

IMMIGRATION ENFORCEMENT AND HEALTH CENTERS: KNOWING YOUR RIGHTS AS A PROVIDER

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LEARNING OBJECTIVES

- Learn about what's currently happening with immigration policy and enforcement
- Understand your rights and how to respond most appropriately to immigration enforcement activities
- Identify ways to make your practice and interactions with clients safe, welcoming, and empowered

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NATIONAL
IMMIGRATION
LAW CENTER

Who We Are - National Immigration Law Center (NILC)

- Our mission is to defend & advance the rights & opportunities of low-income immigrants and their family members.
- We combine policy advocacy, litigation and strategic communications to protect immigrants' rights under immigration law and in the workplace and to advance their access to advance access to health care, education and economic opportunity.



Disclaimers

- Things are changing fast!
- There are still a lot of unknowns.
- We are sharing the information we have at this time.
- We are providing general information and not legal advice. Consult with an attorney who can advise your organization.

Agenda:

- I. Immigration & Health Access Basics
- II. The Current Landscape
- III. Immigration Enforcement and Health Centers
- IV. Understanding Providers' and Patients' Rights
- V. Creating Safe Spaces

I. Immigration and Health Access Basics

National Perspective

- **“Immigrant” = “Foreign born” - includes naturalized citizens, lawfully present non-citizens, undocumented immigrants**
 - 40.8 million immigrants in US, out of 314 million total (13%)
 - Latin America (S. America, C. America, Mexico, Caribbean)- 52%
 - Asia - 29%, Europe - 12%, Africa - 4%
 - North America (Canada, Bermuda, Greenland, St. Pierre and Miquelon) - 2%
 - Oceania - 0.6%
- **About ½ are naturalized citizens, ¼ are lawfully present, ¼ are undocumented**
- **51% have been in US longer than 15 years**
- **25% of all children in the US have at least one foreign born parent (mixed-immigration status families)**
- **50% are Limited English Proficient (LEP) and speak English less than “very well”**

Sources: Migration Policy Institute tabulations of the U.S. Bureau of the Census' American Community Survey (ACS) and Decennial Census. Data is from the 2012 one-year ACS file.

Types of immigration statuses

- **Lawful Permanent Residents** - green card holders, one step from becoming US Citizens
- **Humanitarian Visas**
 - Asylees
 - Refugees
 - Cuban/Haitian Entrants
 - Temporary Protected Status
 - Deferred Action
 - Others
- **Survivors of Domestic Violence, Trafficking, other Crimes**
- **Nonimmigrant Visas**
 - Tourists, visitors, workers, etc.
- **Many others!**
 - Some don't fit neatly into any category, but have federal authorization to be in the country

Key Principles & Terms

- **Immigration system based on 3 principles:**
 - 1) reunification of families;
 - 2) admitting immigrants with skills that are valuable to US economy; and
 - 3) protecting persons fleeing persecution and for other humanitarian reasons
- **Lawful Permanent Residency (“green card” or LPR status)**
 - certain categories of immigrants may become eligible to apply for LPR status or a green card. Path to a green card/LPR varies.
- **U.S. citizenship -**
 - To become eligible to apply to naturalize, an individual must have had LPR status for at least 5 years (or 3 years if obtained LPR status through US citizen spouse or through Violence Against Women Act, VAWA)
- **Undocumented immigrants**
 - Individuals who lost permission to remain in the U.S., or entered the U.S. without permission

Mixed-Status families

The truth is, we're all immigrants!

