



Practices no longer off-limits to ICE raids; know your rights

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With new emphasis on, and orders for, removal of undocumented immigrants, some physician practices have reason to prepare for federal agents to come to their office looking for documents and, perhaps, patients or staff. Experts say it's important to understand your rights in this situation — as well as your responsibility to the people under your care.

As announced throughout his 2024 campaign, President Donald Trump has made a priority of expelling “millions” of immigrants via “mass deportations.” Shortly after his inauguration Trump signed several executive orders calling for more aggressive enforcement of immigration laws.

Enforcement via investigations and raids is usually performed by the Immigration and Customs Enforcement agency, aka ICE, part of the U.S. Department of Homeland Security (DHS). On January 23, DHS announced it was empowering other federal agencies, including U.S. Marshals, the Drug Enforcement Administration (DEA), the Bureau of Alcohol, Tobacco, Firearms and Explosives, and the Federal Bureau of Prisons, to assist in these efforts.

On Jan. 21, DHS announced the end of its previous “so-called ‘sensitive’ areas” guidance, aka protected areas policy, that had discouraged enforcement actions in locations such as churches and medical offices.

Individuals targeted include many who had previously been thought to have a right to live in the United States, such as refugees seeking asylum under the Biden-era DHS’ “Circumvention of Lawful Pathways” final rule and other programs.

These changes suggest a heightened possibility that physician practices, particularly those serving immigrant communities, will be visited by federal agents looking for undocumented aliens.

Papers, please?

The first thing to do in preparation is to make sure that your “front line” staff — the ones who’ll deal with these incursions — knows what to do, counsels Alison P. Hitz, an immigration and health care lawyer with the Clark Hill firm in San Francisco.

Most importantly, says Nina Pelc-Faszczka, an attorney with Shipman & Goodwin LLP in Hartford, Conn., when agents arrive the practice should immediately contact a lawyer for help — preferably an “immigration lawyer or a lawyer with expertise in government investigations. A lawyer can help the business navigate the ICE encounter, whether through in-person assistance or speaking to the ICE agent over the phone,” Pelc-Faszczka says.

Your in-house or retained attorney may not have that expertise, so discuss options with them. Kripa Upadhyay, an attorney with the Buchalter law firm in Seattle, advises a conversation with vetted immigration advocacy groups such as the ACLU or the National Immigration Law Center.

On first contact with agents, “the practice should try to verify as much information as they can from the outset,” including agent credentials, Upadhyay says. “It’s possible somebody could be impersonating an ICE agent.”

If the agents are asking for documents, your front line should be aware of some distinctions — for example, between immigration-specific documentation that may be required for some of your staff and your patients’ protected health information (PHI).

It is appropriate for immigration officials to request immigration-specific documents such as I-9 forms and documents the employer may be required to keep as a part of the I-9 verification process. However, Hitz says, these are usually requested in an audit process that involves advance notification.

“ICE can demand to inspect a company’s I-9 forms, but a business is not required to produce them immediately,” according to Mark Stevens, an immigration attorney in Washington, D.C., and John F. Howard, a health care attorney in Scottsdale, Ariz., both with the Clark Hill law firm. “Rather, three days must be given to produce the records.”

Most medical organizations are aware that requests for a patient’s PHI, regardless of the immigration status of the patient, require careful attention and, sometimes, refusal to turn over those documents, at least immediately, lest the surrender violate the patient’s HIPAA rights and expose the practice to discipline, and even lawsuits, on those grounds (PBN 3/4/2024, PBN blog 3/6/24).

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Generally speaking, documents from a lawyer or agency get less deference than documents signed by a judge. According to Marc Lombardi, a partner with Shipman & Goodwin and chair of the firm's privacy, cybersecurity and data innovation practice group, this also goes for requests from ICE or other federal agencies.

Lombardi points to HHS' guidance on the subject in a FAQ: It says providers may respond to "a court order or court-ordered warrant, a subpoena or summons issued by a judicial officer, or a grand jury subpoena," in recognition of "the legal process in obtaining a court order and the secrecy of the grand jury process provides protections for the individual's private information" (*see resources, below*).

With regard to an "administrative request" — that is, one not signed by a judge — you are allowed to answer under HIPAA, HHS says, if "the information sought is relevant and material to a legitimate law enforcement inquiry; the request is specific and limited in scope to the extent reasonably practicable in light of the purpose for which the information is sought, and de-identified information could not reasonably be used." HHS also makes allowance for a response to "a request for PHI for purposes of identifying or locating a suspect, fugitive, material witness or missing person."

