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Immigration And Health Care : An Update On Providing Care To Undocumented Immigrants

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The Context for the Immigration Debate On Who Is Entitled To Health Care

Immigration is a front page story and will continue to be an issue for the next two years

There is an existing and sizeable portion of our population that have no immigration papers

There is a division of opinion on whether this population is entitled to receive health care through a recognized system of federal or state health care

Some policy makers contend that the costs of providing health care to this population outweighs any benefit that such population provides to our society

The complexity of providing health care and how it is paid for provides an added overlay to these issues

Present Day Concerns

Undocumented Immigrants are currently prohibited from purchasing insurance exchange coverage under the Affordable Care Act

Due to their status as “undocumented” this population generally has less access to private health care insurance markets

There is a division of opinion on whether undocumented immigrants seek health care as a last resort or until significant health issues arise in the family

Safety net health care organizations become the place for providing access to care

In seeking access, financial and legal issues arise in providing “quality care” to these patients

Financial Pressures in Providing Health Care

It is a complex system for seeking reimbursement for health care and different approaches must be followed

Sometimes there is uncertainty on what care is needed and what service should be provided

The Board has an underlying fiduciary obligation to maintain the solvency of the health care organization

The Board must secure and plan for commitments for future funding 2-3 years in advance and this population is subject to the immigration issues

Legal Pressures

Fully understanding the legal obligations and requirements are challenging

The Board of Directors must be aligned with Staff on who is entitled to care and what services should be provided on enrollment and finances

The Board must adopt understandable policies that will be followed by staff as to certain policies on privacy , access, and immigration inspections

The safeguards for providing patient confidentiality must be understood by everyone: staff, patients, and the Board

Some Additional Background

The U.S. Immigration and Customs Enforcement (ICE) is the enforcement agency within the U.S. Department of Homeland Security (DHS).

U.S. Customs and Border Protection (CBP), another agency within DHS, is responsible for enforcement at or near the nation's borders.

Search and Seizures

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The Basics

ICE and CBP's power to enforce immigration law is limited by our constitutional protection from *unreasonable search and seizures*.

Under the 4th Amendment to the U.S. Constitution, the reasonableness of a search depends on whether a person has a *reasonable expectation of privacy* in the area searched.

The Right To Privacy

Federal and state privacy laws provide protections that further limit the disclosure of patient information— including immigration status— related information—to law enforcement officials.

The Federal law protection is HIPPA, regardless of immigration status, and California has a right to privacy just as stringent

Sensitive Locations — What Does This Mean?

Both ICE and CBP consider hospitals and other health care facilities to be “SENSITIVE LOCATIONS.” Both agencies have issued memoranda that state immigration enforcement actions are to be avoided at sensitive locations, this includes hospitals and other health care facilities, *unless exigent circumstances exist or the officers conducting the actions have prior approval from certain officials within the enforcement agencies.*

Sensitive Locations – How Safe?

ICE defines “enforcement actions” as including arrests, interviews, searches, and surveillance done for purposes of immigration enforcement only.

The memos defining “safe locations” are subject to change, depending on the enforcement priorities of ICE and CBP.

The Information Conundrum

Health care providers have no affirmative obligation to inquire into or report to federal immigration authorities about a patient's immigration status.

The Health Insurance Portability and Accountability Act (HIPAA) privacy rule prohibits the use or disclosure of patient information, without the patient's consent, *except when required by law.*

The Right To Remain Silent

While immigration enforcement at health care facilities is limited by the “sensitive locations” guidance described previously, immigration agents may enter a public area of a health care facility without a warrant or the facility’s consent and may question any person present. These people have a right to remain silent

A Visit From ICE

Immigration Officers may look at anything that is in “***PLAIN VIEW***” in a public area. An object is in “plain view” if it is obvious to the senses. For example, an immigration official may visually inspect anything—including papers and files—that are clearly visible from the visitors’ side of the reception desk. Unless they have a warrant, however, they may not move an object in plain view to expose other portions of it or what is under it. The plain view doctrine extends to sounds within “***plain hearing***” as well

PRIVATE
AREAS
in
HEALTH
CARE
SETTINGS

To enter a private area (an area not open to the public) of a health care facility, immigration enforcement officers must have either a warrant or consent from an authorized person, i.e., from a predesignated staff member of the health facility.

ICE And Judicial Warrants

If immigration authorities or other law enforcement officials present a warrant or other court order, the authorized person—a predesignated health center staff member—should *review the warrant* to ensure that:

* IT IS A VALID JUDICIAL WARRANT

*IT IS SIGNED BY A JUDGE OR
MAGISTRATE JUDGE

* IT STATES THE ADDRESS OF THE
SPECIFIC PREMISES TO BE SEARCHED

* THE WARRANT IS BEING EXECUTED
DURING THE TIME PERIOD
SPECIFIED ON THE WARRANT

2 IMPORTANT ITEMS ON WARRANTS

If immigration authorities or other law enforcement officials present a warrant or other court order, the authorized person—a predesignated health center staff member—should *review the warrant* to ensure that:

* IT IS A VALID JUDICIAL WARRANT
AND
NOT AN ADMINISTRATIVE WARRANT

* THE DESIGNATED PERSON UNDERSTAND THE SCOPE OF THE WARRANT; FOR EXAMPLE, IF THE WARRANT STATES THAT OFFICIALS MAY SEARCH THE RECEPTION AREA, THEY MAY NOT USE THIS WARRANT TO THEN SEARCH PRIVATE PATIENT EXAMINATION ROOMS.

WHAT DO
WE DO
NOW?

BOARD POLICIES
STAFF TRAINING
PATIENT INFORMATION