SEIU/CIR Model Policy for Immigration Enforcement in the Healthcare Setting

Adapted from the model policy drafted by The Physician Working Group on Patient Safety

Introduction: In response to the recent increase in immigration enforcement activity within healthcare environments—and the corresponding rise in questions regarding the rights of patients under immigration custody—this model policy establishes standards and protocols governing interactions between healthcare institutions, providers, and immigration enforcement personnel. The policy delineates health entity and provider responsibilities to ensure that all clinical actions remain consistent with medical ethics, patient rights, and applicable federal, state, and local laws. Hospitals and healthcare facilities bear institutional responsibility for ensuring that no violations of patient rights, medical negligence, or unlawful detentions occur under their supervision or in coordination with immigration enforcement personnel. Specifically, failure to maintain the standard of care and protecting patient privacy, regardless of immigration enforcement presence, hospitals may be deemed complicit if their inaction, acquiescence, or cooperation contributes to a compromised quality of care. CIR members at _____ hospital request hospital administration to implement the policy and take actions to protect patient rights and uphold the responsibility to provide care to all.

I. Purpose and Scope

This policy establishes the procedures governing interactions between healthcare facility personnel and anyone who seeks to access any healthcare facility operated by this organization for immigration enforcement purposes. This includes officers, agents, or contractors of U.S. Immigration and Customs Enforcement ("ICE") and U.S. Customs and Border Protection ("CBP") as well as any other law enforcement officer or agency attempting to enforce immigration laws.

This policy applies to all employees, medical staff, residents, contractors, volunteers, and other individuals performing work within the facility ("Covered Individuals").

Immigration detention is civil and operates under unique standards, requiring its own medical-care policy.

II. Definitions

1. ICE Officer or Agent – For purposes of this policy, the terms "ICE officer" and "ICE agent" include any employee or contractor of the U.S. Immigration and Customs Enforcement agency, or any person acting under its authority.

2. CBP Officer or Agent – Any employee or contractor of U.S. Customs and Border Protection, or any person acting under its authority.

3. Immigration Enforcement Officer or Agent – Any law enforcement officer acting under the authority of the federal government for purposes of enforcing federal immigration laws.

4. Judicial Warrant – A warrant issued and signed by a federal judge or magistrate authorizing a specific search or seizure. Administrative warrants, including DHS Form I-200 or I-205, are not judicial warrants.

5. Private Patient Areas – Any location within a healthcare facility in which protected health information (PHI) or patient treatment or care is provided or discussed, including examination rooms, inpatient units, procedure rooms, and staff work areas.

III. Policy Statement

A. The facility shall provide medical services to all individuals regardless of immigration or documentation status, consistent with federal, state, and local patient protection laws and ordinances.

B. All Covered Individuals shall comply with the Health Insurance Portability and Accountability Act (HIPAA) and its implementing regulations, state confidentiality statutes, and applicable local sanctuary or patient protection ordinances.

C. All interactions with anyone enforcing immigration laws shall be conducted in accordance with this policy and applicable law.

D. All Covered Individuals shall receive a copy of this policy to review. Healthcare facilities shall provide training to all covered individuals regarding this policy.

IV. Monitoring and Receiving Visitors into Healthcare Facilities/Notification and Response Procedures

1. The facility shall maintain an internal notification system to alert staff when immigration enforcement agents are present on premises.

2. The facility shall post a “notice to authorities” at the entrances of the facility to notify outsiders of the requirements for registration and that areas such as patient rooms, nursing stations, and other areas within the hospital marked as "private," are considered by the facility to be private areas.

3. All immigration enforcement officers will need to check in at a designated entry point upon entering hospital premises, where they will be asked to identify the purpose of their presence on hospital premises.

4. If immigration enforcement officers are engaging in enforcement activity, they must follow the protocol outlined in section VII of this document. If immigration enforcement officers are accompanying a patient already in immigration custody, they must follow the protocol outlined in section IX of this document.

