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## **Attorney General Guidance:** **Information for Massachusetts Healthcare Providers Regarding Immigration** **Enforcement and Access to Care and Assistance Programs**

The Office of the Attorney General of Massachusetts has received inquiries from healthcare providers about the impact of new and anticipated executive orders and federal policies on immigrants who seek healthcare in the Commonwealth. It is important to note that no executive action has prohibited (or could prohibit) healthcare providers from continuing to provide services to all residents, regardless of immigration status, and from protecting the privacy of their patients as required by law. The Attorney General's Office will continue to closely monitor relevant executive orders, federal rulemaking, and legislation, and will update this guidance as needed.

Healthcare providers are seeking information about how to respond if U.S. Immigration and Customs Enforcement (ICE) conducts enforcement activities at healthcare facilities or requests information from healthcare providers about patients. They are also concerned that individuals may be deferring necessary healthcare out of fear that they may be ineligible to receive healthcare services, and that accessing care might lead to enforcement or otherwise adversely impact their immigration status. This guidance addresses the rights of healthcare providers and patients with respect to requests for access or information by ICE. It also provides information about access to care and government assistance programs.

**This guidance is not legal advice or a formal legal opinion of the Attorney General. A healthcare provider or organization should consult with legal counsel about specific questions and concerns and to determine how the considerations discussed below affect a particular healthcare environment.**

## QUESTIONS AND ANSWERS

### **Information about ICE Enforcement Activities**

*What should a healthcare provider do if ICE asks for information about a patient?*

Protected health information (PHI) held by a healthcare provider is protected by federal and state privacy laws, including the Health Insurance Portability and Accountability Act (HIPAA),<sup>1</sup> irrespective of a patient's immigration, visa, or residency status. Healthcare providers may not provide PHI to law enforcement officials, including ICE, except under certain limited circumstances.<sup>2</sup> Prior to releasing PHI, a healthcare provider must comply with federal and state privacy requirements that apply in the particular circumstance and should consult their organization's internal policies and procedures, which may include requiring law enforcement to obtain a court order, warrant, subpoena, or summons and which may be more protective of patient privacy.<sup>3</sup>

*What level of access can ICE officials have at healthcare facilities?*

Many providers are newly concerned about the possibility that ICE could conduct enforcement at or near a healthcare facility, given the recent rescission of ICE guidelines that generally prohibited ICE agents from conducting enforcement activities in or near healthcare facilities and other "sensitive" or "protected" areas.<sup>4</sup>

The authority of ICE, like that of other law enforcement agencies, is governed by the Fourth Amendment to the U.S. Constitution, which protects against *unreasonable search and seizure*.<sup>5</sup> Where a reasonable expectation of privacy exists, the U.S. Constitution prohibits access without consent, a judicial warrant, or certain exigent circumstances that excuse the warrant requirement.<sup>6</sup>

*How can a healthcare facility prepare for potential ICE enforcement activity?*

Healthcare providers should consider adopting comprehensive policies and procedures that apply to any law enforcement activity, including immigration enforcement activity by ICE. Recommended policies include:

- ***Designating private areas*** within the facility that are closed to the public. Access to private areas should be limited to individuals receiving and providing care, and

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<sup>1</sup> See 45 C.F.R. Parts 160 and 164.

<sup>2</sup> See 45 C.F.R. § 164.512(k)(5)(i).

<sup>3</sup> See 45 C.F.R. §§ 164.512(e), 164.512(f)(1)(ii)(A).

<sup>4</sup> The language of the updated directive does not include concrete rules or procedures for ICE agents to follow but instead instructs agents to use "common sense" when determining where to engage in immigration enforcement. See [Statement from a DHS Spokesperson on Directives Expanding Law Enforcement and Ending the Abuse of Humanitarian Parole](#).

<sup>5</sup> *Katz v. United States*, 389 U.S. 347 (1967).

<sup>6</sup> *Id.*

those needed to accompany them, and should exclude all others. A waiting area at a healthcare facility can be open to the public or can be limited to patients and those accompanying them, and there can be a posted policy requiring all visitors, including immigration and other law enforcement officials, to sign in.<sup>7</sup>

- Ensuring that no sensitive information in writing is openly in *plain view* in public spaces, and that no conversations regarding such information can be easily overheard.
- ***Designating a staff member*** as authorized and responsible for any interactions with ICE officers and law enforcement personnel. All staff should refer ICE officers and other law enforcement personnel to this designated staff member and inform them that only the designated staff member is authorized to consent to provide access to private areas of the healthcare facility and to review any warrant documents. Staff can further be trained and advised to refer any questions about a patient or any patient information to the designated staff member.

