

# Promoting Safe and Secure Healthcare Access for All

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Guidance and Model Policies to Assist California's Healthcare  
Facilities in Responding to Immigration Issues



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# Acknowledgments

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# Introduction

California is home to more than 10 million immigrants, representing 27 percent of the State's population.<sup>1</sup> Many immigrants feel deterred from using healthcare facilities because of fear that doing so will provoke immigration enforcement actions.<sup>2</sup> It is in the State's interest to ensure access to healthcare, but also to create a safe and secure environment in which all Californians feel comfortable seeking that care. To that end, California has embraced the immigrant population and created laws that protect their interests in accessing healthcare services.<sup>3</sup> The California Office of the Attorney General is committed to safeguarding these rights and access to healthcare services for all Californians.

California's healthcare facilities serve many people in need of help, regardless of circumstances. According to the California Association of Public Hospitals and Health Systems, California's public healthcare systems serve more than 2.85 million patients each year. These public facilities include just 6 percent of the State's hospitals, but provide more than 40 percent of hospital care to the State's uninsured patients. Additionally, these systems train more than half of the State's new doctors.<sup>4</sup>

The collective health of all Californians, immigrants and non-immigrants, benefits greatly when all have access to the State's multifaceted healthcare system, including public healthcare facilities, community health clinics, hospital systems, and emergency departments. Communicable diseases do not discriminate on the basis of immigration status and, for the health of the population as a whole, neither should the treatment of those diseases. However, fears of immigration enforcement at healthcare facilities have led many immigrants to question whether they should seek medical care and utilize those systems,<sup>5</sup> even when facing health crises or medical emergencies.

Existing federal laws and regulations address the rights of all people to access medical care, including immigrants. To improve access to the healthcare system, the U.S. Congress has established various publicly funded healthcare programs, such as Medicare, Medicaid, and the Children's Health Insurance Program (CHIP). It also created the federal subsidies available to purchase private coverage as a result of the Patient Protection and Affordable Care Act (ACA).<sup>6</sup> In addition, the Emergency Medical Treatment and Active Labor Act (EMTALA) guarantees medical treatment for all people who arrive at emergency departments in hospitals that accept Medicare, regardless of factors such as citizenship, legal status, or ability to pay.<sup>7</sup>

California laws and regulations address individuals' rights to access healthcare by ensuring that all counties are obligated to "relieve and support" indigent local residents who have no other source of care.<sup>8</sup> As the backbone of California's healthcare safety net, the California Department of Health Care Services (DHCS) seeks to preserve and to improve the overall health and well-being of all Californians. Similarly, the California Department of Managed Health Care (DMHC)<sup>9</sup> and the California Department of Insurance (DOI)<sup>10</sup> oversee access to healthcare by Californians covered by managed-care and insurance contracts. California also mirrors the protections provided by EMTALA, guaranteeing medical treatment for all people who enter California emergency rooms that accept Medicare.<sup>11</sup>

In sum, California’s healthcare facilities contribute to the overall health of the entire state population by ensuring that there are safe, accessible facilities for those who are in need of medical care.

## Purpose of this Guide

Senate Bill (SB) No. 54 (2017-2018 Regular Session) mandates that the California Attorney General publish model policies “limiting assistance with immigration enforcement to the fullest extent possible consistent with federal and state law at” several kinds of public institutions, including healthcare facilities.<sup>12</sup> SB 54 further requires that all health facilities operated by the State or a political subdivision of the State adopt and implement the following model policies or equivalent policies.<sup>13</sup> SB 54 clarifies that “health facility” includes healthcare facilities as defined in section 1250 of the Health and Safety Code, clinics as defined in sections 1200 and 1200.1 of the Health and Safety Code, and substance abuse treatment facilities.<sup>14</sup>

California Attorney General Xavier Becerra offers this guide to California’s healthcare facilities to fulfill this mandate and to equip personnel with the information and resources necessary to confidently continue to provide healthcare to all California residents. This guidance implements the California Legislature’s decision to limit state and local participation in immigration-enforcement activities. Such participation diverts state resources, blurs lines of accountability, and threatens trust between immigrant communities and state and local agencies that provide critical public services. The model policies laid out in this guidance are aimed at assisting healthcare facilities in focusing their resources on their distinct missions, while leaving immigration enforcement efforts to others. To that end, this guide discusses procedures for responding to immigration enforcement actions and requests for information. Specifically, the guide:

- Outlines relevant federal and state laws for the benefit of patients, healthcare facility administrators, doctors, nurses, families, and other facility staff and health professionals (including relevant volunteers);
- Provides policy recommendations that comply with federal and state laws, and that may mitigate disruptions from immigration enforcement actions at healthcare facilities; and
- Promulgates model policies that must be adopted and implemented (unless equivalent policies are adopted and implemented) by all healthcare facilities operated by the State or a political subdivision of the State, and that all other related organizations and entities are encouraged to adopt.

This guide is intended to help California healthcare facility officials form practical plans to protect the rights of patients and their families. To that end, this guide discusses procedures for responding to immigration enforcement actions and requests for immigration-related information directed at healthcare facilities. This guide is *not* intended to cover the obligations arising from employer-employee relationships at public healthcare facilities. Public healthcare facilities should be aware that other laws may apply to immigration enforcement activities and requests for information directed at facility employees as the subjects.<sup>15</sup>

California law enforcement agencies are prohibited under state law from performing the functions of immigration officers. But healthcare facilities should be aware that, although U.S. Immigration and Customs Enforcement (ICE) and U.S. Customs and Border Protection (CBP) are the federal agencies with primary responsibility for federal immigration law enforcement, there are instances in which other law enforcement agencies may also attempt to enforce immigration laws.<sup>16</sup> In this guide, ICE, CBP, and other law enforcement agencies attempting to enforce immigration laws are treated the same, in terms of the advice given for how healthcare facilities should handle interactions with them. Any policy adopted to address interactions between healthcare facility personnel and immigration enforcement officers should encompass all law enforcement agencies that seek to enforce immigration law, and should handle requests from all law enforcement agencies acting with that purpose in the same way.

To the extent that any specific healthcare facility program encounters circumstances that are not addressed in this guidance, healthcare facility personnel should consult with their designated healthcare facility administrators in adapting the model policies described here.

Some healthcare facilities may have already adopted policies equivalent to, or exceeding, the protections provided with the policies set forth in this guidance. To the extent that healthcare facilities have developed policies that are aligned with or provide greater protections for immigrants, this guide is not intended to displace those policies. Nor does the exclusion of a particular policy in this guide—whether recommended by a stakeholder group or implemented by an agency—necessarily indicate the Attorney General’s disapproval of that policy. Rather, this guide offers foundational elements reflecting the minimum that should be present in the policies of any California healthcare facility and should serve as a resource to enhance current policies as needed and to ensure alignment with state law. Healthcare facilities that have already adopted policies should use this guide as a resource to ensure alignment, providing protections at least as strong as are described here. Ultimately, the policies of healthcare facilities operated by the State or a political subdivision of the State must at minimum follow the model policies here, except where contrasting laws or circumstances require adjustments. It is important that healthcare facilities train staff for possible interaction with immigration enforcement officers, so that staff can be prepared in the event of an immigration enforcement activity, inquiry, or request at the facility, including determining when, if at all, any potential disclosures of patient information will be necessary.

*This guide is not legal advice.* This guide is based on current law as of its date of publication, which, of course, may change. Management at healthcare facilities operated by the State or a political subdivision of the State should consult with their facility attorneys when formulating policies and practices, and in addressing any questions, regarding the issues covered in this guide.

## Purpose of this Section

Provide healthcare facility administrators with policies for collecting and retaining patient and family health information, while preventing unnecessary collection and maintenance of information on the immigration status of patients and their families.

## Governing Law

### 1. Privacy Law and Personal Health Information

California state and federal laws and regulations give all patients, regardless of immigration status, the right to keep their medical records private in most circumstances. All healthcare facilities and other covered entities should already understand and have policies in place to protect private medical information; this guidance complements, but is not a substitute for, general privacy policies.<sup>17</sup>

#### *HIPAA*

The federal Health Insurance Portability and Accountability Act (HIPAA), including its Privacy Rule and its Security Rule, provides protections for the use and disclosure of information contained in medical records. Healthcare facilities should be well-versed in ensuring HIPAA compliance. Under HIPAA, personal health information may not be used or disclosed, except under certain conditions, including for treatment or payment for health care;<sup>18</sup> upon the consent of the patient;<sup>19</sup> in connection with a use or disclosure otherwise permitted, if the disclosure is the minimum necessary to accomplish the purpose of the disclosure;<sup>20</sup> or under limited circumstances for which neither authorization nor agreement is required.<sup>21</sup> Federally funded programs that provide treatment for substance-abuse disorders must take additional precautions.<sup>22</sup> (See Section 3 of this guidance for information about the circumstances under which personal health information may be disclosed to law enforcement.)

#### *California Law*

California state laws provide similar protections. The California Constitution includes a right to “privacy.”<sup>23</sup> California has several laws protecting health information privacy, including the Confidentiality of Medical Information Act (CMIA), which prohibits healthcare providers, insurance plans, and contractors from disclosing medical information to third parties;<sup>24</sup> the Patient Access to Health Records Act, which establishes a patient’s right to see and to receive copies of his or her own medical records;<sup>25</sup> the Insurance Information and Privacy Protection Act (IIPPA), which applies to insurance agents, brokers, and companies;<sup>26</sup> California Welfare and Institutions Code, which applies to the California Department of State Hospitals (DSH), the California Department of Health Care Services (DHCS), the California Department of Social Services (DSS), and the California Department of Developmental Services (DDS), as well as county mental health and/or developmentally disabled facilities;<sup>27</sup> and the Information Practices Act (IPA), which limits California state agencies’ authorization to collect, manage, and disseminate personal information.<sup>28</sup> Additionally, healthcare facilities are obligated to prevent unauthorized access to, or disclosure of, medical information.<sup>29</sup> Furthermore, for a patient involuntarily detained, a healthcare facility must abide by California Welfare and Institutions Code section 5328, governing the disclosure of all information and records obtained in the

course of providing mental health services and developmental-disability services.

### *Patient Privacy*

The scope of private health information protected from disclosure is very broad. While immigration status and evidence of foreign birth are not expressly listed as protected personal health information, both federal and state rules allow for protections for any characteristics that could uniquely identify the individual.<sup>30</sup> For example, Social Security numbers and patients' addresses are considered personal health information. Immigration information that can be linked to an individual's identity should therefore also be considered protected information.

Most healthcare providers must give all patients a notice of provider privacy policies.<sup>31</sup> The notice tells patients how their personal information about their health care will be used, who will see that information, what the patients' rights are, and where to lodge a complaint if those rights have been violated. A patient has the right to ask his or her healthcare provider or insurer to contact the patient only in certain ways or in certain locations. For example, a patient can ask to be sent notices only at home or only at work.

## **2. Collection of Immigration-Related Personal Information for Public Benefits Purposes**

Healthcare facilities have no general affirmative legal obligation to inquire into a patient's immigration status. In some circumstances, however, information related to immigration status may be relevant to a determination of a patient's eligibility for public benefits that assist with payment for health care, and HIPAA permits disclosure of personal health information for this purpose. County, state, and federal agencies, not healthcare facilities, make final determinations regarding immigrant eligibility for healthcare benefits, but healthcare facilities may play a role in that eligibility screening process. For example, hospitals participating in the Hospital Presumptive Eligibility (HPE) program may temporarily provide qualified individuals immediate access to Medi-Cal covered services.<sup>32</sup> The information collected by DHCS under HPE is provided by the patient and is not verified against any federal databases. However, for the limited purpose of ensuring that eligibility has not otherwise been established for the individual, DHCS verifies an individual's HPE information against the California Medi-Cal Eligibility Data System. Other programs or sources of healthcare payment or coverage, and the types of immigration-related information that are collected, are discussed below.

