Executive Board

DRAFT_UC Health Policy Responding to Immigration Enforcement Issues Involving Patients in UC Health Facilities_031319

Table of Contents

Exec Divisional Response - UC Health Policy Responding to Immigration Enforcement_Bristow to May_5_15_19 1

---Robert May 1

Exec DRAFT_UC Health Policy Responding to Immigration Enforcement Issues Involving Patients in UC Health Facilities_031319 2

---Responding to Immigration Enforcement Issues Involving Patients in UC Health Facilities - INTERIM Policy 2

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Robert May
Chair, Academic Council

RE: Systemwide "Limited Review": DRAFT_UC Health Policy Responding to Immigration Enforcement Issues Involving Patients in UC Health Facilities

Dear Robert,

The Executive Board of the UCLA Academic Senate discussed the DRAFT UC Health Policy Responding to Immigration Enforcement Issues Involving Patients in UC Health Facilities at its meeting on May 9, 2019. Due to the limited review and the short turnaround time, the Executive Board was unable to solicit comments from standing committees of the Senate.

The Senate recognizes the importance of trying to balance compliance with the demands of immigration officers while still providing health and wellness to patients. The request that California public institutions only cooperate with immigration enforce within limits set by the California Values Act puts necessarily places units, such as the hospitals, in a difficult situation. Although we do not feel in a position to opine on the specific ways that the policy attempts to mediate these conflicting requirements, we appreciate the University's efforts to provide guidance to employees and protect patients' rights within the context of competing legal demands.

In Section III.F.2. states "Health facility personnel shall immediately notify the minor patient's parent or guardian if a law enforcement officer requests or gains access to the 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." Several members recommended that the policy be extended and that health facility personnel notify anyone whose records are accessed, not just minors.

The Executive Board appreciates the opportunity to opine. Please feel free to contact me should have any questions.

Sincerely,



Joseph Bristow
Chair, UCLA Academic Senate

cc: Hilary Baxter, Executive Director, Systemwide Academic Senate
Sandra Graham, Immediate Past Chair, UCLA Academic Senate
Michael Meranze, Vice Chair/Chair-Elect, UCLA Academic Senate
Michael LaBriola, Principal Policy Analyst, Systemwide Academic Senate
Linda Mohr, Chief Administrative Officer, UCLA Academic Senate

Responding to Immigration Enforcement Issues Involving Patients in UC Health Facilities - INTERIM Policy

Responsible Officer:	EVP – UC Health
Responsible Office:	HS – UC Health
Issuance Date:	TBD
Effective Date:	TBD
Last Review Date:	
Scope:	This Policy applies to health facilities as defined in California Health and Safety Code section 1250, clinics as defined in California Health and Safety Code sections 1200 and 1200.1, and substance abuse treatment facilities operated by the University.

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TABLE OF CONTENTS

I. POLICY SUMMARY 2
II. DEFINITIONS 2
III. POLICY TEXT 3
IV. COMPLIANCE / RESPONSIBILITIES 7
V. PROCEDURES 7
VI. RELATED INFORMATION 7
VII. FREQUENTLY ASKED QUESTIONS 8
VIII. REVISION HISTORY 8

I. POLICY SUMMARY

The California Values Act (Cal. Gov. Code § 7284 et seq.), which went into effect on January 1, 2018, requires 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 and facilities, including "health facilities operated by the state or a political subdivision of the state." The Act further requires that all such health facilities implement these policies or equivalent policies, and encourages "all other organizations and entities that provide services related to physical or mental health and wellness," including the University of California, to adopt the model policies.

To satisfy this mandate, on October 1, 2018, the California Attorney General's Office published immigration enforcement-related guidance and model policies for health facilities, entitled "Promoting Safe and Secure Healthcare Access for All: Guidance and Model Policies to Assist California's Healthcare Facilities in Responding to Immigration Issues." The model policies address information sharing, responding to immigration enforcement presence at health facilities, providing information on patient rights (including immigrant patient rights) and remedies, monitoring and receiving visitors, and notifying minor patients' parents of immigration law enforcement actions.