V. Access Restrictions

1. Immigration enforcement agents shall not enter private areas of facility grounds without a valid judicial warrant. The facility will designate areas as private through signage and restrictions on

entry (for example, a buzzer system or security personnel).

2. Immigration enforcement agents shall not be permitted to conduct questioning, searches, surveillance, or enforcement actions on private facility grounds without a valid judicial warrant.

3. Immigration enforcement agents shall otherwise remain in designated areas outside of patient care spaces that do not interfere with patient care or the experience of an environment of safety for patients and their families.

4. The designation of a private patient area for the purposes of immigration enforcement activities does not change the rights and privileges of employees' labor representatives and off duty employees from accessing areas of the health care facilities.

VI . Protection of Patient Information and Privacy

1. No patient information, including immigration status or place of birth, may be disclosed to immigration enforcement personnel without a valid judicial warrant, subpoena, or patient's written consent, or as otherwise required by law.

2. Staff shall take reasonable measures to protect patient privacy when immigration enforcement agents are present, including locking computers, securing doors to private areas, and removing documents with Protected Health Information (e.g. patient names, diagnoses, etc.) from plain view.

3. All photography, videography, or surveillance by immigration enforcement agents within medical settings is prohibited. However, facility staff and patients may document potential violations by immigration enforcement agents in accordance with applicable law, ensuring no patient is filmed or photographed without written consent.

VII. Support for Patients

The facility shall provide access to social, legal, mental health, and advocacy resources for patients negatively impacted by immigration enforcement activities. The facility shall post general Know Your Rights information in multiple languages in waiting areas. Healthcare providers shall be encouraged to provide patients and their families with relevant Know Your Rights materials as appropriate.

VIII. Immigration Enforcement within Healthcare Facilities

1. The facility shall designate a first point of contact for Covered Individuals to notify in the event of immigration enforcement officer presence within the facility. The facility shall post signage in patient care areas indicating how and when to notify said point of contact.

2. If an immigration enforcement officer identifies that they are present to conduct immigration enforcement activity, Covered Individuals shall direct the officer to wait outside of the building**.** Covered

Individuals shall as soon as possible notify management or legal counsel to verify any request (including subpoenas, petitions, complaints, judicial warrants, or court orders) by an immigration enforcement officer to access a healthcare facility, a patient, or a patient's medical information.

3. In addition to notifying management or legal counsel, Covered Individuals shall take the following steps in response to an immigration enforcement officer present at the healthcare facility for immigration enforcement purposes:

i. Advise the immigration enforcement officer that before proceeding with their request, Covered Individuals must first notify and receive direction from management or legal counsel.

ii. Ask to see, and make a copy of or note, the immigration enforcement officer's credentials (name, employing agency and badge number). Also ask for and copy or note the name and telephone number of the immigration enforcement officer's supervisor.

iii. Ask the immigration enforcement officer to explain the purpose of the visit, and note the response.

iv. Ask the immigration enforcement officer to produce any documentation that authorizes healthcare facility access.

v. Make copies of all documents provided by the immigration enforcement officer.

vi. Decline to answer questions posed by the immigration enforcement officer and direct them to speak to management or legal counsel.

vii. If the immigration enforcement officer continues to demand access to private patient areas and refuses to wait for management or legal counsel, document the immigration enforcement officer's actions, name, agency and badge number and complete an incident report using available safety violation reporting mechanisms. The report shall include the information gathered as described above and the officer's statements and actions.

viii. Verifying the legality of immigration enforcement officers' ability to access private spaces is the sole responsibility of the first point of contact as outlined above. Covered Individuals should not attempt to review warrants or otherwise assess whether enforcement officers may legally pursue enforcement actions within the facility.

4. In the event of immigration enforcement activity at the healthcare facility, hospital management will promptly notify union representatives and staff.

