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Attorney General Guidance:
Information for Massachusetts Health Care Providers regarding Immigration
Enforcement

The Office of the Attorney General of Massachusetts provides this information and guidance to health care providers in the Commonwealth.

The Office has received inquiries from health care providers about the impact of recent executive orders and federal policies on immigrants who seek health care in the Commonwealth.¹ We have also received questions about media reports of a draft executive order – which has *not* been issued – that would expand the immigration law concept of “public charge” – a status that can adversely impact an immigrant’s legal status.² Health care providers are concerned that individuals may be deferring necessary health care because they are afraid that the U.S. Immigration and Customs Enforcement (“ICE”) may conduct enforcement activities at health care facilities or request information from health care providers about patients’ immigration status, or because they are afraid that accessing care might adversely impact their immigration status. In light of these concerns, it is important that health care providers be informed about what the law permits and requires of them with respect to protecting their patients and their patients’ information. This guidance addresses the rights of health care providers and patients with respect to requests for access or information by ICE. It also provides information about access to care and government assistance programs.

This Guidance is not legal advice or a formal legal opinion of the Attorney General. A health care provider or organization should consult with legal counsel about specific questions and concerns and to determine how the considerations discussed below affect a particular health care environment.

¹ These executive orders include: [Executive Order: Border Security and Immigration Enforcement Improvements](#), signed January 25, 2017; Executive Order: [Enhancing Public Safety in the Interior of the United States](#), signed January 25, 2017; Executive Order: [Protecting the Nation from Foreign Terrorist Entry into the United States](#), signed January 27, 2017; and Executive Order: [Protecting The Nation From Foreign Terrorist Entry Into The United States](#), signed March 6, 2017.

² See Hauslohner, Abigail and Ross, Janell. “Trump administration circulates more draft immigration restrictions, focusing on protecting U.S. jobs.” Washington Post, January 31, 2017. https://www.washingtonpost.com/world/national-security/trump-administration-circulates-more-draft-immigration-restrictions-focusing-on-protecting-us-jobs/2017/01/31/38529236-e741-11e6-80c2-30e57e57e05d_story.html?utm_term=.501609a81442.

Dated: May 16, 2017

QUESTIONS AND ANSWERS

Information about ICE Enforcement Activities

Can ICE detain a patient at a health care facility?

The Attorney General's Office is not aware of any instance in which ICE has asked a private Massachusetts health care facility to detain individuals or approached a health care facility looking for individuals. Under ICE's current policies, certain places are deemed "sensitive locations" where enforcement activities such as surveillance, interviews, searches, and arrests are generally prohibited absent exigent or special circumstances or prior approval.³ "Sensitive locations" include hospitals and, according to ICE's website, medical treatment and health care facilities, such as doctors' offices, accredited health clinics, and emergent or urgent care facilities. As stated on [ICE's website](#), this policy remains in effect. The ICE website provides information about how to report an enforcement action that appears to violate the policy. While ICE could change the "sensitive locations" policy and would have authority to enter health care facilities, we currently have no reason to believe that ICE intends to change this policy.

What can or should a health care provider do if ICE requests access to a health care facility to interview or take custody of a patient?

Should an ICE official or other law enforcement officer request access to a patient or a patient care area, health care providers should consult their organization's policies and procedures,⁴ which may include contacting legal counsel, verifying the identity of the law enforcement officer, asking about the purpose of the visit, and/or obtaining evidence of a valid judicial warrant, depending on the particular circumstances. As noted above, current federal policy discourages enforcement actions at "sensitive locations," which include health care facilities, absent special or exigent circumstances or without prior approval.

Can ICE obtain information about a patient from a health care provider?

Protected health information (PHI) held by a health care provider is protected by federal and state privacy laws, including the Health Insurance Portability and Accountability Act

³ See Memorandum of ICE Director, John Morton, Policy Number 10029.2, October 25, 2011, <https://www.ice.gov/doclib/ero-outreach/pdf/10029.2-policy.pdf>. The purpose of this policy is "to ensure that people seeking to participate in activities or utilize services provided at any sensitive location are free to do so, without fear or hesitation." See Immigration and Customs Enforcement, Sensitive Locations FAQs, <https://www.ice.gov/ero/enforcement/sensitive-loc>. The sensitive location policy, however, does not prohibit ICE from obtaining records or documents, serving subpoenas, or guarding or securing detainees. ICE has not historically made such requests.

⁴ It is important to have written policies and procedures on responding to law enforcement requests (among many other things). Providers, with assistance from counsel, may consider constitutional limits on search and seizure when establishing policies governing law enforcement visits to their facilities.

(HIPAA), irrespective of the patient's immigration, visa or residency status. Law enforcement officials, including ICE, may compel a health care provider to produce certain types of records under certain limited circumstances. Prior to releasing PHI about anyone, a health care provider must comply with federal and state privacy law requirements that apply in the particular circumstance and should consult his or her organization's internal policies and procedures, which may include calling for law enforcement to obtain a court order, warrant, subpoena or summons and which may be more protective of patient privacy.

Information About Access to Health Care and Government Insurance Coverage

Do the President's Executive Orders prevent any immigrant patients from getting health care?

No. To date, none of the Executive Orders signed by the President directly impact any patient's ability to receive health care or apply for and receive health insurance coverage for which they may be eligible (e.g., MassHealth Limited or Health Safety Net programs).