- Many families are “mixed-status” where at least one person is undocumented.
 - For example - It's not uncommon to have a family with US citizen children, but where one of the parents is undocumented.
 - Huge implications for access to programs, services, affecting the entire family
- 16.6 million people live in mixed-status families (2013)
- 1/3 of US citizen children of immigrants live in a mixed-status household (2013)

Health & benefits: two main standards

- Qualified immigrant
 - Used for Medicaid and many public benefits programs
 - Biggest group = LPRs
 - Also includes asylees, refugees, some domestic violence victims
 - Many programs include a five-year waiting period (with some exclusions)
- Lawfully present/residing
 - Used for ACA marketplace plans and in CHIP/Medicaid for kids & pregnant women in some states
 - Includes all qualified immigrants (no waiting period for access)
 - Also includes visa holders, persons granted TPS, and just about any form of relief
 - Deferred Action included, but DACA is excluded by regulation

Access to health & benefits program

PROGRAM	LAWFUL PERMANENT RESIDENTS (age 18 and over)	LAWFUL PERMANENT RESIDENTS (under age 18)	LAWFUL PERMANENT RESIDENTS (pregnant women)	REFUGEES, ASYLEES, VICTIMS OF TRAFFICKING, OTHERS ¹	LAWFULLY PRESENT INDIVIDUALS	UNDOCUMENTED IMMIGRANTS and DACA RECIPIENTS ² (including children and pregnant women)
	If entered the U.S. on or after August 22, 1996					
ACA – Health Care Reform Subsidies (premium tax credits and cost-sharing reductions)	Eligible	Eligible	Eligible	Eligible	Eligible	Not eligible Also not eligible for full-priced health insurance in the Exchange marketplace
SNAP	Not eligible until after 5-year waiting period <i>or</i> have credit for 40 quarters of work	Eligible	Not eligible until after 5-year waiting period <i>or</i> have credit for 40 quarters of work	Eligible	Not eligible	Not eligible
MEDICAID	Not eligible until after 5-year waiting period ³	State option ⁴ to provide without a 5-year waiting period ³	State option to provide without a 5-year waiting period ³	Eligible ⁵	State option for children under 21 and pregnant women only	Eligible only for emergency Medicaid
CHIP	Not eligible until after 5-year waiting period	State option to provide without a 5-year waiting period	State option to provide without a 5-year waiting period	Eligible	State option for children under 21 and pregnant women	Not eligible
TANF	Not eligible until after 5-year waiting period ⁶	Not eligible until after 5-year waiting period ⁶	Not eligible until after 5-year waiting period ⁶	Eligible ⁵	Not eligible	Not eligible
SSI	Not eligible until after 5-year waiting period <i>and</i> have credit for 40 quarters of work <i>or</i> meet another exception	Not eligible until after 5-year waiting period <i>and</i> have credit for 40 quarters of work <i>or</i> meet another exception	Not eligible until after 5-year waiting period <i>and</i> have credit for 40 quarters of work	Only eligible during first 7 years after status is granted	Not eligible	Not eligible

II. The Current Landscape

Three Executive Orders in Immigration

- 1) *Muslim & refugee bans*: Seeks to “temporarily” halt all entry from 6 Muslim countries and all refugees; also cuts refugee entries in half. Does not impact health & benefits. Currently tied up in courts
- 2) *Border enforcement*: Calls for the so-called wall and increase in border patrol and detention on the southern border. No direct reference to health or benefits
- 3) *Interior enforcement*: Calls for changes to enforcement priorities and punishing so-called sanctuary cities. Some reference to health & benefits in memos, but does not mean much.



Anyone Could Be a Priority

- Revoked Obama-era policies that directed immigration enforcement prosecutors & agents on when to use discretion
- Creates so many “priorities” for enforcement that it seems like just about everyone is a priority, causing fear in communities
- References to health & benefits in memos, not what it appears
 - About abuse, not use: prioritizes those who have “abused” programs, but defines as “knowingly defrauded”
 - Privacy Act: Limits to citizens, nationals, & LPRs; but statute already says that! Changes guidance but not other federal & state privacy laws
 - See NILC The Torch blog post at www.nilc.org/news/the-torch/3-2-17

Draft Public Charge Executive Order

- Public charge is a *forward-looking* test of whether someone is likely to be reliant on the government for subsistence
- **NOTHING IN LAW OR POLICY HAS CHANGED**
 - Still only cash benefits and long-term care on Medicaid are relevant
- There are lots of protections in statute (exemptions, forward-looking test, totality of the circumstances)
- Important to stick to the facts (see NILC community messages):
<https://www.nilc.org/issues/health-care/exec-orders-and-access-to-public-programs/>

