

## ***RESPONDING TO IMMIGRANTS' AND REFUGEES' FEARS ABOUT HEALTH CARE***

Many non-citizens in the United States express fears that using health care, especially government-assisted care, may harm their own or their loved ones' ability to remain in the U.S. Health care providers and social service agencies also have concerns about whether accessing health care presents risks for non-citizens. This publication provides a summary of the current laws, policies and government actions that apply in Washington State and are relevant to non-citizens' access to healthcare. Our goal is to help both individuals and service providers better understand the real risks and benefits, as well as providing an update on possible changes in law or policy.

### ***What are people afraid of?***

- Raids by immigration law enforcement (possibly assisted by state or local police) near hospitals, clinics, and other places where people seek health care, and near other public places that immigrants and refugees need to go in their daily lives;
- Private information they give in benefits applications and to health care providers being shared with immigration agencies or law enforcement;
- Health care or other government assistance they legally receive jeopardizing their current or future legal status in the U.S.;

These fears cause stress and anxiety, and may cause non-citizens to delay or refrain from seeking needed care. Health care and other human service providers are unsure what reassurance they can accurately give patients and clients.

### ***What has actually happened to increase fears?***

Standing out amid the climate of anti-immigrant speech by the new federal administration are the following actions:

- At some places in the U.S., Immigration and Customs Enforcement (ICE) or Border Patrol officials have detained people at or near health care facilities;
- One of President Trump's executive orders has resulted in changing immigration enforcement "priorities" in ways that make many more people more likely to be detained or deported. It mentions people who have "abused" government assistance.
- A leaked draft document indicates that President Trump might try to change policies related to when the government can deny permanent resident status (or in some cases

revoke it) to immigrants deemed likely to depend on the government for their subsistence (this is called the “public charge” test).

- The American Health Care Act bill passed by the U.S. House, and bills that the Congress still might consider (after rejecting several), would take away health care assistance from many immigrants.
- The “RAISE Act” bill introduced in the U.S. Senate would radically reduce legal immigration to the United States: capping refugee admissions, cutting total immigration in half by eliminating diversity visas and cutting family-based visas, creating a new visa system that awards points to potential immigrants based on characteristics such as speaking English and having higher education levels, barring more immigrants and their families from government health and food assistance, and creating new barriers to naturalization for seeking help.
- President Trump ended the Deferred Action for Childhood Arrivals (DACA) program for people who entered the U.S. as children with their undocumented parents (the “Dreamers”). This means persons granted DACA will lose their status in less than six months unless Congress passes new legislation.

### *What does the law say now?*

#### **1. IMMIGRATION ENFORCEMENT AT HEALTH FACILITIES**

The risks in any situation depend on a complicated combination of federal and state law about what actions law enforcement must or may take; whether state and local officials cooperate with federal immigration enforcement; what private information authorities can require to be disclosed; and policies and practices adopted by health care providers themselves.

- **Under the U.S. and Washington State Constitutions**, the law of “search and seizure” limits what law enforcement officials can do. For a brief stop to question persons, they need a “reasonable suspicion” that the person has committed or is committing a crime. For an arrest, they must have “probable cause” that the person is committing or has committed a crime; and for a search (with narrow exceptions), they must have a warrant that specifies where and/or what is to be searched and that is signed by a judge. Otherwise, they may only search with the person’s consent. An important consideration in searches is whether people have a “reasonable expectation of privacy” in the place or situation. So it can be important whether health care providers have designated portions of their facilities as “public” and “private.”

- **Under current federal law**, unlawful entry into the U.S. is a crime, but mere presence here without legal documentation is not, unless the person has previously been deported.
- **Under current federal law**, state and local law enforcement are not required to give federal authorities information about citizenship or immigration status unless there is a warrant or subpoena, but state and local governments cannot prohibit their employees from giving that information. Governor Inslee and several local governments have ordered their agencies and staff not to collect or retain citizenship and immigration status information that is not strictly required for specific programs.
- **Under current federal policy memoranda** by ICE and U. S. Customs and Border Protection (CBP), health facilities are considered “sensitive locations” where immigration arrests, interviews, searches, and surveillance “are to be avoided” unless there are exigent circumstances or designated ICE or CBP officials have prior-approved those actions. The current administration has not changed these policies, but could do so without legislation. ICE has issued an FAQ with their further interpretation of these policies, listed below.
- **Under current law**, the federal Health Insurance Portability and Accountability Act (HIPAA) prohibits disclosure of protected health information without patients’ consent, except where required by law. In its HIPAA Privacy Rule, the U.S. Department of Health and Human Services (HHS) has issued guidance about what is “required by law” (court orders, warrants, subpoenas, summonses, administrative requests, and other law enforcement requests in emergencies). State laws can provide greater protections. Washington’s law on disclosure of personal information does not apply to immigration status, so the health care provider cannot release that information without the patient’s consent. And when a warrant or subpoena is issued for such information, there must be advance notice giving adequate time to seek a protective order.

