

# Knowledge Is Key for Safety-Net Providers

UNDOCUMENTED PATIENTS MAY NOT KNOW  
THEIR HEALTH-RELATED AND LEGAL RIGHTS



A Guide  
for Group  
or Personal  
Reflection



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CHA's July-August edition of *Health Progress* magazine focuses on immigrants and refugees and their current at-risk status. It includes an article by Nancy Berlinger, a research scholar at The Hastings Center in Garrison, N.Y., who co-directs the Undocumented Patients project; Laura Guidry-Grimes, a clinical ethicist at Medstar Washington (D.C.) Hospital Center and assistant professor in the Division of Medical Humanities at the University of Arkansas for Medical Sciences, in Little Rock; and Adira Hulkower, a bioethics consultant at Montefiore Medical Center, Bronx, N.Y.<sup>1</sup> Titled, *Knowledge Is Key for Safety-Net Providers: Undocumented Patients May Not Know Their Health-Related and Legal Rights*, the article fleshes out the case and how-to's for educating administration, staff and clinicians to take practical steps to protect the basic rights of undocumented patients, manage typical challenges in their care and strengthen the safety net.

In the pages that follow a process is offered to engage leaders around the themes of the article. The process is designed to be used flexibly by individuals or groups as a reflection, as part of personal formation and as an exercise between in-person sessions for participants in senior leader formation programs. We hope that it will be useful to executives, managers, clinical and non-clinical associates, board members, sponsors, ethics committee members and others.

### **Suggested Reflection Process**

1. Begin your reflection with prayer – one is provided.
2. Read the Executive Summary of the article.
3. Review the Questions for Reflection, noting their concepts, but not answering them yet.
4. Read the full article.
5. Return to the Questions for Reflection:
  - A. Review the questions after reading the entire article.
  - B. Take time to consider each question, jotting down any responses, considerations or questions that come to you.
  - C. If you are completing this as an individual, you might consider taking time to discuss your responses with a colleague – get her or his thoughts on the questions; see if the

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<sup>1</sup> The authors acknowledge the assistance of Norine McGrath, MD, FACEP, director of the John J. Lynch, MD Center for Ethics at Medstar Washington Hospital Center, who read and provided comments on the article in draft.

person agrees with your thoughts or has different viewpoints to offer. If you are discussing as part of a group, take your written notes with you to the meeting. For group use, it could be helpful to assign the reading and then convene either by phone or in person for group discussion.

6. Close with prayer – a concluding reflection is provided.

The goal of this and previous reflection guides is to offer a personal formation tool at your fingertips. Because we want it to best suit your needs, please let CHA know if it is useful in your ongoing formation, as well as any changes, suggestions or insights about it that you would like to share. It is a resource for the ministry, and we hope that it is valuable and user friendly. To share comments, please contact Mary Ann Steiner, editor, *Health Progress*, at [masteiner@chausa.org](mailto:masteiner@chausa.org).

## Opening Prayer

Lord Jesus, when you multiplied the loaves and fishes, you provided more than food for the body, you offered us the gift of yourself, the gift that satisfies every hunger and quenches every thirst! Your disciples were filled with fear and doubt, but you poured out your love and compassion on the migrant crowd, welcoming them as brothers and sisters.

Lord Jesus, today you call us to welcome the members of God's family who come to our land to escape oppression, poverty, persecution, violence and war. Like your disciples, we too are filled with fear and doubt and even suspicion. We build barriers in our hearts and in our minds.

Lord Jesus, help us by your grace,

- To banish fear from our hearts, that we may embrace each of your children as our own brother and sister;
- To welcome immigrants and refugees with joy and generosity, while responding to their many needs;
- To realize that you call all people to your holy mountain to learn the ways of peace and justice;
- To share of our abundance as you spread a banquet before us;
- To give witness to your love for all people, as we celebrate the many gifts they bring.

We praise you and give you thanks for the family you have called together from so many people. We see in this human family a reflection of the divine unity of the one Most Holy Trinity in whom we make our prayer: Father, Son, and Holy Spirit. Amen.

- "Prayer for Migrants and Refugees," from the United States Conference of Catholic Bishops

## Executive Summary

Safety-net hospitals, community health centers and health programs serving low-income populations almost inevitably will encounter undocumented immigrants. Knowing how this vulnerable group is similar to and different from other low-income patient populations is an important part of planning for and providing good care. A health care facility's administration, staff and clinicians should be educated and ready to take practical steps to protect the basic rights of these patients, manage typical challenges in their care and strengthen the safety net.

