

New Administration Outlook: Guidelines for Healthcare Providers Responding to Immigration Enforcement Actions

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Agenda

- Law Enforcement in Hospitals: Basic Rules
- Information Privacy in Context of Law Enforcement Presence
- Immigration Considerations
- Healthcare Regulatory Considerations
- Practical Takeaways



News Coverage: ICE in Healthcare Sites

LOCAL NEWS

ICE detains man, 30, inside Ontario surgery center in heated confrontation

by: Josh DuBose
Posted: Jul 9, 2025 / 10:44 PM PDT
Updated: Jul 9, 2025 / 10:49 PM PDT

Los Angeles Times

SCIENCE & MEDICINE

In Southern California, many are skipping healthcare out of fear of ICE operations

NEWS/LOCAL

ICE Presence at Glendale Memorial Hospital Sparks Outrage

by Samantha Raquel Norris, San Fernando Valley Sun/el Sol
July 9, 2025



Hello humankindness

Search

Glendale Memorial

Services Patients & visitors

Statement from Glendale Memorial Hospital Regarding Immigration and Customs Enforcement (ICE) - July 7, 2025

Father Detained By ICE In Hospital After Student Visa Revoked

Published Apr 14, 2025 at 10:18 AM EDT

Law Enforcement in Hospitals: Basic Rules

Healthcare Facilities No Longer “Sensitive” or “Protected” Areas

- No statutory or regulatory protections for hospitals; any protections are discretionary exercise of executive authority as matter of policy
- Policy prior to January 21, 2025:
 - Set forth in October 27, 2021 Memorandum from DHS Secretary Mayorkas
 - Policy principle: minimize enforcement actions in protected areas
 - Medical or mental healthcare facilities considered “protected areas”
 - No enforcement actions in protected areas absent (1) prior approval from headquarters; or (2) limited exigent circumstances
 - Actions in or near protected areas performed to minimize risk of denying people access to protected areas

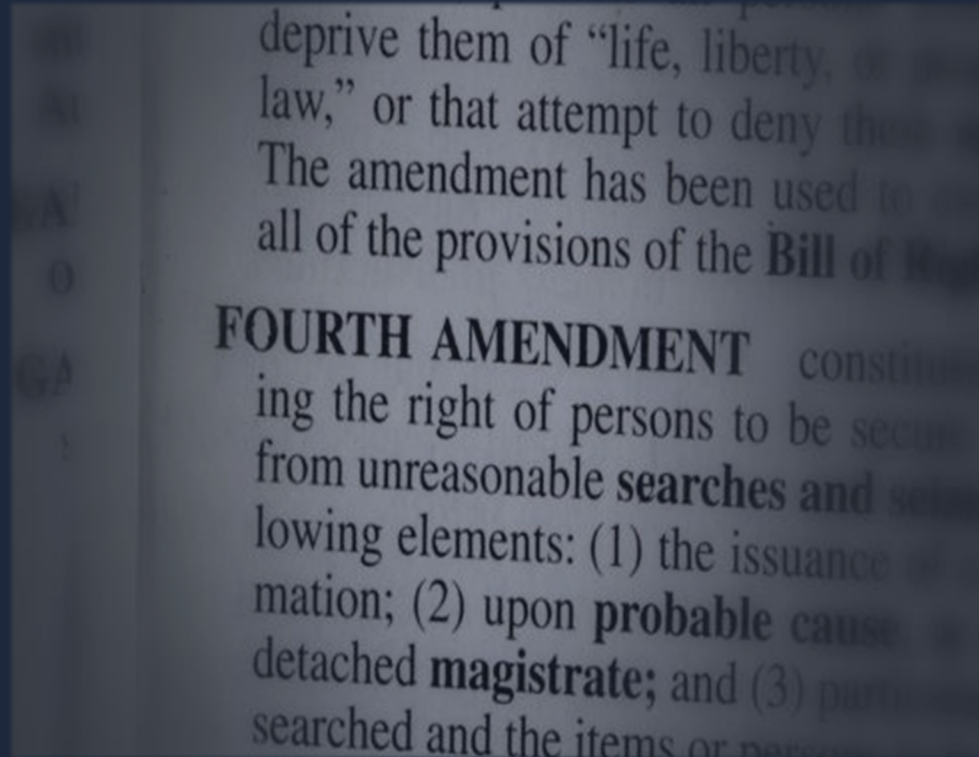
Healthcare Facilities No Longer “Sensitive” or “Protected” Areas

- October 27, 2021 policy rescinded on January 20, 2025
- Hospitals are no longer “protected areas”
 - No policy goal of minimizing enforcement actions at hospitals
 - No supervisory approvals required for enforcement actions at hospitals
 - No limitations on enforcement tactics at hospitals