In light of these laws and policies, advocates recommend that health facilities write policies about matters including private areas, collecting and retaining information about immigration status, designating staff responsible for all law enforcement contacts, and consultation with attorneys. A host of organizations have written publications on these issues, tailored to different audiences (several referenced below). They include guidance for health facilities from immigration advocacy and health organizations, recommendations about policy development, educational materials, know-your-rights cards, and posters.

## GOVERNMENT DOCUMENTS:

**Sensitive Locations Memos (ICE, 2011 CBP 2013)**, <https://www.ice.gov/doclib/ero-outreach/pdf/10029.2-policy.pdf>; <https://foiarr.cbp.gov/streamingWord.asp?i=1251>; **FAQ on Sensitive Locations and Courthouse Arrests (ICE, last updated June 2017)**,

<https://www.ice.gov/ero/enforcement/sensitive-loc>. The FAQs are intended to clarify what types of locations are covered by the Sensitive Locations policies.

**When does the Privacy Rule allow covered entities to disclose protected health information to law enforcement officials? (HHS 2004)**, <https://www.hhs.gov/hipaa/for-professionals/faq/505/what-does-the-privacy-rule-allow-covered-entities-to-disclose-to-law-enforcement-officials>

**Immigration Guidance (Washington State Attorney General)**,

<http://www.atg.wa.gov/immigrationguidance>. Wide-ranging guide discussing relationship between Washington jurisdictions and federal immigration authorities; “sanctuary” jurisdictions; search and seizure law; subpoenas and warrants; patient privacy and confidentiality laws; emergency treatment and charity care laws that apply regardless of legal immigration status, anti-discrimination laws; and best practices for providers. Appendices include Governor’s Executive Order, county and city ordinances, and sample immigration detainers, warrants, and motions.

## BY ADVOCATES AND PROVIDER ASSOCIATIONS:

**Health Care Toolkits (National Immigration Law Center, 2017)**, <https://healthtoolkit.nilc.org/>. Requires on-line registration, has many documents under each of the headings: Know Your Rights as a Provider (includes confirmation that Sensitive Locations policy remains in place), Know Your Patients’ Rights, Creating Safe Spaces. **Health Care Providers and Immigration Enforcement: Know Your Rights, Know Your Patients’ Rights (National Immigration Law Center, April 2017)**, <https://www.nilc.org/issues/immigration-enforcement/healthcare-provider-and-patients-rights-imm-enf/>

**Guidelines for Releasing Patient Information to Law Enforcement (American Hospital Association)** <http://www.aha.org/content/00-10/guidelinesreleasinginfo.pdf>.

**Immigrant Child Health Toolkit (American Pediatric Association)**, <https://www.aap.org/en-us/about-the-aap/Committees-Councils-Sections/Council-on-Community-Pediatrics/Pages/Immigrant-Child-Health-Toolkit.aspx>

**Health Care Centers Can Become Safe Spaces for Immigrant Patients (National Immigration Law Center, 2017)**, <https://www.nilc.org/news/the-torch/5-25-17/>

**Advisory to Nonprofit Organizations and Social Service Providers Regarding Immigration Enforcement (Northwest Immigrant Rights Project, April 2017)**, <http://nwirp.org/nonprofit-org-advisory.pdf>

**Hotline to Report Active Raids and ICE Activities (WA Immigrant Solidarity Network)**, <https://waimmigrantsolidaritynetwork.org> .

## 2. IMPACT OF USING GOVERNMENT HEALTH CARE ON ABILITY TO OBTAIN OR KEEP LEGAL IMMIGRATION STATUS IN THE U.S.

Certain immigrants may be barred from obtaining lawful permanent resident (“green card”) status, or may lose status, if the government determines they are likely to become a “*public charge*” – someone who depends on government assistance for their subsistence. A draft (unsigned) Executive Order was leaked in January of 2017, which would make changes to how the public charge test is applied. There are a variety of materials written by legal advocates and government agencies about the public charge test and possible changes. Some key points are:

- **Under current law**, the public charge test does not apply to many categories of immigrants when they apply for their green card. These include: refugees, asylees, certain victims of trafficking, self-petitioners and persons granted cancellation of removal under the Violence Against Women Act, U visa holders, Special Immigrant Juvenile Status (SIJS) recipients, persons granted status under the Nicaraguan and Central American Relief Act (“NACARA”), certain Cubans and Haitians, Lautenberg parolees, and registry applicants.
- **Under current law**, the public charge test is a prospective test that considers numerous factors; public charge determinations cannot be based solely on past receipt of assistance.
- **Under current law**, public charge is not a consideration in qualifying for naturalization.
- **Under current law**, the grounds for deporting a person based on public charge are extremely narrow.
- **Under longstanding policy guidance**, only cash assistance is considered in the public charge determination. Medical assistance is not considered, with the exception of long term care paid for by the government.

