

Access to health care for undocumented immigrants: rights and practice

– secondary publication

Anne Rytter Hansen, MPH, Allan Krasnik, Professor
& Erling Høg, MSc

University of Copenhagen, Institute of Public Health, Department of Health Services Research.

Correspondence: Anne Rytter Hansen, Frederiksborggade 52, 4., 1360 Copenhagen K, Denmark.

E-mail: aha@niph.dk

Dan Med Bull 2007;54:50-1

ABSTRACT

The purpose of this article is to analyse undocumented immigrants' right to access to health care and their access in practice. Undocumented immigrants have a right to equal access to health care. Access to more than emergency health care in Denmark is dependent on immigration status. Medical doctors' duty to treat does not apply to non-emergency health needs, and the options existing in this situation remain ambiguous. However, in practice, undocumented immigrants in Denmark are able to receive more than emergency health care through unofficial networks of health care providers.

According to the World Health Organisation (WHO), national health care plans often discriminate against undocumented immigrants by making only emergency care available for non-citizens [1]. The designation "undocumented immigrants" is used throughout this article in place of the dehumanising "illegal immigrants". The term "undocumented" describes immigrants residing without documents to prove legal residence in a country. Access to health care for undocumented immigrants in Denmark has until now not been described.

The number of undocumented immigrants staying in Denmark is unknown. However, among reported immigrants almost 4000 asylum seekers were reported missing in 2003. It is unknown how many of these have left for other countries and how many are residing undocumented in Denmark [2, 3]. But if we additionally assume that some, if not most, undocumented immigrants do not seek asylum, but for various reasons intentionally reside outside the realm of legal documentation, a substantial number of immigrants live in Denmark without appropriate legal documents. The purpose of this article is to analyse, in which ways undocumented immigrants have a right to health care according to international human rights covenants, and in which ways undocumented immigrants in Denmark have access to health care formally and in practice.

This article is based on a Master's thesis in Public Health Science [4]. In the thesis, access to health care for undocumented immigrants in both California (USA) and Denmark was investigated but the focus in this article is on the Danish situation.

We compare human rights documents, health policy statements and access to health care for undocumented immigrants in Denmark. The International Covenant on Economic, Social and Cultural rights along with an explanatory United Nations document provide a rights perspective on formal access to health care. Formal access to health care in Denmark was investigated by going through national law and health policy statements concerning entitlement to health care for undocumented immigrants. Qualitative semi-structured interviews provided information on access to health care for

undocumented immigrants in practice. We interviewed a doctor and a caseworker from the organisation The Committee Refugees Underground (KFUJ), which helps rejected asylum seekers obtaining medical care. We also conducted a phone interview with a Danish Immigration Service employee to raise questions on the Aliens Consolidation Act and how it practically relates to health services available to undocumented immigrants. Finally, there is officially another refugee organisation in Denmark, which supports rejected asylum seekers. However, this organisation did not wish to participate in our study.

ACCESS TO HEALTH CARE – A HUMAN RIGHT?

Early on Denmark ratified a number of human rights documents containing the right to health – a short expression for the right to access to health care – and the right to freedom from discrimination. Discrimination means differential treatment between members and non-members of a definable group due to group affiliation, when the difference in treatment cannot be objectively justified [5]. In this case, discrimination is understood as differential treatment between undocumented immigrants and Danish citizens. If we take the relevant articles on the right to health as enshrined in international human rights treaties, along with United Nations officially added comments, we see that all humans have equal right to "the highest attainable standard of physical and mental health", exercised without discrimination, including undocumented immigrants (see Article 12, 2, and General Comment 14) [6, 7].

FORMAL ACCESS TO HEALTH CARE

The Aliens Consolidation Act and Danish health policy statements only sporadically deal with access to health care for undocumented immigrants. Even when compared, we see disagreements and ambiguities. The Danish Immigration Service is, according to the Aliens Consolidation Act, responsible for covering necessary health care for foreigners who are not entitled to stay in Denmark [8]. However, this does not apply if the foreigner's place of stay is unknown.

Undocumented immigrants can enquire at one of the asylum centres or the Danish Immigration Service when in need of treatment. The Danish Immigration Service is then obliged to keep the police notified on such persons' place of stay.

In reply to an enquiry about false patient identity in the Journal of the Danish Medical Association in 1997, the National Board of Health stated that it is a doctor's duty to begin the best treatment possible for anyone in need of emergency health care services regardless whether it is found that the patient has professed false identity [9].

In case of elective, i.e. non-emergency, treatment this duty does not apply. This was confirmed in a letter dated January 9 2003 from

Keywords

Access to health care is a human right.

Formal access to more than emergency health care is limited for undocumented immigrants. This can be seen as not being in accordance with UN's Covenant on Economic, Social and Cultural Rights, which is ratified by Denmark.

The Hippocratic oath and the Danish Act on Medical Doctors contain that doctors have a duty to treat. This duty does not apply to elective treatment needs. It therefore remains ambiguous, which options doctors and undocumented immigrants have in this situation.

In the USA, undocumented immigrants have formal access to health care to a higher degree than in Denmark.

the National Board of Health to the leading medical officers of health.

