



ACLU Alaska Immigration Enforcement Guidance for Health Centers

Relevant Laws

- The Health Insurance Portability and Accountability Act of 1996 (HIPAA)
 - Governs disclosures of protected health information and prohibits medical providers from disclosing such information with some relevant exceptions: (1) there is a court order or court-ordered warrant, a subpoena or summons issued by a judicial officer, or a grand jury subpoena, (2) there is an administrative request, or (3) the covered entity in good faith believes the PHI to be evidence of a crime that occurred on the covered entity's premises.
 - Details on these exceptions [here](#).
- 4th Amendment
 - The Fourth Amendment is a constitutional right for all individuals to be free from illegal searches or seizures. Similar to the enforcement agency memos, the Fourth Amendment may limit immigration enforcement agents' activities at a hospital.
 - Under the Fourth Amendment, the reasonableness of a search depends on whether a person has a reasonable expectation of privacy in the areas searched.
 - It is likely that a patient at a health center has a reasonable expectation of privacy in a doctor's office or examination room because it is not a public space.
 - However, a waiting area or lobby area located at a health center that is open to everyone may be afforded less protection under the Fourth Amendment.

FAQs

Are health centers required to enforce immigration laws?

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

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

Healthcare 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.

Can ICE conduct a raid at a health center?

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.

What are considered public spaces in health centers and how does this impact immigration enforcement?

Public areas include lobbies, waiting areas, and any other places open to the public.

Non-public areas of a health center include treatment rooms, inpatient units, offices, etc., essentially anything not open to the public.

It is strongly recommended that health centers identify and distinguish (ideally with legal advice) their private spaces from their public ones, if any. This can be done by placing signs identifying private areas, or by placing security guards tasked with signing in visitors at main entrances.

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

Officers may also 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.

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

The plain view doctrine extends to sounds within “plain hearing” as well.

Can an immigration agent access a non-public area in a health center?

No. Only 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.

Should a hospital designate a specific person to interact with ICE if they arrive at a facility?

Yes, hospitals should designate an “authorized person” or “hospital liaison” who is trained to interact with immigration agents.

What should hospital staff do if they don’t have an “authorized person” or “hospital liaison” or are waiting for them to arrive?

Ask the agent for identification and a business card. Ask the agent to step into an office or room away from the reception area/lobby.

The purpose is not to grant consent to the agent to access the facility, but to get the agent 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.

How can the 4th 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?

Your patients thus may be more vulnerable to immigration enforcement actions when they are in areas of your facility that are open to the public than when they’re in areas that are considered private.

What if a judicial warrant is presented?

The hospital personnel should consult with legal counsel before taking any action.

What is considered protected health information (PHI)?

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

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 that information is secure. Avoid including that information in the patient's medical and billing records.

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

Yes, but according to HIPAA, 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.

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 if the health facility is in a State (like Florida or Texas) where healthcare staff are required to ask patients about their immigration status?

Healthcare staff should inform patients that they are not required to answer.

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.

Can immigration officials be stationed outside or near a health center?

Yes. 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 and remind people of their rights or prepare should the agents attempt to gain entry.

Recommendations for Health Centers

Prepare and implement an internal policy to protect patients from immigration enforcement.

Internal policies should include:

- Establish a written policy designating private areas.
- Internal protocol on the procedure to interact with immigration agents, including protocol for handling law enforcement requests.
- Prohibiting healthcare 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).
- Requirement to inform patients that they can decline to be listed in directory.
- Requirement to inform patients of their right to decline to answer questions about their immigration status.
- Establish a policy for staff to limit information in “public view.”
- Designation of a well-trained individual or immigration advocacy group personnel to approach ICE agents outside or near the property.
- [KYR accessing health care - sample internal policies \(ACLU of KY\)](#)

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.

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 and/or law enforcement credentials.

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

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

- [ACLU Know Your Rights: Immigration Enforcement](#)
- [KYR graphics and wallet cards \(ACLU\)](#)

Recommendations for Health Centers contd.

Post KYR materials throughout health centers.

- [ACLU Know Your Rights: Immigration Enforcement](#)

Host or provide emergency safety planning for immigrant families.

- [Family Safety Plan \(ILRC\)](#)

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

- [Immigration Advocates Network](#)

Resources

- [ACLU Know Your Rights: Immigration Enforcement \(ACLU\)](#)
- [KYR graphics and wallet cards \(ACLU\)](#)
- [Sanctuary policies fact sheet \(ILRC\)](#)
- [Family Safety Plan \(ILRC\)](#)
- [Warrants and subpoenas guidance \(NILC\)](#)
- [KYR Healthcare facilities \(AFT\)](#)
- [KYR accessing health care \(ACLU of KY\)](#)
- [Guidance for health centers \(NILC\)](#)
- [Healthcare toolkits \(NILC\)](#)
- [Healthcare providers and immigration enforcement \(NILC\)](#)
- [Healthcare providers guide \(ACLU and NILC\)](#)
- [Undocumented immigrants and patient privacy laws \(Network for PHL\)](#)
- [Q & A on immigration enforcement in hospitals \(GNYHA\)](#)
- [Welcoming and protecting immigrants in healthcare settings toolkit \(Doctors for Immigrants\)](#)
- [HHS HIPAA Privacy rule and patient directory \(HHS\)](#)

For more information, contact ACLU of Alaska at info@acluak.org or www.acluak.org.