An Executive Order could change policy by, for example, requiring the government to consider receipt of noncash benefits in a public charge determination. However, an Executive Order cannot change or amend the law. This means that unless new legislation is passed, the public charge test remains a prospective test based on numerous factors, the categories of immigrants listed above will remain exempt from the public charge test, public charge will not be considered in the naturalization process, and the public charge ground for deportation will remain extremely narrow.

**GOVERNMENT DOCUMENTS:**

**Field Guidance on Deportability and Inadmissibility on Public Charge Grounds (U.S. Immigration and Naturalization Service, 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>. Most recent complete official U.S. government policy statement on the subject.

**Public Charge Fact Sheet (U.S. Citizenship and Immigration Services (CIS), 2013),**

<https://www.uscis.gov/news/fact-sheets/public-charge-fact-sheet>. The agency's apparently most recent summary, written in 2011 and "reviewed/updated" in 2013.

**Public Charge Q&A (CIS, 2009),** <https://www.uscis.gov/greencard/public-charge>. Similar summary in a question-answer format.

**BY ADVOCATES:**

**When Is It Safe for Immigrants to Get Benefits? (Washington Law Help, March 2017),**

[http://www.washingtonlawhelp.org/files/C9D2EA3F-0350-D9AF-ACAE-BF37E9BC9FFA/attachments/7B3AD4C4-9B8C-44AB-858D-1EDBB5327B89/8121en\\_public-charge\\_when-is-it-safe-to-for-immigrants-to-get-benefits.pdf](http://www.washingtonlawhelp.org/files/C9D2EA3F-0350-D9AF-ACAE-BF37E9BC9FFA/attachments/7B3AD4C4-9B8C-44AB-858D-1EDBB5327B89/8121en_public-charge_when-is-it-safe-to-for-immigrants-to-get-benefits.pdf) - Most recent summary about this subject on Northwest Justice Project's (NJP) legal self-help website aimed at low-income people (also available in Spanish)

**Public Charge: When is it safe for immigrants to Access Benefits? (Northwest Justice Project, 2017)**

[http://www.kingcounty.gov/depts/health/locations/health-insurance/access-and-outreach/~/\\_media/depts/health/health-insurance/documents/FFF-2017/FFF-June-2017-public-charge.ashx](http://www.kingcounty.gov/depts/health/locations/health-insurance/access-and-outreach/~/_media/depts/health/health-insurance/documents/FFF-2017/FFF-June-2017-public-charge.ashx) - PowerPoint presentation from NJP attorney Kate Laner.

**Public Charge: An Overview (National Immigration Law Center, 2013),** found at

<https://www.nilc.org/pubcharge/> - Two-page summary.

**When is it safe to use public benefits? (National Immigration Law Center, 2014)** found at

<https://www.nilc.org/pubcharge/> - Detailed information about public charge, based on the 1999 federal guidance.

**Trump's Executive Orders and Immigrants' Access to Health, Food, and Other Public Programs: Things to Keep in Mind When Talking with Immigrants (National Immigration Law Center, March 2017),**

<https://www.nilc.org/issues/health-care/exec-orders-and-access-to-public-programs/>. Trump draft and things to keep in mind while speaking with immigrants.

### **3. WILL THE GOVERNMENT REQUIRE THE IMMIGRANT OR A SPONSOR TO PAY BACK BENEFITS THAT THE IMMIGRANT RECEIVED?**

Some immigrants may fear that the government will require them to pay back benefits they receive. People who get status through a family visa petition are required to submit an “affidavit of support” from the petitioning family member, stating that the petitioner (also called the “sponsor”) will financially support the person immigrating. (In some cases, there may be joint sponsors in addition to the petitioner.) This is required in some employment petition cases as well. In theory, the government can seek reimbursement from sponsors, but in practice it rarely if ever does so. Although the government could engage in more aggressive efforts to collect from sponsors, at this time that does not appear to be happening. This is subject to change.

