



Providing Care and Services for Undocumented Immigrants

Information for Healthcare Workers and Staff Members

Background

Currently, there are more than 11 million undocumented immigrants living in the US.¹ Undocumented immigrants are a uniquely vulnerable population who often face significant obstacles when seeking access to health insurance² and healthcare. Further, the fear of federal immigration enforcement action may lead some families to forgo medical services.³ This fact sheet aims to provide healthcare professionals with guidance and resources to provide safe, high-quality care and services for undocumented patients.

Legal Responsibilities

As healthcare providers, as that term is broadly defined in the Health Insurance Portability and Accountability Act (HIPAA), you are responsible for protecting sensitive patient information at all times. As a reminder, the HIPAA Privacy Rule generally prohibits the use or disclosure of patient information without the patient's consent, except when permitted or required by law.⁴

The Rhode Island Department of Health (RIDOH) discourages routine recording of immigration status in patient medical or billing records, which practice is unnecessary and may both exacerbate existing health conditions and cause undocumented individuals to be less likely to engage in health-seeking behaviors. RIDOH recognizes, however, that immigration status can affect patient health and well-being in multiple ways and can, therefore, be clinically relevant to the past, present, or future physical or mental health or condition of an individual. When clinically relevant, immigration status constitutes protected health information (PHI) under HIPAA, and RIDOH expects that you will protect it accordingly.

In addition, you are **not** legally required to:

- Inquire about a patient's immigration status; or
- Answer questions posed by an immigration enforcement officer, unless the request for information is pursuant to a warrant or other court order for a specifically identified individual.⁵

Patient Rights

- **Right to emergency treatment:** Under the federal Emergency Medical Treatment and Active Labor Act (EMTALA), all patients who present in a hospital emergency department must receive an appropriate medical screening and, if necessary, must be treated until stable, *regardless of insurance or immigration status*.⁶
- **Right to preventive services:** All patients may seek nonemergency and preventive health services at community health centers, *regardless of immigration status*.⁷
- **Hospital Charity Care:** Rhode Island requires hospitals to provide essential medical services to qualified charity care patients, regardless of immigration status. Hospitals must not discourage patients who cannot afford to pay from seeking essential medical services, nor direct them to seek those services from other providers.⁸
- **Sensitive Locations:** According to current US Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP) memoranda, these are areas where immigration enforcement actions are to be avoided absent exigent circumstances or prior approval. ICE considers medical treatment and healthcare facilities, such as hospitals, doctors' offices, accredited health clinics, and emergent or urgent care facilities to be sensitive locations.⁹
- **Right to remain silent:** Under the United States Constitution, patients may refuse to answer questions from immigration agents and other law enforcement officers and may insist that their lawyers be present if they are questioned.¹⁰

Best Practices

- **Avoid collecting information on patient immigration status.** If you must collect this information, avoid writing it down on the patient's medical and billing records.¹¹
- **Store sensitive patient information in a safe location.** Immigration enforcement officers may look at anything in "plain view" in a public area. Additionally, be mindful of where sensitive conversations occur, as officers have access to anything in "plain hearing" as well.¹²

Key Term

Undocumented Immigrant: An individual who crossed a border into the United States without authorization or who is living outside the terms of an entry visa or other authorization.

¹ Unauthorized immigrant population profiles. Migration Policy Institute.

<https://www.migrationpolicy.org/programs/us-immigration-policy-program-data-hub/unauthorized-immigrant-population-profiles> Accessed February 13, 2020.

² How can physicians care, and advocate for, undocumented immigrants? American Medical Association.

<https://www.ama-assn.org/delivering-care/ethics/how-can-physicians-care-and-advocate-undocumented-immigrants> Published January 11, 2019. Accessed February 13, 2020.

³ Health care providers and immigration enforcement: Know your rights, know your patients' rights. National Immigration Law Center. <https://www.nilc.org/issues/immigration-enforcement/healthcare-provider-and-patients-rights-imm-enf/> Published April 2017. Accessed February 13, 2020.

⁴ See 45 C.F.R. § 164.512(f)(1).

⁵ Health care providers, *supra* note 3.

⁶ See Emergency Medical Treatment and Labor Act (EMTALA), 42 USC §1395dd.

⁷ Immigrants and the Affordable Care Act (ACA). National Immigration Law Center. <https://www.nilc.org/wp-content/uploads/2015/11/Immigrants-and-the-ACA-2014-01.pdf> Updated January 2014. Accessed February 13, 2020.

⁸ See Hospital Conversions (216-RICR-40-10-23), https://risos-apa-production-public.s3.amazonaws.com/DOH/REG_10020_20180811132002.pdf.

⁹ FAQ on sensitive locations and courthouse arrests. US Immigration and Customs Enforcement. <https://www.ice.gov/ero/enforcement/sensitive-loc> Updated September 25, 2018. Accessed February 13, 2020.

¹⁰ Health care providers, *supra* note 3.

¹¹ Health care providers, *supra* note 3.

¹² Health care providers, *supra* note 3.