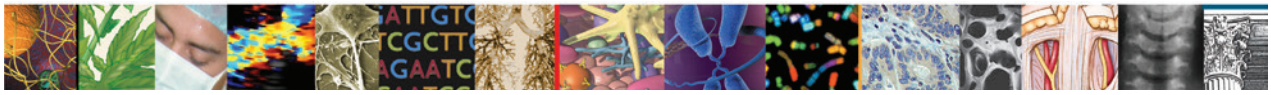

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Perspective

Health Care in an Evolving Immigration Landscape — Providing Care while Upholding the Law

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In January 2025, the "sensitive locations policy," which protected health care facilities and other designated areas from immigration enforcement activities, was rescinded.[1] As a result, U.S. Immigration and Customs Enforcement (ICE) officials are no longer barred from entering health care facilities to conduct these activities. This change does not grant the officials unrestricted access to all areas of health care facilities or to patient information — the Fourth Amendment and the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule remain in place. Immigration officials may enter public spaces (e.g., lobbies) without consent, but they can access private spaces (e.g., exam rooms) only with a valid warrant or in exigent circumstances, such as threats to public safety.

Health care professionals are therefore more likely than in the past to encounter immigration officials in health care settings, to care for patients who are in ICE custody, and to treat patients who are at risk for detention or deportation or whose family members have already been detained or deported. Health care professionals may find themselves caught between pressure to comply with immigration enforcement efforts and their professional duties to their patients. If they defy immigration officials' demands in an effort to protect patients, they risk obstructing or interfering with immigration enforcement activities, which carries legal consequences. Although such scenarios have not previously been commonplace in the United States, uncertainty remains about how policies may evolve. But proper institutional procedures can protect both the constitutional rights of patients and the ethical responsibilities of health care professionals.

Clinicians and other staff members (e.g., receptionists) may face requests from officials to facilitate immigration enforcement. Under the HIPAA Privacy Rule, health care professionals are not obligated to provide protected health information (PHI) to anyone without a judicial warrant or subpoena.[2] The definition of PHI is expansive and includes a patient's name, immigration status, and hospital discharge date. Administrative warrants from the Department of Homeland Security (such as Form I-200 or I-205) are not judicial warrants and do not compel health care professionals to disclose PHI. A judicial warrant must be signed

by a judge and list a state court or U.S. district court on the document.

If an immigration official presents a judicial warrant or subpoena, health care professionals should verify its validity with their institution's legal counsel before complying with it. They should escort the official away from private areas and document the official's name and identification number, the nature of the request, and any actions taken, and obtain a copy of any documentation the official provides. They should not provide immigration officials with information beyond the scope of the warrant. When possible, they should avoid documenting a patient's immigration status in the medical record, since that information could be used against the patient in legal proceedings.

If immigration officials enter public spaces, they may take note of information available in plain view, such as patients' names on sign-in sheets. However, the Fourth Amendment protects against "unreasonable searches and seizures" in private areas, requiring law enforcement officials to obtain warrants based on probable cause. To enter private spaces absent an urgent threat, officials must present a valid warrant issued by a court with specific information about the area to be searched, the time frame of the search, and a list of items or persons to be taken into custody. If an official attempts to gain access to a private area by claiming there are exigent circumstances, legal counsel should be contacted. If an official forcibly enters a private area without legal authorization, staff should avoid physical confrontation, document the incident in detail (including names, badge numbers, and any statements made), and notify institutional leadership, their security team, and legal counsel as soon as possible.

If no clear policies are already in place, health care institutions should establish policies distinguishing public and private areas. Lobbies, parking lots, and sidewalks outside a health care facility are considered to be public spaces. Health care facilities should designate private areas (e.g., clinical workspaces and waiting rooms) using clear signage, closed or locked doors, and policies restricting public access. Confidential information should be kept out of plain view in all areas.

In the past, immigration officials have pressured clinicians to transgress their clinical duties or to conduct evaluations or interventions that are not clinically indicated, such as certifying detainees' fitness to travel for deportation, obtaining dental x-rays for estimating a patient's age (to determine whether a detainee can be placed in adult detention),[3] and force-feeding ICE detainees engaged in hunger strikes (a practice condemned by medical experts and ethicists).[4] Such requests by law enforcement officials always raise ethical concerns, in this case because they may facilitate immigration enforcement goals rather than patient well-being. Clinicians must remain committed to their professional obligations and ensure that clinical evaluations and interventions are guided solely by patients' needs. If pressured to perform a nonindicated intervention, clinicians should document their medical reason for declining, request documentation from the official specifying the legal basis for the request, and consult with their institution's legal counsel. Without a court order, clinicians are not obligated to perform interventions that are not clinically indicated.

Clinicians may encounter difficulties contacting surrogate decision makers for patients in ICE custody or for those whose family members have been detained or deported. In both types of cases, immigration and other law enforcement officials have been known to delay or restrict approval for clinicians to contact designated surrogates, sometimes citing security concerns. The legal basis for such restrictions remains unclear, and officials, in keeping with their organizational policies, may decline to provide further details about the security risks in question. Such a lack of transparency complicates efforts to ensure timely communication between clinicians and legally recognized surrogates. Health care professionals can mitigate these challenges by encouraging all their patients to complete legal documentation designating their preferred surrogate decision makers (e.g., medical power of attorney). If there is a risk that surrogate decision makers may be detained or deported, clinicians should encourage patients to name multiple surrogates, to maximize the likelihood that at least one of them will be available when needed.

Increased immigration enforcement has caused many undocumented immigrants to avoid seeking health care,[5] which poses risks to both them and public health. Health care professionals can reduce the barriers to care by offering multilingual telehealth services to patients who fear encountering

immigration officials when they leave their homes. Although health care professionals should not attempt to provide legal guidance to patients, they can refer patients to local legal and advocacy organizations.

Many of the actions described above depend on strong institutional policies and rapid access to legal counsel. Health care professionals should work with their institutions to establish a response team for managing interactions with immigration officials. Institutions should provide legal support so that health care professionals can advocate for their patients within the bounds of the law. Institutions should update their policies regarding interactions with law enforcement, particularly those applying to cases involving uncertainty about the validity of officers' requests for medical evaluation and treatment.

In addition, institutions should review and update policies regarding PHI access and disclosure; safeguarding patient information is a best practice that benefits all patients. Given the potential for federal enforcement actions to include financial penalties or exclusion from federal programs — such as the loss of Medicare or Medicaid funding, which can amount to millions of dollars — institutions should assess and prepare for these risks. Despite these concerns, institutions can uphold patients' rights by implementing clear policies that comply with federal law while minimizing unnecessary engagement with enforcement efforts, ensuring staff are trained on legal protections, and participating in advocacy efforts to safeguard equitable access to care.

Health care professionals may face legal and ethical challenges as immigration policies evolve. By understanding their own legal rights and those of their patients, they can continue caring for patients while advocating for them and adhering to the law.

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The views expressed in this article are those of the authors and do not necessarily represent the official policies or positions of their affiliated institutions.

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