

## Immigrants and NC Local Health Departments

October 2008

### What are the main issues now?

- Noncitizens' eligibility for services
- Asking clients about their immigration status
- Dealing with patients who have aliases

### Are undocumented immigrants eligible for health department services?

- Yes, for at least 20 major local services.
- Other services: ask (your lawyer, SOG).

### Why do DSS and the health department differ on this issue?

- Social services denies benefits to undocumented. Why doesn't the health department?
- This is determined by federal law, which gives us different rules for different programs.
- Social services actually has a mixed bag:
  - Required to deny some benefits to some noncitizens, including some documented immigrants.
  - But may not deny some of its programs—even to undocumented.

### Where is more information about who is eligible for which services?

- Summary of federal rules:  
Are Noncitizens Eligible for Publicly Funded Benefits & Services? Local Government Law Bulletin No. 110 (May 2007).
- Chart: Noncitizen Eligibility for NC Local Health Department Mandated Services (March 2008).

### Are LHDs required to ask about citizenship or immigration status?

- Generally no. This is the final answer for the 20 health department services on the chart.
- Exception: If a department provides a service that is not on the chart, it should determine whether that service must be restricted for noncitizens. If the service must be restricted, then the department must ask about citizenship/status for that particular service.

### Are LHDs allowed to ask about citizenship or immigration status?

- This issue is not directly addressed by traditional sources of law (statutes, regulations, court cases).
- However, federal agencies with the authority to enforce civil rights laws have cautioned against the practice, warning that it could violate federal civil rights laws.

### What does the US Department of Justice say about this?

- When a benefit or service is not restricted for noncitizens, then *“the benefit provider is not required to, and should not attempt to verify an applicant’s status.”*
  - 62 Fed. Reg. 61344 (Nov. 17, 1997) (italics in original)

### Issues with names & aliases

- Questions fall into two categories:
  - Multiple patients with the same name
  - One patient with multiple names
- For both categories, the bottom-line concern for health care providers is the same: matching the right records with the right patients.

### What is an “alias”?

- Different definitions from different sources – alternate name, assumed name, false name.
- AHIMA’s recommended core data element “aliases” includes maiden names, other former legal names, and nicknames.
- For our purposes, we’ll define it as simply an alternate name.

### Some categories of alternate names

- Those with origins that are easy to understand and considered legitimate: nicknames, maiden names, prior legal names, names adopted for religious reasons.
- Mistakes: may be particularly common in groups with naming conventions that are unfamiliar in US – e.g., putting family (“last”) name first.
- Illegitimate: names that are made up, bought, or stolen and used for illegitimate purposes.

### Multiple patients, same name – what are the concerns?

- Differentiating the patients and maintaining separate records on each individual.
  - If HCP does not know which information applies to which patient, ability to make good treatment decisions is compromised.
  - Confidentiality also compromised when information about multiple individuals appears in the same record.

### One patient, multiple names – what are the concerns?

- Keeping records and information consolidated.
  - HCP may not have all the information that is important to treatment decisions if person's information is in different records under different names.
  - Patient can be lost to public health follow-up if alternate names unknown.

### How should health departments manage name issues?

- Identifiable legal concerns, but no law directly on point – no clear answers that apply across the board.
- No formal policies or guidance from oversight agencies or professional licensing boards.

### How are health departments in NC managing name issues?

- Practices vary – some I'm aware of:
  - Asking patients for ID.
  - Taking photos of patients for charts.
  - Keeping track of known aliases.
  - Not permitting aliases – each patient gets one name only.

### Are these practices okay?

- Asking patients for ID?
  - May ask but cannot require.
- Taking photos of patients and put them in charts?
  - May ask patients to permit this but cannot require.

### Are these practices okay?

- Tracking aliases in patient records?
  - ??? – No law directly addresses this.
  - Some support for this in other sources:
    - AHIMA: Aliases a core data element for a master patient index.
    - NC rules and position statements that say medical records should be accurate, complete, and readily accessible in order to serve several purposes, including treatment planning, assuring continuity of care, and maintaining confidentiality.

### Are these practices okay?

- Allowing patients only one name?
  - ??? – No law directly addresses this.
  - Implementation experience?

### What to do when a patient asks for a work note in an alias?

- Question first arose in 2001. Asked health departments how they handled this, learned of several practices:
  - Some wrote notes only in name believed to be the real name.
  - Some wrote notes with AKAs.
  - Some used employee ID numbers rather than names.
  - Some wrote notes in name the patient requested, if patient confirmed that was the name patient used at work.

### What to do when a patient asks for a work note in an alias?

- What I said in 2001 & 2006:
 

“The first three approaches are clearly the least risky practices. The last approach seems riskier, but it is not clear that it violates any civil or criminal laws. However, it is possible that under some circumstances the health department’s actions could amount to a fraud against the employer.”

### Events of summer 2008

- Criminal investigation of two local health department employees who wrote work notes in alias names.
- By writing notes, did employees violate federal or state criminal laws?
- Conclusions: SBI and DHHS Medicaid fraud investigators uncovered no violations by the two employees. SBI determined that employees had “no criminal intent.” Investigation results provided to US Attorney, who declined to bring federal charges, and county DA, who declined to bring state law charges.

### What to do when a patient asks for a work note in an alias?

- Competing concerns:
  - Potential for criminal or civil liability still exists
  - Public health and medical concerns
    - Barriers to care
    - Controlling communicable disease
    - Perception of health department in community
  - Administrative concerns
    - Potential for disruption in agencies
    - Effects on employees

### Recommendation now?

- July 2008 NCALHD meeting:
  - Recommended not putting names believed to be aliases on work notes.
  - Acknowledged that this elevates legal and administrative concerns above public health and medical concerns.
  - Putting recommendation in context:
 

***This action should avoid legal risks.*** Does not avoid (could even exacerbate) other risks.

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