

Hospitals Brace For Immigration Agents, Legal Clashes

By **Dan McKay**

Law360 (January 28, 2025, 2:48 PM EST) -- Healthcare lawyer Douglas Grimm is encouraging his clients to think through a likely scenario.

A federal agent shows up at the front desk and wants to know whether the hospital is treating immigrants living in the country illegally and, if so, where to find them.

It's the kind of inquiry that could trigger overlapping legal questions touching on patient privacy, the provision of healthcare, and police powers.

"If you're not prepared," Grimm said, "now is the time to get prepared."

The scenario outlined by Grimm — a Washington, D.C.-based partner at ArentFox Schiff LLP — is part of the discussion that hospital leaders and lawyers across the country are having since the Trump administration last week revoked a Biden-era directive to avoid immigration enforcement at sensitive locations.

The U.S. Department of Homeland Security rescinded the 2021 policy on President Donald Trump's first day in office, saying federal agents are free to use common sense to catch criminals and enforce immigration laws wherever they need to.

The announcement has healthcare providers and their attorneys evaluating how to navigate not just the potential legal questions but also broader changes in how people seek care. The policy reversal could put extra pressure on emergency rooms, experts say, if some families avoid routine care or fear traveling to follow-up appointments.

"We just don't know if there are going to be many more arrests at hospitals and other formerly designated sensitive locations or not, but people are going to be very scared. They already are scared," said Medha D. Makhoul, a professor at Penn State Dickinson Law and founding director of the school's Medical-Legal Partnership Clinic.

The possible legal conflicts and changes in healthcare delivery make it all the more important for hospitals to prepare ahead of time, attorneys say, and ensure patients and staff alike know how their hospital will respond to immigration agents.

"Learning it on the fly is not the way to go with this, because people's lives are at stake," said Grimm, who leads the healthcare practice at ArentFox Schiff.

New Options for ICE

Guidance issued under then-President Joe Biden in 2021 called for federal agents to avoid immigration enforcement in or near sensitive locations, such as churches, schools and hospitals, "to the fullest extent possible."

The guidance applied to enforcement actions by Immigration and Customs Enforcement and Customs and Border Protection agents. Protected medical areas included hospitals, doctor's offices, health clinics, vaccination or testing sites, urgent care centers and community health centers.

Maria Kallmeyer, a Chicago-based partner at Quarles & Brady LLP and national co-chair of its immigration and mobility group, said the goal was to ensure people felt comfortable seeking care, regardless of their immigration status.

Hospitals "are places where we generally want people to feel safe, and people don't feel safe if they're afraid that they're going to get picked up by ICE because they went to the doctor," she said.

The Trump administration says the change will help protect public safety.

Benjamin Huffman, then-acting secretary of the U.S. Department of Homeland Security, rescinded the guidance last week amid a flurry of executive actions as Trump returned to office.

A department spokesperson said the policy change would empower "CBP and ICE to enforce our immigration laws and catch criminal aliens — including murders and rapists — who have illegally come into our country."

The administration "will not tie the hands of our brave law enforcement and instead trusts them to use common sense," the spokesperson said in a written statement.

The president on his first day also declared a national emergency and ordered the U.S. Department of Defense to deploy armed forces to help control the southern border. It was necessary, he said, "to protect the security and safety of United States citizens."

Overlapping Laws

Healthcare and immigration attorneys say hospitals should prepare now for how they will handle an immigration enforcement action.

Nora Katz, a Nashville, Tennessee-based partner for Holland & Knight LLP, said receptionists, providers and administrators who are likely to encounter a federal agent should have a response plan and know whom to call.

"Enforcement events are high-stress, particularly in sensitive areas like hospitals or medical centers," Katz told Law360 Healthcare Authority. "The best way to navigate these events is by preparing ahead of time."

Kallmeyer said ICE agents can generally go anywhere considered a public location, and there's not much a hospital can do about it. Administrators may want to consider which areas of the hospital would be considered public.

