

Care for Undocumented Patients: Risk Management Considerations

Note: these are general risk management guidelines. Health Centers should seek the advice of an attorney to adopt specific risk management policies and procedures that address their unique needs.

BACKGROUND: Unlike providers of many other federally-funded services and benefits, Health Centers are permitted to serve undocumented patients, and are not required to ask about a patient's immigration status. Migrant Health Centers need to ensure that their policies protect patient privacy while complying with applicable laws on collection and disclosure of patient information.

CONSIDERATIONS:

- The information that a Health Center gathers on a patient, including an undocumented immigrant, is generally protected under the Health Insurance Portability and Accountability Act (HIPAA).
- HIPAA states, however, that disclosure of a patient's health record may occur if *required* by another federal or state law. In some instances, a court may issue an order under another law to release a patient's medical record. It is possible in such a situation that information about immigration status could be revealed if it appears in the medical record.
- Health Centers may soon have certain responsibilities to establish systems to prevent and detect perpetration of "identity theft," which could relate to some undocumented workers. The term "identity theft" means a "fraud" committed or attempted using the identifying information of another person without authority. However, the state of the law is unclear: The US Supreme Court has recently ruled that use of false documents to get a job is not necessarily "identity theft" under criminal law.
- In 2003, Congress ordered federal agencies that regulate credit to issue regulations requiring that non-profit and other entities that provide services for which they bill later implement programs to prevent identity theft. The FTC issued regulations known as "Red Flag Rules." The term "Red Flag" refers to a pattern, practice, or specific activity that indicates the possible existence of identity theft. Although the Rules became effective in late 2008, enforcement has been delayed several times, most recently until August 1, 2009.
- To determine if your Health Center must comply with and for additional details about Red Flag requirements, please see *Complying with the FTC's Red Flag*

Rules¹ and FTC Red Flag Rule Considerations in Developing an Identity Theft Prevention Program².

- The development and implementation of identity theft prevention programs in accordance with the Red Flag Rules is separate from the Health Centers' legal obligations to meet the health care needs of eligible patients, which includes undocumented workers. The Red Flag Rules do not directly affect Health Centers' responsibilities to provide medical care.
- In meeting their obligations, Health Centers should be aware of the potential for misunderstandings regarding migrant workers' identities, particularly those who are immigrants, and attempt to prevent adverse effects on such workers. For example, a patient may supply personal identifying information that contains inconsistencies. However, there may be some circumstances where this would arise that are unconnected to identity theft. For example, in some Hispanic/Latin American cultures, naming traditions are different than in the United States and inconsistencies in the medical records may result. A patient may innocently provide *one* last name, and then at a later date, may provide *multiple* last names. Health Centers' policies and practices should continue to be sensitive to the special populations they are serving.

¹ Available from the National Association of Community Health Centers at http://www.nachc.org/client/documents/Compliance_with_FTC_Red_Flag_Rules_Issue_Brief_2.10.09.pdf

² Available from the National Association of Community Health Centers at [http://www.nachc.org/client/documents/FTC_Red_Flag_ITPP_IB_4_8_09\[1\].pdf](http://www.nachc.org/client/documents/FTC_Red_Flag_ITPP_IB_4_8_09[1].pdf)