The harm is already real

Help us track it:
publiccharge@nilc.org

III. Immigration Enforcement and Health Centers

Implications

- Chilling effect in accessing health services
 - People wanting to stop receiving services from WIC, Medicaid, and other programs
- Fear of immigration enforcement actions at health facilities
 - Fear that ICE may be at or near a facility
- Fear around the privacy of personal information found in patient medical records
- Fear around the use of medical services and whether patient will need to pay back



Fear of Using Medical Services

- *If I use these benefits, will I be deported?*
 - Under current laws, people are usually not deportable for using benefits for which they are eligible.
 - There is confusion and fear around **public charge: does not have to be**
- *If I use these benefits, do I or a relative have to pay back for these services?*
 - There is confusion and fear around sponsor liability, where sponsors may be held accountable for used benefits

Concerns around the Privacy of Personal Information Found in Medical Records

- *Is my personal and medical information secure or could ICE use it to find me?*
- Existing guidance:
 - Information submitted when applying for health benefits is used to determine eligibility
 - Information is not to be used for law enforcement purposes (exception: fraud investigations)
- Health Insurance Portability and Accountability Act (HIPAA):
 - Protects against disclosure of personal identifying information
 - There's a need for national origin and immigration status to be protected, *but you do not need to ask*
- ICE Memo clarifying use of of health care information (2011)
 - Confirmed that information used to enroll in the ACA would not trigger immigration enforcement activity.
 - <http://www.ice.gov/doclib/ero-outreach/pdf/ice-aca-memo.pdf>



HIPAA

- Privacy rule prohibits disclosure of certain medical records and other patient information by “covered entities,” which include health plans, health care clearinghouses and health care providers.
- “Protected Health Information” (PHI), defined to be all “individually identifiable health information” held or transmitted by a covered entity or its business associate. 45 C.F.R. § 160.103.
 - The list of PHI identifiers does not specifically include immigration status or evidence of foreign birth, though federal guidance includes a catch-all category for identifiers of “any other characteristic that could uniquely identify the individual.”
- HIPAA does include specific exceptions that allow medical providers to disclose medical records without a patient’s consent for judicial and administrative proceedings and for law enforcement activities. 45 CFR § 164.512(e); 45 CFR § 164.512(f).
 - Don’t consent. Document!

Fear of Immigration Enforcement Actions at Health Facilities

- While there is a low likelihood that an enforcement action could occur at a health center, there are reports of ICE presence at health center parking lots and ICE arresting people across the street from a health center. So, Know Your Rights:
- Immigration enforcement actions at health settings are protected by the 4th Amendment
- Sensitive Locations Memos also tools to prevent against these actions



Sensitive Locations

- Certain immigration enforcement action by immigration agents is discouraged at sensitive locations.
- Based on Policy from 2011
 - ICE Memo from 2011
 - CBP Memo from 2013
- Locations “at or near:”
 - Places of worship;
 - Health facilities, incl. hospitals and clinics;
 - Schools;
 - Funerals, weddings, and other public religious ceremonies; and
 - Public demonstrations (rallies, marches).

Protections Triggered at Sensitive Locations

Policy Number: 10029.2
FEA Number: 306-112-002b

Office of the Director

U.S. Department of Homeland Security
500 12th Street, SW
Washington, D.C. 20536



U.S. Immigration
and Customs
Enforcement

OCT 24 2011

MEMORANDUM FOR: Field Office Directors
Special Agents in Charge
Chief Counsel

FROM: John Morton
Director

A handwritten signature in black ink, appearing to read "John Morton", written over the printed name and title.

