

# LOCAL CONFIDENTIALITY POLICIES

## THE PROBLEM

Fear of disclosing immigration status deters many immigrant families from seeking health coverage or care, and public services, including police protection, benefits, and economic supports. These fears are understandably amplified during periods of increased anti-immigrant sentiment. Last year, an undocumented Houston mother of three was arrested in a doctor's office exam room.<sup>1</sup> She was charged with a felony for tampering with documents, prompted by her fake Social Security card, but it's unclear how the clinic staff discovered her license was a fake and got law enforcement involved with the case. The arrest violates the federal HIPAA law that protects patient privacy. In Illinois, immigration officials arrested an immigrant who was participating in the state program that issues licenses to qualified residents who enter the US illegally, despite state officials' assurance that applicants don't need to fear being targeted for deportation.<sup>2</sup>

**"IF YOU SAY TO PEOPLE WE'RE NOT GOING TO GIVE YOU A ZONE OF PROTECTION WHEN YOU'RE SICK AND SEEKING TREATMENT IN A HOSPITAL, IN EFFECT, WE'RE SAYING WE'RE GOING TO PUT YOU AT PERIL AND YOU'LL BE DEPORTED OR EXPELLED IF YOU SEEK TREATMENT."**

—Former New York City Mayor Rudolph Giuliani, defending the city's immigrant confidentiality policy<sup>3</sup>

A patchwork of federal laws governs when federal and state agencies may collect information about immigration status, and when or if they must share it.<sup>4</sup> Two such laws, specifically pertaining to state and local governments' ability to restrict the sharing of immigration-related information, bear mention here.

In 1996, the **Federal government** enacted the Welfare Reform Act and the Illegal Immigration Reform and Immigrant Responsibility Act, both of which contained provisions relating to state and local government communication with the then-Immigration and Naturalization Service (INS).<sup>5</sup> Both were enacted to "prevent any State or local law, ordinance, executive order, policy, constitutional provision, or decision of any Federal or State court that prohibits or in any way restricts any communication between State and local officials and the INS."<sup>6</sup> However, consistent with federal law, cities like New York have adopted executive orders that protect the confidentiality of a broad range of private information— for example, sexual orientation, victim status, public benefits recipient, as well as information regarding immigrants.<sup>7</sup>

## THE SOLUTION

Numerous jurisdictions around the country, including **New York, NY; San Francisco, CA; Seattle, WA; Durham, NC; New Haven, CT; Takoma Park, MD;** and, most recently, **Suffolk County, Long Island, NY** among others, have adopted policies to protect the confidentiality of information, including information provided by immigrant residents.<sup>8</sup>

## POLICY ISSUES

In general, immigrant confidentiality policies do one or both of the following: (1) most importantly, they prohibit local government employees from inquiring, collecting or recording information about immigration status where such information is not necessary in order to determine an individual's eligibility for a benefit or service, and/or (2) they prohibit or limit local government employees from sharing a broad range of information with other agencies, except where required by law (for e.g. to confirm an individual's eligibility for benefits). A variety of mechanisms have been used to implement such policies, including city ordinances, resolutions, executive orders, and administrative directives.

These policies are consistent with federal laws and guidance issued by federal agencies to protect against potential civil rights or privacy violations and to ensure that eligible individuals in mixed status households can obtain critical services. [See, e.g. Tri-Agency Policy Guidance Regarding Inquiries into Citizenship, Immigration Status and Social Security Numbers in State Applications for Medicaid, State Children’s Health Insurance Program (SCHIP), Temporary Assistance for Needy Families (TANF), and Food Stamp Benefits, at <http://www.hhs.gov/civil-rights/for-individuals/special-topics/needy-families/triagency-letter/index.html>; confidentiality laws cited in NILC chapter (n. 4 below); and recent DHS reassurance to ensure that residents of Flint have safe access to clean water <https://www.dhs.gov/news/2016/02/24/public-notice-current-water-emergency-flint-mich>.

**GROUPS PROTECTED:** As discussed above, it is wise for municipalities considering immigrant confidentiality policies to cover a broad range of sensitive information within the policy, such as sexual orientation, receipt of public benefits, crime victim status, information contained on tax returns, and status as a victim of domestic violence. Doing so can help build a broader coalition in support of the confidentiality policy.

**ADDITIONAL ELEMENTS OF THE POLICY:** Municipalities can also consider including agency staff training requirements into their confidentiality policies, to ensure that city employees understand how to implement the policy, its interactions with other federal, state, and local laws, and the importance of the policy in promoting trust and inclusion of immigrant communities, among others. One innovative approach would focus on the city attorney’s office and requiring that city law departments, in proceedings where the city is a party, oppose the efforts of other parties to discover the immigration status of complainants or witnesses, unless the issue is central to the dispute.<sup>9</sup>

## LANDSCAPE AND RESOURCES

The **Center for Popular Democracy** has been supporting local campaigns on immigrant confidentiality, including an ongoing effort in **Aurora, CO** and the recently enacted policy in **Suffolk County, Long Island**, and can provide assistance on policy development, bill or policy drafting, and campaign strategy.

## NOTES

- 1 Texas Observer, “Woman Arrested at Gynecology Office May Face Deportation.” September 2015. Accessed April 29, 2016. <https://www.texasobserver.org/woman-arrested-at-gynecology-office-may-face-deportation/>
- 2 Chicago Tribune, “License application leads to immigration bust.” September 2014. Accessed April 29, 2016. <<http://www.chicagotribune.com/news/ct-drivers-license-deportation-met-20140908-story.html>>
- 3 Speech of Rudolph W. Giuliani, “Personal Responsibility and Work Opportunity Reconciliation Act of 1996” (September 11, 1996), available at: [www.nyc.gov/html/records/rwg/html/96/welfare.html](http://www.nyc.gov/html/records/rwg/html/96/welfare.html). Letter of Alan D. Aviles, President, New York City Health and Hospitals Corporation to All HHC Employees (May 18, 2006).
- 4 For a helpful summary, please see: National Immigration Law Center, “Confidentiality, Verification, and Reporting: What happens to information that immigrants give to the government,” in the Guide to Immigrant Eligibility for Federal Programs (4th ed. 2002).
- 5 8 U.S.C. 1644.
- 6 H.R. Rep. No. 104-725, at 383 (1996).
- 7 City of N.Y. Exec. Order 34 (May 2003).
- 8 For a summary of these local immigrant confidentiality provisions, among other local efforts to promote immigrant inclusion, see Cristina M. Rodriguez, “The Significance of the Local in Immigration Enforcement,” Michigan Law Review, vol. 106, p. 567 (2007-2008)
- 9 See: Model Bill: Immigrant Assistance in Crime Fighting, developed by Bernie Horn, Progressive Majority ([bhorn@ourfuture.org](mailto:bhorn@ourfuture.org))

*Co-authored by*

