Compensation for egg donation: a zero-sum game

The New York Times recently reported on an ongoing class action lawsuit filed by a group of egg donors against the American Society for Reproductive Medicine (ASRM), challenging guidelines that recommend limiting reimbursement for egg donation to up to $10,000. The lawsuit, *Kamakahi v. American Society for Reproductive Medicine*, was first filed in 2011 and will likely go to trial next year. The *Times* quickly followed up with an editorial asserting that the lack of a free market for egg donation unjustly short-changes egg donors, who could earn much more if the market were unfettered by the ASRM guidelines. Although the pros and cons of reimbursing egg donors have been much debated in the ethics literature and in European policy circles, insufficient attention has been paid to already-high costs of infertility treatment in the United States. Because of a limited availability of insurance coverage for infertility treatment in the United States, the cost of egg donation is essentially a zero-sum game; if payment to egg donors increases, costs to egg recipients will increase as well. This piece argues that although the existing reimbursement cap for egg donation may be inadequately grounded, an adjusted cap for egg donor payments could be justified in order to maintain access to donor eggs for patients in need.

The ASRM guideline in question, an ethics document entitled "Financial Compensation of Oocyte Donors" (1), states that "Total payments to donors in excess of $5,000 require justification and sums above $10,000 are not appropriate." Though this guideline is not universally followed, it sets professional standards that influence the activities of most clinics and physicians in the field of infertility. As justification for the cap, the document cites many of the common arguments for limiting payment to donors. First, it is generally considered unacceptable to sell human body parts, including eggs, out of consideration for human dignity and the value of human life. The guideline therefore stresses that egg donors are selling their time, effort, and risk, not the eggs that they produce. Although people's discomfort with the commodification of eggs is understandable, the moral distinction between compensating donors for their eggs vs. compensating them for the process required to produce the eggs is questionable. It seems naïve to conceive of egg donation as solely a compensated act of altruism, because evidence suggests that without compensation, there would be a significant shortage of eggs (2). Furthermore, it is unclear why higher compensation would be more objectionable on dignity grounds than lower compensation; it is compensation per se that raises concerns about inappropriately valuing human life.

The ASRM guideline further notes that high levels of reimbursement could unduly induce women in need to subject themselves to the risks and discomfort of egg donation. Compensation, but at a relatively low level, the ASRM argues, would keep the danger of unduly inducing low-income women in check. A similar view can be found in the ethics literature on egg donation, in which low levels of compensation, or "incomplete commodification," is considered by some to be "a reasonable compromise" (3). However, the concept of undue inducement is often misapplied (4), including in relation to egg donation. Undue inducement occurs through an offer of excessive, unwanted, or inappropriate reward, thereby interfering with the ability to rationally weigh the risks and benefits of a decision. Although there is likely some amount of money that, if offered, would cause a woman to downplay the risks, it seems improbable that payment greater than $10,000 would substantially impair a woman's ability to rationally comprehend and consider the risks associated with egg donation. The payment certainly may induce some women to donate, but there is no evidence to suggest that it unduly induces women to do so, inhibiting voluntary and autonomous decision making.

Finally, the ASRM document raises the concern that women in need of money may conceal medical information that would render them ineligible to donate eggs in order to receive substantial compensation. Although this worry is valid, its relationship to the $5,000 and $10,000 cutoffs is also unclear. Five or ten thousand dollars is already a large sum of money that could stimulate someone in need of money to withhold disqualifying information.

A more ethically justifiable reason to cap payment is to facilitate access to egg donation for infertile couples of modest means. Fertility treatment in the United States is largely uncovered by health insurance, meaning that couples must pay out of pocket more than $12,000, on average, for a single fresh cycle of IVF (including medications). Insurance coverage for fertility treatment is mandated in 15 states, but coverage in most of these states excludes IVF. Add the cost of egg donation, and many couples find the price of having a child through assisted reproduction prohibitive. If a free market system for compensating egg donors were implemented, the additional cost would be passed on to infertile couples, rendering the treatment unaffordable to even more couples in need.

Understandably, the plaintiffs in the *Kamakahi* case are asking, "Why should egg donors pay the price for more affordable assisted reproduction?" Although it is true that the ASRM's suggested cap creates winners (couples who can now afford donor egg IVF) and losers (egg donors who could have earned more on a free market), the same is true of any regulation that aims to increase access to a product or service. Such is the nature of regulated markets; they create inefficiencies that are often absorbed unequally between producers and consumers, and they do so to achieve an external goal that promotes the public good—increasing access to donor egg IVF, in this case. Although many egg donors make less under the current guidelines than they would otherwise, that is not inherently unjust. One could argue that on a societal level, it is just to equalize access to donor egg IVF by limiting egg donor compensation to some extent.

Precisely how much egg donor compensation can be limited without unjustly shortchanging donors, however, is difficult to determine. The ASRM guideline cites a 1993 article that set compensation for egg donors by using a formula that multiplied payment for sperm donation by the amount of time

women spent donating eggs as compared with men donating sperm. The ASRM document acknowledges that the 1993 estimate does not take sufficient account of the additional risk and discomfort to which egg donors are exposed, but the guideline does not provide a clear alternative calculation to support the $10,000 cap. If our justification for capping payment for egg donation is to increase access to donor egg IVF, data should be gathered on the financial resources available to the average patient in need of egg donation. With a more complete picture, the ASRM could set an appropriate compensation limit by balancing the needs and interests of egg donors and egg recipients.

Ideally, however, egg donation would not be a zero-sum game. If there were greater insurance coverage for egg donation, or a sliding scale for payment by egg recipients, egg donors could receive greater compensation without greatly increasing the cost of donor egg IVF. If insurance companies, rather than individual recipients, absorbed the additional expense, egg donors could be reimbursed at or near market rates without restricting access to patients.

The first step toward moving to a fairer model of egg donor compensation is abandoning the notion that egg donation is an act of pure altruism, for which egg donors should only receive minor compensation. Although many donors are motivated by the desire to help others have children (5), compensation should not be capped out of an unwillingness to acknowledge that some egg donors are primarily driven by the financial reward. Instead, if payment is to remain capped, it should do so out of a clear and transparent effort to promote access for patients in need of donor egg IVF.

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