SUBJECT: Enforcement Actions at or Focused on Sensitive Locations

Purpose

This memorandum sets forth Immigration and Customs Enforcement (ICE) policy regarding certain enforcement actions by ICE officers and agents at or focused on sensitive locations. This policy is designed to ensure that these enforcement actions do not occur at nor are focused on sensitive locations such as schools and churches unless (a) exigent circumstances exist, (b) other law enforcement actions have led officers to a sensitive location as described in the "Exceptions to the General Rule" section of this policy memorandum, or (c) prior approval is obtained. This policy supersedes all prior agency policy on this subject.¹

Definitions

- Memo ensures “enforcement actions do not occur at nor are focused on sensitive locations.”
- So generally, both ICE and CBP agents are not allowed at these locations.
- Exceptions:
 - Exigent circumstance,
 - Other law enforcement led immigration agents there, or
 - Prior approval is obtained.

The Memos Remain in Place, but...

- Reports of immigration actions near sensitive locations raise questions about the memos
- DHS commitments that the memos remain in effect
 - FAQ on DHS Implementation of the enforcement EO's (Q26)
 - <https://www.dhs.gov/news/2017/02/21/qa-dhs-implementation-executive-order-border-security-and-immigration-enforcement>
 - Verbal commitment
 - https://www.washingtonpost.com/blogs/plum-line/wp/2017/02/20/how-bad-are-trumps-mass-deportations-going-to-get-heres-a-big-thing-to-watch-for/?utm_term=.59e951bd5c71
- Need to pressure DHS to ensure strict compliance with memo



Fourth Amendment Protections

- The Fourth Amendment Protects against unreasonable searches and seizures.
- Some factors involved:
 - Reasonable expectation of privacy
 - Public v. private spaces
 - Beware of plain view
 - Warrant required in areas w/ reasonable expectation of privacy...
 - But, what if there's probable cause?
 - ... or Consent
 - Don't consent. Document!



IV. Understanding Providers' and Patients' Rights

Immigration Enforcement at Health Settings

- What does it look like?
 - An arrest of an individual inside or outside health space
 - Asking questions regarding immigration status of anyone in room
 - Hanging around parking lot, or roaming hospital hallways
- What may cause confusion?
 - Hospital security or local police at health spaces
 - Immigration agents often wear “Police” jackets
- What you should remember:
 - Tactics change, and vary by location
 - Knowing your rights and your patients’ will help regardless of tactic



Advocate
Organize · Educate
Empower

Providers' Rights When Encountering Immigration Agents

- Right to determine who enters their premises, if there is no warrant or other legal requirement
 - If no warrant, you can refuse consent for them to enter
 - If there is a warrant, it should have the name of the person they are looking for *and* your center's address
- Right to protect your patients' health information
 - Information does not need to be released without a court document listing the type of records that you can release

Sample warrant: administrative

U.S. Department of Justice
Immigration and Naturalization Service

Warrant of Removal/Deportation

File No: _____

Date: _____

To any officer of the United States Immigration and Naturalization Service:

(Full name of alien)

who entered the United States at _____ on _____
(Place of entry) (Date of entry)

is subject to removal/deportation from the United States, based upon a final order by:

- an immigration judge in exclusion, deportation, or removal proceedings
- a district director or a district director's designated official
- the Board of Immigration Appeals
- a United States District or Magistrate Court Judge

and pursuant to the following provisions of the Immigration and Nationality Act:
Section 241(a)(5) of the Immigration and Nationality Act(Act), as amended.

I, the undersigned officer of the United States, by virtue of the power and authority vested in the Attorney General under the laws of the United States and by his or her direction, command you to take into custody and remove from the United States the above-named alien, pursuant to law, at the expense of the appropriation. "Salaries and Expenses Immigration and Naturalization Service 2002," including the expense of an attendant if necessary.

(Signature of INS official)

(Title of INS official)

(Date and office location)

32

Sample warrant - judicial

33

UNITED STATES DISTRICT COURT

for the
Eastern District of California

In the Matter of the Search of)
(Briefly describe the property to be searched)
or identify the person by name and address))

540 Oak Avenue)
Davis, California 95616)

Case No.