But, as with other PHI surrenders, the information you are allowed to grant in all cases is limited and case-specific. Again, talk to your lawyer. Lombardi suggests training a practice privacy officer who can make these distinctions and can serve "as the point(s) of contact for managing all law enforcement interactions" on PHI.

Can they come in?

What if it's not just papers they want? If agents want to come in, i.e., conduct a raid, that requires a judicial warrant — not an "administrative" warrant, but one signed by a judge. As it involves your and your patients' and staff's Fourth Amendment, Constitutional right to protection from "unreasonable searches and seizures," it is your right and also your responsibility to refuse consent to unwarranted entry.

"[ICE agents] need to have a judicial warrant — one issued by a judge or a magistrate judge, typically from district court," Upadhyay says. "It needs to say very specifically the name of the person that they are seeking to arrest. If it is a general worksite raid, that warrant needs to say specifically what areas the officers intend to access and what is the reasonable cause or suspicion."

"Anyone — including ICE agents — can enter public areas of a business without specific permission," Stevens and Howard note. "This includes foyers, waiting areas, and lobbies. But to demand entry into private areas of a business, ICE agents need a judicial warrant."

Private areas, Stevens and Howard say, include offices, examination rooms and restricted access areas. "Unless ICE has a judicial warrant," they stress, "businesses are free to refuse access to private areas."

"Obviously, you can do so in a respectful manner and not get combative," Upadhyay says. "But if it is an administrative warrant and ICE knows they cannot access facilities, they're just counting on you to *not* know that."

The National Immigration Law Center, in a fact sheet on the subject, warns that federal agents have a right "to look at anything that is in 'plain view' in a public area," meaning anything that is "obvious to the senses." (This goes for what they can hear from the public area, as well.) For example, the Center says, "an immigration official may visually inspect anything — including papers and files — that are clearly visible from the visitors' side of the reception desk. Unless they have a warrant, however, they may not move an object in plain view to expose other portions of it or what is under it."

What if they bust in?

If you refuse entrance and the agents come in anyway, Stevens and Howard remind you that "while the public is not required to assist ICE in an investigation, it is illegal to obstruct law enforcement officers." Also, "it is a crime to harbor undocumented immigrants, such as by hiding someone, lying about their location, or encouraging someone to escape."

To protect yourself from charges from either party, Upadhyay suggests recording the encounter with your phone, but adds "you want to be careful about videoing [the raid] because federal officers will say that you're not allowed. I tell my clients to record as long as they are not being obstructive in their recording of the raid."

Hitz also advises caution. "You don't want to be deemed to have obstructed the agents," she says. "You can say you do not consent to what's being done. That's different from trying to bar their entry."

If ICE won't let you record their raid, Hitz says, "you should document what's going on as much as possible, and maybe have another person come along so there are multiple witnesses. Take notes. If they're taking documents, see if you can get copies before they take those."

Keep in mind that if the agents are violating the law and the Constitution, the matter is going to be settled in court, not in your office.

Resources

- U.S. Department of Homeland Security, "Statement from a DHS Spokesperson on Directive Expanding Immigration Law Enforcement to Some Department of Justice Officials," Jan. 23, 2025: www.dhs.gov/news/2025/01/23/statement-dhs-spokesperson-directive-expanding-immigration-law-enforcement
- U.S. Department of Homeland Security, "Circumvention of Lawful Pathways Final Rule," May 11, 2023: www.dhs.gov/archive/news/2023/05/11/fact-sheet-circumvention-lawful-pathways-final-rule

- U.S. Department of Homeland Security, April 18, 2022: "Immigration Enforcement at Sensitive Locations," www.dhs.gov/sites/default/files/2022-06/ICE%20-%20Immigration%20Enforcement%20at%20Sensitive%20Locations.pdf
- HHS, FAQ: "When does the Privacy Rule allow covered entities to disclose protected health information to law enforcement officials?" last reviewed Dec. 28, 2022: www.hhs.gov/hipaa/for-professionals/faq/505/what-does-the-privacy-rule-allow-covered-entities-to-disclose-to-law-enforcement-officials/index.html
- National Immigration Law Center, "Health Care Providers and Immigration Enforcement: Know Your Rights, Know Your Patients' Rights," April 2017: www.nilc.org/wp-content/uploads/2017/04/Protecting-Access-to-Health-Care-2017-04-17.pdf


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