Given the California Values Act's requirements that the model policies limit immigration enforcement assistance "to the fullest extent possible consistent with federal and state law" and all State- and local government-operated health facilities implement them, as well as UC Health's commitment to creating the safest environment possible for all patients to obtain medical care regardless of their immigration status, UC Health has chosen to adopt the Attorney General's model policies as set forth in this Policy while maintaining flexibility for UC health facilities to implement them consistent with local conditions.

In addition to the model policies, the Attorney General's guidance "[p]rovides policy recommendations that comply with federal and state laws, and that may mitigate disruptions from immigration enforcement actions at healthcare facilities[.]" Health facilities may evaluate whether or not to adopt the Attorney General's policy recommendations in their locally-established implementation policies and procedures. This Policy does not require adoption of these recommendations.

II. DEFINITIONS

As provided in Cal. Government Code section 7284.4, the following (selected) definitions apply to this Policy:

***Health facility*:** Health 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.

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***Immigration enforcement*:** Includes 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.

***Judicial warrant*:** A warrant based on probable cause for a violation of federal criminal immigration law and issued by a federal judge or a federal magistrate judge that authorizes a law enforcement officer to arrest and take into custody the person who is the subject of the warrant.

III. POLICY TEXT

A. Designated Health Facility Administrator

Health facilities shall designate an administrator to handle immigration issues, ensuring staff members and relevant volunteers are adequately dealing with immigration enforcement inquiries and requests involving patients, dissemination of information to patients, and compliance with internal procedures.

B. Responding to Information Requests from Immigration Enforcement Officers

1. Health facilities should implement policies that are protective of patient information, under which health facility staff members and volunteers disclose patient information only when required or expressly authorized to do so by all applicable laws.

2. Health facilities and their designated health facility administrators should consult legal counsel to help determine when and to what extent they are required to comply with administrative requests involving protected health information.

3. For responding to information requests issued by immigration enforcement officers, health facilities should develop a verification procedure to determine and document:

    a. The specific agency the requester is from;

    b. Whether the requester has law enforcement power;

    c. The specific types of protected health information the requester seeks; and

    d. The reason the requester wants the information.

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4. Health facilities 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 health facility administrator to ensure that correct protocols are followed.

5. Health facilities 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 health facility's privacy officer or medical records department, to assure that information is disclosed appropriately under all applicable laws. If possible, health facilities should consult with competent legal counsel each time on such matters.

6. If health facility is required under applicable laws to disclose patient information to immigration enforcement authorities without the patient's authorization in compliance with a court order or judicial warrant, then the health 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 Health Insurance Portability and Accountability Act Privacy Rule.

C. Responding to Immigration Enforcement Officers' Physical Presence at Health Facilities

Health facilities shall develop procedures for responding to an officer present at the health facility for immigration enforcement purposes, including the following:

1. As soon as possible, health facility personnel shall notify the designated health facility administrator of any request (including subpoenas, petitions, complaints, warrants, or court orders) by an immigration enforcement officer to access a health facility or a patient, or any request for the review of health facility documents.

2. Advise the officer that before proceeding with his or her request, health facility personnel must first notify and receive direction from the designated health facility administrator. Decline to answer questions posed by the officer. Advise the officer that the health facility is not obstructing the officer's process and direct him or her to speak to the designated health facility administrator.

3. Ask to see, and make a copy of or note, the officer's credentials (name and badge number or identification card). 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.

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5. Ask the officer to produce any documentation that authorizes health facility access.

6. Make copies of all documents provided by the officer.

7. State that the health facility does not consent to entry of the health facility or portions thereof.

8. Without expressing consent, respond according to the requirements of the officer's documentation and consistent with all applicable laws. For example, unless otherwise provided by laws applying to patient information at the health facility, if the officer has:

    a. An ICE administrative "warrant": Immediate compliance is not required. Inform the officer that the health 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.

    b. A federal judicial warrant (either a search-and-seizure warrant or an arrest warrant): Prompt compliance usually is required, but, where feasible, staff should consult with legal counsel before responding.

    c. A subpoena for production of documents or other evidence: Immediate compliance is not required. Inform the officer that the health facility cannot respond to the subpoena until after it has been reviewed by a designated administrator. Give a copy of the subpoena to the designated administrator or legal counsel as soon as possible.

    d. A notice to appear: This document is not directed at the health facility. Health facility staff is under no obligation to deliver or facilitate service of this document to the person named in the document. If a copy of the document is received, give it to the designated health facility administrator as soon as possible.