The ACA and the Medicaid Act of the Social Security Act (SSA) require that individuals seeking coverage under programs like Medicaid, CHIP, and subsidized private insurance through Covered California (California's state-based health insurance benefit exchange) provide information regarding their immigration status and some information about their household members to determine eligibility for such coverage. According to U.S. Department of Homeland Security (DHS) policy, ICE does not presently use information about individuals submitted to assist in determining eligibility for health coverage as the basis for pursuing civil immigration enforcement actions.<sup>33</sup> That policy, adopted in 2013, has not been withdrawn or superseded as of the date of this guidance.

### *Medi-Cal*

Medicaid is a federal-state partnership to provide healthcare coverage to low-income individuals



and families. The program coverage and policies vary by state. In California, the Medi-Cal program provides coverage for adults under certain income levels, even if the individuals are not U.S. citizens or U.S. nationals.<sup>34</sup> An immigrant, like any other beneficiary, must meet certain eligibility requirements, such as income limits and California residency. Adult immigrants with satisfactory immigration status (which includes a broad range of categories of legal status) and children (without regard to immigration status) may qualify for full Medi-Cal coverage. Undocumented adults currently qualify for Medi-Cal coverage for only emergency and pregnancy-related services.

DHCS is required under federal law to verify citizenship or immigration status for almost all individuals who apply for Medi-Cal coverage and to report data, including demographic information and immigration status, to the federal government. California law provides that all types of information concerning an individual and obtained for provision of Medi-Cal services “shall be kept confidential, and shall not be open to examination other than for purposes directly connected with the administration of the Medi-Cal program.”<sup>35</sup> DHCS obtains and maintains an individual’s immigration status only for evaluating a person’s eligibility for benefits. If a facility assists someone in applying for Medi-Cal, the facility may become aware of an individual’s immigration status. However, California public healthcare facilities should not otherwise ask for, or, in any event, retain, citizenship or immigration information from patients in their facilities.

In California, CHIP serves low-income children under the age of 19 years and pregnant women who have incomes above the level to qualify for Medi-Cal, including immigrants, without a waiting period, throughout pregnancy until the end of the post-partum period.<sup>36</sup>

### *Medicare*

Medicare is a federal health benefit program with different eligibility rules from Medi-Cal, including requirements for qualifying work history, and immigration-status restrictions. While some non-citizens are eligible for Medicare, all Medicare recipients must have satisfactory immigration status. Medicare applicants (including those dually eligible for both Medi-Cal and Medicare) have their individual information determined and verified by a federally managed data services hub, such that the federal government has the relevant information.<sup>37</sup> Medicare records contained within that system may be disclosed without a beneficiary’s consent, but only in certain limited situations; disclosure for federal law enforcement purposes is only permitted “if the [federal law enforcement] activity is authorized by law and the request is from the head of the agency and specifies the particular record desired and the law enforcement activity for which the record is sought.”<sup>38</sup>

### *Covered California*

An individual must be lawfully present in the United States to purchase health insurance through the health benefit exchange (Covered California, in California) or to be eligible for healthcare subsidies to lower the cost of coverage.<sup>39</sup> Lawfully present individuals, who are under the five-year bar and whose incomes are less than 100 percent of the federal poverty level, may be eligible for tax credits and subsidies to the extent that they are not eligible for full-scope Medi-Cal because of their immigration status. An individual who applies for coverage through Covered California, and is determined to be eligible for Medi-Cal or for subsidies, will have his or her eligibility information verified through the federal data services hub, meaning that the federal government has the relevant information.

The ACA requires applicants seeking coverage through a health insurance exchange, such as Covered California, to provide information about their immigration status.<sup>40</sup> Applicants who attest to eligibility based on immigration status, rather than citizenship, must provide their Social Security numbers (if applicable) and “such identifying information with respect to the enrollee’s immigration status as the Secretary [of Health and Human Services], after consultation with the Secretary of Homeland Security, determines appropriate.”<sup>40</sup>

Covered California collects information regarding immigration status of only the person seeking health coverage, not of family members who are not applying for coverage. Information provided by individuals who are applying for coverage through Covered California will not be used for any purpose other than to confirm eligibility and to ensure the efficient operation of the healthcare exchange.

### *Emergency Services*

All individuals, including immigrants regardless of status, must be screened and provided with some healthcare in an emergency. EMTALA requires hospitals to provide a medically appropriate screening exam for any patient, regardless of immigration status, who comes to the hospital’s emergency department.<sup>42</sup> If the hospital determines that a patient has an emergency condition, then EMTALA restricts the hospital from transferring the patient until the patient has been stabilized.<sup>43</sup> California law likewise requires licensed healthcare facilities to provide emergency services and care to any person who requests them “for any condition in which the person is in danger of loss of life, or serious injury or illness [...] when the health facility has appropriate facilities and qualified personnel available to provide the services or care.” The healthcare facility may not first question the patient’s ability to pay.<sup>44</sup> Hospitals may not delay screening or treatment in order to resolve questions about the patient’s method of payment or insurance status.<sup>45</sup>

### **3. Effect of Receipt of Health Benefits on Future Immigration Status**

Under current immigration law, receiving publicly funded health benefits like community Medi-Cal, CHIP, exchange subsidies, or other subsidized health services does not make someone a “public charge,” a factor which negatively affects an immigrant’s chances of becoming a legal permanent resident.<sup>46</sup> Importantly, the public-charge test does not apply to many categories of immigrants, including refugees, asylum seekers, certain victims of trafficking, self-petitioners, and some other persons.<sup>47</sup> DHS has proposed changing the public-charge regulations to cover most non-emergency Medi-Cal services and Medicare Part D prescription drug benefits,<sup>48</sup> but, as of the date of this guidance, the rules remain the same as they have been for decades. DHS’s proposed rule would not be retroactive, meaning that health services used before any rule change would not count against immigrants seeking to adjust their status.

## Policy Recommendations

- Healthcare facilities should have written policies and procedures for gathering and handling confidential patient information. Staff, including any volunteers whose duties may involve responding to external information requests or healthcare delivery, should be well-trained in these policies and procedures.
- Healthcare facilities should limit collection of information about immigration status, citizenship status, and national origin to information that the facilities are required by law to collect.
  - If a health provider must collect such information for a patient, the provider should avoid including that information in the patient's medical and billing records.
  - Healthcare facilities should collect such information for only the person seeking care, not his or her family members.
- Healthcare facilities should respond promptly to requests by patients (or their parents, guardians, or caretakers, as appropriate) to remove immigration status information from their medical records, as permitted by law.
- Healthcare facilities should educate patients about their privacy rights and reassure them that their healthcare information is protected by federal and state laws. Healthcare facilities should amend standard notices of privacy practices to clarify that information about immigration status is protected by privacy laws.
- Healthcare facilities should make information accessible to individuals with limited English proficiency, in the languages commonly spoken in the community.

### Purpose of this Section

Identify categories of patient information not subject to release by healthcare facilities, and provide model policies protecting against the release of patient or family information, to the extent permitted under the law.

### Governing Law

#### 1. Citizenship and Immigration Status Information

Federal law does not impose an affirmative duty on state or local government entities to collect information about an individual's citizenship or immigration status. California law generally prohibits law enforcement agencies from "[i]nquiring into an individual's immigration status."<sup>49</sup>

Under federal law, hospitals with emergency rooms must screen and treat people who need emergency medical services, regardless of whether a person has health insurance, how much money the person has, or the person's immigration status. Similarly, anyone can seek primary and preventive health care at certain kinds of community clinics<sup>50</sup> regardless of whether they are insured, their ability to pay, or their immigration status. Neither citizenship, nor lawful immigration status, nor a Social Security number are required to receive healthcare services under federal law. But, as mentioned above, hospitals, clinics, health centers, or other medical providers may ask for this information to determine if a patient may be eligible for public health insurance, like Medicaid, or to establish the patient's method of payment for services.

The U.S. Department of Homeland Security, which oversees the actions of ICE and CBP, maintains a policy that immigration enforcement actions such as arrests, interviews, searches, and surveillance will generally not occur at "sensitive locations," which include medical-treatment and healthcare facilities, such as hospitals, doctors' offices, accredited health clinics, and emergent or urgent care facilities. This policy is generally referred to as the ICE Sensitive Locations Policy (discussed in Section 3 below). These policies do not preclude immigration law enforcement actions at or focused on sensitive locations, but rather provide that these areas should generally be avoided. Therefore, immigrant employees, patients, and families may be more vulnerable to immigration law enforcement actions when in areas of healthcare facilities that are open to the public versus areas that are considered private. Some healthcare facilities have sought to adopt internal policies and procedures that limit law enforcement on their premises by designating certain spaces as "private," protected spaces into which law enforcement agents may not enter without a warrant. It is unclear if such designations will suffice as a matter of law to preclude entry into those areas by immigration enforcement officers.

Healthcare facilities seeking to protect immigrant patients' privacy may simply avoid acquiring or maintaining information about immigration and citizenship status. (See Section 1, above.) Federal law itself restricts healthcare facilities from sharing personal information without patient consent as described above, under HIPAA's Privacy Rule, and those federal restrictions apply with equal force to patient personal information, such as information regarding a patient's citizenship or immigration status, contained in medical records.

In addition, there have been successful constitutional challenges to section 1373 of title 8 of the U.S. Code, which provides that state and local government entities and officials cannot prohibit or restrict any government entity or official from maintaining information regarding a person's immigration status, exchanging information regarding a person's immigration status with federal immigration enforcement authorities or other governmental entities.<sup>51</sup> Specifically, federal courts outside of California have determined that this statute violates the Tenth Amendment to the U.S. Constitution.<sup>52</sup> A federal court in California has called the statute "highly suspect."<sup>53</sup> And the Attorney General is currently challenging the statute's constitutionality in federal litigation in California.<sup>54</sup> Counsel for healthcare facilities should continue to monitor developments in the law to determine this statute's continued applicability in California.

There have also been successful challenges to the federal government's expansive interpretation of section 1373. Federal courts have construed section 1373 narrowly, finding that it covers only "information strictly pertaining to immigration status (i.e., what one's immigration status is)" and clarifying that this federal statute does not apply to other categories of information, such as an individual's home or work address.<sup>55</sup>

## **2. Patient Information Generally**

Healthcare providers have no affirmative legal obligation to inquire into or report to federal immigration authorities information about a patient's immigration status. As discussed above, the HIPAA Privacy Rule is the primary federal law that requires healthcare facilities to protect the confidentiality of a patient's protected health information, with certain exceptions.<sup>56</sup> In general, protected health information is individually identifiable information that a healthcare provider receives from an individual and that relates to his or her health status, treatment, or payment, and that could be used to identify the person.<sup>57</sup> As mentioned above, immigration status or evidence of foreign birth is not alone considered protected health information under HIPAA, but federal guidance states that "any characteristic that could uniquely identify the individual" is protected health information. Thus, Social Security numbers and patients' addresses in combination with health information or other reasonably available information,<sup>58</sup> are considered protected health information.<sup>59</sup> Under some of the legal exceptions, including when information is requested by law enforcement officials for law enforcement purposes, protected health information may be shared, but its release is generally not required.<sup>60</sup> Similarly, the HIPAA Security Rule establishes national standards to protect individuals' electronic personal health information that is created, received, used, or maintained by a covered entity. The Security Rule requires appropriate administrative, physical, and technical safeguards to ensure the confidentiality, integrity, and security of electronic protected health information.

