

# What Hospitals and Health Care Providers Must Know About Immigration and HIPAA Following Recent Policy Changes

[Federal policy changes implemented on Jan. 26, 2025](#), lifted restrictions on Immigration and Customs Enforcement (ICE) enforcement agents that previously prevented the arrest of illegal immigrants without legal status in certain specified sensitive areas, such as hospitals, medical clinics, churches, and schools.

With these changes in place, it's vital for physicians and other health professionals to know their rights and responsibilities regarding immigration activity, as well as the rights of the patients in their care.

## What Can Health Care Providers Do Now to Prepare?

Health care providers should take the following steps *in advance* to prepare for a potential onsite Immigration and Customs Enforcement (ICE) enforcement activity:

- Assess and review the entity's policy on responding to law enforcement. Many hospitals and other providers currently maintain policies on federal/local investigations and interactions with law enforcement. These policies should be updated to address the potential for immigration enforcement and to ensure consistent application across differing situations. Many hospitals and other providers have frequent contact with local law enforcement and are used to responding to police inquiries.
- Designate a person in advance within the Legal Department (preferred) or senior on-site administrator with access to legal counsel to be the primary point of contact. A backup liaison should also be available during off-hours.
- Establish basic protocols for the designated entity representative to follow, including obtaining identification of the law enforcement officers (i.e., name and business card). This should include reviewing with legal counsel the type and scope of documentation presented by the agents to justify their inquiry to determine whether it aligns with the request being made.
- Provide a checklist of the basic protocols for the designated entity representative to follow, and keep copies in an easily accessible location, including on the designated representative's work-related cellular phone.
- Provide training to security and "front desk" personnel (and whoever else is likely to be the first person encountered) regarding how to respond to a variety of potential law enforcement scenarios, including raids, targeted enforcement involving those with criminal histories, document requests, and requests for information. This should include obtaining identification of the law enforcement officers, reviewing the materials to determine whether the agents have judicially authorized search warrants (as required to enter non-public business premises) and/or only administrative subpoenas/deportation orders, referring them to the designated entity representative, and requesting they remain in a specified office while the designated representative evaluates the appropriate response.
- Notify and train personnel who may encounter ICE agents that they are not authorized to provide information or documentation or permit entry to non-public areas of the provider's

premises without direction from the designated representative and that they should be courteous and fully document all occurrences and actions of the agents.

- Notify appropriate staff they must not provide legal advice to patients or employees who may be affected by immigration enforcement measures. Instead, if they wish, they may make available pamphlets or other literature regarding immigrant rights from recognized immigration support organizations and refer them to such organizations for further information.
- Connect with legal counsel specializing in health care, privacy, and immigration law to obtain guidance regarding internal policies, procedures, and training and support to the designated entity representative.
- Assess whether, and to what extent, information regarding immigration status should be obtained from patients.

## What Else Should Health Care Providers Know?

Health care providers are generally not obligated to share the immigration status (if known) of their patients, nor are they obligated to provide immigration officials with access to treatment spaces in their facilities, which are non-public, absent a judicially issued search warrant or a warrant to arrest a specific individual. While HIPAA generally permits the disclosure of PHI to law enforcement in limited circumstances, as described in the regulations, **it does not require disclosure** of PHI. The definition of PHI is, of course, quite comprehensive and includes information such as name, address, date of birth, immigration status, admission status, and anticipated discharge date. Visitors to a facility will not have the same HIPAA protections as patients.

The staff of health care providers are also generally under no obligation to speak with ICE agents or other immigration enforcement personnel and should be advised they are not authorized to speak or release any documentation or information on behalf of the provider entity. Legal counsel should be consulted to determine what disclosure **is permitted** under HIPAA based on the documentation presented and what response, if any, **is required** by such documents.

With all this in mind, health care providers should be careful not to engage in a physical or verbal altercation with any law enforcement officer or otherwise be seen as obstructing or interfering with the government's actions. Note also it is illegal to intentionally protect from detention a person who is in the United States unlawfully. Balancing this with the ongoing obligation to observe HIPAA and other privacy laws, as well as holding law enforcement to their legal standards for entry and access to patients and visitors, requires some analysis and judgment. This is the basis for recommending the designation (in advance) of a Legal Department or other senior on-site administrator with access to legal counsel to be the primary point of contact for law enforcement personnel, including for after-hours inquiries.

**SOURCE:** <https://natlawreview.com/article/trump-administrations-immigration-enforcement-policy-what-hospitals-and-health-0>