

Interactions with Federal Immigration Officers in the Emergency Department

Adapted from: National Immigration Law Center. (2017). Health Care Providers and Immigration Enforcement: Know Your Rights, Know Your Patients' Rights. Retrieved from <https://www.nilc.org>

Hospital Policy [if in existence]:

Procedures:

1. Federal Immigration Officers include but are not limited to:
 - a. Department of Homeland Security (DHS)
 - i. U.S. Immigration and Customs Enforcement (ICE)
 - ii. U.S. Customs and Border Patrol (CBP)
 - iii. U.S. Customs and Immigration Services (USCIS)
 - b. Staff are most likely to interact with ICE officers as these are the officers who are in charge of enforcement within the U.S.
2. If Federal Immigration Officers enter the premise, staff should follow the subsequent protocol:
 - a. Call the Department of Public Safety at _____
 - b. Call the Office of Legal Affairs at _____
 - c. Inform the officer that he/she must wait in a public area (i.e. the waiting room of the ED) for authorized staff to arrive
3. Authorized staff consisting of _____ will assess whether the officer has valid legal authority to enter any non-public areas. Situations in which the officer has valid legal authority include:
 - a. Possession of an authorized warrant with all of the following components:
 - i. It is a valid judicial warrant
 - ii. It is signed by a judge or magistrate judge
 - iii. It states the address of the specific premises to be searched, and the address is that of the facility
 - iv. It is being executed during the time period specified on the warrant
4. Federal Immigration Officers should not be allowed to enter the premises unless they have a valid judicial warrant.
5. If Federal Immigration Officers are allowed to enter the premises for the above stated purposes, then:
 - a. Officers must be accompanied at all times by designated personal
 - b. Officers may perform only the actions explicitly permitted per warrant or applicable by federal law. For example, if the officer has the right to search the emergency department, this does not include private patient exam rooms.

Other important general information for providers:

- **Sensitive locations.**¹ ICE and CBP recognize hospitals and other health facilities as “sensitive locations.” Immigration enforcement is discouraged in sensitive locations without prior approval or “exigent” circumstances. This includes arrests, interviews, searches, and surveillance.
- **Collection of immigration status.** As providers, avoid documenting immigration status or country of origin in medical and billing records if possible.
- **Disclosure of information.**² Health care providers are not legally obligated to inquire into or report a patient’s immigration status.
- **Right to remain silent.**³ Individuals have a right to remain silent and speak to an attorney if Federal Immigration Officers enter a health care facility.
- **Be aware what is in public view.** Federal Immigration Officers may inspect anything in plain view in public spaces. Avoid keeping patients’ medical or personal information in plain view. This includes what is within earshot as well.
- **Probable cause.**⁴ Federal Immigration Officers may search a private area if they has “probable cause” to suspect unlawful activity. Again, call appropriate personal once contact with Federal Immigration Officers have been established to further assist.

¹ Memorandum from John Morton, Director, U.S. Immigration and Customs Enforcement on Oct 24, 2011, <https://www.ice.gov/doclib/ero-outreach/pdf/10029.2-policy.pdf>; and Memorandum from David V. Aguilar, Deputy Commissioner, U.S. Customs and Border Protection on Jan 18, 2013, https://foiarr.cbp.gov/docs/Policies_and_Procedures/2013/826326181_1251/1302211111_CBP_Enforcement_Actions_at_or_Near_Certain_Community_Locations_%7BSigned_M.pdf; confirmation on DHS Q&A Q26 on Feb 21, 2017, <https://www.dhs.gov/news/2017/02/21/qa-dhs-implementation-executive-order-border-security-and-immigration-enforcement>

² Under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), personal health information, including characteristics that uniquely identify an individual, are protected and cannot be disclosed absent a legal requirement to do so, 45 C.F.R. § 160.103

³ As established in *Katz v. United States*, 389 U.S. 347 (1967).

⁴ As established in *Brinegar v. United States*, 338 U.S. 160 (1949).