

# GUIDANCE MEMORANDUM

IMMIGRATION ENFORCEMENT ACTIVITY: GUIDANCE  
FOR MARYLAND HEALTHCARE PROVIDERS



JANUARY 2025

The State of Maryland has an interest in ensuring that all residents feel safe and secure when accessing healthcare services. To advance this mission, and at the request of the Maryland Secretary of Health, the Office of the Attorney General offers this guidance for Maryland's healthcare providers. The guidance aims to help providers prepare for the possibility of increased federal immigration enforcement operations at hospitals and other healthcare facilities.

This general guidance is not a replacement for tailored legal advice. Providers should consult their institution's legal counsel to identify existing policies on interacting with immigration enforcement officers and to determine whether additional policies are needed. Providers should also contact counsel immediately upon encountering immigration enforcement activity at a healthcare facility. With these points in mind, this guidance outlines several key considerations about preparing for and responding to immigration enforcement activity.

### ➤ **Summary**

- Due to a change in federal policy, immigration enforcement actions are now more likely to occur at healthcare facilities.
- If an immigration officer appears at a facility:
  - Staff should request and record the officer's credentials and contact counsel immediately.
  - Staff and patients may choose not to answer questions.
  - Staff do not need to give the officer consent to enter restricted spaces.
  - Generally, the officer may enter such spaces only with a judicial warrant.
  - If the officer commands staff to open a restricted space, staff should ask to speak with counsel but should follow any orders the officer gives.
  - Staff should not attempt to bar the officer from public spaces, conceal patients, or take other action to thwart the investigation.
- Providers should consult with counsel before disclosing any patient information to immigration officials.
- Facilities should train their staff on these issues.

### ➤ **The Federal Government no longer has a policy against conducting immigration enforcement at healthcare facilities.**

Soon after President Trump's second inauguration, the U.S. Department of Homeland Security (DHS) revoked a policy that had previously restricted immigration enforcement at healthcare facilities and other places considered sensitive, such as schools.<sup>1</sup> Under the prior policy, which had been in place in some form since 2011, immigration officers did not

attempt to make arrests at hospitals or other healthcare facilities, except in rare circumstances.<sup>2</sup>

It remains to be seen how much the Trump Administration will actually increase enforcement activities at healthcare facilities. From reports received thus far, it appears that the Administration is, in fact, ramping up these activities. The revocation of the policy may also be challenged in court. Regardless of how these issues play out, however, the revocation heightens the potential for enforcement operations at healthcare facilities and is likely to raise fears among immigrant patients that seeking medical treatment will expose them to deportation risk. In this environment, it is essential for facilities to inform patients and staff of their rights and obligations when encountering immigration enforcement officers. Those rights and obligations are addressed below.

➤ **ICE enforces federal immigration law, but so do other agencies.**

U.S. Immigration and Customs Enforcement (ICE), a DHS component, has primary responsibility for enforcing immigration laws in the interior of the U.S. and is the agency most likely to conduct enforcement operations at healthcare facilities. But providers could also encounter officers from other law enforcement agencies attempting to enforce immigration laws. For providers, it does not matter what agency is involved. Federal efforts to enforce immigration laws raise the same issues, regardless of which agency does the enforcing. For brevity, we generally refer to ICE here when speaking of immigration enforcement officers. But providers should treat all efforts to enforce immigration laws at their facilities similarly, regardless of the enforcement agency involved.

If a federal officer appears at a facility seeking access to patients or information, providers should request the officer's credentials, make a record of those credentials, and ascertain whether the officer's purpose is to enforce the immigration laws. Staff should also contact legal counsel immediately.

➤ **Providers need not collect information about the immigration status of patients, except where necessary to assess eligibility for public benefits.**

Healthcare providers have no affirmative obligation to inquire into a patient's immigration status. Immigrant patients, like all patients, have a right to emergency medical treatment and equal access to health care. The federal Emergency Medical Treatment and Active Labor Act requires emergency departments to provide persons seeking emergency medical treatment with "an appropriate medical screening examination" and treatment to stabilize their condition regardless of citizenship, legal status, or ability to pay.<sup>3</sup> Moreover, State and federal law prohibits discrimination by health care providers.<sup>4</sup> As a result, individuals are not required to disclose their immigration status to receive health care.

Providers should ask for immigration information only if the individual wishes to apply for public benefit programs that use immigration status as an eligibility factor.