Safety-net health care systems are major employers. They have broad educational responsibilities to staff members, to professionals employed under contract and to some nonstaff such as community physicians with admitting privileges. All employees should recognize and agree to respect the duties of a health care institution to its patients, including their civil rights as persons.

Professionals responsible for employee education should ensure that all employees have opportunities to learn about the health-related rights and constitutional rights of undocumented immigrants and other noncitizens under current U.S. law. It is particularly important to clarify common misunderstandings – for example, medical records privacy protections apply to all patients regardless of immigration status, and knowing or suspecting that a patient is undocumented creates no obligation to inform federal immigration authorities. Staff members should know where to turn for answers if questions arise in everyday work.

## Questions for Reflection

Authors Nancy Berlinger, Laura Guidry-Grimes and Adira Hulkower have written about the concerns of undocumented patients who come to safety net hospitals and the ethical practice expected of clinicians and other staff who care for them.

What protocols does your ministry have in place to secure necessary information without causing undocumented patients to reveal more than they want to?

One of the biggest concerns is follow-up care, which can place undocumented patients in situations outside their comfort zone. Can you describe practices in place or ideas to be implemented that would help undocumented persons follow through with ongoing care?

How does your ethics committee serve immigrant patients in setting policies and preparing for situations that will challenge resource allotment and extended care decisions? How is this information transmitted to all staff and volunteers?



# Knowledge Is Key for Safety-Net Providers

## UNDOCUMENTED PATIENTS MAY NOT KNOW THEIR HEALTH-RELATED AND LEGAL RIGHTS

NANCY BERLINGER, PhD, LAURA GUIDRY-GRIMES, PhD and ADIRA HULKOWER, JD

Immigration policy and health care — what's the connection? Safety-net hospitals, community health centers and health programs serving low-income populations almost inevitably will encounter undocumented immigrants:

- As patients or prospective patients
- As community members for whom health care access is an important avenue for integration into American society
- As persons whose health-related legal rights may be overlooked, imperiled or difficult to use

Knowing how this vulnerable group is similar to — and different from — other low-income patient populations is an important part of planning for and providing good care. A health care facility's administration, staff and clinicians should be educated and ready to take practical steps to protect the basic rights of these patients, manage typical challenges in their care and strengthen the safety net. In the words of Rob Marlin, a Cambridge, Mass., physician who trains colleagues to care for their immigrant patients, physicians and safety-net institutions need to have “greater knowledge of immigration policy to take care of our patients ... [policy] is no longer a spectator sport.”<sup>1</sup>

Federal immigration policies currently put a priority on enforcement and deportation via the operations of U.S. Immigration and Customs Enforcement (ICE). Undocumented immigrants try to avoid situations where their status might be scrutinized, including contact with police, secu-

rity guards and other authority figures. Because security and information-gathering are features of safety-net health care facilities, immigrants may avoid the settings. “Many undocumented immigrants and their families therefore go without needed care, to their detriment and sometimes that of others, as in the case of a woman with syphilis who is pregnant with a future U.S. citizen,” wrote Kathleen R. Page, MD, and Sarah

### ABOUT THE AUTHORS

Laura Guidry-Grimes, PhD, and Adira Hulkower, JD, are clinical ethicists with backgrounds in urban safety-net hospitals. Nancy Berlinger, PhD, is a health care ethicist who studies health care access for undocumented patients. They have drawn on their experiences with questions that often arise in challenging cases involving how to provide medically appropriate care to a low-income patient excluded from public insurance and other key federally funded benefits.

The authors' aim is to outline practical steps that clinician educators, directors of clinical services and safety-net administrators can take to learn about and care for undocumented immigrants as a local patient population.



Polk, MD, MH, in a March 2017 *New England Journal of Medicine* article.<sup>2</sup> The pregnant woman had been diagnosed at the Baltimore City Health Department and urged to return to the clinic for treatment. She agreed, but didn't show up. An outreach team contacted her, and she explained that she had gone to the clinic but saw an armed security guard, and "because I have no papers, I left."

### SAFETY-NET OBLIGATIONS

Safety-net institutions — including public hospitals and clinics, nonprofit community health centers such as Federally Qualified Health Centers and nonprofit hospitals with emergency departments — share a basic duty of care to patients who lack health care access for reasons that include lack of insurance.

