



22nd Annual Chicago Infection Control Conference

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How to Serve Immigrant Clients and Patients in Challenging Times



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Sargent Shriver National Center on Poverty Law

The Sargent Shriver Center National Center on Poverty Law provides national leadership in advancing laws and policies that secure justice to improve the lives and opportunities of people living in poverty.



Learning Objectives

At the conclusion of this course participants will be able to

Enable the learner to gain knowledge of emerging healthcare-associated infections pathogens.

Identify effective infection control strategies to mitigate spread of multi-drug resistant organisms.

Raise awareness of emerging disease threats and identify appropriate diagnostic testing, reporting and prevention methods.

Raise awareness of local public health issues including opioid epidemic and immigrant health.

To obtain credit you must:

- **Be present for the entire session**
- **Complete an evaluation form**
- **Return the evaluation form to staff**

Certificate will be sent to you by e-mail upon request.

In support of improving patient care, [Insert name of Joint Accredited Provider] is jointly accredited by the Accreditation Council for Continuing Medical Education (ACCME), the Accreditation Council for Pharmacy Education (ACPE), and the American Nurses Credentialing Center (ANCC), to provide continuing education for the healthcare team.

Rush University Medical Center designates this live activity for a maximum of 6.25 AMA PRA Category 1 Credit(s)[™]. Physicians should claim only credit commensurate with the extent of their participation in the activity.

ANCC Credit Designation - Nurses

The maximum number of hours awarded for this CE activity is 6.25 contact hours.

Rush University designates this live activity for 6.25 Continuing Education credit(s).

This activity is being presented without bias and without commercial support.

Rush University is an approved provider for physical therapy (216.000272), occupational therapy, respiratory therapy, social work (159.001203), nutrition, speech-audiology, and psychology by the Illinois Department of Professional Regulation.

Immigration Enforcement and Health Care

- The increase in immigration enforcement is impacting hospitals, medical providers, their staff and their patients.
- In addition, the recent focus in the media and the political attention to undocumented persons and deportation proceedings is causing understandable fear and anxiety in immigrant communities.
- Patients, staff and their families are increasingly worried about seeking care; applying for public benefits; providing employment information; and sharing personal information.
- Many existing policies and laws to protect patients and their privacy are still in force but the release of draft policies and increased immigrant enforcement actions exacerbated by news stories, rumors, and political threats are creating a culture of uncertainty.

Legal Protections and Practical Steps

- There are existing federal and state legal protections to keep private information confidential when someone is seeking health care services or applying for public benefits such as Medicaid, Medicare, or SNAP for themselves or their family members.
- There are also policies and practices that medical providers can implement to make it less likely that information is shared with federal, state, or local agencies or that law enforcement can get access to a patient.
- We are discussing the existing laws and practices today, not giving specific legal advice. We don't have all of the answers yet. We are engaging in legal research, creating toolkits for medical providers, sharing best practices, and collecting consumer "know your rights" materials and resources.

General HIPAA Protections

- The HIPAA Privacy Rule establishes national standards to protect individuals' medical records and other personal health information and applies to health plans, health care clearinghouses, and those health care providers that conduct certain health care transactions electronically.
- The Rule requires appropriate safeguards to protect the privacy of personal health information, and sets limits and conditions on the uses and disclosures that may be made of such information without patient authorization. The Rule also gives patients rights over their health information, including rights to examine and obtain a copy of their health records, and to request corrections.

<https://www.hhs.gov/hipaa/for-professionals/privacy/index.html?language=es>

Exceptions to HIPAA Protections

- HIPAA generally prohibits the disclosure of patient protected health information except under certain limited circumstances, such as disclosures that are required by law pursuant to a *court-ordered* search warrant.
- There are additional exceptions to the general non-disclosure prohibition, such as if necessary to prevent or lessen a serious and imminent threat to health or safety of a person or the public; *however*, situations meeting these additional exceptions are very rare.
- If a valid search warrant is served, personnel should contact the general counsel immediately (if available) but not obstruct or interfere with the search.
- Issues remain that we are researching including the protections available to someone who uses information such as a SSN that is not their own (whether or not they are using that SSN to apply for public benefits.)

<https://www.hhs.gov/hipaa/for-professionals/faq/505/what-does-the-privacy-rule-allow-covered-entities-to-disclose-to-law-enforcement-officials/index.html>

<https://www.hhs.gov/hipaa/for-individuals/court-orders-subpoenas/index.html>

General Practices in Interacting with Law Enforcement

- Law enforcement personnel are to be respected and cooperated with, but no on line health care worker should be threatened or feel coerced into giving information - the response to any situation that is in any way unclear or uncomfortable should be to rely on the provider's policy that any warrant/subpoena/request must go to the office of general counsel, risk management, compliance or all of the above.
- In the face of a valid warrant, to interrogate or apprehend, the patient's medical condition must be accounted for. As in any situation, a patient should not be discharged unless clinically appropriate and if a patient's medical condition is not deemed appropriate for interrogation, access may be denied. Documentation in the patient's chart supporting the clinician's decision in this regard is important.
- Providers should comply with all law, both State and Federal. While laws on patient privacy and law enforcement authority vary by State, it is a general principle that Federal law, including HIPAA, overrides State law (unless the State law errs on the side of stricter enforcement of privacy).

