

Preparing for immigration enforcement and asserting patient and provider rights

***Disclaimer:** this page contains general information about legal matters. The information contained herein does not constitute legal advice and should not be treated as such. Please do not rely on the information on this website as an alternative to legal advice from your attorney or other professional legal services provider.*

I. Overview

It is the general policy of immigration enforcement agents to not conduct enforcement actions at certain sensitive locations, including hospitals, doctors' offices, accredited health clinics, and emergent or urgent care facilities.

However, exceptions to this policy apply, and it is possible that immigration enforcement agents will attempt to pursue people who are seeking care at medical providers. To protect patients' health information and enforce their rights, providers should prepare in advance for the possibility of such immigration enforcement. This section outlines steps providers can take in preparation.

II. Know your rights – a “reasonable expectation of privacy”

[Immigration and Customs Enforcement](#) (ICE) and [Customs and Border Protection](#) (CBP) are limited in their ability to enforce immigration law by the [Fourth Amendment's](#) protection against unreasonable searches and seizure.

Under the Fourth Amendment, immigration enforcement agents need a judicial warrant to enter and search a place where the provider has a “reasonable expectation of privacy.” They do not need a warrant to search a place where there is no reasonable expectation of privacy.

[Examples](#) of places where there is generally a reasonable expectation of privacy include:

- Patient examination rooms
- A doctor's office
- Locations that offer access only to patients and staff

[Examples](#) of places where there may not be a reasonable expectation of privacy include:

- The patient waiting room
- Entrances
- Rooms that anyone can access freely, such as a café or parking garage

III. What happens during a search by immigration enforcement agents?

ICE and CBP agents have the power to conduct searches and make arrests to enforce immigration law. What happens during a search by ICE/CBP will depend on if there is a reasonable expectation of privacy in the area.

[When there is a reasonable expectation of privacy:](#)

- ICE/CBP agents need a judicial warrant to conduct a search of anything that is not in plain sight or obtain patients' protected health information.
- If ICE/CBP agents do not have a judicial warrant, health care providers can refuse to consent to a search of the place where there is a reasonable expectation of privacy. Health care providers can also refuse to disclose a patient's medical or personal information if requested.

[When there is not a reasonable expectation of privacy:](#)

- ICE/CBP agents do not need a judicial warrant to conduct a search of the area, even without the provider's consent.
- ICE/CBP agents may view or examine any patient's protected health information that is left in plain sight (e.g., a folder left open on a counter showing a patient's information).

IV. What are the different kinds of warrants?

ICE and CBP use more than one kind of warrant in immigration enforcement:

- An [administrative warrant](#) is a warrant issued by the immigration enforcement agency itself. It is signed by a senior ICE or CBP official. An administrative warrant is *not* sufficient to show probable cause, and a provider can refuse to consent to a search when presented with an administrative warrant.

- A [judicial warrant](#) is issued by a neutral, third-party judge or magistrate. It is signed by the judge or magistrate. A judicial warrant is sufficient to show probable cause, and, upon showing the warrant, ICE/CBP can search an area without the consent of the provider.

A simple way to tell the difference between the two types of warrants is to check the signature. As stated above, administrative warrants are signed by immigration officials, while judicial warrants are signed by neutral judges or magistrates. The signature line should indicate the title of the person who signed off on the warrant.

V. Preparing for a search by immigration enforcement

The [National Immigration Law Center](#) (NILC) recommends the [following steps](#) be taken in preparation for a potential search by ICE/CBP:

- Establish a written policy identifying which areas of the hospital or clinic are not open to the general public.
- Clearly delineate areas that are not open to the public with signage.
- Protect all patient files so they are not in the public view of visitors.
- Provide “[know your rights](#)” resources to patients.
- Designate and train specific staff members on handling law enforcement contacts and reviewing warrants.
- Avoid asking questions about a patient’s immigration status unless necessary.
- Do not collect or record immigration status in a patient’s file.
- Educate and reassure patients that the law protects their health information. Post [signs and notices](#) reassuring patients the hospital or health center is a safe place for them.

It is important to establish a written policy for what staff should do if immigration enforcement officials appear at a health care provider, either with or without a warrant. A best practice is to train front-line staff to call a designated person or people who have received specialized training in how to respond to such a situation. The point person or people should be able to identify the type of warrant, if relevant, as well as exercise decision-making power with regard to the institution’s policies. In summary, trained decision-makers should be brought in to respond to any immigration enforcement actions within medical providers rather than permitting ad hoc responses by front-line staff.