

State Immigration Initiatives Affecting Access to Health Care

Summary

State actions on immigration have intensified the national debate on immigration reform. Some of the more controversial laws that were enacted recently – in Alabama, Arizona, Georgia, Indiana, South Carolina and Utah – include provisions that require law enforcement to attempt to determine the immigration status of a person involved in a lawful stop; allow state residents to sue state and local agencies for noncompliance with immigration enforcement; require state and local verification of immigration status of persons applying for public benefits; make it a state violation for failure to carry an alien registration document; and criminalizes the harboring or transporting of illegal immigrants. Alabama’s law goes even further and requires schools to verify students’ immigration status.

Court challenges have been filed against the Alabama, Georgia, and Indiana laws; and Utah’s HB 497 (the section of the law that addresses law enforcement, identification, and public benefits) citing civil rights concerns and federal preemptive rights which gives the U.S. government control of immigration enforcement.

How could these laws affect patient care?

The requirement in these laws that state and local agencies verify the lawful immigration status of a person in order for that person to receive public benefits (except in the case of emergency medical treatment, immunizations, prenatal care, and treatment of communicable diseases); and the laws’ prohibition of anyone knowingly transporting or harboring an “alien,” could affect physicians, hospitals and other health care providers and patients in these states in several ways:

- Health care providers working in a public institution, such as, universities, community health centers, or providers that are publicly funded could be required to verify the lawful immigration status of persons applying for public benefits such as Medicare, Medicaid, and the Children's Health Insurance Program (CHIP) or others;
- Prospective patients may not seek needed medical care for fear of being reported to immigration authorities which could, in turn, endanger the public health;
- These laws may conflict with physician-patient confidentiality and privacy of medical records obligations;
- Hospitals may have to change their services or administrative policies to comply with the verification requirements;
- Physicians, hospitals and other providers’ workload may increase if they have to collect or verify immigration status; and
- Physicians, hospitals, and private persons may be prohibited from “harboring” (admitting a patient to a hospital) or transporting a patient (except when a patient is being transported by an ambulance in an emergency situation) if they know that the patient is an unlawful immigrant.

As health issues relating to immigration status increases in focus, health care providers may find themselves in a precarious position where their ethical code of conduct conflicts with that of state and/or federal laws. ACP's position paper "National Immigration Policy and Access to Health Care" outlines ACP's stance on access and delivery of care to immigrants. Although ACP does not have policy on the broader immigration policies of these states, the College does have policy against any laws that would require physicians or hospitals to report a person's immigration status, and/or criminalize activities like treating and transporting undocumented persons to a hospital. ACP policy also specifically calls for national legislation to address issues relating to immigration and health care and for that reason, the College generally does not favor state-specific legislation on immigration policies as they affect access to health care.

Specifically, ACP chapters should consider taking a position on proposed or enacted state legislation to ensure that it is consistent with ACP policies. Although ACP's policy recommendations are presented in the context of federal legislation, the underlying principles and positions (excerpted from ACP's position paper) are applicable as well to state legislation:

- Access to health care for immigrants is a national issue and needs to be addressed with a national policy. Individual state laws will not be adequate to address this national problem and will result in a patchwork solution.
- Access to health care should not be restricted based on immigration status, and people should not be prevented from paying out-of-pocket for health insurance coverage.
- U.S.-born children of parents who lack legal residency should have the same access to health coverage and government-subsidized health care as any other U.S. citizen.
- Immigration policy should recognize the public health risks associated with undocumented persons not receiving medical care because of concerns about criminal or civil prosecution or deportation.
 - Increased access to comprehensive primary care, prenatal care, injury prevention initiatives, toxic exposure prevention, and chronic disease management may make better use of the public health dollar by improving the health status of this population and alleviating the need for costly emergency care.
 - Immigration policy should encourage all residents to obtain clinically effective vaccinations and screening for prevalent infectious diseases.
- Physicians and other health care professionals have an ethical and professional obligation to care for the sick. Immigration policy should not interfere with the ethical obligation to provide care for all.
- Immigration policies should not foster discrimination against a class or category of patients in the provision of health care.

ACP is calling for a national immigration policy on health care that balances:

- The need for a country to have control over whom it admits within its borders and to enact and implement laws designed to reduce unlawful entry.
- The need for the U.S. to differentiate its treatment of persons who fully comply with the law in establishing legal residency from that of persons who break the law in the determination of access to subsidized health coverage and treatment.
- The concern that unlawful residents may not pay state or federal income taxes but could receive care that is subsidized by legal residents who lawfully pay their income taxes.
- Recognition that residents who lack legal documentation are still likely to access health care services when ill, especially in emergency situations, and that hospitals have an ethical and legal obligation under Emergency Medical Treatment and Active Labor Act (EMTALA) to treat such persons, and physicians are ethically responsible to take care of them.
- Recognition that society has a public health interest in ensuring that all residents have access to health care, particularly for communicable diseases, and that delayed treatment for both communicable and non-communicable diseases may be costly and can endanger the rest of the population.
- Recognition that persons who delay obtaining care because they cannot document legal residency are likely to generate higher health care costs that are passed onto legal residents and taxpayers, through higher premiums and higher taxes.
- Recognition that any policy intended to force the millions of persons who now reside unlawfully in the U.S. to return to their countries of origin through arrest, detention, and mass deportation could result in severe health care consequences for affected persons and their family members (including those who are lawful residents but who reside in a household with unlawful residents—such as U.S.-born children whose parents are not legal residents), creates a public health emergency, results in enormous costs to the health care system of treating such persons (including the costs associated with correctional health care during periods of detention), and is likely to lead to racial and ethnic profiling and discrimination.

Resources

ACP Position Paper: National Immigration Policy and Access to Health Care
http://www.acponline.org/advocacy/where_we_stand/policy/natl_immigration.pdf

National Conference of State Legislatures: 2011 Immigration-Related Laws, Bills and Resolutions in the States <http://www.ncsl.org/default.aspx?TabId=13114>

National Conference of State Legislatures: Immigrant Policy Project
<http://www.ncsl.org/default.aspx?TabId=22529>