ICE Guidance on Sensitive Locations

- Enforcement actions should generally be avoided in sensitive locations such as medical treatment and health care facilities, including hospitals, doctors' offices, accredited health clinics, and emergent or urgent care facilities.
- There are other sensitive locations that should be avoided including schools and places of worship.
- Such actions may only take place when (a) prior approval is obtained from an appropriate supervisory official, or (b) there are exigent circumstances necessitating immediate action without supervisor approval. The policies are meant to ensure that ICE and CBP officers and agents exercise sound judgment when enforcing federal law at or focused on sensitive locations, to enhance the public understanding and trust, and 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.

<https://www.ice.gov/ero/enforcement/sensitive-loc>

<https://www.ice.gov/doclib/ero-outreach/pdf/10029.2-policy.pdf>

<https://foiarr.cbp.gov/streamingWord.asp?i=1251>

Application for Health Coverage and Public Benefits

- There is also increasing concern among our clients about applying for benefits such as Medicaid and whether it could harm them or whether their information could be shared with immigration enforcement.
- Many non-citizens, including undocumented non-citizens, are eligible for Medicaid (e.g., pregnant women, emergency, children) in Illinois.
- Also, many non-citizens have family members who are eligible for health coverage and public benefits and have the right to apply for them, such as a parent applying for Medicaid for their child.
- There are existing laws and rules to protect the privacy of information submitted when applying for Medicaid and health coverage.
- We continue to research the impact of *proposed draft* Executive Orders issued by the President on the protections in Medicaid and the impact of receipt of public benefits in immigration status.

Medicaid and Affordable Care Act Protections

- Section 1902(a)(7) of the Social Security Act requires that a “State plan for medical assistance must... “provide safeguards which restrict the use or disclosure of information concerning applicants and recipients to purposes directly connected with (A) the administration of the plan;...” 42 U.S.C. § 1396.
- The restricted information includes information on a “non-applicant,” 42 C.F.R. § 431.300(b), which the federal regulations define as “an individual who is not seeking an eligibility determination for himself or herself and is included in an applicant’s or beneficiary’s household to determine eligibility for such applicant or beneficiary.” 42 C.F.R. § 431.4.
- And the federal regulations are clear that “[t]he agency’s policies must apply to all requests for information from outside sources, including governmental bodies, the courts, or law enforcement officials.” 42 C.F.R. § 431.306.
- The state agency “must obtain permission from a family or individual, whenever possible, before responding to a request for information from an outside source.” 42 C.F.R. § 431.306(d).

ICE Statement on Use of Health Care Information

- ICE published a letter on October 25, 2013, entitled “Clarification of Existing Practices Related to Certain Health Care Information,” describing its agency policy:
- “Consistent with the ACA’s, the SSA’s, and implementing regulations’ limitations on the use of information provided by individuals for such coverage, and in line with ICE’s operational focus, ICE does not use information about such individuals or members of their household that is obtained for purposes of determining eligibility for such coverage as the basis for pursuing a civil immigration enforcement action against such individuals or members of their household, whether that information is provided by a federal agency to the Department of Homeland Security for purposes of verifying immigration status information or whether the information is provided to ICE by another source.”

<https://www.ice.gov/doclib/ero-outreach/pdf/ice-aca-memo.pdf>

Patient Enrollment in Medicare/Medicaid/Marketplace through Hospitals and Medical Centers

- Patients should be assured that providers do not have any obligation to report undocumented individuals to any government official or agency.
- While information in applications for health care coverage such as Medicaid is shared with State and Federal agencies through the application process for the purpose of enrollment, this information will not in and of itself, trigger any deportation activity.
- However, the use of a SSN that is not the patient's SSN to enroll for public benefits may present problems. If an individual does use a false SSN, the provider may not process the enrollment but has no obligation to report the patient to ICE or other law enforcement.
- We continue to research issues such as submitting a false or fraudulent SSN on medical or registration records without applying for any Medicaid or public benefits. In general, we advise clients not to use a SSN that is not their own or use a false SSN.
- Hospitals can help by telling patients that a SSN is not necessary for registration, admitting or medical records.
- An SSN is also not necessary to apply for Medicaid.

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LaShaunna Burnett [Chicago] responded to [How can I find an alternative telephone number for a local FCRC?](#)

October 4, 2016 - FCRC, SNAP

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Stephani Becker [Chicago] scheduled [Families USA Webinar - Preparing for OE4: Key changes and updates](#)

October 13, 2016 - families usa, OE4

EXPERT



Maria Salgado [Elgin, IL] responded to [How can a grandmother get granddaughter's case reinstated if child's mother is incarcerated?](#)

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October 4, 2016 - Medicaid, redetermination

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Stephani Becker [Chicago] responded to [reporting](#)

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Key Resources for Assisters

- **Updated Aug 2016:** Marketplace Application Checklist
- **Updated September 8:** FAQ from DOI for Land of Lincoln consumers.



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