

ICE in your Healthcare Facility? No Need to Freeze

January 28, 2025 – Dorsey Health Law

by Alissa Smith, Kirk Schuler, and J. Mike Sevilla



For over a decade, agents with U.S. Immigration and Customs Enforcement (“ICE”) were instructed pursuant to official policies to refrain from conducting law enforcement actions in or near various “sensitive locations” or “protected areas,” such as healthcare facilities, schools, and churches. Exceptions existed in the policies for exigent circumstances, such as when the enforcement action involved a national security

threat or there was an imminent risk of death, violence, or physical harm to a person. But the exceptions and the policies are no more: One of President Trump’s first actions in his second term was to rescind the policies, first put in place in 2011 and reiterated in 2021. In the following days, hospitals and other previously protected places began to report the presence of ICE agents conducting enforcement actions involving searches, interviews, and arrests.

Because of this abrupt change in policy, many hospitals and other healthcare facilities are understandably unfamiliar with what to do and expect when ICE agents arrive at your door. But fear not, below is a short list of “dos” and “do nots” to follow when (and even before) ICE agents arrive at your facility. This guidance is intended to help your staff balance cooperating with federal agents and protecting patient privacy.

Do:

- Prepare a written policy and standard operating procedure for interacting with immigration agents (which should accompany policies for interacting with law enforcement authorities in general).

Related People

- Alissa Smith
- Kirk Schuler
- J. Mike Sevilla

Related Capabilities

- Healthcare & Life Sciences
- Healthcare Transactions & Regulations
- Healthcare Litigation
- Medical Devices

- Identify an internal resource (in-house counsel or other representative with education and training on dealing with law enforcement), whether a single person or a team, who is well-versed in the rules for interacting with ICE agents.
- Identify an external resource, such as outside counsel, who can support your response when immigration agents arrive.
- Contact your internal and external resources immediately when immigration agents arrive.
- Instruct your front desk staff to inform the ICE agents that they must speak with your internal or external resource, and make arrangements to do so.
- While making those arrangements, direct the ICE agents to a conference room away from patients in order to avoid causing patient concern/disruption.
- Identify the ICE agent and inquire whether any government lawyer is aware of their activities.
- Understand that ICE agents are allowed in public spaces like a hospital waiting room, parking lots, and cafeterias, but to enter any private patient care areas they need a valid warrant or your permission (which you may withhold, unless there is a judicial warrant).
- Understand that any warrants or subpoenas served by immigration agents may be judicial (issued by a federal or state court judge) or administrative (issued by the government agency, including an immigration judge), and that agents do not have the authority to enter private areas with an administrative warrant or subpoena.
- Have in-house or outside counsel review all warrants and subpoenas to determine their validity, and cooperate with agents that present valid judicial warrants or subpoenas. Generally speaking, any judicial search warrants should:
 - Be signed by a judge.
 - Specify the name of the hospital, the time period for executing the warrant (and the current time is within that stated time period) and describe the scope of the search.
 - If there is no judicial warrant or subpoena, but the ICE agents are armed with an administrative warrant or subpoena, or otherwise describe an exigent circumstance (e.g., their actions are necessary to avoid imminent harm to the public, national security, or your staff/other patients), evaluate the circumstances. It is important to balance protection of patient privacy with cooperating in an investigation that appears necessary to protect individuals/the public.
- Have at least one facility representative accompany each ICE agent around the facility. Note any staff or patients interviewed or items/records seized. Staff may videotape the ICE agents.
- Protect patient privacy in accordance with HIPAA and applicable state law. HIPAA generally does not allow disclosure of patient information (protected health information) including patient names or immigration status unless an exception under HIPAA is satisfied. Your lawyer can help to evaluate whether an exception applies to any requested disclosure. This may include objecting to a search that is outside of a valid warrant.
- Employees, patients, and visitors have the right to remain silent and they can be advised on that right.



- Be aware the ICE agents may not be in the facility for surveillance or investigation, but instead may be there to deliver an I-9 audit. It is important to develop policies and procedures to appropriately respond to an I-9 audit. The facility will have three business days to produce the requested I-9 forms. It is important to contact the facility's attorney immediately if you receive an I-9 audit.
- Understand that immigration agents visiting your facility may be with ICE, or with US Customs and Border Protection ("CBP"), or with the United States Citizenship and Immigration Services ("USCIS"). For example, USCIS officers may be conducting a Fraud Detection and National Security (FDNS) site visit to confirm the veracity of a nonimmigrant (H-1B, L-1, TN, etc.) petition. Cooperation with this type of site visit is not mandatory, but it is beneficial to provide officers with requested information so that they are able to make a finding with a full record.

Do Not:

- Do not allow ICE agents into patient care areas without the input of your internal and/or external resources, and confirmation that they have valid authority or your permission. The front desk staff can tell the ICE agents that they are not allowed to let them into private patient care areas without talking to the facility's lawyer.
- Do not give statements to ICE agents without consulting with an attorney.
- Do not direct employees or patients to refuse to speak to ICE agents when questioned.
- Do not hide patients or employees or assist them in leaving the premises.
- Do not provide false information or destroy records.
- Do not leave patient information visible from public areas. Even without a search warrant, ICE agents in public areas can look at things that are in plain view, such as papers and computer screens. So, reasonable safeguards should be implemented to cover patient information that is in public spaces, such as covering papers or shielding computer screens or taking any conversations into private spaces to avoid any inadvertent disclosure.
- Do not allow the presence of ICE agents to interfere with patient access to health care.

Dorsey attorneys are actively monitoring activities of the new Administration and will continue to publish updates and analysis on the impacts of these actions in health care. Contact your regular Dorsey attorney or the authors for further guidance.