As discussed above, California has several laws governing health information privacy. Most notable is CMIA,<sup>61</sup> which provides some stronger privacy protections for medical information than those in HIPAA.<sup>62</sup>

### 3. Restrictions on Release of Personal Information or Patient Records

#### *HIPAA*

Under the HIPAA Privacy Rule, organizations that must comply with the rule are called “covered entities,” and include health plans, healthcare clearinghouses, and some healthcare providers, such as local healthcare facilities. A covered entity may not use or disclose protected health information except (1) as permitted or required by the Privacy Rule; or (2) as authorized in writing by the individual who is the subject of the information (or the individual’s personal representative). Under the Privacy Rule, anyone aged 18 years or older and emancipated minors can exercise the rights of individuals; but specific provisions address the protected health information of un-emancipated minors (younger than 18 years).<sup>63</sup> A minor can exercise rights under the rule in one of three circumstances:

- When the minor has the right to consent to health care and has consented, such as when a minor has consented to treatment of a sexually transmitted disease under a state minor consent law.<sup>64</sup>
- When the minor may legally receive the care without parental consent, and the minor or another individual or a court has consented to the care.<sup>65</sup>
- When a parent has assented to an agreement of confidentiality between the health care provider and the minor, which occurs most often when an adolescent is seen by a physician who knows the family.<sup>66</sup>

In each of these circumstances, the parent is not the personal representative of the minor and does not automatically have access to health information specific to the situation, unless the minor requests that the parent be given such access. However, under immigration law, “child” or “minor” is not uniformly defined, and the age of a child for purposes of certain immigration benefits may vary from 18 years old to 21 years old.<sup>67</sup> Therefore, a healthcare facility should determine who is entitled to make decisions about access to a young person’s health information before seeking parent/guardian approval of any disclosures relevant to immigration enforcement. The adolescent may be entitled to maintain the privacy of his or her medical records under state law even from the adolescent’s parents, and seeking consent from parents or guardians would deprive the minor of this protection.

As noted above, healthcare providers must give each patient a notice of privacy policies.<sup>68</sup> The notice tells patients how their personal health information will be used, who will see that information, what their rights are, and where to file a complaint if their privacy has been compromised.

Under HIPAA, a healthcare facility has an obligation to provide, upon a patient’s request, an “accounting of disclosures” whenever it has disclosed any patient’s protected health information.<sup>69</sup> However a healthcare facility is not required to account for disclosures that were made for treatment, payment, or healthcare operations, and disclosures authorized by the individual.<sup>70</sup> Disclosures that are subject to the accounting-for-disclosures requirement include those made by a healthcare facility that is not a party to a related litigation matter or proceeding yet compelled thereby to take some action;<sup>71</sup> made in proceedings before a healthcare oversight agency,<sup>72</sup> or made in response to a subpoena, discovery request, or other lawful process (discussed below).<sup>73</sup>

### *CMIA*

Like HIPAA, the primary purpose of CMIA, a state law, is to protect an individual's medical information, in electronic or paper format, from unauthorized disclosure. However, instead of "protected health information," CMIA applies to "medical information," which it defines as "individually identifiable" information about a patient's medical history, mental or physical condition, or treatment.<sup>74</sup> Under CMIA, individually identifiable information is medical information that includes a data element that identifies a person, such as a name, address, e-mail address, telephone number, or Social Security number, and includes information that can be combined with other publicly available information to reveal a person's identity.<sup>75</sup> Like HIPAA, CMIA applies to healthcare providers, health insurers, and individuals or businesses they contract with that have access to medical information. However, CMIA's definition of "provider of health care" is much broader than HIPAA's, and includes, for example, any business that offers software or products to maintain such medical information.<sup>76</sup> Finally, unlike HIPAA, CMIA provides an individual private right of action.<sup>77</sup> These broader protections and remedies offered under CMIA provide reassurances about these rights for immigrant families and other people of the confidentiality of patient information in California. Establishing policies and practices that both disseminate information and enforce these protections will encourage many immigrant families to continue enrolling and seeking available healthcare services.

## **4. Exceptions Requiring or Permitting Disclosure of Information Without Consent**

### *HIPAA*

The HIPAA Privacy Rule allows covered entities to disclose protected health information in certain circumstances. Generally, protected health information includes demographic data and information that identifies the individual and that relates to the individual's past, present, or future physical or mental health or condition; the provision of health care to the individual; or the past, present, or future payment for the provision of health care to the individual.<sup>78</sup> Protected health information includes many common identifiers, such as a patient's name, address, birth date, Social Security Number, etc., so long as the identifiers are created/included in a medical record.<sup>79</sup> Therefore, identifiers could potentially include information pertaining to a patient's immigration status.

### *Required Disclosures*

Pursuant to the Privacy Rule, a healthcare facility must disclose protected health information (1) when an individual (or his or her personal representative) specifically requests access, and (2) to the U.S. Department of Health and Human Services (HHS) when it is undertaking a compliance investigation, review, or enforcement action.<sup>80</sup> In special circumstances dealing with public health concerns and disease outbreaks, health providers may be required to disclose protected health information under title 17 of the California Code of Regulations.<sup>81</sup> State laws and regulations mandate that specified diseases and conditions be reported by healthcare providers and laboratories to the public health authorities.<sup>82</sup>

### *Permissive Disclosures*

Healthcare facilities covered under HIPAA are permitted, but not required, to disclose protected health information, without an individual's consent, in a number of circumstances: (1) to the individual (unless required for access or accounting of disclosures); (2) for treatment, payment,

and healthcare operations;<sup>83</sup> (3) to provide an individual an opportunity to agree or object to disclosure;<sup>84</sup> (4) incident to an otherwise permitted use and disclosure;<sup>85</sup> (5) for public interest and benefit activities;<sup>86</sup> and (6) as a limited data set for the purposes of research, public health, or healthcare operations.<sup>87</sup> Any sharing of protected health information data sets for the purpose of research is limited to de-identified information.<sup>88</sup>

Some of the most important permissible disclosures relevant to public interest and benefit activities are when disclosures are required by law, or for public health, public safety, or in accordance with court orders. Healthcare facilities may be required to report protected health information to a law enforcement official when required under certain laws, including those requiring the reporting of certain types of wounds or other physical injuries.<sup>89</sup> State laws commonly require healthcare providers to report incidents of gunshot or stab wounds, or other violent injuries. Additionally, healthcare providers are commonly required to report child abuse or neglect or adult abuse, neglect, or domestic violence.<sup>90</sup> Healthcare facilities may also be required to provide protected health information to a law enforcement official in compliance with a properly issued court order, warrant, subpoena, or summons.<sup>91</sup> Therefore, while HIPAA will not require disclosure under these circumstances, disclosure without patient authorization may nevertheless be required by other laws in these instances.

With respect to immigration enforcement, HIPAA-protected information must be withheld unless limited exceptions apply. One such exception is found at 45 Code of Federal Regulations section 164.512, subdivision (k)(5)(I), which applies when an immigration enforcement official demonstrates that there is “lawful custody” of the patient. Therefore, unless the immigration enforcement official provides evidence of lawful custody, the HIPAA-protected information should not be released. Furthermore, this regulatory exception is permissive. The healthcare facility is not required to provide the HIPAA-protected information to the requesting immigration enforcement official invoking that exception.

## **Policy Recommendations**

In addition to the model policies below, healthcare facilities should consider adopting the following policy recommendations.

### **1. Policies and Procedures Regarding Information Sharing**

Healthcare facilities and their providers are required to protect patient information, and in most circumstances a healthcare facility must obtain consent from the patient before any patient information is disclosed. Still, healthcare facilities should have policies and procedures in place regarding disclosures of protected health information in response to court orders, warrants, subpoenas, summonses, and administrative requests. Obviously, the procedure should provide sufficient details to help employees determine how to respond. (See model policies in Section 3.)



To guarantee protected health information is protected, each healthcare facility should designate a healthcare facility administrator to handle immigration issues, ensuring staff members and relevant volunteers are adequately dealing with immigration enforcement inquiries and requests, dissemination of information to patients, and compliance with internal procedures.

## **2. General Information Policies**

Most healthcare providers must give all patients a notice of privacy policies, which alerts patients of their privacy rights, how their personal health information will be used, who will see that information, and where to file a complaint if those rights have been violated. Healthcare providers should:

- ✓ Provide assurances that the healthcare facility will not release information to third parties for immigration law enforcement purposes, except as required by law or court order.
- ✓ Provide access to privacy notices in multiple languages to reach immigrants whose primary languages are not English.
- ✓ Provide annual updates of any changes to the healthcare facilities' privacy policies.

## **3. Requirements for Written Consent for Release of Patient Information**

- ✓ The patients or eligible representatives, in their preferred language (or after adequate translation), must sign and date the consent forms before disclosure of the information.
- ✓ The consent form must include the following:
  - Description of the records to be disclosed;
  - Reason for disclosure;
  - Party or class of parties to whom disclosure may be made; and
  - If desired by the patient, a copy of the records to be released.
- ✓ The consent notice must be permanently kept in the patient's record file.

## Model Policies

All California healthcare facilities<sup>92</sup> shall adopt the following model policies, or equivalent policies. The text below should be adapted by inserting the information sought in the bracketed portions.

### Model Policies and Procedures Regarding Information Sharing

- [Healthcare facility] should develop and post its model policies, if at all possible in the languages commonly spoken in the local community, and make these policies accessible on the [healthcare facility's] website. Staff, including any relevant volunteers, should be well-trained in these policies and procedures.
- [Healthcare facility] shall designate a healthcare facility administrator to handle immigration issues, ensuring staff members and relevant volunteers are adequately dealing with immigration enforcement inquiries and requests, dissemination of information to patients, and compliance with internal procedures.
- [Healthcare facility] should implement a policy that is protective of patient information, under which [healthcare facility] staff members and volunteers disclose patient information only when required or expressly authorized to do so by law.
- [Healthcare facility] and [designated healthcare facility administrator] should consult legal counsel to help [healthcare facility] determine when and to what extent [healthcare facility] is required to comply with administrative requests.
- [Healthcare facility] shall require that an immigration enforcement official provide his/her badge or identification card to be photocopied by [healthcare facility] personnel.
- For responding to requests issued by immigration enforcement officers, [healthcare facility] should develop a verification procedure to determine and document:
  - The specific agency the requester is from
  - Whether the requester has law enforcement power
  - The specific types of protected health information the requester seeks
  - The reason the requester wants the information
- [Healthcare facility] should develop procedures for handling information requests by telephone, such as requiring a call-back process through publicly listed agency phone numbers. Staff members and volunteers receiving immigration inquiries and requests shall first consult with the [designated healthcare facility administrator] to ensure that correct protocols are followed.
- [Healthcare facility] should establish policies that provide guidance on determining whether a document labeled “subpoena,” “warrant,” or “summons” has been issued by a court or judicial officer. Often such requests are handled by the [healthcare facility's] privacy officer or medical records department, to assure that information is disclosed appropriately. If possible, [healthcare facility] should consult with competent legal counsel each time on such matters.

### **Model Policies and Procedures Regarding Information Sharing Continued**

- If [healthcare facility] is required to make a disclosure of patient information to immigration enforcement authorities without the patient's authorization in compliance with a court order or judicial warrant, then the [healthcare facility] should document the disclosure in compliance with facility policies and procedures. Such documentation should include information that supported the decision to disclose the information. Disclosures to law enforcement are subject to the accounting-of-disclosures requirement under the HIPAA Privacy Rule.

