

Q&A ON IMMIGRATION ENFORCEMENT FOR HOSPITALS¹

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Q1. Which agency enforces immigration laws?

- A. The primary agency for immigration enforcement is US Immigration and Customs Enforcement (ICE), a law enforcement component of the Department of Homeland Security (DHS).

Q2. What sort of activities does ICE conduct at companies and businesses?

- A. Historically, ICE has focused on industries known to employ large numbers of undocumented workers, such as in construction, agriculture, and other industries. ICE has arrested unauthorized workers in these industries and has exercised its authority to audit certain documentation that employers are required to keep as verification of their employees' identity and authorization to work in the US (the "I-9" form.)

Q3. Has ICE done immigration enforcement in hospitals?

- A. ICE enforcement at hospitals has been rare. For several years, ICE has maintained a policy limiting enforcement at certain "sensitive" or "protected" locations. The 2021 memorandum, Guidelines for Enforcement Actions in or Near Protected Areas (2021 ICE Guidelines), generally instructs ICE officers to refrain from taking enforcement actions at or near locations or protected areas, which include medical or mental health facilities and social services establishments, unless certain exceptions apply.

Q4. Does this mean that ICE cannot come to hospitals for enforcement purposes?

- A. The 2021 ICE Guidelines contains exceptions, so even if it remains in effect, it does not prohibit ICE from conducting enforcement activities at hospitals under particular circumstances. The purpose of GNYHA's guidance is to help prepare members for the (hopefully unlikely) event that they have to interact with ICE.

Q5. What does "ICE enforcement" refer to?

- A. For the purposes of this guidance, "ICE enforcement" means any official action that ICE could conduct at a hospital (including outpatient facilities). This could include arresting patients and seeking to obtain records or other patient information, including protected health information (PHI). This could also include requesting to do an I-9 audit. Of course, it is possible that ICE may want to take more than one action in a given case. Also, for the purposes of this guidance, GNYHA focuses on enforcement actions directed toward patients, not employees, even though parts of the guidance could apply to both.

¹ This guidance is for informational purposes, meant to be customized, and should not be construed as legal advice or as an industry standard.



GNYHA is a dynamic, constantly evolving center for health care advocacy and expertise, but our core mission—helping hospitals deliver the finest patient care in the most cost-effective way—never changes.

WHAT TO DO IF ICE COMES TO THE HOSPITAL

Q6. Is there a best practice for hospitals in dealing with law enforcement?

- A. Preliminarily, it should be noted that many hospitals maintain policies and practices on interactions with law enforcement. If you have such a policy or practice, GNYHA recommends that you align them so that there is a unified approach no matter what the context of the law enforcement visit is. As a general matter, when dealing with ICE or other law enforcement agencies, **the best practice is to designate one individual in advance as the "Hospital Liaison."** In-house counsel is the best choice because dealing with ICE may require the review of legal documents. Also suitable is a senior on-site administrator who has direct access to legal counsel. Regardless of title, the Hospital Liaison should be knowledgeable about the hospital's rights and responsibilities with respect to immigration enforcement activities and any changes to government policy. Hospitals should have a backup Hospital Liaison for off-hours. All staff should be given the name and contact information for the on-duty Hospital Liaison.

Q7. If an ICE agent arrives at the hospital to arrest someone or is seeking information, what should we do?

- A. If you are not the Hospital Liaison, you should ask the agent to wait while you contact the Hospital Liaison. Like all law enforcement officers, ICE agents take their work seriously and are trained to obtain information. They may use persuasion and even intimidation at times. When dealing with any law enforcement agent, it is important to be professional and calm. You should tell the agent that the hospital has a protocol for dealing with law enforcement requests, and you are not authorized to provide them with information or access to non-public areas of the facility.

Q8. What do I do in that situation if I am the Hospital Liaison?

- A. Ask the agent for identification and a business card. Ask the agent to step into an office or room away from the reception area/lobby. The purpose is not to grant consent to the agent to access the facility, but to get the agent into a private location. Once there, you can have a conversation about what the agent wants and whether he or she has any legal documents.

Q9. How can I verify that the person is really an ICE agent?

- A. You should ask for a business card or at least the agent's name and title. Also note that ICE agents wear uniforms.

Q10. Do we have to cooperate?

- A. Whether the hospital is required to cooperate will depend on what (if any) type of legal document the agent has. Generally, the only document that gives an ICE agent the right to enter non-public areas of a hospital is a warrant signed by a judge, also known as a judicial **warrant**. You should ask the agent to give you whatever document he or she has, if any. You should then ask the agent to wait while you have it reviewed by an attorney if you are not one. The agent may not want to wait, but it is the hospital's right to review any document that the agent says gives him or her the right to access non-public areas or hospital information. More information about the types of documents that ICE could bring to a hospital can be found in Q17 through Q20. Also, see GNYHA's Fact Sheet for Hospital Liaisons.