Agencies Enforcing Immigration Laws

- Prior to January 20, 2025: predominantly “core” DHS components/agents (ICE ERO, CBP)
- Current Environment
 - Core ICE immigration components
 - Immigration & Customs Enforcement (ICE)
 - Homeland Security Investigations (HSI)
 - Customs and Border Protection
 - FBI
 - DEA
 - ATF
 - U.S. Marshals Service
 - Bureau of Prisons
 - IRS Criminal Investigations
 - U.S. Citizenship & Immigration Services

Fourth Amendment Protections



- Law enforcement generally cannot enter non-public spaces of a business, including a healthcare facility, without a search warrant supported by probable cause and signed by a judge or magistrate
- Exceptions:
 - Limited exigent circumstances
 - Consent

Types of Legal Process

- Administrative Subpoenas
- Administrative Arrest Warrants
- Grand Jury Subpoenas
- Criminal Arrest Warrants
- Search Warrants



Prepare

- ✓ Establish a response protocol
- ✓ Designate a point of contact
- ✓ Establish a policy regarding consent searches
- ✓ Verify all law enforcement contacts as valid
- ✓ Clearly designate non-public areas
- ✓ Train staff on rights and policies, including right to remain silent
- ✓ Review data collection and retention policies
- ✓ Never attempt to physically interfere with or obstruct law enforcement
- ✓ Document all law enforcement interactions
- ✓ Preserve and retain evidence of interactions (surveillance video)

Control Number

Visa Type /Class

Sex

Nationality

Issue Date

Expiration Date

1000

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Davis Wright
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Immigration Enforcement Actions

- In the care facility
- **Form I-9 audits:** Conducted by HSI – ICE not involved before penalty stage
 - Paperwork compliance review
 - Assessment of valid employment of personnel
- **Detention and Deportation:** ICE may visit hospitals to detain individuals who are undocumented or have violated immigration laws. This can occur if ICE has information that a person they are seeking is receiving medical treatment
- **Medical Care for Detainees:** ICE may bring detainees to hospitals for necessary medical care that cannot be provided within detention facilities
- **Investigations:** USCIS or Homeland Security Investigations might be involved in investigations related to immigration status of employees

Immigration Enforcement Actions

- **International Travel, Encounters When Entering the United States**
 - Immigration officers need reasonable suspicion to search information stored in devices, beyond what is in plain view
 - Anticipate scrutiny, primarily for non-U.S. citizen
 - Limit access to mobile phones and devices

Immigration Enforcement Actions

- **ICE Arriving With a Detainee**

- ICE documentation to present to care facility:
 - I-794 In-Processing Health Screening Form
 - I-296 Notice to Alien Ordered Removed or Deported
 - I-294 Warning to Alien Ordered Removed or Deported
 - I-216 Record of Person and Property, or I-213 Record of Deportable/Inadmissible Alien (might be presented, although this is typically presented in court)
- Questions to ask in addition to asking about forms:
 - Ask about family or emergency contacts
 - Ask whether the individual has an attorney to contact
 - Ask about submitting reimbursement requests to the federal government, or whether you can have access to [Office of Community Care eCAMS Provider Portal \(va.gov\)](https://www.va.gov/occecams/) which is for medical providers who provide care to aliens in ICE or custody to file a claim or become a vendor to receive reimbursement

Prepare

- ✓ Develop your plan and procedures
- ✓ Do I-9 internal audit
- ✓ Enroll in and utilize E-Verify in conjunction with I-9 process to minimize risk of noncompliance
- ✓ Do internal audit of documentation for sponsored noncitizen employees, such as F-1 students, J-1 exchange visitors, H-1B workers, individuals sponsored for green cards

Information Privacy in Context of Law Enforcement Presence

General HIPAA Issues

- **Scope of “protected health information” (PHI)** – includes mere fact that someone is a patient.
- **Definition of “disclosure”** – includes “provision of access to” information, but it is not clear whether failing to block federal agents from entering treatment areas constitutes “provision of access to” any resulting PHI.
- **Reasonable safeguards** – a covered entity must implement reasonable safeguards to prevent impermissible uses and disclosures of PHI, but is it reasonable to block a federal agent from entering a treatment area?

HIPAA Guidance on Access to Media

<https://www.hhs.gov/hipaa/for-professionals/faq/2023/film-and-media/index.html>

- Does not address disclosures to law enforcement but can be read as generally restricting third parties' facility access.
- “The HIPAA Privacy Rule does not require health care providers to prevent members of the media from entering areas of their facilities that are otherwise generally accessible to the public, which may include public waiting areas or areas where the public enters or exits the facility.”
- “Health care providers cannot invite or allow media personnel, including film crews, into treatment or other areas of their facilities where patients' PHI will be accessible in written, electronic, oral, or other visual or audio form, or otherwise make PHI accessible to the media, without prior written authorization from each individual who is or will be in the area or whose PHI otherwise will be accessible to the media.”

