Protecting Your Immigrant Patients’ Access to Health Care
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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.
Logistics

• Everyone will be muted throughout the presentation

• Webinar will be recorded

• You will receive the slides and resources shared during the webinar

• We will answer questions at the end - please type them into the question box
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 & Health Access Basics
“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
Some common immigration types

- Family-based: citizens or LPRs petition to bring family from abroad—can take from months to decades

- Employment: temporary workers from agriculture to professional athletes; some permanent immigration

- Persons fleeing persecution: well-founded fear of persecution” due to race, membership in a social group, political opinion, religion or national origin

  - Refugees: apply from abroad, annual caps
  - Asylees: apply while in the US, no annual caps
  - Witholding of removal: similar to asylee, more evidence needed
Other Common Forms

• **Temporary Protected Status (TPS):** cannot return to home country because of natural disaster, extraordinary temporary conditions, or ongoing armed conflict. Can be extended. No path to LPR.

• **Deferred Action:** granted for a limited number of reasons. No path to LPR.
  - **DACA:** For some who entered as children. Extra health restrictions.

• **Paroled into the US:** admitted for urgent humanitarian reasons or significant public benefit. Some may have path to LPR if apply for asylum or are petitioned by relative.

• **Domestic Violence Survivors** - may include a few different categories, including relief provided under the Violence Against Women Act (VAWA). Path to LPR.
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)

Source: Center for American Progress
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

<table>
<thead>
<tr>
<th>PROGRAM</th>
<th>LAWFUL PERMANENT RESIDENTS (age 18 and over)</th>
<th>LAWFUL PERMANENT RESIDENTS (under age 18)</th>
<th>LAWFUL PERMANENT RESIDENTS (pregnant women)</th>
<th>REFUGEES, ASYLEES, VICTIMS OF TRAFFICKING, OTHERS¹</th>
<th>LAWFULLY PRESENT INDIVIDUALS</th>
<th>UNDOCUMENTED IMMIGRANTS and DACA RECIPIENTS² (including children and pregnant women)</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACA – Health Care Reform Subsidies (premium tax credits and cost-sharing reductions)</td>
<td>Eligible</td>
<td>Eligible</td>
<td>Eligible</td>
<td>Eligible</td>
<td>Eligible</td>
<td>Not eligible Also not eligible for full-priced health insurance in the Exchange marketplace</td>
</tr>
<tr>
<td>SNAP</td>
<td>Not eligible until after 5-year waiting period or have credit for 40 quarters of work</td>
<td>Eligible</td>
<td>Not eligible until after 5-year waiting period or have credit for 40 quarters of work</td>
<td>Eligible</td>
<td>Not eligible</td>
<td>Not eligible</td>
</tr>
<tr>
<td>MEDICAID</td>
<td>Not eligible until after 5-year waiting period</td>
<td>State option⁴ to provide without a 5-year waiting period</td>
<td>State option to provide without a 5-year waiting period</td>
<td>Eligible⁵</td>
<td>State option for children under 21 and pregnant women only</td>
<td>Eligible only for emergency Medicaid</td>
</tr>
<tr>
<td>CHIP</td>
<td>Not eligible until after 5-year waiting period</td>
<td>State option to provide without a 5-year waiting period</td>
<td>State option to provide without a 5-year waiting period</td>
<td>Eligible</td>
<td>State option for children under 21 and pregnant women</td>
<td>Not eligible</td>
</tr>
<tr>
<td>TANF</td>
<td>Not eligible until after 5-year waiting period</td>
<td>Not eligible until after 5-year waiting period</td>
<td>Not eligible until after 5-year waiting period</td>
<td>Eligible⁵</td>
<td>Not eligible</td>
<td>Not eligible</td>
</tr>
<tr>
<td>SSI</td>
<td>Not eligible until after 5-year waiting period and have credit for 40 quarters of work or meet another exception</td>
<td>Not eligible until after 5-year waiting period and have credit for 40 quarters of work or meet another exception</td>
<td>Not eligible until after 5-year waiting period and have credit for 40 quarters of work</td>
<td>Only eligible during first 7 years after status is granted</td>
<td>Not eligible</td>
<td>Not eligible</td>
</tr>
</tbody>
</table>

¹ Also includes Cuban/Haitian entrants, Amerasian immigrants, Iraqi or Afghan special immigrants, and individuals granted withholding of deportation or removal.

² DACA is the acronym for Deferred Action for Childhood Arrivals.

³ In a few states, remain ineligible after 5 years unless have credit for 40 quarters of work history or are a veteran, active duty military, or his or her spouse/child.

⁴ Eligible if receiving federal foster care.

⁵ A few states terminate Medicaid to humanitarian immigrants after a 7-year period, and/or TANF after a 5-year period.

⁶ At least a dozen states use their maintenance-of-effort funds to provide TANF without a waiting period.
II. The Current Landscape
Legislative Action in Health & Immigration
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](http://www.nilc.org/news/the-torch/3-2-17)
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):
The harm is already real

Help us track it:
publiccharge@nilc.org
IV. 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 health care information (2011)
  • Confirmed that information used to enroll in the ACA would not trigger immigration enforcement activity.
  • [link](http://www.ice.gov/doclib/ero-outreach/pdf/ice-aca-memo.pdf)
• 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
• 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

• 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)
  • Verbal commitment

• 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!
V. 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
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
Sample warrant - judicial
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.
VI. 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

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 or 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

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• I refuse to sign anything without advice from an attorney.

Thank you.
Resources:

- Sensitive Locations Memos

- NILC Patient Protection KYR:

- NILC Health Care KYR:

- 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](https://immigrationlawhelp.org).

- The immigration courts have a list of lawyers and organizations: [justice.gov/eoir/list-pro-bono-legal-service-providers-map](https://justice.gov/eoir/list-pro-bono-legal-service-providers-map).

- At [https://www.adminrelief.org](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](https://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](https://www.nationalimmigrationproject.org/find.html).
Questions?

Email for tracking stories: publiccharge@nilc.org