- **Providers should not disclose patient information to ICE unless ICE presents a warrant, subpoena, or summons for the information or identifies another valid law enforcement purpose. In that event, before making a disclosure, the provider should notify the patient and consult the provider’s counsel.**

State and federal laws restrict the disclosure of patient information to ICE and other law enforcement agencies. Specifically, the federal Health Insurance Portability and Accountability Act (“HIPAA”) protects a patient’s health information, referred to as “protected health information” or “PHI,” regardless of the patient’s immigration status. HIPAA defines PHI as demographic data and information that identifies the individual that “relates to the individual’s past, present or future physical or mental health or condition; the provision of health care to the individual; or the past, present, or future payment for the provision of health care to the individual.”<sup>5</sup> PHI also includes information relating to whether a patient receives public health benefits. Federal law allows disclosure of PHI for certain identified law enforcement purposes, such as in response to a warrant, subpoena, or summons.<sup>6</sup> However, a facility may disclose only that information specifically described in the subpoena, warrant, or summons.<sup>7</sup> Moreover, before PHI is released pursuant to these legal instruments, the hospital must make reasonable efforts to notify the patient and verify the identity and authority of the person requesting the information.<sup>8</sup> In addition, Maryland law also protects the confidentiality and privacy of patient and health records.<sup>9</sup> To the extent Maryland law is more stringent than HIPAA, Maryland law applies.<sup>10</sup> State and local government facilities, in particular, should be aware that the Maryland Public Information Act prohibits State and local officials from disclosing an individual’s “personal information”—including their name, address, and medical information—to federal agents who seek the information for immigration enforcement purposes, unless they have a judicial warrant.<sup>11</sup>

If ICE arrests a patient who requires access to prescribed medications, staff should disclose this information to the arresting officers. State and federal law allows this type of disclosure to protect the patient’s health and safety.<sup>12</sup> Otherwise, given the complexity of the relevant confidentiality laws, providers should consult with their legal counsel before responding to any request for patient information or making any other disclosures of such information.

- **If ICE appears at a facility, providers and patients may decline to answer their questions.**

Under the Fourth Amendment to the U.S. Constitution, if a patient or anyone else in a health care facility has an encounter with an ICE agent, the individual has the right to refuse

to answer questions until they have a chance to speak to a lawyer. Additionally, an individual can refuse to share any information about where they were born or how they entered the country. An individual may choose not to speak at all.

- **Providers do not have to grant ICE physical access to restricted spaces, unless ICE has a judicial warrant (i.e., a court order) or issues a command based on probable cause in certain limited emergency situations.**

ICE may enter spaces at healthcare facilities that are open to the general public, such as lobbies and waiting rooms. Staff should not attempt to block ICE agents from these spaces.

Facility staff do not have to grant ICE access to restricted spaces that are not open to the general public, unless ICE has valid legal authority to enter such a space and commands staff to grant access. Most often, ICE agents will need to present a warrant signed by a judge to establish legal authority to enter a restricted space against the wishes of facility staff. The judicial warrant should specify the person or information that the agents are authorized to seize. In rare situations, such as where there is probable cause to believe illegal activity has occurred and an emergency requires immediate action, ICE agents may order staff to grant them access to restricted spaces absent a judicial warrant.<sup>13</sup> Whether faced with a judicial warrant or some other type of command from ICE, staff should request the opportunity to consult with counsel before granting access but should comply with the agents' orders.

ICE may also attempt to gain access to restricted spaces by presenting facility staff with an administrative warrant, sometimes called an "ICE warrant." This type of warrant is not signed by a judge and does not grant ICE agents any special power to compel staff to comply with their requests. An administrative warrant does not mean that facility staff must grant the agents access to restricted spaces. ICE may, however, make an arrest in a public space pursuant to an administrative warrant.<sup>14</sup>

Finally, an ICE agent may attempt to obtain consent from facility staff to enter restricted spaces. The agents may be quite assertive in these efforts. But staff do not have to grant consent. If staff do not wish to grant consent, they should say so explicitly, even if ICE claims legal authority to enter a restricted space. An explicit statement helps to avoid any doubts about whether ICE acted pursuant to consent.

If a patient is detained by ICE, a healthcare facility may refer the patient or their family to resources for legal and other assistance. In Maryland, CASA, Catholic Charities, CAIR Coalition, and other legal aid and private immigration attorneys may be able to provide legal assistance. The American Immigration Lawyers Association and the National Immigration Legal Services Directory maintain lists of local legal service providers.<sup>15</sup> Individuals seeking to determine whether their family member has been detained and where the family member is being held should be referred to the ICE Online Detainee Locator.<sup>16</sup>

The consulate or embassy of the patient’s country of origin may also be able to offer information and assistance.

➤ **If ICE appears at a facility, staff should not take action to conceal noncitizen patients or thwart the ICE investigation.**

When facility staff encounter ICE agents, staff do not have to answer questions without counsel or otherwise assist in the ICE investigation. Staff should not, however, affirmatively attempt to conceal people from ICE or take other affirmative action to hinder the ICE investigation. Such actions may violate a federal criminal law that prohibits intentional efforts to thwart immigration enforcement.<sup>17</sup>

➤ **Training and Preparation Matters**

Healthcare facilities should train staff on how to interact with immigration enforcement officers. Facilities should also have policies that address the following issues:

- How to proactively inform patients and staff of the rights they have if they encounter immigration enforcement officers.
- When to collect information about the immigration status of patients, and how to handle such information.
- An emergency contact for staff when confronting a law enforcement request for patient information.
- An emergency contact for staff when confronting a law enforcement request for physical access to facilities.
- Which facility spaces are open to the general public and which spaces are restricted.
- Which staff members have authority to grant consent to entry in the restricted spaces.

