NATIONAL IMMIGRATION LAW CENTER

Health Care Providers and Immigration Enforcement: Know Your Rights, Know Your Patients' Rights

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The threat of immigration enforcement raises concerns among immigrant families, some of whom may forego necessary medical services out of fear that they could be putting themselves and their family members at risk. This factsheet provides advice to hospitals, medical centers, community health centers, other health care facilities, and advocates on how to prepare for and respond to (a) enforcement actions by immigration officials and (b) interactions with law enforcement that could result in immigration consequences for their patients.[1]

Immigration Enforcement Power is Limited by the Fourth Amendment

U.S. Immigration and Customs Enforcement (ICE) is the interior enforcement agency within the U.S. Department of Homeland Security (DHS). U.S. Customs and Border Protection (CBP), another agency within DHS, is responsible for enforcement at or near the nation's borders.

ICE and CBP's power to enforce immigration law is limited by our constitutional protection against *unreasonable search and seizure*. Under the Fourth Amendment to the U.S. Constitution, the permissibility of a search depends on whether a person has a *reasonable expectation of privacy* in the area searched.[2] 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?[3] 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.

[1] The information in this document does not constitute legal advice. You should consult your attorney to obtain advice with respect to your specific issue or problem.
[2] Katz v. United States, 389 U.S. 347 (1967).
[3] See, e.g., *id.*

Federal and state privacy laws provide additional protections that limit the disclosure of patient information—including immigration status–related information—to law enforcement officials.[4]

Health Care Providers and Their Patients Have Legal Rights

- **Disclosure of information.** Health care providers have no affirmative legal obligation to inquire into or report to federal immigration authorities about a patient's immigration status. The Health Insurance Portability and Accountability Act (HIPAA) privacy law generally prohibits the use or disclosure of personal health information without a patient's consent, except when required by law.[5] Some HIPAA exceptions, including the permission to disclose information requested by law enforcement officials for law enforcement purposes, allow for personal health information to be shared under some circumstances, but its release is generally *not required*.[6]
    - Two states are currently requiring hospitals to ask patients about their immigration status and to report the aggregate amount of uncompensated care provided to undocumented patients. Providers' obligation to provide care under EMTALA and other applicable laws is not affected by a patient's decision not to provide their status. [7]

- ***Warrants and consent.*** Health care providers *may refuse* to provide information about patients to law enforcement officials *unless* the request for

[4] *See, e.g.* the Medicaid privacy policy at 42 USC §1396a(a)(7) and 42 CFR §431.300 – 307, the CHIP privacy policy at 42 CFR §457.1110, and the ACA privacy policy at 42 USC §18081(g)(2), 45 CFR §155.260(a), 45 CFR §155.260(e)(3).

[5] While immigration status or evidence of foreign birth are not, by themselves, considered *personal health information* (PHI) protected under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), federal guidance includes a catch-all category for "any characteristic that could uniquely identify the individual." 45 C.F.R. § 160.103. Moreover, Social Security numbers and patients' addresses are considered PHI. See 45 C.F.R. § 164.512(f)(1).

[6] See 45 C.F.R. § 164.512(f). State laws vary, however, as to whether health care facilities are required to report undocumented status. See, e.g., Arizona's HB 2008. Arizona Revised Statutes §§1-501, 1-502 requires persons administering public benefit programs to report any violations of federal immigration law they encounter.

[7] Florida SB 1718 Section 5, codified as Florida Statutes §395.3027; Executive Order of Governor Greg Abbott, EO-GA-46-HHSC (August 8, 2024).

information is pursuant to a warrant issued by a judge or magistrate for a specifically identified individual or another order issued by a court.[8]

- ***Right to remain silent.*** Under the Supreme Court's interpretation of the Fourth Amendment, immigration agents may enter a public area of a health care facility without a warrant or the facility's consent and may question any person present.[9] Anyone questioned by agents under these circumstances has a right to remain silent.[10]

- ***"Plain view."*** 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.[11] The plain view doctrine extends to sounds within "plain hearing" as well.[12] Therefore, any speech officers overhear with their unassisted ears while standing in a public area—even if what they overhear comes from a private area—is also considered to be in plain view.

- ***Authorized person.*** To enter a private area (an area not open to the public) of a health care facility, enforcement officers must have either a warrant or consent from an authorized person.[13] Health care facilities should designate specific staff to act as authorized persons in such situations and train other staff to refer agents to the authorized persons and to avoid any action that could be interpreted as consent.

