California Hospital Association

Impact of Presidential Immigration Executive Orders on Hospital Care

Caring for the sick and healing the injured — without regard to a patient's ethnicity, national origin, or citizenship status — is the mission of all hospitals. There is a special trust between patients and health care providers, and no one should ever be afraid to seek care for themselves or their loved ones because they fear being deported. This analysis of the intersection of California law and federal activities and actions around immigration enforcement is intended to support hospitals as they continue to care for patients.

Responding to Immigration and Customs Enforcement (ICE) Inquiries

- The U.S. Department of Homeland Security, Immigration and Customs Enforcement (ICE) is responsible for enforcing federal immigration laws.

- In 2021, the ICE director issued an internal memo directing ICE officers to generally avoid conducting enforcement activities (such as arrests, interviews, searches, and surveillance) at protected areas, including hospitals, churches, and schools (with rare exceptions). This policy did not prevent immigration enforcement actions at, or focused on, these locations, but rather provided guidance that these areas should generally be avoided. Adoption of this internal policy did not change the law — not for ICE officers, and not for hospitals. It only directed ICE officers to avoid protected locations in most cases.

- This internal ICE policy was rescinded by the Department of Homeland Security on January 21, 2025. Although ICE officers are technically now "free" to undertake all enforcement activities in these locations, including hospitals, if they wish, how a hospital responds to ICE is no different today than it was previously. Although it is too early to know whether this change in policy will result in increased enforcement activities at hospitals, the laws that hospitals need to follow have not changed. Hospitals should continue to follow their current policies and procedures when interacting with ICE officials.

- As a reminder, California and federal health information privacy laws prohibit hospitals, physicians, and other health care providers from disclosing patient information to ICE officers unless:
    - The patient signs a legally compliant "authorization for the release of information" form
    - The officer provides a valid subpoena, subpoena duces tecum, search warrant lawfully issued to ICE, or court order (for medical information requests)
    - The officer provides a valid judicial warrant signed by a United States District Court judge or magistrate (for physical access requests)

- Another law specifically requires the disclosure

- Frontline and clinical staff should be trained to neither confirm nor deny the presence of a patient to an ICE officer, and to refer the officer to the administrator on duty. The administrator on duty may wish to consult the hospital's legal counsel or privacy officer to determine how to respond to an ICE officer.

- Most hospitals maintain a hospital directory that lists patients' names and room numbers; the directory is typically used by hospital operators and lobby desk staff. California and federal health information privacy laws allow hospitals to disclose a patient's name and room number to callers and visitors, such as family members, friends, florists, clergy, etc. Although ICE officers wear uniforms, it is possible that a plainclothes or undercover ICE officer could pose as a legitimate visitor and obtain the patient's room number. Patients are informed at the time of admission of the existence of the hospital directory and their right to opt out of being listed. However, many patients do not read hospitals' Notice of Privacy Practices. Hospitals may wish to bring this information to their patients' attention by using a separate document or by having admitting personnel notify them verbally.

- For additional information, California Attorney General Rob Bonta has published a guide to assist health care facilities in responding to immigration related issues.

Birthright Citizenship

- President Trump has issued an executive order ending automatic citizenship to children born without at least one parent who holds U.S. citizenship or lawful permanent resident status (green card) at the time of birth. This executive order, which had been scheduled to take effect on February 19, 2025, has been temporarily blocked by a federal court.

- The process for issuing birth certificates, and the role hospitals play, is relevant to the policy issues regarding birthright citizenship.

- Neither hospitals nor the federal government issue birth certificates. Hospitals complete a Certificate of Live Birth (Health and Safety Code Section 102425) and submit the form to the county registrar. The Certificate of Live Birth does not include citizenship or immigration information.

- The state annually reports vital statistics obtained from county registrars to the federal government.

- Since there is no federal birth registry and because the birth certificate process is left to the states, it is unclear how the Trump Administration intends to enforce the executive order should the courts allow it to be implemented.

- CHA will monitor the lawsuits challenging this executive order and potential efforts to change the birth certificate process.

Employment Eligibility Verification Processes

- Hospitals as employers are reminded of existing laws regarding verifying eligibility for employment. Federal law prohibits employers from hiring individuals who are not authorized to work in the United States. Employers must verify a new employee's eligibility by completing the federal Form I-9. This includes citizens and noncitizens (with appropriate eligibility to work).

- Employers must retain and store I-9 forms for each employee and make the forms available for inspection, if requested, by authorized U.S. government officials from the Department of Homeland Security, Department of Labor, or Department of Justice.

- Form I-9 inspections are usually performed with advance notice. Typically, an employer will receive a written Notice of Inspection ("NOI") at least three days before the inspection. However, government officials may also use subpoenas and warrants to obtain the forms without providing three days' notice.

- Upon receipt of a NOI, the California Immigration Protection Act (AB 450, 2017/ Labor Code Section 90.2(a)(1)) requires an employer to notify each current employee and the employee's union representative — within 72 hours of receiving the NOI — that an inspection is forthcoming. Additionally, the employer must inform employees by posting the notice in the language normally used by the employer to communicate employment-related information to the employee. The California Labor Commissioner has provided a template that employers may use to comply with this requirement.