9. Document the officer's actions while in health facility premises in as much detail as possible, but without interfering with the officer's movements.

10. If the officer orders staff to provide immediate access to facilities, health 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, health facility personnel shall simply document the officer's actions while at the facility.

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11. Health facility staff should complete an incident report that includes the information gathered as described above and the officer's statements and actions.

D. Information on Patient Rights and Responsibilities

1. Health facilities should post and issue general information policies telling patients of their privacy rights and remedies.

    a. Health facilities should give assurances that they will not release information to third parties for immigration enforcement purposes, except as required or expressly authorized by law or court order.
    b. Health facilities 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 the Confidentiality of Medical Information Act).

2. Health facilities should post information guides regarding immigrant patient rights, including the right to remain silent. While immigration enforcement at health facilities is limited by U.S. Immigration and Customs Enforcement ICE and U.S. Customs and Border Protection "sensitive-locations" policies, immigration agents may enter a public area of a health facility without a warrant or the facility's consent and may question any person present (with that person's consent).

E. Monitoring and Receiving Visitors

1. No outsider—which would include immigration enforcement officers—shall enter or remain on a health facility's grounds without having registered with the health facility. 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 health facility's designee:

    a. Name, address, occupation;

    b. Age, if less than 21 years;

    c. Purpose in entering the health facility; and

    d. Proof of identity.

    (Try to obtain this information even from a visitor or officer with a court order.)

2. Health facilities shall post signs at their entrances to notify outsiders of the hours of operation and requirements for registration.

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3. Health facility personnel shall report entry by immigration enforcement officers to the designated health facility administrator.

F. Notification of Immigration Law Enforcement Actions Involving Minor Patients

1. Health 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 health information) before a minor patient can be interviewed or searched by any officer seeking to enforce the civil immigration laws at the health facility, unless the officer presents a valid, effective warrant signed by a judge, or presents a valid, effective court order.
2. Health facility personnel shall immediately notify the minor patient's parent or guardian if a law enforcement officer requests or gains access to the 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.

IV. COMPLIANCE / RESPONSIBILITIES

Health facilities are responsible for designating administrators to handle immigration issues (the "designated health facility administrator"). Designated health facility administrators are responsible for ensuring compliance with this Policy and locally established implementation policies and procedures.

V. PROCEDURES

UC health facilities must adopt local policies and procedures addressing implementation of this Policy. All such policies and procedures must be consistent with this Policy and with local conditions and existing requirements applicable to the health facilities and health information. Health facilities should develop and post their local implementation policies and procedures, if at all possible in the languages commonly spoken in the local community, and make these policies accessible on their websites. Staff, including any relevant volunteers, should be well-trained in these policies and procedures.

VI. RELATED INFORMATION

- California Attorney General, Promoting Safe and Secure Healthcare Access for All: Guidance and Model Policies to Assist California's Healthcare Facilities in Responding to Immigration Issues (October 2018): https://oag.ca.gov/sites/all/files/agweb/pdfs/immigration/healthcare-guidance.pdf

- California Values Act, Cal. Gov. Code § 7284 et seq. (especially §§ 7284.4 & 7284.8):

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http://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=GOV&division=7.&title=1.&part=&chapter=17.25.&article

- UCOP Office of the General Counsel, Frequently Asked Questions for University Employees About Possible Federal Immigration Enforcement Actions on University Property: https://www.universityofcalifornia.edu/sites/default/files/frequently-asked-questions-federal-immigration-enforcement-uc.pdf

- University of California Statement of Principles in Support of Undocumented Members of the UC Community (see "UC MEDICAL FACILITIES"): https://www.universityofcalifornia.edu/sites/default/files/Statement-of-Principles-in-Support-of-Undocumented-Members-of-UC.pdf

VII. FREQUENTLY ASKED QUESTIONS

Not applicable.

VIII. REVISION HISTORY

New policy issued: [Date]

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