

## MEMORANDUM

**TO:** Primary Care Associations

**FROM:** Feldesman Tucker Leifer Fidell LLP

**DATE:** March 1, 2017

**RE:** Recent Federal Activity around Immigration Enforcement

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The past month has seen a sharp rise in federal activity involving immigration, including the issuance of three Executive Orders and a significant expansion of U.S. Immigration and Customs Enforcement (ICE) enforcement actions. A broad range of national groups including immigration attorneys, health law experts, and groups representing providers and public health officials are working actively to monitor and respond to these developments.

As one of the firms that has been closely monitoring these events, we have identified resources that we believe will be of value to health centers and PCAs that seek to understand and respond to these events. In addition, in response to numerous requests from the field, we are offering guidance to help answer questions from health center patients.

As we know that things are moving very quickly in this regard, be advised that we intend to provide updates as new information becomes available. We ask that you let us know of local and state-level developments that would be of interest to your colleagues.

*Please note that this information is not intended as legal advice or to substitute for the guidance or advice of qualified legal counsel.*

## Helpful Resources

### 1. What are reliable sources of legal information on immigration issues?

The following organizations have legal expertise in the field of immigration:

- The National Immigration Law Center (NILC) - <https://www.nilc.org/>
- Immigration Legal Resource Center (ILRC) - <https://www.ilrc.org/>
- The American Civil Liberties Union (ACLU) -
  - <https://www.aclu.org/issues/immigrants-rights>

- The American Immigration Lawyers Association (AILA) – <http://www.aila.org/>

## 2. Where can I find state-specific information about immigration?

The American Immigrant Council at <https://www.americanimmigrationcouncil.org/> has state fact sheets highlighting key data about immigrant populations in each state.

## Recent Executive Orders

### 1. What is an Executive Order (EO)?

An Executive Order is a directive from the President to federal agencies, giving instructions about how they should function. EOs cannot override statutes, automatically “undo” existing regulations, or contradict federal court decisions.

### 2. Several Executive Orders impacting immigrants have been circulating in the press. Have all of them been signed?

No. As of February 27, 2017, President Trump has signed three Executive Orders that relate to immigration. In addition, draft versions of two other EOs – involving “public charge” and changes to visa programs – were leaked to the press in late January, but neither has been signed.

### 3. Which Executive Orders have been signed, and where can I get more information on them?

- [Border Security and Immigration Enforcement Improvements](#)
  - Among other provisions, this EO orders the construction of a wall on the southern border.
  - Link to [NILC analysis](#).
- [Enhancing Public Safety in the Interior of the United States](#)
  - Among other provisions, this EO provides for potential sanctions on “sanctuary jurisdictions,” directs ICE to add 10,000 immigration officers, gives state and local agencies the authority to perform the functions of immigration officers and expands whom the government considers a priority for deportation.
  - Link to [NILC analysis](#)
- [Protecting the Nation from Foreign Terrorist Entry into the US](#)
  - Among other provisions, this EO suspended entry in the U.S. from seven countries for 90 days. This provision is currently on hold,

pending legal appeal. However, the President may also decide to use recent court decisions as a guide for issuing a new EO, without waiting for challenges to the current EO to proceed through the judicial system.

- o Link to [NILC analysis](#).

#### **4. What impact do the Executive Orders have on immigrants' ability to seek care from health centers?**

The Executive Orders do not directly impact immigrants' ability to receive care at health centers, and as a result, nothing should change in how such individuals and families access care or how health centers treat them. However, news coverage and other publicity regarding the EOs has created a great deal of fear and apprehension among immigrant communities that may negatively impact immigrants' willingness to seek health center services.

#### **5. What impact could the Executive Order on "Sanctuary Jurisdictions" have on health center funding?**

While it is not yet clear how the Administration plans to implement this Executive Order, the language in the order only applies to public entities the federal government deems to be a "sanctuary jurisdiction." Therefore, this EO would not directly affect non-profit, private health centers, and it remains to be seen whether it would apply to public entity health centers. For more information on the impact of the sanctuary jurisdiction EO on federal grantees, please see FTLF's [analysis](#).

#### **6. At present, would receiving Medicaid or a discounted service from a health center qualify an immigrant as a "public charge"?**

No. Per Justice Department Field Guidance and Proposed Regulations that have been in effect for almost two decades, neither the receipt of Medicaid benefits (other than institutional long-term care services) nor discounted services provided by Section 330-supported health centers qualify as "public benefits [which] are relevant evidence in a public charge determination." For additional information on health benefits and public charge, see [NACHC 1999 Issue Brief on Public Charge](#) and [BPHC PAL 1999-25](#). (For general information on "public charge" and how it is currently defined, see the [NILC website on public charge](#).)

## Considerations for Health Centers

### 1. Are health centers required to verify their patients' immigration status?

No. Federal law requires health centers to serve all residents in their Federally-approved service area. (Public Health Service Act Section 330(a)(1).) According to HHS's [interpretation on federal public benefit](#), HRSA's [PAL 1999-25](#) on the definition of public charge, and the Department of Justice's [final order on verification requirements](#), health centers are not required to verify the citizenship or immigration status of patients and can treat any person regardless of their immigration status.