SEARCH AND SEIZURE WARRANT

To: Any authorized law enforcement officer

2:11-SW-0161 EFB

An application by a federal law enforcement officer or an attorney for the government requests the search of the following person or property located in the EASTERN District of CALIFORNIA
(Identify the person or describe the property to be searched and give its location):

SEE ATTACHMENT A, ATTACHED HERETO AND INCORPORATED BY REFERENCE

The person or property to be searched, described above, is believed to conceal (Identify the person or describe the property to be seized):

SEE ATTACHEMNT B, ATTACHED HERETO AND INCORPORATED BY REFERENCE

I find that the affidavit(s), or any recorded testimony, establish probable cause to search and seize the person or property.

YOU ARE COMMANDED to execute this warrant on or before

5-9-2011

(not to exceed 14 days)

in the daytime 6:00 a.m. to 10 p.m. at any time in the day or night as I find reasonable cause has been established.

Unless delayed notice is authorized below, you must give a copy of the warrant and a receipt for the property taken to the person from whom, or from whose premises, the property was taken, or leave the copy and receipt at the place where the property was taken.

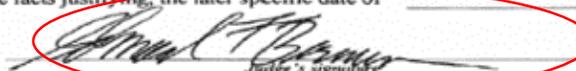
The officer executing this warrant, or an officer present during the execution of the warrant, must prepare an inventory as required by law and promptly return this warrant and inventory to United States Magistrate Judge

(name)

I find that immediate notification may have an adverse result listed in 18 U.S.C. § 2705 (except for delay of trial), and authorize the officer executing this warrant to delay notice to the person who, or whose property, will be searched or seized (check the appropriate box) for _____ days (not to exceed 30).

Until, the facts justifying _____, the later specific date of _____.

Date and time issued: 4-25-2011
9:10:00 AM


Judge's signature

City and state: SACRAMENTO, CALIFORNIA

EDMUND F. BRENNAN, U.S. MAGISTRATE JUDGE
Printed name and title

Providers' Rights when Protecting Patients

- Use existing guidance regarding use of patient information
 - Information submitted used to determine eligibility and not for law enforcement purposes (exception: fraud)
- Use HIPAA to remind both immigration officers and patients that:
 - Their personal identifying information is protected
 - *But*, avoid having any documents or records in public view!



Patients' Rights when Accessing Health Services

- Strong privacy rules protect families applying for health insurance.
- Do not provide your immigration status if you are not applying for insurance for yourself.
 - “I am not eligible for health insurance and do not want to apply”
- If you are uninsured, you have health care options regardless of your immigration status.
- You should not be asked your immigration status.
- You do not have to provide a Social Security Number if you do not have one.
- If you do not have a photo ID, you may still be able to receive medical treatment.
- You have a right to an interpreter, at no cost.
- Existing policy keeps immigration officials away from hospitals and medical facilities.



Patients' Rights During an Encounter with ICE

- Patient can refuse to answer questions until they have had a chance to consult with an attorney
- Patient can choose not to speak at all by saying “I want to remain silent”
- Patient can decline to share information about where they were born or how they entered the United States
- Patient can carry a “know your rights” card and provide it to immigration officers if stopped

KNOW YOUR RIGHTS!

If you are stopped by immigration or the police:

- ✓ Hand this card to the officer, and remain silent.
- ✓ The card explains that you are exercising your right to refuse to answer any questions until you have talked with a lawyer.

To: Immigration or Other Officer

Right now I am choosing to exercise my legal rights.

- I will remain **silent**, and I refuse to answer your questions.
- If I am detained, I have the right to contact an attorney **immediately**.
- I refuse to sign anything without advice from an attorney.

Thank you.

V. Creating Safe Spaces

How Can You Help Patients Feel Safer?