Clear policies and effective training on these issues will help protect staff and patient rights while ensuring compliance with legal obligations.

---

<sup>1</sup> See <https://www.dhs.gov/news/2025/01/21/statement-dhs-spokesperson-directives-expanding-law-enforcement-and-ending-abuse>.

<sup>2</sup> See Memorandum of Alejandro N. Mayorkas, Guidelines for Enforcement Actions in or Near Protected Areas, at 3 (Oct. 27, 2021) (“The foundational principle of this guidance is that, to the fullest extent possible, we should not take an enforcement action in or near a protected area.”).

<sup>3</sup> 42 U.S.C. § 1395dd.

<sup>4</sup> See Title VI of the federal Civil Rights Act of 1964 and Section 1557 of the Affordable Care Act; Md. Code Ann., Health-General § 19-355(a) (“A hospital or related institution may not

---

discriminate in providing personal care for an individual because of the race, color, or national origin of the individual.”). *See also Ehrlich v. Perez*, 394 Md. 691, 732 (2006) (holding that plaintiffs had sufficiently shown a likelihood of success on their claim that denying health services on the basis of national origin violated federal and State law equal protection provisions).

<sup>5</sup> 45 CFR § 160.103.

<sup>6</sup> 45 C.F.R. § 164.512(f). The law enforcement purposes are:

- (1) to comply with a court order or judicial warrant, subpoena or summons issued by a judicial officer, or a grand jury subpoena (45 C.F.R. § 164.512(f)(1)(ii)(A)-(B));
- (2) to comply with an administrative request (45 C.F.R. § 164.512(f)(1)(ii)(C));
- (3) to respond to a request for PHI for purposes of identifying or locating a suspect, fugitive, material witness or missing person (45 C.F.R. § 164.512(f)(2));
- (4) to respond to a request for PHI about a victim of a crime, and the victim agrees (45 C.F.R. § 164.512(f)(3));
- (5) to report PHI to law enforcement when required by law (45 C.F.R. § 164.512(f)(1)(i));
- (6) to alert law enforcement about the death of the individual (45 C.F.R. § 164.512(f)(4)).

<sup>7</sup> *See* 45 C.F.R. § 164.512(f). The U.S. Department of Health and Human Services has published more information on the permissive law enforcement exceptions at <https://www.hhs.gov/hipaa/for-professionals/faq/505/what-does-the-privacy-rule-allow-covered-entities-to-disclose-to-law-enforcement-officials/index.html>.

<sup>8</sup> 45 C.F.R. § 164.512(e)(1) and 45 C.F.R. § 164.514(h)(1); *see also*, “Guidance on Immigration Enforcement,” Washington State Office of the Attorney General (April 2017) at 48-49, <https://www.atg.wa.gov/immigrationguidance>.

<sup>9</sup> Maryland Confidentiality of Medical Records Act, Md. Code Ann., Health-Gen § 4-301 et seq.

<sup>10</sup> *See* 45 C.F.R. § 160.203(b).

<sup>11</sup> Md. Code Ann., Gen Prov. §§ 4-101(h), 4-320.1(b).

<sup>12</sup> *See* Md. Code Ann., Health-Gen § 4-305(b)(3), (b)(6); 45 C.F.R. § 164.512(j), (k)(5). The Public Information Act restriction in § 4-320.1 of the General Provisions Article does not apply to this type of disclosure; it applies only where federal agents seek information for immigration enforcement purposes. *See* Gen Prov. § 4-320.1(b).

<sup>13</sup> *See Mincey v. Arizona*, 437 U.S. 385, 392 (1978).

<sup>14</sup> *See generally United States v. Santos-Portillo*, 997 F.3d 159, 162-64 (4th Cir. 2021).

<sup>15</sup> The American Immigration Lawyers Association list is available online at [www.aialawyer.com](http://www.aialawyer.com), and the National Immigration Legal Services Directory can be found at <https://www.immigrationadvocates.org/nonprofit/legaldirectory/>. Note that immigration consultants

---

and notaries are not authorized to provide legal advice and services on immigration matters. For more information on finding immigration assistance see the Office of the Attorney General’s website at [http://www.marylandattorneygeneral.gov/Pages/CPD/immFraud/immFraud\\_assist.aspx](http://www.marylandattorneygeneral.gov/Pages/CPD/immFraud/immFraud_assist.aspx).

<sup>16</sup> <https://locator.ice.gov/odls/homePage.do>

<sup>17</sup> See 8 U.S.C. § 1324(a)(1)(A)(iii) (making it a crime to “conceal[], harbor[], or shield[] from detection” an unlawfully present person); *Reyes v. Waples Mobile Home Park*, 91 F.4th 270, 277 (2024) (“Conceal, harbor, and shield are all active verbs. Thus, the statute only applies to those who intend in some way to aid an undocumented immigrant in hiding from the authorities.”).