#### **GOVERNMENT DOCUMENTS:**

##### **Affidavit of Support (US Citizenship and Immigration Services)**

<https://www.uscis.gov/greencard/affidavit-support>

#### **BY ADVOCATES:**

**Washington Public Assistance: Family Visa Beneficiaries (Washington Law Help, Sept. 2017),** <https://www.washingtonlawhelp.org/resource/washington-public-assistance-for-family-visa?ref=kvAnc>

**Sponsored Immigrants and Benefits (National Immigration Law Center, August 2009),** <https://www.nilc.org/wp-content/uploads/2016/05/sponsoredimmsbens-na-2009-08.pdf>

### **4. COULD INFORMATION IN A PUBLIC BENEFIT APPLICATION OR MEDICAL RECORD GO TO IMMIGRATION AGENCIES?**

Some immigrants may fear information they provide in public benefit applications will be disclosed to immigration officials. The Privacy Act is a federal law that safeguards individuals’ information in government databases. The “interior enforcement” executive order issued in January 2017 has caused unnecessary fear via its section 14, which says, “Agencies shall, to the extent consistent with applicable law, ensure that their privacy policies exclude persons who are not United States citizens or lawful permanent residents from the protections of the Privacy Act regarding personally identifiable information.” However, the Privacy Act has always applied only to U.S. citizens and lawful permanent residents, so the executive order simply restates existing law. Some privacy-related policies and practices *may* change under the Trump administration – for example, the administration has indicated that it intends to disregard a longstanding policy that encourages federal agencies to treat all information as if it is subject to

the Privacy Act's provisions. This means people could experience more difficulty when, for example, they try to access and correct their own records at certain agencies.

There are independent federal and state laws – apart from the Privacy Act - that protect the confidentiality of medical records and other information about individuals receiving health coverage or other benefits (such as HIPAA, discussed above). These laws have not been altered by the executive order. Information provided in public assistance applications is only to be used to make eligibility determinations and must be protected from unauthorized disclosure for other purposes. The Washington State Governor issued his own executive order in February 2017, limiting the information state agencies can collect about an individual's immigration status.

Of course, no immigrant or citizen should misrepresent any information in any benefits application or other communication with a government agency. That is even more important for immigrants now after President Trump's executive order on immigration enforcement stating that "abuse" related to public benefits (including knowingly defrauding the government) may make a person a priority for enforcement.

#### GOVERNMENT DOCUMENTS:

**Reaffirming Washington's Commitment to Tolerance, Diversity, and Inclusiveness, (Exec. Order 17-01, February 23, 2017),** [http://www.governor.wa.gov/sites/default/files/exe\\_order/eo\\_17-01.pdf](http://www.governor.wa.gov/sites/default/files/exe_order/eo_17-01.pdf)

**Enhancing Public Safety in the Interior of the United States (US Executive Order 13767, Jan. 25, 2017)** <https://www.whitehouse.gov/the-press-office/2017/01/25/presidential-executive-order-enhancing-public-safety-interior-united>

#### BY ADVOCATES:

**Tips for Addressing Immigrant Families' Concerns When Applying for Health Coverage Programs (National Immigration Law Center, October 2017),** <https://www.nilc.org/issues/health-care/addressing-concerns-health-coverage-applications>

**Know Your Rights: Is it Safe to Apply for Health Insurance or Seek Health Care? (National Immigration Law Center, November 2016),** <https://www.nilc.org/issues/health-care/health-insurance-and-care-rights/> ; Spanish: [www.nilc.org/derechos-seguro-y-cuidado-de-salud/](http://www.nilc.org/derechos-seguro-y-cuidado-de-salud/)

**Immigrant Eligibility for Health Coverage Programs (Center on Budget and Policy Priorities and National Immigration Law Center, October 2017),** [http://www.healthreformbeyondthebasics.org/wp-content/uploads/2017/10/Webinar-OE5-2017-10-04\\_Immigrant-Eligibility-for-Coverage-Programs.pdf](http://www.healthreformbeyondthebasics.org/wp-content/uploads/2017/10/Webinar-OE5-2017-10-04_Immigrant-Eligibility-for-Coverage-Programs.pdf)

**Trump's Executive Orders and Immigrants' Access to Health, Food, and Other Public Programs: Things to Keep in Mind When Talking with Immigrants (National Immigration Law Center, March 2017),** <https://www.nilc.org/issues/health-care/exec-orders-and-access-to-public-programs/>.



**5. OTHER RESOURCES ON IMMIGRATION LAW, POLICY, AND PROPOSALS:**

**DEFERRED ACTION FOR CHILDHOOD ARRIVALS (DACA) RESCISSION:**

**Frequently Asked Questions on DACA Termination (United We Dream and National Immigration Law Center, September 2017), <https://www.nilc.org/issues/daca/daca-termination-faq>**

**Changes to DACA: Access to Health Care in Washington State (Northwest Health Law Advocates, October 2017), <http://tinyurl.com/yblx4sfo>**

**RAISE Act:**

**Text (as introduced in U.S. Senate, 2017):**

**[https://www.cotton.senate.gov/files/documents/170802\\_New\\_RAISE\\_Act\\_Bill\\_Text.pdf](https://www.cotton.senate.gov/files/documents/170802_New_RAISE_Act_Bill_Text.pdf)**



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