### **Model Policies for Information Notice to Patients or Representatives**

- [Healthcare facility] should post and issue general information policies telling patients of their privacy rights and remedies.
  - [Healthcare facility] should give assurances that [healthcare facility] will not release information to third parties for immigration enforcement purposes, except as required or expressly authorized by law or court order.
  - [Healthcare facility] should provide a comprehensive list of privacy protections, under both federal law and California law (including a patient's right of action for disclosures in violation of CMIA).
- Healthcare facility should post information guides regarding immigrant patient rights, including the right to remain silent. While immigration enforcement at [healthcare facility] is limited by the "sensitive locations" guidance described previously, immigration agents may enter a public area of [healthcare facility] without a warrant or the facility's consent and may question any person present (with that person's consent).

### Purpose of this Section

Explain what to do when an immigration enforcement official requests physical access to a healthcare facility, including pointing out applicable law and suggesting steps for healthcare facility employees to follow in responding to access requests.

### Governing Law

#### 1. Substantive Federal Law and Policy

The Fourth Amendment to the U.S. Constitution protects individuals against unreasonable searches and seizures. What is required for law enforcement officers to access different areas of a healthcare facility depends on whether an individual has an expectation of privacy in the place to be entered. Where a reasonable expectation of privacy exists, the U.S. Constitution prohibits access without consent, a judicial warrant, or the types of exigent circumstances that excuse the warrant requirement. This guide does not address all of the factual circumstances that may arise relating to an individual's Fourth Amendment protections in different areas of a facility.

##### *Federal Policies Regarding Immigration Enforcement at "Sensitive Locations"*

ICE and CBP have each issued a memorandum and accompanying Frequently Asked Questions describing policies regarding immigration enforcement actions at or focused on "sensitive" locations.<sup>93</sup> Hospitals are "sensitive locations" at which immigration enforcement should not generally occur. These policies do not preclude enforcement actions at such locations. Rather, the policies provide that enforcement actions at or focused on sensitive locations should generally be avoided.

Such actions may take place at sensitive locations only when either: (1) prior approval was obtained from an appropriate supervisory official; or (2) there are "exigent circumstances" necessitating immediate action without prior approval.

According to the ICE memorandum, exigent circumstances exist when there is:

- an enforcement action involving a national security or terrorism matter;
- imminent risk of death, violence, or physical harm to a person or property;
- an enforcement action involving the immediate arrest or pursuit of a dangerous felon, terrorist suspect, or other individual posing an imminent danger to public safety; or
- an imminent risk of destruction of evidence material to an ongoing criminal case.

When proceeding with an enforcement action under exigent circumstances, ICE officers and agents must conduct themselves as discretely as possible, consistent with officer and public safety, and make every effort to limit the time at or focused on the sensitive location.

The sensitive-location policies cover any actions taken by ICE or CBP to apprehend, arrest, interview, or search an individual, or to conduct surveillance for immigration enforcement purposes. These policies do not extend to actions such as obtaining records, documents, and similar materials from officials or employees; providing notice to officials or employees; serving

subpoenas; or participating in official functions or community meetings. CBP's sensitive-locations policy does not apply to CBP operations conducted at or near the international border, or that bear a "nexus" to the border.

Although the sensitive-locations policies remain in effect, they may be modified, superseded, or withdrawn at any time with little notice. Because of this possible transience of the policies, and because exceptions to the memos exist, healthcare facilities should have plans in place in the event that a law enforcement officer requests information about or physical access to a healthcare facility or a patient for immigration enforcement purposes.

#### *Relevant Statutes*

HIPAA established federal standards for the confidentiality, security, and transmissibility of healthcare information. Healthcare facilities should be well-versed in ensuring HIPAA compliance.

As mentioned above, with respect to immigration enforcement, HIPAA-protected information must be withheld unless limited exceptions apply. An immigration official may attempt to obtain such information by relying on a HIPAA exception, 45 Code of Federal Regulations section 164.512, subdivision (k)(5)(I). However, this regulatory exception is permissive. Therefore, the healthcare facility need not provide the HIPAA-protected information to the requesting immigration enforcement official invoking that exception. Also, the exception is available only when an immigration enforcement official demonstrates that there is "lawful custody" of the patient. Therefore, unless immigration enforcement officials provide evidence of lawful custody, the HIPAA-protected information should not be released.

#### *Different Types of Documents Requesting Information*

The type of entity issuing the request determines a covered entity's response:

##### **ICE Administrative "Warrant"**

An ICE administrative "warrant" is the most typical type used by immigration enforcement officers. Such a document authorizes an immigration enforcement officer to arrest a person suspected of violating immigration laws. An ICE warrant can be issued by any authorized immigration enforcement officer. An ICE administrative warrant is not a warrant within the meaning of the Fourth Amendment to the U.S. Constitution, because an ICE warrant is not supported by a showing of probable cause of a criminal offense. An ICE warrant is not issued by a court judge or magistrate.

An ICE warrant does not grant an immigration enforcement officer any special power to compel facility personnel to cooperate with his or her requests. For example, an ICE warrant does not authorize access to non-public areas of a healthcare facility. An ICE warrant alone does not allow an immigration enforcement officer to search facility records. (See Appendix A for a sample ICE administrative "arrest warrant" (Form I-200), and Appendix B for a sample ICE "removal warrant" (Form I-205).)

Facility personnel should not physically interfere with an immigration enforcement officer in the performance of his or her duties. However, a facility employee is not required to assist with the apprehension of a person identified in an ICE administrative warrant, nor is a facility employee required to consent to an immigration enforcement officer's search of the facility. In fact, a healthcare facility that is a public employer may not provide voluntary consent to an immigration enforcement officer seeking access to a nonpublic area when presented with an ICE warrant.<sup>94</sup>

### **Federal Court Warrant**

A federal court warrant is issued by a district judge or a magistrate judge of a U.S. District Court, based on a finding of probable cause authorizing the search or seizure of property, the entry into a nonpublic place to arrest a person named in an arrest warrant, or the arrest of a named person.

There are two types of federal court warrants, a search-and-seizure warrant and an arrest warrant.

- A federal search-and-seizure warrant allows an officer to conduct a search authorized by the warrant. (See Appendix C for a sample federal search and seizure warrant (Form AO 93).)
- A federal arrest warrant allows an officer to arrest the individual named in the warrant. (See Appendix D for a sample federal arrest warrant (Form AO 442).)

Prompt compliance with a federal court warrant is usually required. Where feasible, however, healthcare facility personnel should consult with a designated healthcare facility official or legal counsel before responding.

### **Administrative Subpoena**

An administrative subpoena is a document that requests production of documents or other evidence, and (in the immigration enforcement context) is issued by an immigration enforcement officer. The administrative subpoena will contain the following information: file number, subpoena number, mailing address to which to mail the requested information, a list of the regulations that apply, the request for information, and the signature(s) of the officer(s). (See Appendix E for a sample administrative subpoena (Form I-138).)

A healthcare facility generally does not need to immediately comply with an administrative subpoena. If an immigration enforcement officer arrives with an administrative subpoena, the facility may decline to produce the information sought and may choose to challenge the administrative subpoena before a judge. Therefore, facility personnel should immediately contact a designated administrator or the facility's legal counsel upon receipt of a subpoena.

### **Federal Judicial Subpoena**

A federal judicial subpoena is a document that asks for the production of documents or other evidence. The federal judicial subpoena will identify a federal court and the name of the judge

or judicial magistrate issuing the subpoena, and may require attendance at a specific time and location and the production of prescribed records. (See Appendix F for a sample federal judicial subpoena.)

As with an administrative subpoena, noted above, a healthcare facility generally does not need to immediately comply with a federal judicial subpoena, and can challenge it before a federal judge in a U.S. District Court. Facility personnel should therefore immediately contact a designated facility administrator or legal counsel upon receipt of a federal judicial subpoena.

### **Court Order**

If an immigration enforcement officer arrives with a court order, a designated healthcare facility administrator shall review the order with legal counsel or other designated person, and then respond accordingly.

### **Notice to Appear**

A notice to appear (NTA) is a charging document issued by ICE, CBP, or U.S. Citizenship and Immigration Services (USCIS) seeking to commence formal removal proceedings against an individual before an immigration court. An NTA contains allegations made about a particular person's immigration status. An NTA notifies an individual that he or she is expected to appear before an immigration judge on a certain date. An NTA does not authorize an individual's arrest by immigration enforcement authorities or local law enforcement authorities.<sup>95</sup> (See Appendix G for a sample notice to appear form (Form I-862).)

An NTA does not require health facility staff to take any action, and also does not grant an officer engaged in immigration enforcement any special power to compel the facility to cooperate with the officer. An NTA does not authorize access to nonpublic areas of the facility. An NTA does not legally require facility staff to allow authorities to search facility records.

### *Medical Code of Ethics*

The American Medical Association's Code of Medical Ethics sets forth a number of principles which relate to a doctor's obligation to provide care, even in the face of immigration enforcement activities. For example, physicians must provide competent medical care; they must respect the rights of patients, and "safeguard patient confidences and privacy within the constraints of the law"; and, while caring for a patient, they must "regard responsibility to the patient as paramount." Therefore, doctors may have ethical obligations to their patients that require restricting immigration enforcement officers' access to a patient.

### **Additional Resources**

In the event that a patient is detained, the healthcare facility should refer the patient or his or her family members to other resources for assistance, including, but not limited to the following.

### *ICE Detainee Locator*

The ICE detainee locator (<https://locator.ice.gov/odls/homePage.do>) can help people determine if their family member has been detained and where the family member is being held. In using

the ICE detainee locator, it is helpful to know the family member's date of birth and 'A-Number' (Alien Registration Number), if there is one. The ICE detainee locator is intended only for locating individuals who are already detained. If an individual has general questions about his or her immigration status, he or she should be referred to the list of legal service providers.

#### *Legal Assistance*

Immigration lawyers in private practice, accredited representatives (who assist immigrants in immigration proceedings), or legal-aid organizations may be able to provide legal assistance to secure the release of a patient or his or her family member or to help arrange for the patient to visit the family member.

An individual can determine whether lawyers are licensed by and in good standing with the State Bar of California, by checking online at <http://www.calbar.ca.gov/Attorneys>.

Do not hire a notary or an immigration consultant if you are seeking advice and assistance regarding your immigration status. Notaries and immigration consultants are not attorneys or experts in immigration. In fact, they are not legally required to know anything about immigration law because they are only allowed to help you with non-legal tasks like translating information. They cannot—and should not—provide advice or direction about your immigration forms or speak to the government on your behalf.

A list of California organizations accredited by the Board of Immigration Appeals (BIA) to represent immigrants before the DHS and Executive Office of Immigration Review (EOIR) can be found here: <https://www.justice.gov/eoir/page/file/942306/download#CALIFORNIA>.

California courts operate Self-Help Centers that may also be able to provide family-law assistance of relevance. A list of these centers across the State is available at <http://www.courts.ca.gov/selfhelp-selfhelpcenters.htm>.

A patient or his or her family member may be able to find legal assistance from legal-aid offices and lawyer-referral services at the California Department of Social Services website, <http://www.cdss.ca.gov/Benefits-Services/More-Services/Immigration-Services/Immigration-Services-Contractors>, or at the California Courts website, <http://www.courts.ca.gov/1001.htm>.

#### *Consulate or Embassy*

The consulate or embassy of the patient's country of origin may be able to offer additional information and assistance.

## **Policy Recommendations**

### **1. Establish Procedures for Monitoring and Receiving Visitors to Healthcare Facilities and Designating Restricted-access Areas**

Healthcare facilities should have in place policies for receiving visitors to their facilities, and those policies should apply to immigration enforcement officers. Immigration enforcement



officers may be in civilian clothing without displaying a badge or other insignia. Model policies for receiving and registering outsiders, including immigration enforcement officers, are included below. Healthcare facilities may post a “notice to authorities” at facility entrances. (See sample below.)