Are health care providers required to verify their patients' immigration or citizenship status?

No. Health care providers are not required to ask about immigration or citizenship status and may treat anyone regardless of immigration or citizenship status. Emergency departments are required to provide emergency screening and stabilization services without asking about immigration, citizenship or insurance status.⁵ Some providers are required to treat anyone living in their service area, irrespective of immigration status.^{6,7} An individual may be required to disclose his or her immigration status to apply for government benefits including government-funded health insurance; however, application to such programs is voluntary.

Under the President's signed Executive Orders, is a patient's immigration status affected if he or she receives a government-subsidized health care service or applies for government insurance, such as MassHealth?

No. Under current federal policy, the receipt of non-cash benefits for which one is eligible such as Medicaid (MassHealth) (other than for nursing home care), CHIP (Children's Health Insurance Program), Health Safety Net or health insurance through the Health Connector does not impact an individual's immigration status.⁸ Earlier this year, a draft executive order that sought to expand the applicability of the term "public charge"

⁵ Emergency Medical Treatment & Labor Act (EMTALA) 42 U.S. Code § 1395dd.

⁶ See, e.g., Public Health Service Act Section 330(a)(1). Federal law requires "health centers," as defined by statute, to serve all residents in their federally-approved service area.

⁷ See, e.g., Health Services and Resources Administration, Program Assistance Letter, HRSA's PAL 1999-25.

⁸ See The Justice Department Field Guidance on Deportability and Inadmissibility on Public Charge Grounds, May 26, 1999, <https://www.uscis.gov/ilink/docView/FR/HTML/FR/0-0-0-1/0-0-0-54070/0-0-0-54088/0-0-0-55744.html> Note, however, that receipt of certain public benefits can affect visa status or eligibility for future visas. For more information, see the U.S Customs and Immigration Service Website, <https://www.uscis.gov/news/fact-sheets/public-charge-fact-sheet>.

in a way that would change this policy was reported in the press.⁹ That draft executive order has not been signed and is not in effect.

Do the President's Executive Orders prevent immigrants from receiving MassHealth or other government-subsidized services?

No. The President's Executive Orders do not change eligibility for such programs or services. Under previously existing rules, immigration/citizenship status may affect eligibility for certain MassHealth or Health Safety Net programs, but there are coverage options for individuals in need of emergency or urgent services. Please note that applicants need to provide the immigration status only of those applying for benefits and not all the members of the household. If an applicant is applying for someone else, the applicant does not need to provide his or her immigration status.

What programs are available to individuals without regard to immigration or citizenship status?

Massachusetts has programs for low-income children and adults without regard to citizenship or immigration status. Information about these programs can be found at <http://www.mass.gov/eohhs/consumer/insurance/#> or by clicking the following links: [MassHealth Limited](#), [Health Safety Net](#), and [Children's Medical Security Plan](#). A local Navigator or Certified Application Counselor can assist with applications for coverage through public assistance programs.¹⁰

What protections are currently in place for patients who seek care at a hospital or other health care provider?

Under federal law, as noted above, an emergency department must provide emergency screening and stabilization services regardless of a patient's ability to pay or immigration/citizenship status.¹¹ In addition, while it doesn't directly address immigration status, the Massachusetts Public Accommodation Law prohibits making any distinction, discrimination, or restriction in admission to or treatment in, a health care facility, including dental and medical offices, pharmacies, clinics, hospitals, and nursing homes, based on *race, color, religious creed, national origin, ancestry, sex, gender identity, sexual orientation, deafness, blindness, or any physical or mental disability*.¹² State licensure requirements also mandate that hospitals shall not discriminate in the provision of service against any person on the basis of race, creed, color, sex, handicap, or national origin.¹³ Many health care providers have their own non-discrimination policies that may be found on their websites (for example, in a Patient's Rights section).

⁹ See footnote 2 above.

¹⁰ For help locating enrollment assistance service, see <https://my.mahealthconnector.org/enrollment-assisters>.

¹¹ Emergency Medical Treatment & Labor Act (EMTALA) 42 U.S. Code § 1395dd.

¹² M.G.L. c. 272, §§ 92A, 98 and 98A.

¹³ See, e.g., 105 CMR 130.206.

Additional Information

What steps might health care providers take to protect patients and their information?

A health care provider should collect and maintain only as much patient immigration or citizenship information as necessary for treatment or regulatory compliance purposes. A health care provider should consult with his or her organization's policies and procedures regarding the collection and release of patient information.

May a health care provider educate patients about their rights with regard to immigration enforcement activities?

Yes, health care providers are permitted to educate patients about their constitutional rights. A health care provider may, for example, post information about rights, distribute information, and hold educational sessions. Before engaging in and funding such activities, a health care provider should consider whether any limitations might preclude the use of certain funds for this purpose, including any restrictions that may accompany grants to fund particular projects or programs.

Who can a health care provider contact at the AGO with questions or to report an incident?

If you have questions or need further assistance, you may contact the Health Care Division of the Attorney General at (888) 830-6277 or <http://www.mass.gov/ago/bureaus/hcfc/the-health-care-division> or the Civil Rights Division of the Office of the Attorney General at (617) 963-2917 or <http://www.mass.gov/ago/civilrights>.