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HIPAA shields patient data from ICE; train staff on ground rules, attorneys say

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HIPAA-covered home care agencies can generally refuse to share patient information with Immigration and Customs Enforcement (ICE) agents unless those agents present court orders, search warrants or subpoenas signed by judges, according to a healthcare data privacy attorney during a webinar Tuesday hosted by the Polsinelli law firm.

An administrative subpoena from ICE on its own is not sufficient to allow disclosure of protected health information under HIPAA, said Iliana Peters, a Polsinelli healthcare operations attorney who previously served as acting deputy director of the HIPAA program at HHS's Office for Civil Rights.

"If they hand you a document that does not have a judge's signature on it, you can say HIPAA requires that you get a judge to sign this before I even confirm that a particular individual was a patient," Peters said.

The guidance comes as healthcare settings face new exposure to enforcement actions. The Department of Homeland Security in January rescinded a 2021 memorandum that had discouraged ICE from conducting enforcement at medical facilities, allowing agents to now operate at any healthcare location.

But Peters emphasized that HIPAA protections extend broadly. Even confirming whether someone is a patient constitutes protected health information, as does sharing a phone number, email address or zip code. When responding to law enforcement, staff cannot disclose any of the 18 identifiers covered under HIPAA — such as a patient authorization or a court order, warrant or subpoena signed by a judge — unless a HIPAA-permitted basis applies.

Nonpublic area limits

Moreover, ICE agents may enter public areas of facilities just like any member of the public, but they cannot access nonpublic areas without a court order or search warrant signed by a judge because protected health information is present throughout clinical spaces, Peters explained.

For substance use disorder treatment providers covered under 42 CFR Part 2, the restrictions are even more stringent. Programs that only provide SUD treatment generally cannot even confirm a patient's presence to law enforcement unless they have either a Part

2-compliant court order accompanied by a subpoena or a signed Part 2-compliant patient consent.

Training required

Attorneys urged agencies to train all workforce members — including volunteers and front desk staff — on how to respond to law enforcement requests. Staff should notify a designated point of contact, refuse to consent to searches on the organization's behalf and consult legal counsel before providing any information.

Peters noted the current environment is creating real operational challenges, with patients canceling appointments out of fear they may encounter immigration enforcement during visits. The webinar concluded Polsinelli's three-part series on navigating government investigations affecting healthcare employers.

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