Healthcare facilities should develop policies to enhance the privacy available to facility users while being consistent with their healthcare mission. Healthcare facilities should consider which areas of their facilities can benefit from restricted access and clearly designate those areas through mapping, signage, key-entry, or a combination thereof. Healthcare facilities can have, and indeed do have, different policies in place regarding restricted areas, for instance, areas designated for staff or patients only. Designating restricted areas and policies limiting access to outsiders can promote the need for a safe environment conducive to the facility’s mission. Healthcare facilities should also acknowledge that immigration enforcement activities, and threats of such activities, interfere with healthcare facility activities and should adopt policies on restricted areas and similar policies regarding access to facilities that promote the facility’s mission. While restricted areas protect facility users and staff in other ways and promote the need for a safe environment conducive to the institution’s mission, such restrictions on access will not always equate to Fourth Amendment protection.

The Immigrant Worker Protection Act (Assembly Bill No. 450; 2017-2018 Regular Session), imposes obligations on public employers and persons acting on their behalf, in the event an officer engaged in immigration enforcement seeks to enter an employer’s place of business, subject to certain exceptions.<sup>96</sup> As of the date of this publication, this provision is subject to an order by a federal trial court preliminarily enjoining a portion of its enforcement against private employers.<sup>97</sup> The order does not impact the application of this provision to public employers, such as healthcare facilities operated by the State or a political subdivision of the State.

Employers, or persons acting on behalf of employers, are prohibited from providing “voluntary consent” for an immigration enforcement officer to enter “any nonpublic areas of a place of labor.”<sup>98</sup> This provision does not apply if the immigration officer provides a judicial warrant.<sup>99</sup> (Additional information about how to identify judicial warrants can be found below.) This provision also does not preclude an employer from bringing an immigration enforcement officer into a nonpublic area of the workplace for the purpose of determining whether the agent has a judicial warrant, “provided no consent to search nonpublic areas is given in the process.”<sup>100</sup> Employers who violate this provision may be subject to civil penalties.<sup>101</sup>

Whether voluntary consent has been provided by an employer, or a person working on behalf of an employer, is a fact-based determination that depends upon the specific circumstances of the interaction between the employer and the officer conducting immigration enforcement, including the conduct of, and words used by, the employer or person working on behalf of the employer. In general, for consent to be voluntary, it cannot be the result of duress or coercion, whether express or implied.

## **2. Develop Policies for Responding to Immigration Enforcement Officer's Physical Presence at Healthcare Facility**

When the circumstances allow, healthcare facility personnel shall immediately notify healthcare facility management or a designated healthcare facility administrator of any request by an immigration enforcement officer for healthcare facility physical access or patient access, or any requests for review of healthcare facility documents (including via the service of a lawful subpoena, a petition, a complaint, a warrant, or a court order). Also, healthcare facility personnel shall direct the immigration enforcement officer to the designated healthcare facility administrator when the immigration enforcement officer requests access to a healthcare facility site or patient, including to obtain information about a patient or his or her family. The healthcare facility administrator shall, in turn, contact the healthcare facility's legal counsel and inform the immigration enforcement officer to direct requests and questions to the healthcare facility's legal office.

Healthcare facility personnel should identify circumstances in which granting immigration enforcement officers access to patients may interfere with physicians' duty to provide competent medical care, to safeguard patient confidences and privacy, and to otherwise prioritize their obligations to their patients. If a provider determines that granting a request for access would interfere with their ethical obligations to the patient, they should consult with the healthcare facility's ethics official and legal counsel.

The policy language below provides specific steps that healthcare facility personnel should follow in responding to an officer present at the healthcare facility specifically for immigration-enforcement purposes.

## **3. Develop Policies Regarding Parental Notification of Immigration Enforcement Actions**

Healthcare facility personnel shall require consent from a minor patient's parent or guardian before a minor can be interviewed or searched by any officer seeking to enforce immigration laws at a healthcare facility, unless the officer presents a valid, effective warrant signed by a judge (see, e.g., sample federal search and seizure warrant [Form AO 93], attached as Appendix C; see also sample federal arrest warrant [Form AO 442], attached as Appendix D), or presents a valid, effective court order. Healthcare facility personnel shall immediately notify the minor's parents or guardians if a law enforcement officer requests or gains access to a minor for immigration enforcement purposes, unless such access was in compliance with a judicial warrant or subpoena that restricts the disclosure of the information to the parent or guardian.

## **4. Develop Training Programs for Healthcare Facility Staff**

Healthcare facilities shall establish training regarding immigration issues for healthcare facility staff and relevant volunteers, including information on responding to requests from officers enforcing immigration law to visit facility sites or to have access to patients. If feasible, the healthcare facility should also designate an immigrant-affairs liaison to facilitate training programs for staff and relevant volunteers, to help provide non-legal advice to families, and to assist in communications with the healthcare facility and other stakeholders in local and state government.

## 5. Encourage Patient Preparedness

Healthcare facilities should encourage patients to attend community “Know Your Rights” trainings and update their emergency contacts. Healthcare facilities should provide patients with contact information for legal-assistance organizations, to help patients make family preparedness plans (e.g., designating a standby legal guardian for minor children), in the event that a parent is taken into immigration custody.<sup>102</sup>

### Model Policies

All healthcare facilities operated by the State or a political subdivision of the State shall adopt the following model policies, or equivalent policies, and all other California healthcare facilities are encouraged to adopt the following model policies, or equivalent policies. The text below should be adapted by inserting the information sought in the bracketed portions.

#### Model Policies for Monitoring and Receiving Visitors into Healthcare Facilities

- No outsider—which would include immigration enforcement officers—shall enter or remain on [healthcare facility] grounds without having registered with [healthcare facility]’s designee. If there are no exigent circumstances necessitating immediate action, and if the visitor does not possess a judicial warrant or court order that provides a basis for the visit, the visitor must provide the following information to [healthcare facility]’s designee:
  - ✓ Name, address, occupation;
  - ✓ Age, if less than 21 years;
  - ✓ Purpose in entering [healthcare facility];
  - ✓ Proof of identity.(Try to obtain this information even from a visitor or officer with a court order.)
- [Healthcare facility] shall post signs at the entrances of the facility to notify outsiders of the hours of operation and requirements for registration.
- [Healthcare facility] personnel shall report entry by immigration enforcement officers to the [designated healthcare facility administrator], as would be required for any unexpected or

unscheduled outside visitor coming into the facility.

## **Model Policies for Responding to Immigration Law Enforcement at Healthcare Facilities**

- As soon as possible, [healthcare facility] personnel shall notify the [designated healthcare facility administrator] of any request (including subpoenas, petitions, complaints, warrants, or court orders) by an immigration law enforcement officer to access a healthcare facility or a patient, or any request for the review of [healthcare facility] documents.
- In addition to notifying the [designated healthcare facility administrator], [healthcare facility] personnel shall take the following steps in response to an officer present at the healthcare facility for immigration enforcement purposes:
  1. Advise the officer that before proceeding with his or her request, [healthcare facility] staff must first notify and receive direction from the [designated healthcare facility administrator].
  2. Ask to see, and make a copy of or note, the officer's credentials (name and badge number). Also ask for and copy or note the telephone number of the officer's supervisor.
  3. Ask the officer to explain the purpose of the officer's visit, and note the response.
  4. Ask the officer to produce any documentation that authorizes healthcare facility access.
  5. Make copies of all documents provided by the officer.
  6. Decline to answer questions posed by the officer and direct him or her to speak to the [designated healthcare facility administrator].
  7. State that [healthcare facility] does not consent to entry of [healthcare facility] or portions thereof.
  8. Without expressing consent, respond according to the requirements of the officer's documentation. If the officer has:
    - An ICE administrative "warrant" (see Appendices A and B): Immediate compliance is not required. Inform the officer that [healthcare facility] cannot respond to the warrant until after it has been reviewed by a designated administrator. Provide a copy of the warrant to the designated administrator as soon as possible.
    - A federal judicial warrant (either a search-and-seizure warrant or an arrest warrant; see Appendices C and D): Prompt compliance usually is required, but, where feasible, staff should consult with legal counsel before responding.
    - A subpoena for production of documents or other evidence (see Appendices E and F): Immediate compliance is not required. Inform the officer that [healthcare facility] cannot respond to the subpoena until after it has been reviewed by a designated administrator. Give your copy of the subpoena to the designated administrator or legal counsel as soon as possible.
    - A notice to appear (see Appendix G): This document is not directed at the healthcare facility. Healthcare facility staff is under no obligation to deliver or facilitate service of this document to the person named in the document. If you get a copy of the document, give it to your designated healthcare facility

administrator as soon as possible.

### **Model Policies for Responding to Immigration Law Enforcement at Healthcare Facilities (Continued)**

9. Document the officer's actions in as much detail as possible when he or she enters [healthcare facility] premises, but without interfering with the officer's movements.
10. If the officer orders staff to provide immediate access to facilities, [healthcare facility] staff should comply with the officer's order and also immediately contact a designated administrator. Personnel also should not attempt to physically interfere with the officer, even if the officer appears to be acting without consent or appears to be exceeding the purported authority given by a warrant or other document. If an officer enters the premises without authority, [healthcare facility] personnel shall simply document the officer's actions while at the facility.
11. [Healthcare facility] staff should document the officer's actions while in [healthcare facility] premises in as much detail as possible, but without interfering with the officer's movements.
12. [Healthcare facility] staff should complete an incident report that includes the information gathered as described above and the officer's statements and actions.

### **Model Policies for Parental Notification of Immigration Law Enforcement Actions**

1. [Healthcare facility] personnel must receive consent from a minor patient's parent or guardian (provided the child is not legally regarded as his or her own personal representative of his or her medical records) before a minor patient can be interviewed or searched by any officer seeking to enforce the civil immigration laws at [healthcare facility], unless the officer presents a valid, effective warrant signed by a judge, or presents a valid, effective court order.
2. [Healthcare facility] personnel shall immediately notify the minor patient's parent or guardian if a law enforcement officer requests or gains access to a patient for immigration enforcement purposes, unless such access was in compliance with a judicial warrant or subpoena that restricts the disclosure of the information to the parent or guardian.

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The analysis, recommendations, and policies expressed in this guide are based on research and input from the staff of the Attorney General's Special Project Team and office, and should not be considered as representing the views of any agency or organization that contributed to the report.

## Endnotes

<sup>1</sup> Hayes, Public Policy Institute of California, *Immigrants in California* (Jan. 2017), available online at [http://www.ppic.org/content/pubs/jtf/JTF\\_ImmigrantsJTF.pdf](http://www.ppic.org/content/pubs/jtf/JTF_ImmigrantsJTF.pdf) (last visited Sep. 3, 2018).

<sup>2</sup> Gov. Code, § 7284.2, subd. (c).

<sup>3</sup> See, e.g., Covered California, *Eligibility and Immigration*, available online at <https://www.coveredca.com/individuals-and-families/getting-covered/immigrants/> (last visited Sept. 9, 2018) (describing how Covered California offers healthcare insurance options for both immigrants and non-immigrants, and for both documented immigrants and undocumented immigrants); Public Policy Institute of California, *Health Coverage and Care for Undocumented Immigrants*, available online at <http://www.ppic.org/publication/health-coverage-and-care-for-undocumented-immigrants/> (last visited Sept. 9, 2018) (explaining benefits for California as whole in providing healthcare services to immigrants).