IX. Parental Notification of Immigration Enforcement Actions

1. Covered Individuals must receive consent from a minor patient's parent or guardian (provided the child is not legally regarded as their own personal representative of their medical records) before a minor

patient can be interviewed or searched by any immigration enforcement officer seeking to enforce immigration laws, unless the officer presents a valid, effective judicial warrant signed by a judge, or presents a valid, effective court order.

2. Covered Individuals shall immediately notify the minor patient's parent or guardian if an immigration enforcement officer requests or gains access to a patient for immigration enforcement purposes. Covered Individuals shall also immediately notify the minor patient's parent or guardian if an immigration enforcement officer requests or gains access to a patient's medical records. The facility shall wait to respond to any immigration enforcement requests until the patient's parent/guardian arrives. If no parent or guardian is present when the patient arrives at the healthcare facility, the healthcare facility shall appoint an adult advocate to accompany the patient until the parent or guardian arrives.

X. Custody of Patients Accompanied by Immigration Enforcement Agents

A. Procedures

1. If the immigration enforcement officer is seeking medical treatment for a person already in immigration custody, Covered Individuals shall notify management or legal counsel to verify the legality of immigration custody prior to discharge into custodial care. Discharge should not happen before legality of custody is verified by legal counsel and documented in the patient's chart.

2. Covered Individuals shall document the immigration enforcement officer's name, badge number, and the agency whose authority they are acting under (i.e. ICE, CBP, etc.). Staff shall also document the name and telephone number of the immigration enforcement officer's supervisor.

3. If custody is determined to be unlawful, documentation shall be made in the patient's record, and legal counsel and patient representatives shall be notified.

B. Conduct of Immigration Enforcement Agents

1. Immigration enforcement agents must remain identifiable at all times, displaying name, agency, and badge number. Except for the use of medical personal protective equipment (surgical mask, N95, etc.), immigration enforcement agents may not use a facial covering while performing their duties if it violates hospital policies on face coverings.

2. Firearms and other weapons must be secured prior to entry into the healthcare facility.

3. Immigration enforcement agents shall not obstruct or interfere with medical care. Violations shall result in removal by security staff from patient care areas, and repeat violations may result in removal from the premises.

4. No immigration enforcement officer may make or influence medical decisions, nor may they serve as interpreters or surrogate decision-makers.

5. Immigration enforcement officers must comply with all sanitation precautions that are deemed necessary by the medical team (i.e. masking, gowning, sanitizing hands, etc.).

C. Patient Privacy

1. Covered Individuals must maintain patient privacy standards as outlined by HIPAA and any local laws and ordinances which protect patient privacy. Covered individuals can disclose protected health information (PHI) to law enforcement only under limited and specific circumstances, such as when mandated by a court order. Providers and hospital leadership are liable under civil and criminal law for violations of HIPAA.

2. Covered Individuals must ask immigration enforcement officers to step out of the room when discussing any matters pertaining to patient care or performing any physical examination.

3. If immigration enforcement officers refuse to comply, Covered Individuals shall document the actions, name, employing agency and badge number of the immigration enforcement officers and report the violation using available safety violation reporting mechanisms. In addition, Covered Individuals shall alert appropriate management within the healthcare facility and the supervising agent/officer with immigration enforcement of the violation.

D. Restraint and Safety Standards

1. Employees of the healthcare provider entity may request the removal of restraints if they interfere with patient care. Restraints shall only be used in cases where a patient poses a risk of harm to self or others. When restraints are used, only the minimal amount and type consistent with clinical safety standards shall be applied.

2. When restraints are used, only the minimal type and number consistent with clinical safety standards shall be applied. The type and number of restraints are to be determined by the medical team.

3. If restraints are determined to interfere with patient care by the clinical team (e.g., in cases involving delirium precautions, labor, or mental health concerns), they shall be removed.