A healthcare facility may also distribute clear procedures to staff members about what to do if an ICE official or other law enforcement officer requests access to a patient or a patient care area. A healthcare facility may want to include the following steps in any such procedures:

- First, ask the officer for his or her name, identification number, and the name of the agency with which he or she is affiliated;
- Second, ask the officer if they have a judicial warrant or court order, and if so, ask for a copy of the document. Without a court order or warrant signed by a judge, immigration officers cannot compel a healthcare provider or their staff to comply with their requests;
- Third, inform the officer that you are not attempting to obstruct their actions, but that you are not authorized to respond to the request and need to contact the appropriate point person before you can provide access; and
- Fourth, ask the officer to wait outside while you contact your legal counsel or other appropriate point person.

*What types of documents may an ICE official present when conducting immigration enforcement activity and what to look for?*

If presented with a warrant or other court document by immigration or other law enforcement officials, a designated staff member at a healthcare facility should review whether the document: (1) is a valid judicial warrant; (2) is signed by a judge or

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<sup>7</sup> For additional information see National Immigration Law Center (December 2024), [“Health Care Providers and Immigration Enforcement: Know Your Rights, Know Your Patients’ Rights.”](#)

magistrate judge; (3) states the address of the premises to be searched; and (4) if indicated, is sought to be executed during the time specified on the warrant.

Immigration officials may present a variety of documents, not all of which are warrants in the constitutional sense. Healthcare providers are not required to consent to a search of the private areas of a facility unless presented with a judicial warrant, signed by a judge or magistrate, and based on probable cause. Subpoenas, whether administrative or judicial, are documents that request the production of documents or other evidence. They generally do not require immediate responses and can be challenged in court. If feasible, a designated staff member or other appropriate point person should review all documents presented by immigration officials with the assistance of legal counsel. Healthcare facility staff are advised to not physically interfere with the actions of immigration officials or any law enforcement officers.

***ICE Administrative Removal Warrants (Form I-200) or Arrest Warrants (Form I-205)*** authorize ICE officers to arrest a person suspected of violating the immigration laws. These are not warrants within the meaning of the Fourth Amendment to the U.S. Constitution, are not signed by a judge or magistrate judge and are not based on a showing of probable cause of a criminal offense. These warrants do not require healthcare providers to grant ICE officers access to a facility's non-public areas.

***Federal Arrest Warrants (Form AO 442) or Search and Seizure Warrants (Form AO 93)*** are issued by a federal court judge or magistrate judge based on a finding of probable cause and authorize the search and seizure of property in a specified location or the arrest of a person named in the warrant, including in non-public areas. Prompt compliance with these warrants is usually required. If feasible, a healthcare provider should review the document and consult with legal counsel.

## **Information About Access to Healthcare and Government Insurance Coverage**

*Are healthcare providers required to verify their patients' immigration or citizenship status?*

No. Healthcare providers in Massachusetts are not required to ask about immigration or citizenship status and may treat anyone regardless of immigration or citizenship status. An individual may be required to disclose his or her immigration status to apply for certain government benefits, including government-funded health insurance; however, application to such programs is voluntary.

*What protections are currently in place for patients who seek care at a hospital or other healthcare provider?*

Emergency departments are required to provide emergency screening and stabilization services without asking about immigration, citizenship, or insurance status.<sup>8</sup> Some

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<sup>8</sup> Emergency Medical Treatment & Labor Act (EMTALA) 42 U.S. Code § 1395dd.

providers are required to treat anyone living in their service area, irrespective of immigration status.<sup>9</sup>

In addition, the Massachusetts Public Accommodation Law prohibits making any distinction, discrimination, or restriction in admission to or treatment in, a healthcare facility, including dental and medical offices, pharmacies, clinics, hospitals, and nursing homes, based on *race, color, religious creed, national origin, ancestry, sex, gender identity, sexual orientation, deafness, blindness, or any physical or mental disability*.<sup>10</sup> State licensure requirements also mandate that hospitals shall not discriminate in the provision of service against any person on the basis of race, creed, color, sex, handicap, or national origin.<sup>11</sup> Many healthcare providers have their own non-discrimination policies that may be found on their websites (for example, in a Patient's Rights section).

