


Guide to Protecting Your Patients from Immigration Enforcement Actions

Step 1: When do I have a Fourth Amendment protection?


Immigration and Customs Enforcement's (ICE) ability to enforce immigration law is limited by the Fourth Amendment constitutional protection against *unreasonable search and seizure*.




Under the Fourth Amendment, the reasonableness of a search depends on whether you have a *reasonable expectation of privacy* in the area to be searched.

Step 2: How do I know that I have a reasonable expectation of privacy in this area?

This requires that a subjective, actual expectation of privacy exists in the place or things searched at the time of the search and that the expectation be objectively reasonable.



Examples of locations with a reasonable expectation of privacy include: patient examination rooms, a doctor's office, and possibly locations that only offer access to patients and staff.



Examples of locations that do not have a reasonable expectation of privacy include the patient waiting room, any hallways to enter your facility, and any rooms that anyone can access freely, such as a cafe or parking structure.

Step 3: Do I have any protections if there is no expectation of privacy?

Where no expectation of privacy exists, ICE agents may enter into that public area without a warrant or the facility's consent. They may question any individual present.

But, hospitals and clinics are considered "sensitive locations" by both ICE and Customs and Border Protection (CBP).

Immigration enforcement actions are to be avoided at sensitive locations, including hospitals and clinics, unless exigent circumstances exist and with prior approval.

Thus, immigration agents should not conduct any immigration enforcement actions at these locations. They should also not casually hang out in these areas, even when not conducting immigration enforcement actions.

Step 4: What are my rights if there is an expectation of privacy?

Immigration agents need a warrant to search and/or arrest anyone in a location where there is an expectation of privacy.


If there is no warrant, health care providers *can refuse to consent to a warrantless search of private areas* of the facility.

However, officials can still conduct the search or seize items if they have "probable cause," or a reasonable belief that there is unlawful activity taking place at the location.


They can also conduct a search if something is in plain view, meaning that evidence of unlawful activity is obvious to the senses (e.g., can be seen or heard).

Step 5: Will I be required to disclose my patients' medical or personal information?


The Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule prohibits the use or disclosure of patient information without the patient's consent.



Health care providers have no affirmative obligation under federal law to inquire into or report to federal immigration authorities a patient's immigration status.



However, HIPAA does authorize disclosure when it is requested by law enforcement officials for law enforcement purposes. Officers need a subpoena, warrant, or other court document to request HIPAA-protected information.



Thus, providers *can refuse* to provide information on an individual patient's, or group of patients' immigration status to law enforcement officials, *unless* the request is pursuant to a warrant or other court order for a specifically identified individual

Step 6: How can I protect my patients?

- Establish a written policy identifying which areas of the clinic are not open to the general public.
- Protect all your files so that they are not in the public view of your visitors.
- Provide "Know Your Rights" resources to patients.
- Designate a specific staff member(s) as authorized and responsible for handling contacts with law enforcement officials.
- Avoid asking any questions related to immigration status.
- DO NOT collect or record any immigration-related information.
- Educate and reassure patients that their health care information is protected by federal and state laws.