- Understand the protections you have and those of your patients
 - Review this presentation and accompanying resources
- Take steps to make your facility provide a welcoming environment
 - Review and implement the steps recommended
- Help your patients feel empowered
 - Access to KYR resources goes a long way



Recommended Steps for Creating Safe Spaces

- Have sample talking points available to know how to respond to patient fears around accessing health services
- Train all staff on protections available to providers & immigrant patients
- Train a designated staff member on how to interact with ICE
- Post notices and posters indicating facility is a safe space
- Avoid asking questions about immigration status
- Provide KYR resources for patients
- Develop relationships with local immigration attorneys



Train Staff to be Prepared to Interact with ICE

- If a law enforcement officer enters your facility, your designated staff member should:
 - Promptly ask them to identify themselves (Are they local police or immigration?).
 - Write down the full name of the officer/s present.
 - Ask why he/she is there and request to see a warrant. If the officer lacks a warrant, respectfully ask that the officer leave your premises.
- If the officer has a warrant, you should:
 - Document whether the warrant is administrative or judicial,
 - Try to limit interactions with the officer to only the individuals named in the warrant,
 - Contact a local immigration attorney or nonprofit to advise of the situation.
- Any member of your staff can:
 - Inform all those present (including patients) that your staff will engage directly with the officers, and remind everyone present of their right to remain silent.
- DO NOT:
 - Disclose any patient medical records unless the officer has a HIPAA subpoena or a warrant that specifically lists medical records as part of the search,
 - Share contact information or information about your patients' immigration status or national origin with the officer.

Sample notice

SAMPLE NOTICE

A Message to All Our Patients:

All are welcome here.

Our facility is a safe space for everyone we serve.

Our spaces are reserved for our patients and their relatives and friends.

Maintaining this safe space and protecting the privacy of the information you share with us are our top priorities.

Please reach out to our staff if you have any questions.

Even if you do not inquire into immigration status, you should:

- Avoid asking patients questions related to national origin
- Avoid collecting or recording any information containing national origin immigration status
- Avoid asking patients for a Social Security Number
- Remind patients that everything they share with you is confidential
- Train staff to communicate this in a culturally competent way



Recommended Steps for Creating Safe Spaces

But, if you ask any immigration-related questions, explain why you're asking this question

Patient Empowerment

- Create a “resources” location where patients can access:
 - KYR materials on both access to health and general immigration enforcement
 - KYR cards
 - Info on how to find local immigration attorneys
 - Info on family preparedness plans
- Offer resources in the languages most commonly spoken in the neighborhoods you serve
- Help patients understand and keep track of the medications they are taking

KNOW YOUR RIGHTS!

If you are stopped by immigration or the police:

- ✓ Hand this card to the officer, and remain silent.
- ✓ The card explains that you are exercising your right to refuse to answer any questions until you have talked with a lawyer.

To: Immigration or Other Officer

Right now I am choosing to exercise my legal rights.

- I will remain **silent**, and I refuse to answer your questions.
- If I am detained, I have the right to contact an attorney **immediately**.
- I refuse to sign anything without advice from an attorney.

Thank you.

Resources:

- Sensitive Locations Memos
 - ICE: <https://www.ice.gov/doclib/ero-outreach/pdf/10029.2-policy.pdf>
 - CBP: <https://foiarr.cbp.gov/streamingWord.asp?i=1251>
- NILC Patient Protection KYR: <https://www.nilc.org/issues/immigration-enforcement/healthcare-provider-and-patients-rights-imm-enf/>
- NILC Health Care KYR: <https://www.nilc.org/issues/health-care/health-insurance-and-care-rights/>
- NILC Know Your Rights (available in many languages): <https://www.nilc.org/issues/immigration-enforcement/everyone-has-certain-basic-rights/>
- ILRC Family Preparedness Plan <https://www.ilrc.org/family-preparedness-plan>



Locating Pro Bono or Low Bono Attorneys

- Nonprofit organizations: immigrationlawhelp.org.
- The immigration courts have a list of lawyers and organizations: justice.gov/eoir/list-pro-bono-legal-service-providers-map.
- At <https://www.adminrelief.org> there is a search engine into which you type a zip code and then are given a list of all the legal services near you.
- You can search for an immigration lawyer using the American Immigration Lawyers Association's directory, ailalawyer.com.
- The National Immigration Project of the National Lawyers Guild also has an online find-a-lawyer tool: <https://www.nationalimmigrationproject.org/find.html>.

QUESTIONS?

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