"Can ICE just sort of walk into the hospital and look for people in the waiting room? Yes, they probably can do that," Kallmeyer said.

But they wouldn't necessarily be entitled to visit, say, a patient exam room without permission.

Hospitals should also consider what information to collect from patients and when it may be shared, attorneys said. State laws may complicate the issue.

Texas and Florida, for example, call for certain hospitals to collect information about patients' immigration status. California, meanwhile, recommends healthcare providers limit their collection of immigration information.

"This patchwork of regulation will add to the workload of healthcare and hospital attorneys, particularly those working with large health systems operating in a number of states," Katz said.

Some of the legal questions raised by the Trump move are likely to wind up in court.

Federal law generally prohibits sharing a patient's health information without consent, albeit with an exception for court-ordered hand-overs.

Immigration agents may show up with a warrant signed by a judge, attorneys say. Others may just

ask to look around or ask if the hospital is aware of any immigrants lacking legal status — patients or otherwise — on the premises.

"Privacy is a critical and highly regulated issue in healthcare," Katz said. "I expect legal questions about whether and when immigration status constitutes protected health information."

How aggressive ICE agents might be isn't clear. But Grimm said that before the 2021 policy change, there were "some very challenging cases to read about — individuals who have been attempting to make their way to emergency rooms, either in ambulances or in private vehicles, who are in emergent situations and they're intercepted."

Providers often face complaints for violating the Health Insurance Portability and Accountability Act, which outlines a number of privacy rules.

But Makhoulf, the Penn State professor, said the law also grants some discretion to healthcare providers, allowing them to decide "where to draw the line" on sharing information with law enforcement.

"When law enforcement — whatever kind of law enforcement — comes to healthcare providers under HIPAA and requests certain kinds of otherwise protected information, there actually is some discretion for healthcare providers to decide whether to hand that over or not," she said.

Frederick Strasser, principal at FW Strasser Associates LLC, where his practice includes immigration matters, said laws prohibiting interference with the delivery of healthcare could also come into play.

"Coming into a healthcare facility while they're providing care — that seems to be a line that most moral people would say, 'OK, this is not the right place for this. They're obviously not going anywhere. They're not posing a threat to anyone. Why is this a mandate of the government?'" Strasser said.

'Anxiety and Panic'

Legal questions aside, healthcare lawyers and providers are also evaluating the practical implications of the new "sensitive areas" policy.

Fear of immigration enforcement could put extra pressure on emergency departments if people avoid routine care or wait until their condition worsens before going to the hospital. Communicable diseases could spread more easily if people aren't seeking immediate treatment.

Penn State's Makhoulf said providers may also find themselves weighing the risks of referring certain patients for follow-up procedures. Multiple visits on public transportation, for example, could increase the person's risk of being stopped by federal agents.

"The foremost thing for healthcare providers to keep in mind right now is that this change in policy could very well change the way that they are practicing medicine and providing healthcare to their patients," she said.

Strasser said he doesn't expect hospitals to be a priority for immigration enforcement. But he noted that the FBI infiltrated mosques following 9/11.

"Every time we say something is impossible or unlikely, we later find out, 'Oh, not so unlikely, not so impossible,'" he said.

Healthcare providers, meanwhile, don't seem eager to plunge into the immigration debate.

Beth Feldpush, senior vice president of advocacy and policy at America's Essential Hospitals, which promotes health equity, said "patients deserve to feel safe in healthcare settings, at a time when they are already more vulnerable because they are sick or injured."

Jan Emerson-Shea, vice president of external affairs at the California Hospital Association, said her organization is "reviewing the intersection of state and federal laws" following the new executive

orders.

"In the meantime," she said, "it's important to remember that hospitals' first and foremost duty is to care for all patients, regardless of their citizenship status."

Grimm, who ran hospitals before becoming a lawyer, said he expects litigation of some kind as hospitals navigate their obligations under state and federal law.

"The only question in my mind is: 'How fast is it going to get here?'" he said.

--Editing by Haylee Pearl.

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