Federal law provides some health care access through the Emergency Medical Treatment and Active Labor Act (EMTALA) of 1987.<sup>3</sup> This law ensures that all patients who come to an emer-

**An undocumented patient may choose to directly disclose his or her immigration status to a trusted health care professional. Being undocumented is often a highly stressful experience.**

gency department for medical care will receive appropriate medical screening, and if found to be experiencing a medical emergency (or in active labor), they will be treated until their condition is stable. Hospitals can apply to state emergency Medicaid programs for reimbursement for specified emergency treatments provided to uninsured patients admitted under EMTALA. Also, federal funding of FQHCs supports low-cost primary care for patients who lack insurance.

But undocumented immigrants are broadly excluded from federally funded insurance programs such as Medicare, Medicaid, the Child Health Insurance Program and Affordable Care Act insurance subsidies. Because of these exclusions, an uninsured patient who is undocumented has severely limited — or nonexistent — access to outpatient diagnostic, specialty, rehabilitative, chronic and palliative services, including supplies and equipment, even when the need for these ser-

vices follows from successful emergency or primary treatment.<sup>4</sup>

State Medicaid programs and local (city or county) health care systems can invest in services for undocumented uninsured immigrants to partially compensate for the federal insurance exclusions. These programs vary widely across states and cities. A few states, such as California, New York and Massachusetts, have enacted laws and policies to provide access to state-funded insurance to eligible undocumented immigrants.<sup>5</sup> Some major cities, including New York, Los Angeles and San Francisco, have programs that offer care coordination plus low-cost primary care to low-income uninsured residents.<sup>6</sup>

### DO PROVIDERS NEED TO ASK ABOUT STATUS?

There usually is no medical need or legal requirement to ask about a patient's immigration status before initiating medical treatment. However, in the American health care system, asking about a patient's insurance status is typical, including after the initiation of emergency treatment.

When a patient lacks proof of insurance from a private insurer or a public insurer such as Medicare or Medicaid, the next step often is for a medical social worker or clinical case manager to determine whether the patient is eligible for public insurance and to help him or her sign up, or explore other payment arrangements. Clarifying that an uninsured patient is ineligible for Medicaid or other insurance is a necessary step before applying to a state's emergency Medicaid program for reimbursement.

That's when the patient's immigration status may come to light. Undocumented immigrants (and often, other immigrants) are wary about being asked for information that may reveal immigration status. Therefore, providers responsible for discussing payment with patients should be prepared to explain why they are asking about insurance eligibility, namely, with the goal of securing health care access.

Also, an undocumented patient may choose to directly disclose his or her immigration status to a trusted health care professional. Being undocumented is often a highly stressful experience. Safety-net hospitals can draw on their own social workers and case managers as resources in clinician education. These staff members can





offer firsthand descriptions of how they provide psychological support and talk with uninsured patients to determine if they are eligible for Medicaid or other insurance, including when immigration status is a relevant factor. Such information can help other clinicians understand the undocumented patient's perspective and concerns.

Certified medical interpreters may be additional resources for professional education, because they are frequently involved in the care of immigrant patients and their families. In turn, interpreters may benefit from attending clinician education about the rights, needs and concerns of immigrant patient populations.

Education is key to helping care providers understand undocumented patients' needs and rights — for example, how much information about immigration should be included in a patient's chart, given that charts potentially are discoverable.<sup>7</sup> Education is equally important for helping providers recognize and navigate their own questions and concerns regarding this vulnerable patient population.

#### **Safety-net physicians, nurses and other clinical professionals should:**

- Gain a working knowledge of how health care is financed for low-income patients who are excluded from federally funded insurance programs because they are not “lawfully present” in the United States
- Understand how questions about insurance coverage may be interpreted by immigrants, and when it may be necessary and appropriate to discuss immigration status
- Learn from social workers, clinical case managers and interpreters

#### **COPING WITH POLICY CONSTRAINTS**

Cases involving undocumented patients can elicit staff frustration and distress when medical needs could be resolved or more effectively managed if patients had access to some benefit available to other low-income patients. These feelings can trigger workaround behaviors, such as “tailoring the chart” or “bending the rules” to secure resources for a patient. Safety-net professionals may benefit from periodic opportunities to discuss typical (“this happens every day”) and less common problems. Talking openly about cases involving undocumented patients and the emo-

tions the cases create among caregivers can help safety-net professionals acknowledge their own moral and other subjective intuitions about individual patients or types of cases.