Q11. What do you mean by "non-public" areas of the hospital?

- A. Non-public areas of a hospital include treatment rooms, inpatient units, offices, etc., essentially anything not open to the public. Public areas include lobbies, waiting areas, and any other places open to the public.

Q12. What if an ICE agent says a patient needs to be arrested to avoid imminent harm or risk?

- A. It is possible that an agent may say something to that effect (remember, the agent is trying to induce you to cooperate.) Depending on the circumstances, the hospital may decide to cooperate with ICE. But remember, without a judicial warrant, cooperation is not required.

Q13. What if an ICE agent shows me a deportation order or arrest warrant for a patient?

- A. If the agent seeks to arrest someone, he or she may have a warrant or other document pertaining to that person. But the only document that will give an ICE agent the right to immediately enter a non-public area of a hospital is a warrant that has been signed by a judge **specifically naming the location** where the agent is permitted to enter to arrest the person.

Q14. So if ICE does not have a judicial warrant including that information, I can ask them to leave?

- A. If you are not given such a warrant, you can decline to provide ICE with whatever it requests, whether it is access to non-public areas of the hospital or records/information. You may not be able to compel them to leave a public area of the hospital, but it is unlikely that they would stay if they are not going to be able to conduct their activities.

Q15. What will ICE do if the hospital refuses to cooperate?

- A. It may decide to achieve its objective in another way that does not involve the hospital. Or ICE may go to a court, seek a judicial warrant, and return to the hospital.

Q16. If ICE is going to return with a judicial warrant, why shouldn't we just cooperate in the first place?

- A. There is no guarantee that ICE would get a judicial warrant. The ICE agent would have to submit certain information to a judge to show why ICE is entitled to such an order. The judge may decide that there is a less intrusive way for ICE to do its work or there may be local or state laws that prohibit the local authorities from cooperating with ICE under the circumstances. That would be for the authorities and the courts to work out.

INFORMATION ABOUT COURT ORDERS, WARRANTS, AND SUBPOENAS

Q17. What is a court order?

- A. A warrant or subpoena signed by a judge is a type of **court order**. Certain penalties can be issued for noncompliance with a court order, including being held "in contempt."

Q18. Can I have more details on how ICE uses warrants?

- A. ICE can use two types of warrants: **judicial warrants** and **administrative warrants**. A judicial warrant is signed by a judge (and is therefore a type of court order). An administrative warrant, on the other hand, is not signed by a judge but by an ICE official, usually an agent. It is not a court order. The hospital is not required to comply with an administrative warrant, whereas it must comply with a judicial warrant absent unusual circumstances.

Q19. If the hospital receives a judicial warrant from ICE and has to comply, what should we do?

- A. Once an attorney has determined that the judicial warrant is valid and enforceable on the hospital, it is reasonable to request that the agent work with the hospital to minimize disruption to patients and staff. For example, an effort to minimize the agent's access to patient care areas can be made, if it would not obstruct the agent's execution of the warrant. The Hospital Liaison, or other suitable senior administrator, should handle these discussions and accompany the agent as he or she executes the warrant. This advice would also apply in the event the hospital chooses to voluntarily comply with a warrant that is not signed by a judge.

Q20. How does a subpoena differ from a warrant?

- A. Subpoenas are generally used to obtain records or information or to compel someone to appear in court on a future date. Warrants are generally used to obtain immediate access to premises and people, usually for activities like

arrests, searches, and seizures. Like warrants, subpoenas can be signed by a government official (**administrative subpoena**) or a judge (**judicial subpoena**).

An administrative subpoena does not require compliance. A judicial subpoena does, but the hospital has the right to challenge a judicial subpoena in court rather than comply with it.

There is a matrix that compares these documents in the Fact Sheet for Hospital Liaisons.

Q21. How does ICE use subpoenas?

- A. Like other law enforcement agencies, ICE can use a subpoena to seek records or information, including PHI. Again, if the subpoena is not signed by a judge, compliance is not required, and even if it is signed by a judge, the hospital could choose to challenge the subpoena in court rather than comply.

Q22. What do I do if an ICE agent arrives at the hospital with a subpoena directed to the hospital?

- A. Whoever first greets the agent should immediately call the Hospital Liaison. If you are the Hospital Liaison, you should ask the agent to step into a room away from the reception area/lobby to verify credentials and find out more about the visit, including obtaining the subpoena. Assuming the subpoena seeks information or a court appearance for a time in the future, you can just accept the subpoena and ask the agent to leave. It is important to have the subpoena reviewed by an attorney (if you are not one) to determine next steps.

