

MSHS Q&A ON IMMIGRATION ENFORCEMENT FOR HOSPITALS

Federal Law Enforcement Officers (LEO's)

Q1. Which agency enforces immigration laws?

The primary agency for immigration enforcement is US Immigration and Customs Enforcement (ICE), a law enforcement component of the Department of Homeland Security (DHS).

Q2. What sort of activities does ICE conduct at companies and businesses?

Historically, ICE has focused on industries known to employ large numbers of undocumented workers, such as in construction, agriculture, and other industries. ICE has arrested unauthorized workers in these industries and has exercised its authority to audit certain documentation that employers are required to keep as verification of their employees' identity and authorization to work in the US (the "I-9" form.)

Q3. Has ICE done immigration enforcement in hospitals?

ICE enforcement at hospitals has been rare. For several years, ICE maintained a policy limiting enforcement at certain "sensitive" or "protected" locations. On January 21, 2025, the Department of Homeland Security rescinded that policy.

Q4. Does this mean that ICE or other Federal Law Enforcement Officers (LEO's) can come to hospitals for enforcement purposes?

Even before the policy was rescinded, ICE and LEO's had the discretion to conduct enforcement at hospitals and other sensitive locations with approvals and if certain exceptions applied. It is unclear whether the withdrawal of the policy means there will be increased enforcement at hospitals. The purpose of this guidance is to help prepare members for the (hopefully unlikely) event that they have to interact with ICE.

Q5. What does "ICE enforcement" refer to?

For the purposes of this guidance, "ICE enforcement" means any official action that ICE could conduct at a hospital (including outpatient facilities). This could include arresting patients and seeking to obtain records or other patient information, including protected health information (PHI). This could also include requesting to do an I-9 audit. Of course, it is possible that ICE may want to take more than one action in a given case. Also, for the purposes of this guidance, is to focus on enforcement actions directed toward patients, not employees, even though parts of the guidance could apply to both.

Q6. Is there a best practice for hospitals in dealing with law enforcement?

At Mount Sinai Health System, the Vice President of Security & Protective Services will serve this role and will coordinate decision making and guidance with the MSHS office of General Counsel.

Q7. If a LEO arrives at the hospital to arrest someone or is seeking information, what should we do?

You should ask the LEO to wait while you contact the VP of Security & Protective Services. Like all law enforcement officers, LEO's take their work seriously and are trained to obtain information. They may use persuasion and even intimidation at times. When dealing with any law enforcement agent, it is important to be professional and calm. You should tell the LEO that the hospital has a protocol for dealing with law enforcement requests, and you are not authorized to provide them with information or access to non-public areas of the facility.

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Q8. What do I do in that situation if I am approached by a LEO?

Follow the MSHS LEO Notification Procedure

Q9. How can I verify that the person is really a LEO?

You should ask for the LEO's credentials or badge number.

Q10. Do we have to cooperate?

Whether the hospital is required to cooperate will depend on what (if any) type of legal document the LEO has. Generally, the only document that gives a LEO the right to enter non-public areas of a hospital is a warrant signed by a judge, also known as a judicial warrant. You should ask the LEO to give you whatever document he or she has, if any. You should then ask the agent to wait while you have it reviewed by our Liaison who collaborates with the Office of General Counsel. The LEO may not want to wait, but it is the hospital's right to review any document that the LEO says gives him or her the right to access non-public areas or hospital information.

Q11. What do you mean by "non-public" areas of the hospital?

Non-public areas of a hospital include treatment rooms, inpatient units, offices, etc., essentially anything that is not open to the public. Public areas include lobbies, waiting areas, and any other places open to the public.

Q12. What if a LEO says a patient needs to be arrested to avoid imminent harm or risk?

It is possible that a LEO may say something to that effect. Depending on the circumstances, the hospital may decide to cooperate with law enforcement. But remember, without a judicial warrant, cooperation is not required.

Q13. What if a LEO shows me a deportation order or arrest warrant for a patient?

If a LEO seeks to arrest someone, he or she may have a warrant or other document pertaining to that person. But the only document that will give a LEO the right to immediately enter a non-public area of a hospital is a warrant that has been signed by a judge specifically naming the location where the LEO is permitted to enter to arrest the person.

Q14. If the LEO does not have a judicial warrant including that information, I can ask them to leave?

Follow MSHS LEO Notification Procedure. The VP of Security & Protective Services in cooperation with General Counsel will provide next steps.

Q15. If a LEO is going to return with a judicial warrant, why shouldn't we just cooperate in the first place?

There is no guarantee that a LEO would get a judicial warrant. The LEO would have to submit certain information to a judge to show why the LEO is entitled to such an order. The judge may decide that there is a less intrusive way for the LEO to-do its work or there may be local or state laws that prohibit the local authorities from cooperating with the LEO under the circumstances. That would be for the authorities and the courts to work out.

Q16. What is a court order?

A warrant or subpoena signed by a judge is a type of court order. Certain penalties can be issued for noncompliance with a court order, including being held "in contempt."

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Q17. If the hospital receives a judicial warrant from a LEO and has to comply, what should we do?

Once the VP of Security & Protective Services has determined that the judicial warrant is valid and enforceable at the hospital, it is reasonable to request that a LEO work with the hospital to minimize disruption to patients and staff.

Q18. How does a subpoena differ from a warrant?

Subpoenas are generally used to obtain records or information or to compel someone to appear in court on a future date. Warrants are generally used to obtain immediate access to premises and people, usually for activities like arrests, searches, and seizures. Like warrants, subpoenas can be signed by a government official (administrative subpoena) or a judge (judicial subpoena).

Q19. How LEO's use subpoenas?

Like other law enforcement agencies, LEO's can use a subpoena to seek records or information, including PHI. Again, if the subpoena is not signed by a judge, compliance is not required, and even if it is signed by a judge, the hospital could choose to challenge the subpoena in court rather than comply.

Q20. What do I do if a LEO arrives at the hospital with a subpoena directed to the hospital?

Follow the MSHS LEO Notification Procedure. The VP of Security & Protective Services will provide the next steps.