Clinical and administrative professionals in safety-net settings also need access to reliable, regularly updated sources of information on the legal rights of their undocumented patients.<sup>8</sup> Two good information sources are the National Immigration Law Center and the Undocumented Patients Project of The Hastings Center, a non-partisan bioethics research institution based in Garrison, N.Y.

The National Immigration Law Center's website offers detailed, plain-language information on undocumented patients' rights, plus guidance for health care providers on dealing with immigration officials and law enforcement.<sup>9</sup>

The Hastings Center's “Quick Guide” to help professionals get up to speed on state and local issues and services relevant to the care of undocumented immigrants includes information about medical-legal partnerships available in 41 states.<sup>10</sup> Medical-legal partnership attorneys provide legal services to patients and frequently collaborate with health care professionals on immigration issues.

#### **GUIDANCE ON RESOURCE ALLOCATION**

To avoid raising unrealistic expectations among low-income patients and their families — including individuals who are undocumented — safety-net professionals deserve clarity about what a system will provide based on patient need. Which resources are allocated case by case, and what is the process for allocating the resources?

#### **Safety-net institutions should:**

- Provide employees, patients, and families with clear and accurate information about the civil and health-related rights of undocumented immigrants
- Clarify misunderstandings that may impede health care access
- Have a plan for responding to immigration enforcement

For example, will a hospital agree to retain a seriously ill patient so that the patient can receive a life-sustaining treatment that would be difficult

or impossible to obtain in a non-hospital setting due to lack of insurance?

How should cancer care for undocumented immigrants be planned?

Clarifying typical as well as occasional problems helps clinical leaders, starting with unit-level managers and chiefs of clinical services, to frame potential institutional solutions and make the case for these solutions in a coordinated way. Even if solutions remain elusive, such discussion can help point toward opportunities for improvement and reform.

A trustworthy facilitator is essential so that clinicians can speak freely and so they can safely challenge one another's judgments and actions. They also should be willing to take clinical insights and recommendations for the appropriate care of undocumented immigrants up the line if some typical problem has a feasible institutional solution.

For example, clinicians' observations and informal data collection may suggest a better way for a local public health system to invest in services or how to better align a state's emergency Medicaid provisions with patients' needs. Other benefits of a shared institutional framework include the avoidance of duplicate, siloed efforts in different departments.

A shared framework should recognize that, especially in hospitals, responsibility for problem solving often will be distributed across shifts as team members rotate on and off. Clinical hand-offs should prepare incoming team members for ongoing collaboration to resolve or manage medical, social and legal issues during hospitalization and discharge planning.

### THE ROLE OF THE ETHICS SERVICE

Hospitals long have been required to have some mechanism for resolving ethical challenges. In many institutions, it takes the form of clinical ethics consultation on individual cases, plus an ethics committee and ethics education activities. The ethics service has the potential to play key educational, fact-finding and policy development roles concerning health care access for undocumented immigrants, including outreach to community health centers that serve the same patient population but are less likely to have an in-house ethics operation.

For example, the ethics service may identify challenging cases that can be used for teaching and learning. Convening discussions about health

care access for undocumented immigrants within a multisite organization, and with colleagues at different institutions serving the same community, are two further actions that an ethics service can take to support clinical understanding, well-informed organizational policymaking and greater justice in health care.

### CONCLUSION

Throughout the world, unprecedented numbers of people are relocating from poorer to wealthier and from dangerous to relatively safer regions. Safety-net health care professionals in the U.S. benefit from a basic understanding of the health care needs and legal rights of refugees, asylum seekers, survivors of torture, ICE detainees and people who have been trafficked, in addition to undocumented immigrants and recent authorized immigrants.<sup>11</sup> These populations overlap with the undocumented immigrant population but are distinct in some respects. Opportunities for clinician education in a safety-net institution should include attention to different immigrant populations it serves. Providing clinicians with a pocket card or other tool that lists all in-house resources for providing health care to immigrant patients—including medical-legal partnerships (MLPs)

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#### Directors of clinical services and other safety-net administrators should:

- Identify typical problems that arise in an institution when a patient's immigration status is a barrier to health care access
- Provide guidance for the timely resolution or management of such problems. Encourage clinical problem-solving. Discourage passing along ("turfing") of care problems to the next shift or setting
- Offer organizational strategies for resource allocation. Clarify the organization's charity care capacities, in the interests of fairness and efficiency and to limit bias resulting from selective advocacy
- Support the role of the organization's ethics service in clinical problem-solving and in organizational policy development
- Provide opportunities for learning about different immigrant populations and their health-related needs



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that may provide in-house legal assistance in such cases<sup>12</sup> — would be a practical demonstration of an institution's support.

