

NAVIGATING IMMIGRATION ENFORCEMENT IN HEALTH CARE SETTINGS

On January 21, 2025, the Department of Homeland Security ("DHS") rescinded its "Protected Areas" policy that had been in place since 2011. This policy largely restricted the U.S. Immigration and Customs Enforcement ("ICE") and Customs and Border Protection ("CBP") from conducting enforcement actions in or near "protected areas" or "sensitive locations." These areas included **medical facilities**, schools and places of worship, among others. With the revocation of this policy, ICE (which enforces immigration laws within the U.S.) and CBP (which operates at borders and ports of entry) are no longer bound by those geographic restrictions on enforcement actions.

This recent action by DHS means health care providers may see an increase in ICE enforcement actions in or near their facilities. Enforcement actions could include **seeking patient information, arresting undocumented persons and conducting I-9 inspections**. To help prepare for the possibility of such enforcement actions, this alert highlights legal and compliance considerations for navigating interactions with ICE agents.

Like with all law enforcement agencies, in dealings with ICE, health care providers remain subject to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") Privacy Rule and the Emergency Medical Treatment and Labor Act ("EMTALA").

HIPAA prohibits covered entities from disclosing protected health information ("PHI") to law enforcement, unless an exception applies, such as court orders, certain administrative requests and limited information to identify or locate a suspect, fugitive, material witness or missing person. HIPAA permits, but does not require, disclosures of PHI to law enforcement.

EMTALA requires hospitals to provide a medical screening exam and stabilizing treatment to any individual presenting with an emergency medical condition, regardless of immigration status or ability to pay. EMTALA's mandates supersede immigration enforcement priorities.

As employers, health care providers are required by the **Immigration Reform and Control Act** to verify the identity and work eligibility of their employees via Form I-9s. ICE has the authority to conduct I-9 inspections and employers have three business days to produce these forms to ICE.

Two of the most frequently asked questions are:

- **What areas of a hospital may ICE agents enter?** In short, ICE agents are permitted to enter **public areas** of a hospital (e.g., lobbies and parking lots) like any other member of the public, but hospitals may deny access to **nonpublic or private areas** (e.g., patient rooms and treatment areas) unless the ICE agent presents a warrant signed by a judge, such as a search and seizure warrant, which has the force of a court order. In contrast, **administrative warrants**, such as warrant of removal/deportation signed by an ICE officer (not a judge), do not have the force of a court order and hospitals may deny access to nonpublic areas.
- **What types of patient information are hospitals required to produce?** Similarly, hospitals are required to only produce documents demanded by a warrant or court order signed by a judge, but not subpoenas signed by an ICE agent or most other administrative requests. Such subpoenas and administrative requests should be responded to by legal counsel. Hospitals are required to produce Form I-9s pursuant to a Notice of Inspection.

In light of the revocation of the "Protected Areas" policy, there are a number of action steps health care providers should consider taking at this time:

First, be aware of whether your organization collects immigration status of its patients. Except for Arizona, Florida and Texas, health care providers are **not required to inquire about patients' immigration status**. Limiting collection to only necessary information may reduce the burdens of documentation production.

Second, designate a **liaison** to directly handle interactions with ICE and designate a cross-functional **response team**, such as legal, compliance, security and senior leadership, to provide support. Provide the liaison and response team with training and resources including access to outside counsel. Educate the workforce on how and when to contact the liaison and response team. The liaison and response team may be assigned to respond to all types of law enforcement requests, not just by ICE.

Third, review and update **law enforcement-related policies** to address ICE requests and how to ensure HIPAA and EMTALA compliance during ICE interactions. These policies should address how to respond to court orders, warrants, subpoenas and other administrative requests.

Last, regularly conduct **internal compliance I-9 audits** and promptly resolve any deficiencies. Evidence of corrections, willingness to cooperate and actionable steps to come into compliance may mitigate the imposition of penalties and fines.

CONCLUSION

Health care providers should have a plan and be prepared to interact with ICE agents in a manner that protects patient privacy, complies with EMTALA and is responsive to information requests as required by law.

PRACTICAL TAKEAWAYS

- **Designate a Liaison/Response Team:** Assign an individual as the designated liaison to interact with ICE agents with the support of a cross-functional response team (e.g., legal, compliance and security).
- **Review Law Enforcement Policies:** Review and update law enforcement-related policies and procedures to address ICE requests and prioritize HIPAA and EMTALA compliance during ICE interactions.
- **Conduct I-9 Compliance Audits:** Regularly conduct internal I-9 compliance audits and resolve any deficiencies.

If you have any questions or desire assistance with liaison and response team training, policy reviews or I-9 audits please contact:

- **Charise Frazier** at (317) 977-1406 or cfrazier@hallrender.com;
- **Elizabeth Callahan** at (248) 457-7854 or ecallahan@hallrender.com
- **Mike Kim** at (317) 977-1418 or mkim@hallrender.com
- **Waseem Chachar** at (317) 977-1496 or wchachar@hallrender.com;
- **Ryan McDonald** at (317) 429-3671 or rmcdonal@hallrender.com
- **Brandon Helms** at (248) 457-7847 or bhelms@hallrender.com; or
- Your primary Hall Render contact.

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