*Is a patient's immigration status affected if he or she receives a government-subsidized healthcare service or applies for government insurance, such as MassHealth?*

No. The potential expansion of the concept of “public charge” – a designation that can adversely impact an immigrant's legal status<sup>12</sup> – is of particular concern to healthcare providers. Under current federal policy, effective September 9, 2022, the receipt of non-cash benefits for which one is eligible, including but not limited to Medicaid (MassHealth) (other than for nursing home care), CHIP (Children's Health Insurance Program), Health Safety Net or health insurance through the Health Connector, SNAP (Supplemental Nutrition Assistance Program), or any benefits related to immunization or testing for communicable diseases, does not impact an individual's immigration status.<sup>13</sup> Any changes to the public charge designation require federal rulemaking, which involves a lengthier process than an executive order.

*What programs are available to individuals without regard to immigration or citizenship status?*

Massachusetts has programs for low-income children and adults without regard to citizenship or immigration status. Information about these programs can be found at <http://www.mass.gov/eohhs/consumer/insurance/> or at the following links: [MassHealth Limited](#), [Health Safety Net](#), and [Children's Medical Security Plan](#). A local Navigator or Certified Application Counselor can assist with applications for coverage through public assistance programs.<sup>14</sup>

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<sup>9</sup> See, e.g., Public Health Service Act Section 330(a)(1) (PHSA, 42 U.S.C. § 254b). Federal law requires “health centers,” as defined by statute, to serve all residents in their federally-approved service area.

<sup>10</sup> M.G.L. c. 272, §§ 92A, 98, and 98A.

<sup>11</sup> See, e.g., 105 CMR 130.206.

<sup>12</sup> Currently, the rule established by President Biden remains in effect, see <https://www.federalregister.gov/documents/2022/09/09/2022-18867/public-charge-ground-of-inadmissibility>.

<sup>13</sup> See 8 C.F.R. 212.20 through 212.23; “Public Charge Ground of Inadmissibility,” September 9, 2022 (2022 Final Rule), <https://www.govinfo.gov/content/pkg/FR-2022-09-09/pdf/2022-18867.pdf>.

<sup>14</sup> For help locating enrollment assistance service, see <https://my.mahealthconnector.org/enrollment-assisters>. For MassHealth Information for Noncitizens, see <https://www.mass.gov/info-details/masshealth-information-for-noncitizens>.

As of November 1, 2024, Deferred Action for Childhood Arrivals (DACA) recipients are eligible for coverage under the Affordable Care Act (ACA) through the Massachusetts Health Connector.<sup>15</sup> Applicants are encouraged to seek assistance from a Certified Assister through the [Massachusetts Health Connector](#).

When applying for coverage through the Massachusetts Health Connector, applicants will have to provide information about their immigration status to determine eligibility. The Massachusetts Health Connector will not share this information with immigration enforcement agencies.<sup>16</sup> The Health Connector provides a [list of immigration statuses](#) that can qualify for coverage.

## **Additional Information**

*What steps might healthcare providers take to protect patients and their information?*

A healthcare provider should collect and maintain only as much patient immigration or citizenship information as may be necessary for treatment or regulatory compliance purposes. A healthcare provider should consult with their organization's policies and procedures regarding the collection and release of patient information.

*May a healthcare provider educate patients about their rights with regard to immigration enforcement activities?*

Yes. Healthcare providers are permitted to educate patients about their legal rights. A healthcare provider may, for example, post information about rights, distribute information, and hold educational sessions. Before engaging in and funding such activities, a healthcare provider should consider whether any limitations might preclude the use of certain funds for this purpose, including any restrictions that may accompany grants to fund particular projects or programs.

*Who can a healthcare provider contact at the AGO with questions or to report an incident?*

If you have questions or need further assistance, you may contact the Office of the Attorney General at (617) 963-2917.

Updated January 31, 2025

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<sup>15</sup> See <https://www.masshealthmtf.org/health-connector-coverage-daca-recipients-update/>. An injunction in a federal case in North Dakota does not affect applicants in Massachusetts, but they are advised to monitor the effect of ongoing litigation on their eligibility for coverage.

<sup>16</sup> See <https://www.mahealthconnector.org/immigration-status>.