- ***Warrant—what to check for.*** If immigration authorities or other law enforcement officials present a warrant or other court order, the authorized person—a predesignated health center staff member—should *review the warrant* to ensure that:

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[8] See 45 C.F.R. §§ 164.512(e), 164.512(f)(1)(ii)(A).
[9] See *Katz*, 389 U.S. at 351.
[10] U.S. CONST. amend. V. In some states you are required to give your real name if asked to identify yourself.
[11] See generally Arizona v. Hicks, 480 U.S. 321 (1987).
[12] See, e.g., United States v. Baranek, 903 F.2d 1068 (6th Cir. 1990).
[13] See Katz, 389 U.S. at 351.

  - it is a valid judicial warrant
  - it is signed by a judge or magistrate judge
  - it states the address of the specific premises to be searched
  - it is being executed during the time period specified on the warrant, if any

- ***Scope of the warrant.*** The designated staff member *should pay close attention and object* if officials go beyond the scope of their authority to search or seize objects as specified in the warrant. For example, if the warrant states that officials may search the emergency room, they may not use this warrant to search private patient examination rooms.

- ***"Probable cause."*** Health care providers *may refuse to consent to a warrantless search of the facility's private areas*. Nevertheless, officers may search private areas and seize items found there if they have "probable cause" to believe that the search may reveal that unlawful activity is occurring, has occurred, or will occur. An officer has "probable cause" if the facts and circumstances justify a reasonable person's conclusion that people or things connected with unlawful activity will likely be found in a particular place.[14]

Protect Your Patients' Rights and Your Rights as a Health Care Provider

- ***Establish a written policy designating private areas.*** Establish a written policy identifying which areas of the clinic are closed to the public. Limit access to private areas to people who are receiving or providing care, or who are otherwise necessary, such as a parent accompanying a child who is receiving care. To the extent possible, access to private areas intended for patients and their family members should be restricted to essential medical personnel (e.g., doctors and nurses), excluding all other staff and visitors during business hours. For example, the clinic's waiting room may be open to the public, but individuals must be invited to enter examination rooms, offices, and medical records areas. Alternatively, the waiting room may be open only to patients and people accompanying them, while the public must remain in areas outside the building. Consider visually separating areas where patients receive treatment from public waiting rooms.

[14] See, e.g., Brinegar v. United States, 338 U.S. 160 (1949); Carroll v. United States, 267 U.S. 132 (1925).

- ***Beware of what is in "public view."*** Be cautious of what information is in open view of the public, such as files and computer screens visible from the visitors' side of the reception desk.

- ***Avoid collecting immigration status information.*** Avoid asking for patients' immigration status and, if you must collect such information for a purpose such as Medicaid enrollment, avoid including that information in the patient's medical and billing records.

- ***Provide educational materials.*** Provide posters and educational materials advising patients that they have the right to refuse to answer questions from immigration agents and other law enforcement and to insist that they have a lawyer present if they are questioned.
    - Make available in your reception area know-your-rights cards that patients can hand to officers while remaining silent.[15] These cards help people assert their rights and defend themselves against constitutional violations. Patients have the right to have a lawyer be present during any interview while in custody of law enforcement. Also, advise patients never to run from immigration officers, because this can give an officer probable cause to pursue and arrest them.

- ***Be ready to consult a lawyer.*** Establish a relationship with a local immigration lawyer, such as a member of your board of directors, who can be available if an enforcement officer comes to the clinic.

- ***Designate an authorized staff person.*** Designate a specific staffer (or staffers) as authorized and responsible for handling contacts with law enforcement officers. Train all other staff to inform immigration or other law enforcement officers that only the designated individual is authorized to review a warrant or to consent to their entry into private areas. Train staff to decline to answer questions about a patient unless they are authorized to do so by the designated staff member.

- ***Don't consent, document.*** If immigration officers ask permission to enter a private area or attempt to do so, the designated person should state explicitly that they do not consent to the officer(s) entering without a warrant. If the

[15] See www.ilrc.org/red-cards.

officers say that they will get a warrant, contact a lawyer and try to have the lawyer present before the warrant is served or before the search begins. During the search, document the officers' conduct with detailed notes and photographs.

- ***Review the warrant carefully.*** When presented with a warrant, the designated staff member should review the warrant for validity. If the immigration agents have a valid warrant issued by a judge or magistrate, they may enter the private areas indicated in the warrant and question anyone present. Remind all patients and other individuals present that they have the right not to answer any questions, although they may be required to provide their name in some jurisdictions.

- ***Practice.*** Have staff role play their responses to an immigration raid on your facility so they are prepared to respond confidently to a stressful situation.

- ***Reassure your patients.*** Educate and reassure patients that their health care information is protected by federal and state laws.

Ultimately, immigration enforcement policies and practices evolve, with dramatic changes sometimes occurring with presidential transitions, but constitutional rights remain unchanged. The best strategy is to arm your staff and your patients with the knowledge they need to protect everyone's right to obtain health care.