HIPAA Disclosures to Law Enforcement

- HIPAA *permits* disclosures to law enforcement in many circumstances but never *requires* such disclosures.
- Permissible disclosures to law enforcement include:
 - Required by law (e.g., mandatory reporting of gunshot wounds) [45 C.F.R. § 164.512(f)(1)]
 - Court order, court-ordered warrant, subpoena or summons issued by a judicial officer, or grand jury subpoena [45 C.F.R. § 164.512(f)(1)]
 - Administrative request if three conditions are met [45 C.F.R. § 164.512(f)(1)]
 - Limited information for purposes of identifying or locating a suspect, fugitive, material witness, or missing person (requires request from law enforcement official) [45 C.F.R. § 164.512(f)(2)]

HIPAA Disclosures to Law Enforcement

- Permissible disclosures to law enforcement include (cont'd):
 - Victim of crime (generally requires victim's agreement) [45 C.F.R. § 164.512(f)(3)]
 - Decedent PHI if suspicion that death occurred due to criminal conduct [45 C.F.R. § 164.512(f)(4)]
 - Crime on premises [45 C.F.R. § 164.512(f)(5)]
 - Reporting off-premises medical emergency to alert of crime [45 C.F.R. § 164.512(f)(6)]
 - To avert a serious and imminent threat to health or safety [45 C.F.R. § 164.512(j)]
 - To report child abuse or neglect (if law enforcement is authorized to receive such a report) [45 C.F.R. § 164.512(b)(1)(ii)]
 - To report abuse, neglect, or domestic violence (generally requires victim's agreement) [45 C.F.R. § 164.512(c)]
 - With patient's authorization [45 C.F.R. § 164.508]

General Guidelines

- Do not proactively disclose information about a patient to immigration enforcement officials unless a HIPAA law enforcement permission applies.
- Do not invite immigration enforcement officials into treatment areas unless a HIPAA law enforcement permission applies (e.g., court order, court-ordered warrant, patient's HIPAA-compliant authorization).
- HIPAA is unclear on whether you must actively block immigration enforcement officials from entering treatment areas if they insist on doing so.
 - Are you “providing access” if they insist on access and threaten obstruction?
 - Is it ever a “reasonable safeguard” to obstruct an immigration enforcement official from performing their duties?

General Guidelines

- Under current administration, OCR is unlikely to allege a HIPAA violation if you cooperate with immigration enforcement officials. A state attorney general also can enforce HIPAA, however.
- It is ultimately a risk-based decision – balancing likelihood of HIPAA enforcement vs. risk from immigration enforcement vs. best interests of patients.



Healthcare Regulatory Considerations

Hospital Role in Communities

- Presence of ICE / law enforcement in healthcare settings may deter individuals from seeking necessary medical care
 - Fear of being detained/apprehended
 - Fear of separation from family
 - Fear of deportation
- May also deter friends and family from going with patient

Interplay with EMTALA

- EMTALA requires hospitals with EDs to provide appropriate medical screening examination and necessary stabilizing treatment to any patient who comes to an ED, regardless of Medicare status or ability to pay
- EMTALA is a federal mandate
- Hospitals must ensure that their ability to provide screening and treatment is not compromised by presence of law enforcement

Medicare Conditions of Participation

- Do not specifically require hospitals to treat patients regardless of immigration status (but see EMTALA)
- CoPs emphasize nondiscrimination
 - Indirectly supports treatment of all patients, including those who lack documentation
 - Open question whether current administration will revise CoPs or related guidance to support policies

A background image of a clipboard with a checklist. A red marker is at the top left. The checklist has several items, each with a red checkmark in a square box. The text "Practical Takeaways" is overlaid in the center in a bold, orange font.

Practical Takeaways

Practical Takeaways: Policies

- Review and revise existing relevant policies and procedures to ensure they align with both Executive Orders, Administration directives, and existing healthcare requirements
- Examples of policies to review:
 - Disclosure of healthcare information to law enforcement
 - Legal process required for access to information or facilities by law enforcement
 - EMTALA
- If you do not have a policy related to responding to ICE's or other federal agents' physical presence at a facility, consider developing such a policy.

Practical Takeaways: Training

- Provide training to educate and remind staff and clinicians about the following in the context of law enforcement presence:
 - Do not affirmatively disclose to immigration enforcement officials unless a HIPAA permission applies
 - Do not invite immigration enforcement officials into treatment areas unless a HIPAA permission applies
 - Organization's policy – whatever that may be – on whether privacy laws require staff to block immigration enforcement officials from accessing treatment areas

Practical Takeaways: Training



- Have a protocol and response plan in place
- Designate a point of contact for ICE enforcement actions
- Clearly designate non-public spaces
- Review policies around data retention
- Train staff on their rights and obligations

Thank You!



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