

What to Do When ICE Shows Up at Your Clinic or Hospital

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Immigration Customs Enforcement

- Who Are they?
- Why would they visit your clinic/hospital?
- Who are they trying to take/talk to?
- Current Enforcement Actions

What Rules Apply to ICE

- Sensitive Location Policy
 - Generally prohibited from taking enforcement actions inside hospitals and medical facilities
 - Exceptions for national security, terrorism, or an imminent risk of destruction of evidence material to an ongoing criminal case
 - Little repercussion for violating policy

What ICE Agents Can't Do

- Gain access to medical records without a subpoena/warrant
- Interfere with medical treatment
- Violate the 4th Amendment

ICE Enforcement

- Enforcement actions include arrests, interviews, searches, surveillance done for purposes of immigration enforcement only

Where Can Federal Agents Go

- Public spaces
 - May question visitors in the lobby
 - Patients waiting admission
 - Family members of patients
- Plain view
 - Inspect files in the open
 - Listen to conversations in public areas

What Rights to Medical Facilities Have

- No affirmative legal obligation to report undocumented immigrants to officials without a warrant or subpoena
- HIPAA generally prohibits the use or disclosure of patient information without their consent unless required by law
- May refuse to provide information unless requested by warrant or other court order for a specifically identified individual
- If ICE are in public spaces, people being questioned have the right to remain silent.

ICE and Warrants

- If a warrant or court order is presented have an authorized staff member:
 - Review that it is valid
 - Signed by judge/magistrate judge
 - Address of premises to be searched
 - Executed during time period on warrant
 - Review scope

ICE Search without a warrant

- Can be refused
- Probable cause – unlawful activity
- Waiting outside hospital/clinic to arrest patients
- Arrests of family members going into hospitals

Recommendations

- Designate public v. private spaces
- Be cautious of files visible to the public
- Don't ask a patient's immigration status unless required, and avoid listing that in medical or billing records

Other ICE Visits

- Department of Homeland Security(DHS)/Homeland Security Investigations (HSI)
 - Criminal Activities: Alien smuggling, human trafficking, money laundering, document fraud, worker exploitation and/or substandard wage and working conditions
 - Administrative enforcement against undocumented immigrants/employees

Other Government Agency Visits

- DHS/USCIS
 - Fraud Detection National Security Investigations: H-1B, H-2, L-1, R-1, F-1 STEM OPT
- Department Of Labor
 - LCA Investigations
 - Wage and Hour Division

Preplanning for Enforcement Actions

- Establish a worksite enforcement action plan
 - Designate a company representative who will be point of contact with government until counsel is contacted
 - Provide legal counsel's contact information
 - Establish internal communication plan
 - Communicate/role-play worksite enforcement plan to employees on the front line

Worksite Enforcement Visits: Sample Scenarios

Sample Scenario: ICE Seeks Employee Information

- ICE contacts employer for employment information/records for an employee
 - Ask ICE for signed subpoena/warrant for requested information
 - Be aware of privacy laws & industry specific privacy laws (FERPA, HIPAA, state data privacy laws)
 - No subpoena or warrant required to confirm or deny employment of individual
 - Inform employee of request from ICE unless you are ordered otherwise by ICE

Sample Scenario: ICE Executes Administrative Removal Orders

- ICE appears at worksite to arrest employee with an outstanding warrant of removal
 - Request ICE to see subpoena/warrant
 - Ask ICE to wait for you in a private conference room and be transparent as to how you will contact employee
 - Contact employee to inform him/her of ICE's warrant and presence at worksite
 - Inform employee's family or emergency contact if ICE arrests employee

Public Charge Rule

- Accessing public benefits can disqualify the recipient from immigration benefits
- Health care coverage through medicaid, except for emergency medical conditions added to public charge test

Tips for Any Government Agent Encounter

Telephone Calls

- Get the caller's name.
- Find out what they are talking about.
- Call the person back. This will allow you to verify the caller's identity, and gather your thoughts.

Armed Agents At the Door

- If they have a warrant, let them in.
- Do not talk to them.
- Get I.D. and call a lawyer.



Dealing With Investigations

- Agents want you to talk. They will use your:
 - Fear.
 - Confidence.
- Your biggest weapon:
 - Silence.
- Be especially wary of saying “my lawyer told me it was ok.” You will have waived the attorney-client privilege.

The Agents Are Not Your Friends:

- Don't try to convince the agent "It is all a misunderstanding."

Remember two key points:

- Medicare rules are complicated. You may have violated one without knowing it.
- To many investigators - there is no such thing as an "innocent mistake."

Know Your Rights

Agent:

- Can't require anyone to attend interview.
- Can't obtain documents without a warrant or subpoena.
- Can't obtain privileged information.
- Can't prevent you from talking about the interaction.

Know Your Obligations:

- Cannot prevent employees from talking.
- If you talk, you must tell the truth.
- Never destroy/hide documents.



“Take this handkerchief back to the lab, Stevens. I want some answers on which monster did this - Godzilla? Gargantua? Who?”

Questions?

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