



ACLU
Alaska

Immigration Enforcement Guidance for Health Centers

Who Enforces Immigration Law?

Immigration is regulated by federal law and enforced by the U.S. Department of Homeland Security (DHS). In Alaska, state and local law enforcement cannot enforce immigration law.

One way in which DHS enforces immigration laws is by apprehending and repatriating (“removing”) people back to their home countries if they do not have permission to be in the United States. Without a final removal order from an immigration judge, DHS must provide due process, including an appearance before an immigration judge, before it can deport someone.

Immigration and Customs Enforcement (ICE), a sub-agency of DHS, is responsible for non-border enforcement and for detention and removal operations. Other federal law enforcement agencies have also been tasked with assisting ICE in enforcement operations.

Throughout this guide, terms like “ICE agent”, “immigration official”, and “immigration agent” all refer to federal law enforcement officers empowered to enforce immigration law.

FAQs

Are health centers required to enforce immigration laws or cooperate with immigration officials?

No. Health centers and healthcare staff are not required and cannot be forced to cooperate with immigration officials.

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 immigration officials enter a health center without a warrant?

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. If an ICE agent or other law enforcement officer wants to enter those private spaces, they must present a hard copy of a warrant signed by a federal judge.

How can the Fourth Amendment protect people in private places in a house of worship?

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 actual expectation that the place or things searched were private, and was that expectation reasonable, i.e., would it be generally recognized by society as reasonable?

What are considered public areas v. private areas 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 could include treatment rooms, in-patient 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, private area in a health center?

No. Immigration agents cannot access private areas without (1) consent or (2) a valid judicial warrant.

If a health center does not give permission for immigration agents to enter its non-public spaces, then they cannot enter without a valid judicial warrant.

To be valid, a judicial warrant must:

- be signed by a US district court or a state court judge;
- describe the location to be searched and/or the persons or items to be seized; and
- be dated and issued within the past 14 days.

All information in the warrant must be correct for the warrant to be valid.

What is an administrative warrant?

DHS issues its own forms, sometimes referred to as “administrative warrants” or “ICE warrants,” which direct immigration agents to arrest a named individual for alleged violations of federal immigration law. An administrative arrest warrant or immigration enforcement subpoena is not the same as a judicial warrant and does not require a health center to grant immigration agents access to private areas.

Health center staff have the right to read the warrant and check that it is a judicial warrant and that it authorizes the agent to enter private spaces for specific purposes. It is critical that staff be able to distinguish between a valid judicial search warrant and administrative warrants.

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

Yes, it is a good idea to designate an “authorized person” or “health center liaison” who is trained to interact with immigration agents and who understands how to identify a valid judicial warrant and consult with legal counsel before allowing a search to occur. All other staff should be trained to refer immigration agents to the “authorized person.”

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

Ask the agent for identification and a business card. Ask the agent to step outside. Once there, you can discuss what the agent wants and whether they have any legal documents.

What if a judicial warrant is presented?

Staff should always contact their designated “authorized person.” If a judicial warrant appears to be valid, preferably, consult with legal counsel before taking any action. Always get a copy of the warrant.

What if a search is required by a judicial warrant?

If ICE presents a valid judicial warrant, then the health center must allow the immigration agents to enter the private areas specified in the warrant. Staff have the right to monitor agents to ensure they comply with the judicial warrant, i.e., they are only entering private areas designated in the warrant.

Staff may also take audio or video recordings of any interaction with ICE; however, staff should not interfere with the agents’ lawful search.

What if an ICE agent says a client needs to be arrested to avoid imminent harm or risk, or threatens the organization with harboring for not allowing a search?

Without a valid judicial warrant, cooperation is not required. It is not harboring to deny access to private areas if there is not a judicial warrant.

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 a health center 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 health center directory?

Yes, while a health center 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.

Am I required to talk to a police officer or ICE agent if they enter the health center and ask questions?

No. Everyone has a right to remain silent and you are not required to answer any questions for immigration officials. You are not required to tell them anything about anyone's immigration status. Providing false information to ICE agents is illegal and can result in severe penalties, including criminal charges.

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 verify the individuals' identities. If that person can confirm they are immigration agents, it may be a good time to 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:

- A written policy designating private areas.
- An internal protocol on the procedure to interact with immigration agents, including protocol for handling law enforcement requests.
- A prohibition on healthcare staff from asking questions about immigration status or from listing them on patient forms.
- A requirement to inform patients that they can decline to be listed in directory.
- A requirement to inform patients of their right to decline to answer questions about their immigration status.
- A policy for staff to limit information in “public view.”
- The designation of a well-trained individual to approach ICE agents outside or near the property.

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.

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.

Recommendations for Health Centers contd.

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

- [ACLU Know Your Rights: Immigration Enforcement](#)
- [ACLU Know Your Rights: Fight Back Against Mass Deportation](#)
- [KYR accessing health care - sample internal policies \(ACLU of Northern CA\)](#)
- [We Have Rights Videos](#)
- [KYR graphics and wallet cards \(ACLU\)](#)
- [Judicial v. Administrative warrants](#)

Post KYR materials throughout health centers.

Host or provide emergency safety planning for immigrant families.

- [Family Safety Plan](#)

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

- [Legal Resources in Alaska](#)

Additional Resources

- [Sanctuary policies fact sheet \(ILRC\)](#)
- [KYR Healthcare Facilities \(AFT\)](#)
- [KYR Accessing Health Care \(ACLU of CA\)](#)
- [Healthcare toolkits \(NILC\)](#)
- [Healthcare providers and immigration enforcement \(NILC\)](#)
- [Healthcare providers guide \(ACLU and NILC\)](#)
- [Undocumented immigrants and patient privacy laws \(Network for PHL\)](#)
- [Welcoming and protecting immigrants in healthcare settings toolkit \(Doctors for Immigrants\)](#)
- [HHS HIPAA Privacy rule and patient directory \(HHS\)](#)

Relevant Laws

- **U.S. Constitution - 4th Amendment**

- The Fourth Amendment is a constitutional right for all individuals to be free from illegal searches or seizures.
- The Fourth Amendment may limit immigration enforcement agents' activities at a hospital or other healthcare center.
- 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 located at a health center that is open to everyone may be afforded less protection under the Fourth Amendment.

- **The Health Insurance Portability and Accountability Act of 1966 (HIPPA)**

- HIPPA 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](#).

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