E. Presence of Immigration Enforcement Agents

1. Immigration enforcement agents shall not remain continuously in a patient's room unless legally required such as with a valid judicial warrant or court order. In such cases, the aforementioned policy regarding patient privacy rights remains in place and enforcement personnel will be asked to leave when any patient care is being conducted.

2. No more than one immigration enforcement officer may accompany a patient at any given time.

3. Immigration enforcement agents shall remain in designated areas that do not interfere with patient care.

F. Patient Rights

1. Patients accompanied by immigration enforcement officers retain all rights afforded to other patients, including:

- Private communication with family, legal counsel, clergy and advocates;
- Access to interpreters and communication tools;
- The right to refuse medical care and make independent health decisions;
- Access to social, educational, and spiritual support services.

Physicians, nurses, social workers and others in patient-support roles should uphold the best medical practices of providing patient and family/caretakers with access to resources for Social Determinants of Health. This includes access to legal representation and community organizations that provide culturally sensitive services. If the patient consents, they may be visited by a specifically dedicated rights advocate who will provide such education and resources to each patient.

2. Immigration detention is civil in nature; therefore, criminal detention visitation restrictions shall not apply. Patients brought in by immigration enforcement officers are subject to the same visitation policy that applies to patients who are not in criminal custody.

3. Patients shall be informed verbally and in writing, in plain language, of their rights under this policy. Notification of rights shall be in the language of the patient's choosing.

4. Patients shall receive all standard documentation including HIPAA, patient documentation, and patient education materials in the language of their choosing.

5. If a surrogate decision maker needs to be ascertained, this shall be done in accordance with the protocol that applies to all other patients. Immigration enforcement officers are never allowed to make health decisions on behalf of the patient nor should they be included or consulted to have this effect.

XI. Discharge and Continuity of Care

1. Prior to discharge, immigration enforcement officers shall provide written confirmation of the medical services and level of care available at the receiving facility. They shall also provide the name, license number, and contact information of the medical provider responsible for the patient's care when the patient returns to immigration custody outside of the facility. If no such medical provider exists, immigration enforcement officers shall provide the full name and contact information of the supervisor of the facility to which the patient will be returning, so that medical providers can confirm continuity of medical services. The supervisor of the receiving facility is liable for the patient's medical care if no medical provider exists at the facility.

2. Immigration enforcement officers shall also provide written confirmation regarding the continuity of prescribed medications, durable medical equipment, and post-discharge care including rehabilitative

care and a facility's capacity to provide access to future medical visits (e.g. transportation to outpatient follow up, etc.).

3. No patient shall be released into immigration custody unless appropriate and timely continuity of care is verified.

4. The patient's private medical information shall be sealed upon discharge and made accessible only to individuals directly involved in the patient's care.

5. The hospital will follow appropriate discharge procedures to ensure continuity of care and protect patient's privacy rights.

XII. Documentation and Legal Compliance

1. Covered Individuals shall refrain from including information about a patient's documentation status within their medical records.

2. All patient care and legal violations involving immigration enforcement officers shall be documented, including officer names, employing agency and badge numbers, actions taken, and any policy or legal violations.

Only legal counsel, not Covered Individuals, shall determine the legality of immigration enforcement actions.

3. Documentation may include patient chart entries, safety reports, HIPAA violation reports, or other official records. The legality of filming a law enforcement officer at work depends on state laws. However, it is a violation of patient care ethics to film or photograph patients without explicit written consent. Therefore, staff should use careful consideration if documenting violations with the use of visual media and should follow relevant hospital policies.

4. Medical Providers shall uphold standards of medical care in the documentation of all injuries, illnesses and reported symptoms in Review of Systems, for a complete and thorough History of Present Illness and Physical Exam. This documentation should include psychological and physical signs and symptoms resulting from actions of immigration enforcement officers and conditions of arrest and detention.

Medical facilities shall also ensure that requests for medical records by patients, family members, and legal counsel shall be complied with in a timely manner to ensure that the patient has information they need to ensure continuity of care.