Safety-net health care systems are major employers. They have broad educational responsibilities to staff members, to professionals employed under contract and to some nonstaff, such as community physicians with admitting privileges. All employees should recognize and agree to respect the duties of a health care institution to its patients, including their civil rights as persons.

Professionals responsible for employee education via a clinical service or an administrative department such as human resources should ensure that all employees have opportunities to learn about the health-related rights and constitutional rights of undocumented immigrants and other noncitizens under current U.S. law.<sup>13</sup>

The health care workforce is large, and turnover is frequent. Myths or misinformation about the rights of undocumented immigrants can take hold and spread informally. Employee education should aim to clarify common misunderstandings. For example, the medical records privacy protections of the Federal Health Insurance Portability and Accountability Act of 1996 apply to all patients regardless of immigration status; knowing or suspecting that a patient is undocumented creates no obligation to inform federal immigration authorities.

Professional education should teach and reinforce information about health care access for undocumented immigrants and how it applies to safety-net health care. Such instruction should take place during regular opportunities, such as new staff orientation, and should ensure that unit-level supervisors and individual staff members know where to turn as questions arise in every-

day work. E-learning modules can be an effective means of providing information across an institution's workforce.

Educators in safety-net systems should further aim to ensure that information about the health-related rights and constitutional rights of patients, regardless of their immigration status, is available in appropriate languages and formats to patients, family members and community organizations serving immigrants. This is a community service, and it also helps facilitate referrals. Public health systems also may create and share informational resources that describe immigrants' rights and services under local and state law and federal protections; these resources, if they exist locally, can be shared with patients, families and employees.

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## Closing Reflection

In his book, *Immigration and the Next America*, Los Angeles Archbishop José E. Gomez, passionately pleads for renewed commitment to working for a comprehensive reform of our immigration policies.

For this closing reflection, please consider some quotes from the book:

- Immigration is about more than immigration. It always has been. The question of immigration is a question about America. About our national identity and destiny. What is America? What does it mean to be an American? Who are we as a people and where are we heading as a country? What will the “next America” look like? What *should* the next America look like?
- We are talking about souls not statistics. We are talking about families. We’re talking about fathers and husbands who, with no warning, won’t be coming home for dinner tonight — and who may not see their families again for a decade at least. We’re talking about women suddenly left as single mothers to raise their children in poverty. We’re talking about a state policy that results in making many children virtual “orphans” to be raised on the streets or in foster care.
- Catholic commitments to the immigrant ... form a part of our original identity as believers. Put simply, we care for the immigrant because Jesus commanded us to. Catholics must defend immigrants if we are going to be worthy of the name Christian.
- Most of the time, most of the arguments in our public debate are motivated by patriotic ideals and concern for the common good. But there is a persistent undertone that cannot be mistaken. It is driven by fear and, sadly, also by chauvinism. A lot of people — a lot of good Christian people — are saying things they know they shouldn’t be saying about a category of men and women they have never talked to, only talked about. A category of people they have reduced to an abstract enemy they identify as “illegals.”
- Jesus never distinguished between those who “deserve” our love and those who don’t. He told us that God makes his sun to rise on the evil and the good, and sends rain on the just and the unjust. So we can’t choose to love some but not to love others. We can’t justify showing less compassion for those who don’t have the right documents. Jesus said, “I was a stranger.” He did not distinguish between legal and illegal. In fact, he pushed us to find him in those who are the most distressing to us — including strangers and criminals in jail.

- By our political inaction we have allowed a vast underclass to grow at the margins of our society. We have created a situation where millions of men and women are living as perpetual servants — working for low wages in our restaurants and fields; our factories, gardens, homes, and hotels. These men and women have no security against sickness, disability, or old age. In many cases these people can't even open up a checking account or get a driver's license.

And so we pray: Grant, O God, that your life-giving Spirit may so move every human heart, that barriers which divide us may crumble, suspicions disappear and hatred cease; that we see your will and respond with even greater love and care for our brothers and sisters, our neighbors; that they find a place they may call home and live in justice and peace. Amen.





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