<sup>4</sup> California Association of Public Hospitals and Health Systems, *Reducing Health Disparities at California's Public Health Care Systems* (May 2018), pp. 1-2, available online at <https://caph.org/wp-content/uploads/2018/04/disparity-reduction-brief-1.pdf> (last visited Sep. 3, 2018).

<sup>5</sup> Bazar, *Some Immigrants, Fearful Of Political Climate, Shy Away From Medi-Cal*, California Healthline (Feb. 16, 2017), available online at <https://californiahealthline.org/news/some-immigrants-fearful-of-political-climate-shy-away-from-medi-cal/> (last visited Sep. 3, 2018).

<sup>6</sup> See The Commonwealth Fund, *The U.S. Healthcare System*, available online at [https://international.commonwealthfund.org/countries/united\\_states/](https://international.commonwealthfund.org/countries/united_states/) (last visited Sep. 3, 2018).

<sup>7</sup> 42 U.S.C. § 1395dd; see also Centers for Medicare & Medicaid Services (CMMS), *Emergency Medical Treatment and Labor Act* (EMTALA) (Mar. 2012), available online at <https://www.cms.gov/Regulations-and-Guidance/Legislation/EMTALA/> (last visited Sep. 3, 2018).

<sup>8</sup> Welf. & Inst. Code, § 17000.

<sup>9</sup> Health & Saf. Code, § 1367.

<sup>10</sup> Ins. Code, § 10133.5.

<sup>11</sup> Health & Saf. Code, § 1317.

<sup>12</sup> Covered public healthcare facilities are those operated by the State or a political subdivision of the State, and all other organizations and entities that provide services related to physical or mental health and wellness. Gov. Code, § 7284.8, subd. (a). SB 54 defines “immigration enforcement” to include “any and all efforts to investigate, enforce, or assist in the investigation or enforcement of any federal civil immigration law, and also includes any and all efforts to investigate, enforce, or assist in the investigation or enforcement of any federal criminal immigration law that penalizes a person’s presence in, entry, or reentry to, or employment in, the United States.” (Gov. Code, § 7284.4, subd. (f).) This guide adopts that definition.

<sup>13</sup> Gov. Code, § 7284.8, subd. (a).

<sup>14</sup> Gov. Code, § 7284.4, subd. (d). The statute defines “health facility” by reference to parts of the Health and Safety Code, under which health facilities include general acute care hospitals; acute psychiatric hospitals; skilled nursing facilities; intermediate care facilities; special hospitals (dentistry or maternity); intermediate care facilities for the developmentally disabled; congregate living healthcare facilities; correctional treatment centers (i.e., healthcare facilities operated by the California Department of Corrections and Rehabilitation); and hospice facilities. Health & Saf. Code, §§ 1200, 1200.1, and 1250.

<sup>15</sup> Public employers have federal and state obligations based on their statuses as employers, and this guide does not address those obligations. For example, California Assembly Bill No. 450 (2017-2018 Regular Session) prohibits an employer, or a person acting on the employer’s behalf, from providing voluntary consent to an immigration enforcement officer to access, review, or obtain the employer’s employee records without a subpoena or judicial warrant, unless certain exceptions apply. Gov. Code, § 7285.1, subd. (a)(1). Employers should ensure that all their policies are consistent with applicable federal and state law.

<sup>16</sup> Examples of law enforcement agents and officers include (city) police chiefs, police officers, (county) sheriffs, deputy sheriffs, healthcare facility police officers or security agents, and virtually any agent of the

U.S. Department of Homeland Security (DHS).

<sup>17</sup> For more general guidance about how to protect patient privacy, healthcare facilities should consult with the California Office of Health Information Integrity's *Statewide Health Information Policy Manual* (SHIPM), available online at <http://www.chhs.ca.gov/OHII/Pages/SHIPM.aspx> (last visited Aug. 9, 2018). The California Hospital Association also publishes guidance for the association's members regarding privacy; see California Health Information Privacy Manual, available online at <https://www.calhospital.org/privacy> (last visited Aug. 9, 2018). Patients seeking general information about their privacy rights and remedies should consult the California Attorney General's guide, *Your Patient Privacy Rights: A Consumer Guide to Health Information Privacy in California*, available online at <https://oag.ca.gov/privacy/facts/medical-privacy/patient-rights> (last visited Sept. 3, 2018).

<sup>18</sup> 45 C.F.R. § 164.506.

<sup>19</sup> 45 C.F.R. § 164.508.

<sup>20</sup> 45 C.F.R. §§ 164.502, subd. (b); 164.514, subd. (d); 164.530, subd. (c).

<sup>21</sup> 45 C.F.R. §§ 164.502, subd. (a); 164.512; 164.514, subds. (e),(f), or (g).

<sup>22</sup> 45 C.F.R. pt. 2.

<sup>23</sup> Cal. Const., art. I, § 1

<sup>24</sup> Civ. Code, §§ 56 et seq.

<sup>25</sup> Health & Saf. Code, §§ 123110 et seq.

<sup>26</sup> Ins. Code, §§ 791 et seq.

<sup>27</sup> Welf. & Inst. Code, §§ 5328 et seq.

<sup>28</sup> Civ. Code, §§ 1798 et seq. A government agency may not disclose an individual's personal information without his or her consent, other than to a guardian or conservator of the individual, to officers or employees of the agency that holds the information for the performance of their official duties, or where authorized by state or federal law. *Id.*, § 1798.24, subds. (c-e).

<sup>29</sup> Health & Saf. Code, § 1280.15.

<sup>30</sup> 45 C.F.R. §§ 160.103; 164.514, subd. (b)(2)(I)(R) (listing as items to be removed to ensure de-identification: "[a]ny . . . unique identifying number, characteristic, or code [...]"); Civ. Code, § 56.05, subd. (j) ("'Individually identifiable' means that the medical information includes or contains any element of personal identifying information sufficient to allow identification of the individual, such as the patient's name, address, electronic mail address, telephone number, or social security number, or other information that, alone or in combination with other publicly available information, reveals the individual's identity").

<sup>31</sup> 45 C.F.R. § 164.520 (federal Health Insurance Portability and Accountability Act [HIPAA] regulation requiring provision of notice of privacy practices); Civ. Code, § 1798.17; Gov. Code, § 11019.9; California Department of General Services, *State Administrative Manual* (2014), § 5310.1, available online at [https://www.documents.dgs.ca.gov/sam/SamPrint/new/sam\\_master/sam\\_master\\_File/chap5300/5310.1.pdf](https://www.documents.dgs.ca.gov/sam/SamPrint/new/sam_master/sam_master_File/chap5300/5310.1.pdf) (last visited Aug. 17, 2018).

<sup>32</sup> See California Department of Health Care Services (DHCS), *Hospital Presumptive Eligibility (HPE) Program Frequently Asked Questions*, available online at [https://files.medi-cal.ca.gov/pubsdocol/presumptive\\_eligibility/HPE\\_faq.asp](https://files.medi-cal.ca.gov/pubsdocol/presumptive_eligibility/HPE_faq.asp) (last visited Aug. 9, 2018). According to DHCS, an applicant does not need to provide a Social Security number, although doing so is "highly recommended." (*Ibid.*)

<sup>33</sup> U.S. Immigrations and Customs Enforcement (ICE), *Clarification of Existing Practices Related to Certain Health Care Information* (Oct. 25, 2013), available online at <https://www.ice.gov/doclib/ero-outreach/pdf/ice-aca-memo.pdf> (last visited Aug. 9, 2018).

<sup>34</sup> DHCS, *Medi-Cal Eligibility and Covered California—Frequently Asked Questions*, available online at <http://www.dhcs.ca.gov/services/medi-cal/eligibility/Pages/Medi-CalFAQs2014b.aspx> (last visited Aug. 9, 2018).

<sup>35</sup> Welf. & Inst. Code, § 14100.2, subd. (a); see also Centers for Medicare & Medicaid Services (CMMS), *Eligibility for Non-Citizens in Medicaid and CHIP* (Nov. 2014), available online at <https://www.medicaid.gov/medicaid/outreach-and-enrollment/downloads/overview-of-eligibility-for-non-citizens-in-medicaid-and->



chip.pdf (last visited Aug. 9, 2018) (noting that collection of Social Security number must be consented to and used only to determine eligibility for applicant/beneficiary, or for purpose directly connected to Medicaid).

<sup>36</sup> Welf. & Inst. Code, §§ 14005.64(c)(3)(A); 14013.3(d)(1); Cal. Code Regs., tit. 22, §§ 50260, 50262.3, subd. (a); see also DHCS, *Medi-Cal Access Program*, available online at [http://mcap.dhcs.ca.gov/MCAP\\_Program/](http://mcap.dhcs.ca.gov/MCAP_Program/) (last visited Sept. 10, 2018).

<sup>37</sup> See, e.g., CMMS, SORN 09-70-0526 (“Common Working File”), available online at <https://www.hhs.gov/foia/privacy/sorns/09700526/index.html> (last visited Aug. 9, 2018); CMMS, SORN 09-70-0536 (“Medicare Beneficiary Database”), available online at <https://www.hhs.gov/foia/privacy/sorns/09700536/index.html> (last visited Aug. 9, 2018).

<sup>38</sup> See generally CMMS, *Chapter 6 – Disclosure of Information*, Medicare Eligibility Manual (Apr. 29, 2005), available online at <https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/ge101c06.pdf> (last visited Sept. 10, 2018). Information about individuals that is under the control of federal agencies is generally subject to the federal Privacy Act, 5 U.S.C. § 552a.

<sup>39</sup> For more details about immigrants’ eligibility to apply for healthcare coverage through Covered California, and to receive financial assistance, see Covered California, *Eligibility and Immigration*, available online at <https://www.coveredca.com/individuals-and-families/getting-covered/immigrants/> (last visited Aug. 10, 2018).

<sup>40</sup> 42 U.S.C. § 18081, subd. (b)(2). Non-citizens are exempted from the Affordable Care Act’s (ACA) mandate to purchase insurance for any month in which they are not lawfully present in the country. 26 U.S.C. 5000A, subd. (d)(3).

<sup>41</sup> 42 U.S.C. § 1411, subd. (a)(2)(B); 18081.

<sup>42</sup> 42 U.S.C. § 1395dd(a).

<sup>43</sup> 42 U.S.C. § 1395dd(b), (c).

<sup>44</sup> Health & Saf. Code, § 1317 (a), (d).

<sup>45</sup> 42 U.S.C. § 1395dd(h).

<sup>46</sup> The one exception is for individuals who are receiving long-term care in nursing facilities or other institutions at government expense. These people may face barriers in qualifying for green cards under current public-charge rules. The federal government is considering new rules that could change this law in the future. If this change happens, it could allow the U.S. government to deny (or in some cases to revoke) permanent resident status to immigrants on the basis of their receipt of Medi-Cal, exchange subsidies, or other benefits on public-charge grounds. See CMMS, *Nursing Homes* (Aug. 17, 2018), available online at <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/GuidanceforLawsAndRegulations/Nursing-Homes.html> (last visited Sept. 10, 2018).

<sup>47</sup> 8 U.S.C. 1182, subd. (a)(4)(E)(i)-(iii).

<sup>48</sup> DHS, *DHS Announces New Proposed Immigration Rule to Enforce Long-Standing Law that Promotes Self-Sufficiency and Protects American Taxpayers* (Sept. 22, 2018), available online at <https://www.dhs.gov/news/2018/09/22/dhs-announces-new-proposed-immigration-rule-enforce-long-standing-law-promotes-self> (last visited Sept. 24, 2018).

