, but regulations limiting the size of and eligibility for incentives can help prevent coercion and manipulation.

Treating Human Beings as Commodities

This objection to financial incentives holds that organs, and perhaps human body parts in general, are simply not the kinds of things that should be bought or sold.^{9,11} This view believes that offering financial incentives would in effect make organ donation just another economic activity. Not only would this cheapen the gift of life, but it is also representative of a disturbing trend towards viewing the individual not as a whole person, worthy of respect and dignity, but instead as a collection of spare parts and a source of profit.

Because the body is part of the integrity of the person, it is argued, its parts are not something that should be sold for a profit. We have the right to control our bodies not because we "own" them but because they are a part of us. The unique relationship between the individual and his or her own body is the reason society prohibits individuals from selling their bodies in other contexts, such as prostitution and slavery.

Though there is no consensus on the exact nature of an individual's property interest in his or her own body, it is true that our attitudes towards donated organs are substantially different from our attitudes towards traditional goods on the market. However, very few advocate that financial incentives for organ donation should resemble a market for apples or oranges. A system of future contracts could be carefully designed and regulated to minimize commercialization of the donation process.

Furthermore, though the body is significantly different from other forms of property, some ownership rights in the body are a part of society's legal and ethical traditions.²⁸ Blood, reproductive materials, and other tissues are allowed to be sold or donated. Donation itself depends on some notion of property rights, for presumably one cannot give away what one does not own any more than one can sell it. The important question is not which account of property rights in the body is more convincing, but whether financial incentives can be designed which would encourage donation while protecting donors from exploitation.

PROPER REGULATION OF FUTURE CONTRACTS

A properly designed and regulated system of future contracts could avoid all the pitfalls commonly attributed to the use of financial incentives. To ensure that future contracts would be ethically appropriate,¹ the following guidelines may prove useful.

First, incentives may be allowed for the donation of organs after death, but not for living donors. Paying living donors for their organs runs too great a risk of exploitation as well as the other ethical abuses discussed above. If a modest payment were made to one's family or estate after one is already dead, however, the voluntariness of decisions to donate would not be threatened. To ensure voluntary decisions, participation in future contracts should be limited to competent adults.

Second, any incentive should be of moderate value and not subject to undue fluctuations of market forces. Generally, the higher the incentive, the more likely it is to have an effect on individuals' decisions to donate. Setting incentives too high may make them very difficult to refuse, even for people who truly do not wish to donate. It would also be needlessly expensive. Setting incentives too low, though, may not result in any appreciable increase in organ donation. In instituting a system of future contracts, it would be best to start with the lowest incentive that can reasonably be expected to encourage donation. Starting with a low incentive would avoid even the possibility of coercing decisions to donate, and if necessary the incentive could slowly be raised until the desired level of its effectiveness was attained. Once a proper level was established, however, it should be held stable and not allowed to fluctuate. Fluctuations in the level of incentive would encourage some potential donors to delay their decision to donate in the hopes of an upswing in prices. Playing the market in this way would take emphasis away from the true purpose of offering incentives for organ donation - to increase the organ supply in order to benefit patients - and would contribute to inappropriate commercialization of the donation process.

Setting limits on the level of incentive would also keep costs under control. While it is true that future contracts, or any financial incentive, would add to the total cost of organ procurement, this added cost may not need to be set very high. In addition, recent reports of wide variations in the amounts patients are charged for transplant procedures indicate that there are a variety of cost inefficiencies in the system²⁹ that, if reduced or eradicated, may produce enough savings to cover the added cost of future contracts.

Third, to facilitate quality control, payment for cadaveric donation should be made only after the organs have been judged suitable for transplantation according to the procedures of the Organ Procurement and Transplantation Network.

CONCLUSIONS

In sum, though an open, unregulated market for organs would be potentially exploitative and degrading, some form of financial incentive to encourage the donation of organs may be ethically permissible. A number of non-financial strategies to encourage donation have been pursued aggressively for many years, with only limited success. A carefully designed and regulated system of future contracts in cadaver organs could significantly increase the supply of organs and, for some organs, save many more lives, while avoiding the ethical pitfalls associated with other forms of financial incentives.

The actual effectiveness of future contracts in increasing the supply of organs is, like all untried policies, difficult to predict. A great deal would depend on public reaction to the issue. Though there is evidence that some sectors of the public and physicians may feel uncomfortable with the idea of financial incentives for donation,³⁰⁻³² these attitudes may be changing. One recent poll indicated that 48% favor some form of incentive to increase the number of donors, with more than 65% in the 18- 24 year-old group expressing support.³³ Since the empirical effectiveness of incentives cannot be settled in advance,

some limited experimentation with future contracts or other incentive may be appropriate. Towards this end, the existing legal prohibition against the use of financial incentives³⁴ should be lifted, at least, temporarily, to allow such experimentation to take place. For instance, a federally funded pilot project could be started that would offer future contracts to prospective donors. Such a program could run for a limited time, in a limited geographical region and would generate more empirical data on the effectiveness and hence the desirability of financial incentives in encouraging organ donation.

RECOMMENDATIONS

For the reasons described in this report, the Council on Ethical and Judicial Affairs recommends that the following guidelines be adopted and the remainder of this report be filed:

1. There is enough evidence in favor of employing some form of financial incentive to justify the implementation of a pilot program. This program, as with any policy involving financial incentives to encourage organ donation, should have adequate regulatory safeguards to ensure that the health of donors and recipients is in no way jeopardized, and that the quality of the organ supply is not degraded. This pilot program should operate for a limited time, in a limited geographical region, and have the following safeguards.
2. Incentives should be limited to future contracts offered to prospective donors. By entering into a future contract, an adult would agree while still competent to donate his or her organs after death. In return, the appropriate state agency would agree to give some financial remuneration to the donor's family or estate after the organs have been retrieved and judged medically suitable for transplantation.

Under a system of future contracts, several other conditions would apply:

- (a) No incentives should be allowed for organs procured from living donors.
- (b) It would be inappropriate to offer financial incentives for organ donation to anyone other than the person who would actually serve as the source of the organs. Only the potential donor and not the potential donor's family or other third party, may be given the option of accepting financial incentives for the donation of his or her own organs. In addition, the potential donor must be a competent adult when the decision to donate is made, and the donor must not have committed suicide.
- (c) Any incentive should be of moderate value and should be the lowest amount that can reasonably be expected to encourage organ donation. By designating a state agency to administer the incentive, full control over the level of incentive can be maintained.
- (d) Payment of any incentive should occur only after the harvested organs have been judged medically suitable for transplantation. Suitability should continue to be determined in accordance with the procedures of the Organ Procurement and Transplantation Network.
- (e) Incentives should play no part in the allocation of donated organs among potential transplant recipients. The distribution of organs for transplantation should continue to be governed only by ethically appropriate criteria relating to medical need.

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