

MEMORANDUM

TO: MEDICAL GROUP MANAGEMENT ASSOCIATION

FROM: POWERS LAW FIRM

DATE: JANUARY 30, 2025

SUBJECT: INCREASED IMMIGRATION ENFORCEMENT: IMPLICATIONS FOR MEDICAL GROUP PRACTICES

The Trump Administration has immediately moved to more aggressive enforcement of the Nation's immigration laws. One aspect of this initiative is the increased number and intensity of searches undertaken by federal Immigration and Customs Enforcement ("ICE") agents designed to locate and arrest suspected illegal immigrants, particularly those with criminal records. The likelihood of ICE agents arriving unannounced at MGMA member practices has increased, although to what extent remains highly uncertain.

This memorandum suggests several common-sense steps practices can take to better prepare for that possibility and respond if it occurs on their premises. These steps are in no way intended to substitute for legal advice which takes into account the specific facts and circumstances of a particular practice or a specific encounter with immigration enforcement personnel. Thus, practices are encouraged to seek input from their own counsel as part of any preparations they choose to make.

Background: Health Care Facilities are No Longer "Protected Areas".

In October of 2021 the Biden Administration Department of Homeland Security (DHS") enunciated a general policy of not conducting immigration enforcement operations in certain areas where people seek essential services or engage in essential activities deemed important to the public welfare. That policy specifically included **hospitals, physician offices and other health care facilities**, as well as schools, institutions of higher education, places of worship and similar venues. While the policy did not constitute an iron-clad exemption from enforcement activity, as a practical matter it resulted in ICE avoiding such areas in most circumstances.

On January 20, 2025, the Trump DHS revoked the protected areas policy, meaning that physician offices no longer enjoy special status and are now potentially

“fair game” for ICE agents.

Know Your Rights: Public vs. Private Premises.

Revocation of protected area status for medical offices does not mean that ICE agents now enjoy unlimited access to the premises of a medical facility. The Constitutional protections against “unreasonable search and seizure” still apply. These protections generally distinguish between public and private spaces with the latter being subject to search and seizure only with a **judicial warrant**.

In the medical group context, **public spaces** would generally include parking lots, reception and waiting areas and cafeterias open to patients and visitors. **Private premises** would be exam rooms, labs, imaging centers, ambulatory surgical suites and other clinical care sites; physician offices; employee break rooms; and billing, finance, personnel, medical records and other administrative offices.

Of course, the physical configurations of medical practices differ widely from one group to the next. If there are clear physical barriers and signage separating public-facing reception areas and “behind the door” employee and patient only areas, the distinction between public and private may be fairly clear. For practices with more open space design and configuration, with open hallways connecting reception to clinical and administrative spaces, the distinction will be much less obvious.

Know Your Rights: Judicial vs. Administrative Warrants and Subpoenas

As noted above, ICE agents (and other law enforcement personnel) generally need, in the absence of the property owner’s consent, a **judicial warrant** to access private premises to locate and arrest an individual whether a patient or an employee. The same applies to **subpoenas** seeking documents. Judicial warrants and subpoenas are issued by a court of law, generally a federal court in the case of ICE, and will typically be signed by a judge or judicial magistrate. They will also specify, at least to some extent, the scope and timing of the authorized search. Practices must comply with judicial warrants and subpoenas or risk significant penalties if they fail to comply.

Administrative warrants and subpoenas are issued by ICE itself or other administrative agencies. They take many forms and are often designed to resemble judicial orders so as to induce compliance. They are not, however, generally enforceable on their face. Non-compliance with an administrative warrant or subpoena would generally have to be determined after the fact in a judicial proceeding.

A Note on Consent: A judicial warrant is not required if consent to a search of private premises is freely given. Groups do not generally have an obligation to protect either employees or patients sought by ICE personnel. Nor do they have an obligation to withhold documents that ICE seeks in an investigation, subject of course to HIPAA and similar patient privacy constraints. If a practice chooses to consent to a warrantless search, it should be very specific in the scope of its consent and should reduce that

scope to writing as soon as possible.

Be Prepared for a Possible Encounter with ICE Agents: Suggested Steps.

- Designate one or more individuals authorized to receive a warrant or a subpoena. In small practices, this would likely be the Administrator. In larger practices, it could be an in-house legal or compliance officer.
- Designate an individual, probably the same one, to be the “on scene” manager of the group’s response.
- Identify legal counsel who can be available on short notice if needed.
- Educate staff on basic distinctions between public and private premises and between judicial and administrative warrants and subpoenas
- Train employees on appropriate behavior in the event of an encounter, e.g.
 - Treat law enforcement personnel civilly and professionally.
 - Refer agents to the Administrator or other designated personnel.
 - Politely ask the agents to await arrival of the designated personnel.
 - Do not physically resist or obstruct an agent. This is particularly important in public spaces where agents do not need a judicial warrant to conduct a search or arrest a suspect.
 - Do not affirmatively assist a possible target, whether patient or employee, in evading arrest or service of process.
 - Never move or destroy documents sought by subpoena even if the subpoena is only administrative.

Responding to an Encounter: Suggested Steps.

- Get the authorized individual on scene ASAP.
- Verify the credentials of the agents.
- Carefully review the warrant or subpoena for validity and scope.
- Contact legal counsel ASAP with questions about the validity or scope and for advice on how to respond.
- Ask agents to speak directly with counsel if agents are overly aggressive, disruptive to patient care or physically threatening.
- Politely comply with the terms of a validly issued judicial warrant or subpoena.
- Politely but firmly object to any search of private premises without a judicial warrant and refuse access to documents if not requested by judicial subpoena.
- In the event any documents are seized or voluntarily produced, ask for a receipt and document to the extent possible what has been taken.
- If legal counsel is not already involved, ensure their involvement in any follow-on discussions with law enforcement personnel.

Disclaimer.

As noted above, this memorandum is not and should not be construed as legal

advice to any individual MGMA member. It is for informational purposes only, and the authors have no obligation to update this information if DHS or other government enforcement policies or procedures change, or if legislative or judicial developments affect any of the general observations contained herein.

For additional information concerning these topics, members should consult their own legal counsel.