Q23. What do I do if an ICE agent arrives at the hospital with a subpoena for a patient?

- A. The answer is the same as Q22 in terms of process. The hospital may have an existing policy on whether to accept subpoenas on behalf of inpatients. As always, it is important to have the subpoena reviewed by an attorney (if you are not one) to determine next steps.

Q24. What if the agent wants to wait while I collect the records/information?

- A. On the basis of a subpoena, it is unlikely that the agent would have the right to demand immediate compliance. Subpoenas usually direct the recipient to do something by a certain date in the future. You can tell the agent that the hospital will respond by the deadline. (Note that “respond” might mean challenging the subpoena in court, not necessarily complying with it.)

WHAT TO DO IF ICE REQUESTS PHI WITHOUT A SUBPOENA OR WARRANT

Q25. I know that the Health Insurance Portability and Accountability Act of 1996 (HIPAA) allows us to disclose PHI to the police under certain circumstances, even without a subpoena. Does this also apply to ICE?

- A. Yes, but the key word is “allows.” HIPAA **permits, but does not require**, disclosure of PHI to law enforcement in response to certain types of requests under certain circumstances. People (including some law enforcement officers) sometimes assume that disclosure to law enforcement is required, but it is not. In fact, sometimes state law prohibits disclosure even though HIPAA permits it.

Q26. What are the circumstances under which HIPAA “permits” PHI to be disclosed without a subpoena or warrant?

- A. Examples include disclosures to identify or locate a suspect, fugitive, material witness, or missing person. HIPAA also permits hospitals to disclose information to avoid a serious and imminent threat or for national security concerns.

These disclosures could be made through a law enforcement agency's **informal request** (which is verbal) or **administrative request** (which must be written). Disclosures made in response to an informal request must be limited to basic demographic and health information. Disclosures made in response to a written administrative request can be more extensive, but the written request must include representations that the information requested is relevant and material, specific and limited in scope, and de-identified information cannot be used. These administrative disclosures can be made only where a response is required by law. It is important to reiterate that while HIPAA "permits" hospitals to disclose PHI under these circumstances, it never "requires" such disclosure.

Q27. What should I do if ICE agents arrive at the hospital saying they need PHI of a patient who is a suspect or fugitive or who poses a serious and imminent threat?

- A. It is possible they may make such statements (remember, they are trying to be persuasive.) First, recall that any requests made by ICE should be referred to the Hospital Liaison, even if ICE is just seeking information and not to arrest someone. If you are the Hospital Liaison, you should take the agent aside and find out the reason for the request. Even if the agent has a subpoena signed by a judge, the hospital could still decline to comply with the request by challenging the subpoena in court. But as noted in Q. 26, the hospital may decide to voluntarily cooperate with ICE depending on the circumstances, as permitted by HIPAA, and assuming that disclosure of the PHI would not violate other laws.

Q28. Is a patient's name, date of birth, and other demographic information considered PHI?

- A. Yes.

Q29. Would that include a patient's immigration status if the hospital has such information?

- A. Yes.

Q30. Is information about when a patient is supposed to be seen or discharged considered PHI?

- A. Yes.

Q31. Is information about whether a particular patient is admitted to the hospital considered PHI?

- A. Yes, but according to HIPAA, a hospital may disclose basic information, such as patient location and general condition, from its directory of patients if asked about a patient by name. However, patients have to be given the right to opt out of the directory, which is usually done in the hospital's Notice of Privacy Practices, and the disclosure cannot violate other laws, like state laws. Even though HIPAA permits disclosure of basic directory information, if the hospital has reason to believe that the patient would not want the information disclosed, the hospital should not provide it. Also, even if you were to provide directory information to ICE about a particular patient, that would not give ICE the right to enter non-public areas and gain access to the patient. For that, ICE would need a judicial warrant.

Q32. Do the 2024 amendments to HIPAA addressing reproductive health care information apply to disclosures of PHI to ICE?

- A. Yes. HIPAA currently prohibits hospitals from disclosing PHI, including to ICE, if the information will be used to pursue a legal proceeding against an individual for seeking, obtaining, or facilitating lawful reproductive health care. The amendments also require hospitals to obtain an attestation from a requestor whenever the PHI requested is "potentially related to reproductive health care" and for, among other things, law enforcement purposes. Requests from ICE for patient information may trigger this attestation requirement. As of January 2025, these amendments are the subject of at least two Federal lawsuits and may be struck down by the courts. It is also possible the Trump Administration may choose not to defend the lawsuits and/or rescind the regulatory amendments.