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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