By February 2003, the Copenhagen Hospital Co-operation Board of Directors informed the city's hospitals that the fact that a patient is suspected to have unsettled matters with the police or the immigration authorities does not entitle the hospital to reject treatment or to report the patient for illegal stay.

Formally, then, there are three different suggestions for how undocumented immigrants should obtain access to health care: 1) According to the Aliens Consolidation Act, undocumented immigrants can enquire at the Danish Immigration Service in case there is a need for treatment. 2) According to the National Board of Health, doctors' have a duty to treat patients who has professed false identity but not in cases of elective treatment. 3) For the Copenhagen area, hospitals are not entitled to reject treatment.

INFORMAL ACCESS TO HEALTH CARE

There is a need for improved health care among undocumented immigrants in Denmark, though its extent remains unclear [4]. Today, this need is solved outside the established public health care system. In practice, undocumented immigrants in Denmark in need of other services than emergency health care often borrow another person's health insurance certificate and show this in the doctor's office or at the hospital. Another possibility is to make use of the informal networks of health care providers who provide treatment to undocumented immigrants outside the public health care system [4].

DISCUSSION

DISCREPANCIES BETWEEN FORMAL ACCESS AND UN'S COVENANT

While it seems impossible to define the absolute level of entitlement to health care for individuals, the principle of not discriminating against undocumented immigrants regarding access to health care is clearly stated in UN's International Covenant on Economic, Social and Cultural Rights and UN's own elaboration of this [6, 7].

The Aliens Consolidation Act conditions access to health care for undocumented immigrants upon their immigration status. This means discriminatory practice based on their group identity as undocumented immigrants as opposed to the rest of the population.

AMBIGUITY FOR DOCTOR AND PATIENT WHEN THE NEED FOR TREATMENT IS NOT ACUTE

In practice, undocumented immigrants without means in Denmark are only able to receive other than emergency health care through unofficial channels, given that making an enquiry about health care at the Danish Immigration Service is not a real choice, including the fear that their presence will be reported to the police authorities with possible repercussions as the outcome. The problem is then only solved for those with the resources and knowledge to use unofficial channels. At the same time, some Danish doctors are in a dilemma between their Hippocratic oath and a wish to give more than emergency care on one side, and on the other side a statement that the duty to treat does not apply when it comes to elective treatment needs. The doctors, who wish to give this treatment, are lacking clear guidelines on how to act and might be inclined to bypass the public system.

ACCESS TO MORE THAN EMERGENCY HEALTH CARE

In the USA, undocumented immigrants are entitled to receive vaccinations and treatment for communicable diseases besides emergency health care, which among other reasons is caused by the consideration for the remaining population. In the state of California certain undocumented immigrants without means are also entitled to a number of other services, such as dialyses, just as children are entitled to some examinations [4]. Inspired by this example it could be considered whether the duty to treat in Denmark should only ap-

ply to emergency health care, all health care services or at least a number of basic health care services besides emergency care.

CONCLUSION

Even though the Danish state is bound by UN's human rights covenants, it has no legal consequences in practice, as the UN does not have power to enforce them [10]. However, with reference to UN's International Covenant on Economic, Social and Cultural Rights one could argue that the illegal action of undocumented immigrants should not influence their right to equal access to health care.

Moreover, a practical step can be to recognize the networks of professionals, which already exist, as collaborators of the health sector and thereby make it easier and less random for undocumented immigrants to receive treatment. Thus, it could be avoided to place medical doctors in a dilemma between the professional oath and health policies, which are unclear on how the medical doctor can act when feeling obliged to give other than emergency health care.

(Box 1)

This article is based on a study first published in *Ugeskr Læger* 2006; 168: 3011-13.

References

1. International migration, health & human rights. Health & Human Rights Publication Series No. 4. Genève: World Health Organization, 2003.
2. Flygtninge fordufter efter asylafslag. DR Nyheder 25 July 2004. www.dr.dk/nyheder/indland/article.jhtml?articleID=186517 /Aug 2005.
3. Flere skjuler flygtninge. Dagbladet arbejderen 27 July 2004. www.arbejderen.dk/index.aspx?&R=2&S_ID=36&F_ID=18381&mode=| /Aug 2005.
4. Hansen AR. Access to health care for undocumented immigrants in California (USA) and Denmark - rights and practice. København: Københavns Universitet, 2005.
5. The International Committee for Human Rights. Discrimination. www.ichr-law.org/english/expertise/areas/discrimination.htm /Nov 2005.
6. International Covenant on Economic, Social and Cultural Rights. 1966. www.unhcr.ch/html/menu3/b/a_ceschr.htm / Nov 2006.
7. UNHCHR. General Comment No. 14. The right to the highest attainable standard of health. E/C.12/2000/4. [www.unhcr.ch/tbs/doc.nsf/\(symbol\)/E.C.12.2000.4.En?OpenDocument](http://www.unhcr.ch/tbs/doc.nsf/(symbol)/E.C.12.2000.4.En?OpenDocument) /Aug 2005.
8. Bekendtgørelse af Udlændingeloven. www.retsinfo.dk/_LINK_0/0& ACCN/A20040080829/Aug 2005.
9. Klarskov OP. Patienter med falsk identitet. *Ugeskr Læger* 1997;159:3654.
10. Claude RP, Weston BH, eds. Human rights in the World Community. Pennsylvania: University of Pennsylvania Press, 1992.