

Immigration Enforcement at Healthcare Facilities

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US Immigration and Customs Enforcement ("ICE") is a law enforcement arm of the Department of Homeland Security ("DHS"). On January 21, 2025, DHS rescinded a prior policy limiting ICE enforcement at "sensitive" or "protected" locations such as hospitals and schools. In preparation for potential immigration enforcement by ICE at hospitals and other healthcare facilities, including outpatient facilities (collectively "Healthcare Facility"), key contacts at each Healthcare Facility should be trained and aware of the Healthcare Facility's obligations under the law. This fact sheet pertains primarily to enforcement actions affecting patients or other visitors to the Healthcare Facility.

1. Definition of "immigration enforcement" for purposes of this fact/information sheet.

Immigration enforcement refers to any official action that ICE could take at a Healthcare Facility. Immigration enforcement could include arresting patients or seeking records or other protected health information ("PHI") and may be carried out by either or both of its component agencies – Homeland Security Investigations ("HSI") or Enforcement and Removal Operations ("ERO").

2. Best practices for dealing with ICE.

Appoint a Designated Healthcare Facility Representative ("DHR") to lead all interactions with ICE. Ideally, the DHR should be in-house counsel as ICE may present legal documentation for the Healthcare Facility's review. There should always be a DHR "on duty" as ICE could present itself at any time. If in-house counsel is not a feasible option, the DHR could be another senior administrator on-site who has direct access to in-house counsel. Whoever is designated as the DHR should be knowledgeable about the Healthcare Facility's rights and responsibilities with respect to ICE enforcement and should remain abreast of changes to governmental policies that may impact the Healthcare Facility's rights and responsibilities. If the DHR is not an attorney, a designated attorney must be contacted immediately. **All employees should be given the name, title, and contact information of the DHR.**

3. If an ICE agent presents themselves at a Healthcare Facility, what do we do?

If you are not the DHR and an ICE agent enters the Healthcare Facility, you should ask the agent to wait while you contact the DHR. **Contact the DHR immediately.** You should inform the agent that, due to protocol, you are not authorized to provide information or access to non-public areas (i.e., areas that require authorization before entry) of the Healthcare Facility. Remain calm and professional.

If you are the DHR, first ask the agent for identification and a business card. ICE agents wear uniforms. Next, ask the agent to step into an office or room away from the reception area/lobby. Once the agent is in a private room, the DHR should ask the agent the reason for their visit and request the presentation of any legal documents. At this point, if the DHR is not an attorney, the DHR should wait for in-house counsel instruction.

4. When, if ever, must the Healthcare Facility cooperate?

Cooperation is directly dependent on the legal documentation the ICE agent presents. The Healthcare Facility has the right to thoroughly review any document that the agent presents. If the DHR is not an attorney, an attorney must review the documentation provided before any action is taken. **If ICE does not present documentation, the Healthcare Facility is not required to comply with any requests.**

5. What type of documentation might ICE present?

A subpoena and a warrant are both court orders serving different legal purposes. A subpoena is a document which generally compels appearance in court or the production of documentation by a specific court-imposed date and time. A warrant generally authorizes immediate action, most often an arrest of an individual or a search of a designated area.

There are several types of documents ICE may present, many of which the Healthcare Facility is **not** required to immediately comply with.

DOCUMENT TYPE	DESCRIPTION OF DOCUMENT	EFFECT ON HEALTHCARE FACILITY
Judicial Warrant	A document signed by a judge which authorizes ICE to obtain records or make an arrest.	Compliance is required. If the accurate Healthcare Facility name is listed on the warrant and it is signed by a judge, the Healthcare Facility must comply.
Administrative Warrant	A document signed by an ICE official (not a judge) which authorizes ICE to obtain records or make an arrest.	The Healthcare Facility is NOT required to comply with an administrative warrant.
Judicial Subpoena	A document signed by a judge compelling appearance or production of records by a certain date.	<u>Immediate compliance is NOT required, and the Healthcare Facility may choose to challenge the judicial subpoena in court.</u> Note that there will almost certainly be a court-designated date and time listed when a response is required. The Healthcare Facility must comply with this deadline but is not required to provide any documentation in that instant.
Administrative Subpoena	A document signed by an ICE official, rather than a judge, compelling appearance or production of records by a certain date.	The Healthcare Facility is NOT required to comply with an administrative subpoena.

6. The ICE agent presented a valid subpoena and told me that he or she will wait while the necessary information is collected. What should I do?

The DHR should let the ICE agent know that the Healthcare Facility will respond by the deadline listed on the subpoena. Further interaction with the ICE agent is not required.

7. ICE says that immediate compliance with the arrest of a patient is required even after establishing that a judge has not signed a warrant. What do I do?

Unless there is a signed warrant from a judge, compliance is not required.

8. The DHR has determined that the Healthcare Facility must comply with the request of the ICE agent. How do we proceed?

If the DHR has made a determination that the Healthcare Facility must comply immediately with a judicial warrant, he or she should request the warrant be executed in a minimally disruptive manner. The DHR should accompany the agent as the warrant is executed. In the event the Healthcare Facility voluntarily chooses to comply with a request, this advice remains the same.

9. ICE has requested documentation containing PHI without a court order. What do I do?

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) allows disclosure of PHI to police without a court order under certain circumstances – this also applies to ICE. However, **HIPAA permits, but does not require disclosure.**

Certain circumstances in which disclosure of PHI is permitted include to assist in the identification or location of a suspect, fugitive, witness, or victim of a crime, or avoid serious and imminent threat. ICE agents will often assume that compliance is required, but it is not. State law may prohibit disclosure even if HIPAA permits.

Keep in mind that the 2024 amendments to HIPAA regarding reproductive health care information still apply to the disclosure of PHI to ICE. As the law currently stands, HIPAA prohibits Healthcare Facilities from disclosing PHI if the information will be used in a legal proceeding against an individual involved in lawful reproductive healthcare.

10. What PHI might an ICE Agent request?

An ICE agent may request a patient's name, date of birth, demographic information, immigration status, or information on whether the patient was seen or discharged by the Healthcare Facility.

11. ICE responded to my declination to provide information without a court order by saying that an admitted patient is an immediate threat and intervention is necessary. Should I comply?

No. ICE agents will try to be persuasive / entice you to provide the requested information. If the DHR has not yet been contacted, contact them. The DHR should then refer to questions 3 and 4.