<sup>49</sup> Gov. Code, § 7284.6, subd. (a)(1)(A). See also Gardner, California Department of Justice, Division of Law Enforcement, DLE Information Bulletin No. DLE-2018-01, *Responsibilities of Law Enforcement Agencies Under the California Values Act, California TRUST Act, and the California TRUTH Act* (Mar. 28, 2018), available online at [https://oag.ca.gov/sites/all/files/agweb/pdfs/law\\_enforcement/dle-18-01.pdf](https://oag.ca.gov/sites/all/files/agweb/pdfs/law_enforcement/dle-18-01.pdf) (last visited September 12, 2018).

<sup>50</sup> Community clinics include federally qualified healthcare centers, and family planning clinics, including Ryan White funded clinics (which provide HIV/AIDS treatment and related services), all of which provide healthcare services regardless of insurance coverage or immigration status.

<sup>51</sup> 8 U.S.C. § 1373(a), (b).

<sup>52</sup> *City of Chicago v. Sessions* (N.D. Ill. July 27, 2018) \_\_\_ F.Supp.3d \_\_\_, \_\_\_, 2018 WL 3608564, at \*10;

*City of Philadelphia v. Sessions* (E.D. Pa. 2018) 309 F.Supp.3d 289, 331.

<sup>53</sup> *United States v. California*, *supra*, 314 F.Supp.3d at p. 1101.

<sup>54</sup> See generally *id.*; *California v. Sessions*, Case No. 3:17-cv-485-WHO (N.D. Cal.).

<sup>55</sup> *United States v. California*, *supra*, 314 F.Supp.3d at p. 1102 (declining to interpret 8 U.S.C. § 1373 to include release dates and addresses); see also *City of Philadelphia v. Sessions*, *supra*, 309 F.Supp.3d at pp. 332–33; *Steinle v. City and County of San Francisco* (N.D. Cal. 2017) 230 F.Supp.3d 994, 1015–1016.

<sup>56</sup> 45 C.F.R. § 160.103.

<sup>57</sup> Protected health information, also sometimes called “PHI,” is individually identifiable health information. PHI excludes education records covered by the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g, and employment records held by a covered entity. (45 C.F.R. §§ 160.103, 164.512, subd. (f)(1).)

<sup>58</sup> PHI’s relationship with health information is fundamental. Identifying information alone, such as personal names, residential addresses, or phone numbers, would not necessarily be designated as PHI. U.S. Department of Health and Human Services (HHS), Office for Civil Rights (OCR), *Guidance Regarding Methods for De-identification of Protected Health Information in Accordance with the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule* (Nov. 2015), available online at <https://www.hhs.gov/hipaa/for-professionals/privacy/special-topics/de-identification/index.html#protected> (last visited Sept. 3, 2018).

<sup>59</sup> 45 C.F.R. §§ 160.103; 164.514, subd. (b)(2)(l)(R) (listing as items to be removed to ensure deidentification “[a]ny other unique identifying number, characteristic, or code [...]”).

<sup>60</sup> 45 C.F.R. § 164.512, subd. (f). State laws vary, however, as to whether healthcare facilities are required to report undocumented status.

<sup>61</sup> Civ. Code, §§ 56.10-56.16.

<sup>62</sup> Civ. Code, §§ 56-56.37; see also Health & Saf. Code, § 1280.15.

<sup>63</sup> 45 C.F.R., § 164.502, subd. (g)(3).

<sup>64</sup> 45 C.F.R., § 164.502, subd. (g)(3)(A).

<sup>65</sup> 45 C.F.R., § 164.502, subd. (g)(3)(B).

<sup>66</sup> 45 C.F.R., § 164.502, subd. (g)(3)(C).

<sup>67</sup> An “unaccompanied alien child” is defined as a child who has not attained 18 years of age. (6 U.S.C. § 279(g)(2).) An “unaccompanied refugee minor” is defined as a child who has not yet attained 18 years of age. (45 C.F.R. § 400.111.) Whereas, a “child” is defined as an unmarried person under 21 years of age, for purposes of applying for an immigration benefits such as naturalization and approvals of visa petitions, issuance of visas, including special immigrant juvenile status. (8 U.S.C. § 1101(b-c).)

<sup>68</sup> 45 C.F.R. §164.520, subd. (a)(1).

<sup>69</sup> 45 C.F.R. §164.528.

<sup>70</sup> *Ibid.*

<sup>71</sup> 45 C.F.R. § 164.512, subds. (a) and (e)(1)(l).

<sup>72</sup> 45 C.F.R. § 164.512, subd. (d)

<sup>73</sup> 45 C.F.R. § 164.512, subd. (e).

<sup>74</sup> Civ. Code, § 56.05, subd. (j).

<sup>75</sup> *Ibid.*

<sup>76</sup> Civ. Code, § 56.05, subd. (m).

<sup>77</sup> Civ. Code, §§ 56.35-56.37.

<sup>78</sup> 45 C.F.R. § 160.103.

<sup>79</sup> HHS, OCR, *Guidance Regarding Methods for De-identification of Protected Health Information in Accordance with the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule* (Nov. 2015), available online at <https://www.hhs.gov/hipaa/for-professionals/privacy/special-topics/de-identification/index.html#protected> (last visited Sept. 3, 2018).

<sup>80</sup> 45 C.F.R. § 164.502(a)(2).

<sup>81</sup> Cal. Code Regs., tit. 17, §§ 2500 (reportable communicable diseases), 2593, 2641.5-2643.20 (Human Immunodeficiency Virus (HIV) infection reporting), 2800-2812 (reportable non-communicable diseases and conditions). For complete HIV-specific reporting requirements, see Cal. Code Regs., tit. 17, §§ 2641.30-2643.20, and California Department of Public Health (CDPH), Office of AIDS, *HIV Surveillance and Case Reporting Resources*, available online at [https://www.cdph.ca.gov/Programs/CID/DOA/Pages/OA\\_case\\_surveillance\\_resources.aspx](https://www.cdph.ca.gov/Programs/CID/DOA/Pages/OA_case_surveillance_resources.aspx) (last visited Sep. 3, 2018).

<sup>82</sup> See CDPH, Division of Communicable Diseases, *Reportable Diseases and Conditions*, available online at <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/Reportable-Disease-and-Conditions.aspx> (last visited Sep. 3, 2018).

<sup>83</sup> 45 C.F.R. § 164.506, subd. (c).

<sup>84</sup> 45 C.F.R. § 164.510, subd.

<sup>85</sup> 45 C.F.R. § 164.502(a)(1)(iii).

<sup>86</sup> 45 C.F.R. § 164.512, subd.

<sup>87</sup> 45 C.F.R. § 164.514(e).

<sup>88</sup> *Ibid.*

<sup>89</sup> 45 C.F.R. § 164.512, subd. (f)(1).

<sup>90</sup> 45 C.F.R. § 164.512, subd. (c)(1). Where a covered entity makes a disclosure permitted or required by law, the entity must promptly inform the individual that such a report has been or will be made, except if there is reason to believe that this information will place the individual at risk.

<sup>91</sup> 45 C.F.R. § 164.512, subd. (f)(1)(ii)(A).

<sup>92</sup> Healthcare facilities include general acute care hospitals; acute psychiatric hospitals; skilled nursing facilities; intermediate care facilities; special hospitals (dentistry or maternity); intermediate care facilities for the developmentally disabled; congregate living healthcare facilities; correctional treatment centers (i.e., healthcare facilities operated by the California Department of Corrections and Rehabilitation); and hospice facilities. Health & Saf. Code, §§ 1200, 1200.1, and 1250.

<sup>93</sup> See Morton, ICE, *Enforcement Actions at or Focused on Sensitive Locations* (Oct. 24, 2011) (available online at <https://www.ice.gov/doclib/ero-outreach/pdf/10029.2-policy.pdf> [last visited Aug. 30, 2018]); ICE, *FAQs on Sensitive Locations and Courthouse Arrests* (available online at <https://www.ice.gov/ero/enforcement/sensitive-loc> [last visited Jul. 11, 2018]); CBP, *U.S. Customs and Border Protection Enforcement Actions at or Near Certain Community Locations* (Jan. 18, 2013) (available online at [https://foiarr.cbp.gov/docs/Policies\\_and\\_Procedures/2013/826326181\\_1251/1302211111\\_CBP\\_Enforcement\\_Actions\\_at\\_or\\_Near\\_Certain\\_Community\\_Locations\\_%7BSigned\\_M.pdf](https://foiarr.cbp.gov/docs/Policies_and_Procedures/2013/826326181_1251/1302211111_CBP_Enforcement_Actions_at_or_Near_Certain_Community_Locations_%7BSigned_M.pdf) [last visited Sept. 19, 2018]); CBP, *Sensitive Locations FAQs* (available online at <https://www.cbp.gov/border-security/sensitive-locations-faqs> [last visited Sep. 19, 2018]).

<sup>94</sup> Gov. Code, § 7285.1.

<sup>95</sup> *Arizona v. United States* (2012) 567 U.S. 387, 407.

<sup>96</sup> The Immigrant Worker Protection Act contains other terms limiting cooperation with immigration enforcement officers by employers and persons acting on their behalf, including, for example, when responding to requests by immigration enforcement officers for employee records. (Gov. Code, § 7285.2.) These terms, and other legal requirements running between employers and their employees, fall outside the scope of this guide.

<sup>97</sup> See *United States v. California*, *supra*, 314 F.Supp.3d at pp. 1096, 1112 (enjoining enforcement of Government Code section 7285.1 on intergovernmental immunity grounds).

<sup>98</sup> Gov. Code, § 7285.1, subd. (a).

<sup>99</sup> *Ibid.*

<sup>100</sup> Gov. Code, § 7285.1, subd. (c).

<sup>101</sup> Gov. Code, § 7285.1, subd. (b).

<sup>102</sup> Instructions on how to develop a family preparedness plan, affidavits, and sample emergency cards for minors can be found online at [https://www.ilrc.org/sites/default/files/resources/family\\_preparedness\\_plan.pdf](https://www.ilrc.org/sites/default/files/resources/family_preparedness_plan.pdf) (last visited Aug. 9, 2018).

Appendix A  
Immigrations and Customs Enforcement "Arrest Warrant"  
(Form I-200)

**U.S. DEPARTMENT OF HOMELAND SECURITY**      **Warrant for Arrest of Alien**

File No. \_\_\_\_\_

Date: \_\_\_\_\_

**To: Any immigration officer authorized pursuant to sections 236 and 287 of the Immigration and Nationality Act and part 287 of title 8, Code of Federal Regulations, to serve warrants of arrest for immigration violations**

I have determined that there is probable cause to believe that \_\_\_\_\_  
is removable from the United States. This determination is based upon:

- the execution of a charging document to initiate removal proceedings against the subject;
- the pendency of ongoing removal proceedings against the subject;
- the failure to establish admissibility subsequent to deferred inspection;
- biometric confirmation of the subject's identity and a records check of federal databases that affirmatively indicate, by themselves or in addition to other reliable information, that the subject either lacks immigration status or notwithstanding such status is removable under U.S. immigration law; and/or
- statements made voluntarily by the subject to an immigration officer and/or other reliable evidence that affirmatively indicate the subject either lacks immigration status or notwithstanding such status is removable under U.S. immigration law.

**YOU ARE COMMANDED** to arrest and take into custody for removal proceedings under the Immigration and Nationality Act, the above-named alien.