### 2. Are there limitations to ICE enforcement actions at health centers?

In 2011, the Department of Homeland Security issued a [memo listing "sensitive locations"](#) where immigration enforcement actions are generally not to occur; these include locations such as hospitals, schools, and places of worship. A [Fact Sheet](#) explaining the policy further expanded the list of "sensitive locations" to include medical treatment and health care facilities, such as doctors' offices, accredited health clinics, and emergent or urgent care facilities.

As of February 27, 2017, the [ICE website](#) contains the following statement: "The ICE and [Customs and Border Protection] sensitive locations policies, which remain in effect, provide that enforcement actions at sensitive locations should generally be avoided, and require either prior approval from an appropriate supervisory official or exigent circumstances necessitating immediate action. DHS is committed to ensuring that people seeking to participate in activities or utilize services provided at any sensitive location are free to do so without fear or hesitation."

It is important to note that the "sensitive locations" policy, and how it is implemented, is determined by the Administration; therefore, the Administration can make changes without Congressional approval or a public notice-and-comment process (such as is used to issue or change regulations).

### 3. Are health centers permitted to educate patients about their Constitutional rights with regards to immigration enforcement activities?

Yes, health centers are permitted to educate patients about these rights. Permissible activities can include:

- Posting information about rights;
- Distributing information about rights; and
- Holding educational sessions about rights.

We recommend that health centers not rely on Section 330 grant funds to support such activities, unless such activities have been included in the health center's HRSA-approved scope of project (e.g. through a medical-legal partnership).

The following "Know Your Rights" materials may be helpful in educating patients:

- [Wallet card from NILC](#) - available in English, Spanish, simplified Chinese, Arabic, and Korean
- [Wallet Cards from Asian Americans Advancing Justice](#) - available in Arabic, Bengali, Burmese, Chinese, Gujarati, Hindi, Karen, Khmer, Korean, Nepali, Punjabi, Urdu, and Vietnamese
- [Three page pdf handout in English](#) from NILC (also available in Spanish, simplified Chinese, Arabic, and Korean)
- [18-page pamphlet in English](#) and [Spanish](#) on rights when interacting with law enforcement, from Catholic Legal Immigration Network, Inc. (CLINIC)
- [PowerPoint in English and Spanish](#) from Catholic Legal Immigration
  - Network, Inc. (CLINIC)
- [One-pager on "Know Your Rights" in various circumstances](#) (e.g., if stopped in your car, if police or immigration officials come to your home) from the ACLU.
- A [9-minute video on Know Your Rights](#) from the Coalition for Humane
  - Immigrant Rights of Los Angeles.

Also see the section on "Supporting Patients" in this document for more information on educating patients.

#### **4. Could ICE or another governmental entity require a health center to provide protected health information (PHI) or information on immigration status about its patients?**

Yes, if the ICE or any other governmental entity has a court order, warrant, subpoena, or summons, it could require the health center to provide protected health information or information on immigration status if the health center has such information.

In responding to law enforcement requests for PHI, health centers should comply with HIPAA's Privacy Rules. For instance, if a health center receives a

court order signed by a judge, the health center should only disclose information expressly described and requested by the order. A subpoena issued by someone other than a judge, such as a court clerk or attorney, is not the same as a court order. In such cases, the health center may disclose PHI only if the health center receives evidence that there were reasonable efforts to notify the person who is the subject of the information about the request so the person has an opportunity to object to the disclosure or seek a qualified protection order for information from the court. Health centers should also be aware of their state's confidentiality and privacy laws.

## Supporting Patients

### 1. Is it safe for eligible immigrants to apply for health insurance?

NILC addresses this issue on [its webpage](#) on November 30, 2016; this information is available also as a pdf and [en espanol](#).

### 2. What protections are currently in place for immigrants who seek care at a hospital or other health care provider?

NILC also addresses this issue on [its webpage](#) on November 30, 2016; this information is available also as a pdf and [en espanol](#).

### 3. If patients ask how they can prepare themselves for potential enforcement actions, what resources are available?

The following resources are available on-line:

- NILC webpage entitled "[How to Be Prepared for an Immigration Raid](#)" - discusses how individuals can prepare for, and respond during and after, an ICE enforcement action. This information is also available as a pdf and [en espanol](#).
- "[What to do if you're stopped by police, immigration, or FBI](#)" by ACLU - available for download in English, Arabic, Chinese, Farsi, French, Indonesian, Korean, Somali, Spanish, Urdu, and Vietnamese.
- "[Know Your Rights](#)" [one-pager](#) by ACLU.

## For More Information

At its upcoming P&I Conference, the National Association of Community Health Centers (NACHC) will feature an education session on "Immigration Considerations for Health Centers" at 8:00 AM on Saturday April 1, with speakers from the National Immigration Law Center and Feldesman Tucker Leifer Fidell LLP.