

GUIDANCE FOR HEALTH CENTERS

IMMIGRATION ENFORCEMENT

This is not legal advice and does not substitute for a consultation with an attorney.



What To Know

If ICE Arrives at Your Health Center

Public vs. Private Spaces



In general, health centers must allow ICE agents in any areas where they would allow general members of the public. ICE agents may be excluded from private areas that are clearly posted and enforced for patients and family.

Public areas of health centers include lobbies, waiting areas, and any other places open to the public. Non-public areas include treatment rooms, inpatient units, offices, etc. - essentially anything not open to the public.

Handling ICE's Presence



If there are ICE agents outside or near your establishment, you can send a designated, well-trained staff member outside to ascertain the identity of the individuals. If they are able to confirm that they are immigration agents, that person can reenter to prepare and remind people of their rights should the agents attempt to gain entry.

Protected Health Information

- Patient's name, date of birth, and other demographic information.
- Patient's immigration status (if the hospital has this information).
- When a patient is supposed to be seen or discharged.

KNOW THE DIFFERENCE:

Judicial Warrants vs. Deportation/Arrest Orders

ICE can only access a non-public area if they have a valid judicial warrant, which should be reviewed and validated by legal counsel before decisions about access are made.

A judicial warrant must be signed by a judge, name the location where the agent is permitted to enter, and name the patient.



A deportation order or arrest order is not the same as a judicial warrant and does not permit an agent to enter.

Hospital Liaison



Health centers should designate an "authorized person" or "hospital liaison" who is trained to interact with immigration agents.

If you don't have a liaison, ask the agent for identification and a business card. Ask the agent to step into a room away from the reception area/lobby. The purpose is not to grant consent to the agent to access the facility, but to get them into a private location. Once there, you can have a conversation about what the agent wants and whether he or she has any legal documents.

Frequently Asked Questions – Health Centers

Before Immigration Enforcement Arrives

Are health centers required to enforce immigration laws?

No. Health centers and health care staff are not required and cannot be forced to enforce immigration laws.

What is the “plain view” doctrine and how does it apply to health facilities?

Officers may look at anything that is in “plain view” in a public area. An object is in “plain view” if it is obvious to the senses. For example, an immigration official may visually inspect anything—including papers and files—that are clearly visible from the visitors’ side of the reception desk. The plain view doctrine extends to sounds within “plain hearing” as well.

Unless they have a warrant, they cannot move an object in plain view to expose other portions of it or anything under it.

How can the Fourth Amendment protect people in private places in hospitals?

Under the Fourth Amendment, the permissibility of a search depends on whether a person has a reasonable expectation of privacy in the area searched.

The test is: at the time of the search, was it the person’s subjective, actual expectation that the place or things searched were private, and was that expectation objectively reasonable, i.e., would it be generally recognized by society?

Thus, your patients may be more vulnerable to immigration enforcement actions when they are in public areas of your facility, rather than private areas.

PATIENT PRIVACY



Does a health care facility need to collect immigration status information?

No, there is no legal obligation for health care centers to collect immigration status information unless mandated by state laws. As an ethical best practice, avoid asking for patients’ immigration status or immigration-related information and, if you must collect such information for a patient, ensure that information is secure. Avoid including that information in the patient’s medical and billing records.

Can admitted patients decline to be listed in the hospital directory?

Yes. While a hospital may disclose basic information from its directory of patients if asked about a patient by name, patients do have the right to decline to be listed.

What obligation do health care workers have to protect patient privacy?

Health care providers are legally obligated to protect patient privacy, including immigration status, and should not disclose any information without a judicial warrant, except in the case of an emergency that poses immediate harm.

Is information about whether a particular patient is admitted to the hospital considered private?

Yes. A hospital may disclose basic information, such as patient location and general condition from its directory of patients if asked about a patient by name.

What if an ICE agent says a patient needs to be arrested to avoid imminent harm or risk?

Without a judicial warrant, cooperation is not required.

Recommendations for Health Centers

Before Immigration Enforcement Arrives

1. Create a proactive internal policy to protect patients from immigration enforcement, including:

PUBLIC VS. PRIVATE SPACES

- It is strongly recommended that health centers create written policy that identifies and distinguishes (ideally with legal advice) private spaces from public ones, if any. Health centers should place signs identifying private areas or place security guards tasked with signing in visitors at main entrances.
- Establish a policy for staff to limit information in “public view.”

REACTING TO ICE PRESENCE

- Internal protocol on the procedure to interact with immigration agents, including protocol for handling law enforcement requests.
- Designate a well-trained individual or immigration advocacy group personnel to approach ICE agents outside or near the property.

PROTECTING PATIENT INFORMATION

- Require staff to inform patients they can decline to be listed in directory.
- Prohibit health care staff from asking questions about immigration status or from listing them on patient forms (if the health center is not in a state where this is required).
- Require staff to inform patients they have the right to refuse questions about their immigration status.



Sample Policy

Sample internal policies for
accessing health centers
(ACLU of KY)

2. Designate an “authorized” person or “hospital liaison.”

Designate a specific staffer (or staffers) as an “authorized person” to serve as a point of contact responsible for handling requests from and interactions with law enforcement. Train all other staff to inform immigration or other law enforcement officers that, as a matter of policy, only the authorized person may review a warrant or provide consent to their entry into private areas. Train staff to decline to answer questions unless they are authorized to do so by the authorized staff person.

3. Create a registration system for all law enforcement officials, including immigration agents.

Upon arriving at a facility, all law enforcement officials could be required to present the following:

- Name, address, title
- Purpose for entering the facility
- Proof of identity/law enforcement credentials

4. Create a notification system for employees when there is law enforcement presence.

5. Create and disseminate educational materials and “Know Your Rights” (KYR) trainings for health care personnel.

ACLU Know Your Rights: Immigration Enforcement
Know Your Rights as an Immigrant (ACLU of Idaho)

6. Post KYR materials in health centers.

Print and Display the “Safe Space” Signs found on
this webpage. (ACLU of Idaho)

7. Host or provide emergency safety planning for immigrant families.

Immigration Emergency Preparedness (Alliance of Idaho)
Emergency Documentation Needed (Alliance of Idaho)

8. Compile and provide contact information for local organizations providing free legal assistance for families.

Immigration Advocates Network

Visit our website for more
information: acluidaho.org

ACLU
AMERICAN CIVIL LIBERTIES UNION
Idaho