\_\_\_\_\_  
(Signature of Authorized Immigration Officer)

\_\_\_\_\_  
(Printed Name and Title of Authorized Immigration Officer)

**Certificate of Service**

I hereby certify that the Warrant for Arrest of Alien was served by me at \_\_\_\_\_  
(Location)

on \_\_\_\_\_ on \_\_\_\_\_, and the contents of this  
(Name of Alien) (Date of Service)

notice were read to him or her in the \_\_\_\_\_ language.  
(Language)

\_\_\_\_\_  
Name and Signature of Officer

\_\_\_\_\_  
Name or Number of Interpreter (if applicable)

**Appendix B**  
**Immigrations and Customs Enforcement “Removal Warrant”**  
**(Form I-205)**

DEPARTMENT OF HOMELAND SECURITY  
U.S. Immigration and Customs Enforcement  
**WARRANT OF REMOVAL/DEPORTATION**

File No: \_\_\_\_\_

Date: \_\_\_\_\_

To any immigration officer of the United States Department of Homeland Security:

\_\_\_\_\_  
(Full name of alien)

who entered the United States at \_\_\_\_\_ on \_\_\_\_\_  
(Place of entry) (Date of entry)

is subject to removal/deportation from the United States, based upon a final order by:

- an immigration judge in exclusion, deportation, or removal proceedings
- a designated official
- the Board of Immigration Appeals
- a United States District or Magistrate Court Judge

and pursuant to the following provisions of the Immigration and Nationality Act:

I, the undersigned officer of the United States, by virtue of the power and authority vested in the Secretary of Homeland Security under the laws of the United States and by his or her direction, command you to take into custody and remove from the United States the above-named alien, pursuant to law, at the expense of:

\_\_\_\_\_  
(Signature of immigration officer)

\_\_\_\_\_  
(Title of immigration officer)

\_\_\_\_\_  
(Date and office location)

# Appendix C

## Federal Search and Seizure Warrant (Form AO 93)

AO 93 (Rev. 11/13) Search and Seizure Warrant

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**UNITED STATES DISTRICT COURT**  
for the

In the Matter of the Search of \_\_\_\_\_ )  
(Briefly describe the property to be searched )  
or identify the person by name and address) ) Case No. \_\_\_\_\_ )  
 ) )  
 ) )  
 ) )

**SEARCH AND SEIZURE WARRANT**

To: Any authorized law enforcement officer

An application by a federal law enforcement officer or an attorney for the government requests the search of the following person or property located in the \_\_\_\_\_ District of \_\_\_\_\_  
(Identify the person or describe the property to be searched and give its location):

I find that the affidavit(s), or any recorded testimony, establish probable cause to search and seize the person or property described above, and that such search will reveal (Identify the person or describe the property to be seized):

**YOU ARE COMMANDED** to execute this warrant on or before \_\_\_\_\_ (not to exceed 14 days)  
 in the daytime 6:00 a.m. to 10:00 p.m.  at any time in the day or night because good cause has been established.

Unless delayed notice is authorized below, you must give a copy of the warrant and a receipt for the property taken to the person from whom, or from whose premises, the property was taken, or leave the copy and receipt at the place where the property was taken.

The officer executing this warrant, or an officer present during the execution of the warrant, must prepare an inventory as required by law and promptly return this warrant and inventory to \_\_\_\_\_  
(United States Magistrate Judge)

Pursuant to 18 U.S.C. § 3103a(b), I find that immediate notification may have an adverse result listed in 18 U.S.C. § 2705 (except for delay of trial), and authorize the officer executing this warrant to delay notice to the person who, or whose property, will be searched or seized (check the appropriate box)  
 for \_\_\_\_\_ days (not to exceed 30)  until, the facts justifying, the later specific date of \_\_\_\_\_

Date and time issued: \_\_\_\_\_ Judge's signature \_\_\_\_\_  
City and state: \_\_\_\_\_ Printed name and title \_\_\_\_\_

Appendix D  
Federal Arrest Warrant (Form AO 442)

AO 442 (Rev. 11/11) Arrest Warrant

UNITED STATES DISTRICT COURT

for the

United States of America  
v.

Case No.

)  
)  
)  
)  
)  
)

Defendant

ARREST WARRANT

To: Any authorized law enforcement officer

YOU ARE COMMANDED to arrest and bring before a United States magistrate judge without unnecessary delay  
(name of person to be arrested) \_\_\_\_\_,  
who is accused of an offense or violation based on the following document filed with the court:

- Indictment     Superseding Indictment     Information     Superseding Information     Complaint  
 Probation Violation Petition     Supervised Release Violation Petition     Violation Notice     Order of the Court

This offense is briefly described as follows:

Date: \_\_\_\_\_

Arresting officer's signature

City and state: \_\_\_\_\_

Printed name and title

Return

This warrant was received on (date) \_\_\_\_\_, and the person was arrested on (date) \_\_\_\_\_  
at (city and state) \_\_\_\_\_.

Date: \_\_\_\_\_

Arresting officer's signature

Printed name and title

# Appendix E

## Department of Homeland Security Immigration Enforcement Subpoena (Form I-138)

1. To (Name, Address, City, State, Zip Code)	DEPARTMENT OF HOMELAND SECURITY  <b>IMMIGRATION ENFORCEMENT SUBPOENA</b> to Appear and/or Produce Records 8 U.S.C. § 1225(d), 8 C.F.R. § 287.4
Subpoena Number	
2. In Reference To	
(Title of Proceeding)	(File Number, if Applicable)

By the service of this subpoena upon you, **YOU ARE HEREBY SUMMONED AND REQUIRED TO:**

- (A)  **APPEAR** before the U.S. Customs and Border Protection (CBP), U.S. Immigration and Customs Enforcement (ICE), or U.S. Citizenship and Immigration Services (USCIS) Official named in Block 3 at the place, date, and time specified, to testify and give information relating to the matter indicated in Block 2.
- (B)  **PRODUCE** the records (books, papers, or other documents) indicated in Block 4, to the CBP, ICE, or USCIS Official named in Block 3 at the place, date, and time specified.

Your testimony and/or production of the indicated records is required in connection with an investigation or inquiry relating to the enforcement of U.S. immigration laws. Failure to comply with this subpoena may subject you to an order of contempt by a federal District Court, as provided by 8 U.S.C. § 1225(d)(4)(B).

3. (A) CBP, ICE or USCIS Official before whom you are required to appear	(B) Date
Name	
Title	
Address	(C) Time <input checked="" type="checkbox"/> a.m. <input type="checkbox"/> p.m.
Telephone Number	

4. Records required to be produced for inspection



If you have any questions regarding this subpoena, contact the CBP, ICE, or USCIS Official identified in Block 3.

5. Authorized Official

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Title)

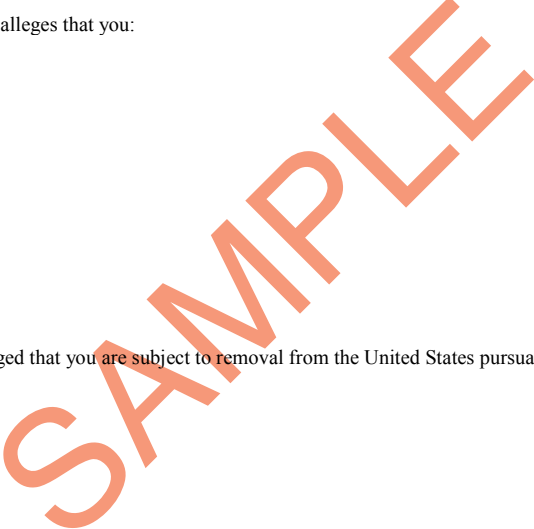
\_\_\_\_\_  
(Date)





# Appendix G

## Notice to Appear Form (Form I-862)

<b>U.S. Department of Homeland Security</b>	<b>Notice to Appear</b>
<hr/> <hr/> <b>In removal proceedings under section 240 of the Immigration and Nationality Act</b>	
	File No: _____
In the Matter of:	
Respondent: _____ currently residing at:	
(Number, street, city, state and ZIP code)	(Area code and phone number)
<input type="checkbox"/> 1. You are an arriving alien.	
<input type="checkbox"/> 2. You are an alien present in the United States who has not been admitted or paroled.	
<input type="checkbox"/> 3. You have been admitted to the United States, but are deportable for the reasons stated below:	
The Department of Homeland Security alleges that you:	
	
On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:	
<input type="checkbox"/> This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution.	
<input type="checkbox"/> Section 235(b)(1) order was vacated pursuant to : <input type="checkbox"/> 8 CFR208.30(f)(2) <input type="checkbox"/> 8CFR235.3(b)(5)(iv)	
YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at: _____	
(Complete Address of Immigration Court, Including Room Number, if any)	
on _____ at _____ to show why you should not be removed from the United States based on the	
(Date)	(Time)
charge(s) set forth above.	
	_____ (Signature and Title of Issuing Officer)
Date: _____	_____ (City and State)
<b>See reverse for important information</b>	
Form I-862 (Rev. 08/01/07)	

## Appendix H

### Quick Reference Guide for Healthcare Facility Personnel

#### *What Should You Do if an Immigration Enforcement Officer Comes to Your Healthcare Facility?*

1. As soon as possible, notify the designated healthcare facility administrator (the person tasked with responding to immigration enforcement actions at the healthcare facility) of any request (including subpoenas, petitions, complaints, warrants, or court orders) by an immigration enforcement officer to access a healthcare facility or a patient, or any request for the review of [healthcare facility] documents.
2. Advise the officer that before proceeding with his or her request, you must first notify and receive direction from a designated healthcare facility administrator.
3. Ask to see, and make a copy of or note, the officer's credentials (name and badge number). Also ask for and copy or note the telephone number of the officer's supervisor.
4. Ask the officer to explain the purpose of the officer's visit, and note the response.
5. Ask the officer to produce any documentation that authorizes healthcare facility access.
6. Make copies of all documents provided by the officer.
7. Decline to answer questions posed by the officer and direct him or her to speak to the designated healthcare facility administrator.
8. State that the healthcare facility does not consent to entry of the healthcare facilities or portions thereof.
9. Without expressing consent, respond according to the requirements of the documentation. If the officer has:
  - ✓ An ICE administrative "warrant" (see samples in Appendix, items A & B): Immediate compliance is not required. Inform the officer that the healthcare facility cannot respond to the warrant until after it has been reviewed by a designated administrator. Provide a copy of the warrant to the designated administrator as soon as possible.
  - ✓ A federal judicial warrant (either a search-and-seizure warrant or an arrest warrant; see samples in Appendix, items C & D): Prompt compliance usually is required, but where feasible, consult with legal counsel before responding.
  - ✓ A subpoena for the production of documents or other evidence (see samples in Appendix, items E & F): Immediate compliance is not required. Inform the officer that the healthcare facility cannot respond to the subpoena until after it has been reviewed by a designated administrator. Give your copy of the subpoena to the designated administrator or legal counsel as soon as possible.
  - ✓ A notice to appear (see sample in Appendix, item G): This document is not directed at the healthcare facility. There is no obligation to deliver this document or facilitate service to the person named in the document. If you get a copy of the document, give it to your designated healthcare facility administrator as soon as possible.
10. Document the officer's actions in as much detail as possible after he or she enters healthcare facility premises, but without interfering with the officer's movements.
11. If the officer orders staff to provide immediate access to facilities, comply with the officer's order and also immediately contact a designated administrator. Do not attempt to physically interfere with the officer, even if the officer appears to be acting without consent or appears to be exceeding the purported authority given by a warrant or other document. If an officer enters the premises without authority, [healthcare facility] personnel shall simply document the officer's actions while at the facility.

12. [Healthcare facility] staff should document the officer's actions while in [healthcare facility] premises in as much detail as possible, but without interfering with the officer's movements.
13. [Healthcare facility] staff should complete an incident report that includes the information gathered as described above and the officer's statements and actions.