



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

Last updated January 2025

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. § 160.105. 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:

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.



The Office of
Minnesota Attorney General Keith Ellison

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February 14, 2025

Dear Minnesota Educators:

Constituents and stakeholders have recently contacted the Office of the Attorney General concerning the announced changes to federal policies and practices related to immigration enforcement and the impact of those changes on students, educators, and our communities. Nothing in these changes should be understood to limit Minnesota's commitment to providing all children with access to free public education, protecting student privacy, and maintaining school environments that are conducive to learning.

EXECUTIVE SUMMARY

This guidance will describe the changes in federal immigration enforcement priorities, the responsibilities of the Minnesota education system to students, educators, and families, and steps that school districts, schools, and educators can take to comply with their legal responsibilities. As described in greater detail below, while the federal approach to immigration enforcement is changing, the legal framework that continues to govern schools' and students' rights and obligations remains unchanged.

We invite school leadership to take this opportunity to ensure that their policies and staff training are up to date, and to be in conversation with their communities about the actions their schools are taking to support students and their families. Clear and consistent communication by school leadership can help reassure students, educators, and their communities that their concerns are heard, and that schools are taking the steps within their power to protect their communities from disruption and harm. Key action items for school districts to consider include:

- Ensuring that policies and procedures clearly explain how to respond if law enforcement, including immigration enforcement personnel, seek to carry out enforcement actions or related information gathering at schools.
- Providing staff, including School Resource Officers (or their equivalent employee), with up-to-date training on student and employee rights and responsibilities.
- Letting your community know about the actions you are taking and the resources available to support students, their families, and the community during this time of uncertainty, including options for updating emergency contacts, flexibility with coursework, and opportunities to limit sharing of student directory information.

GUIDANCE

Recent Changes in Policies Related to Immigration Enforcement

Recent actions in the federal executive branch have signaled a shift in the federal approach to immigration enforcement and treatment of state and local officials who are perceived as not cooperating with enforcement actions. On January 20, 2025, the Department of Homeland Security rescinded its long-standing practice of avoiding immigration enforcement activities in “sensitive spaces,” such as schools. The Department of Justice (DOJ) has also issued recent memoranda instructing U.S. Attorney Offices and the DOJ to investigate and prosecute state and local officials for any “misconduct” that is alleged to facilitate violations of federal immigration laws or obstruct federal immigration enforcement.

Notwithstanding these recent changes in federal policy, schools continue to be bound by law to provide public education to students regardless of immigration status, must protect student data, and cannot be compelled to enforce a federal program or changes in federal policies.

Access to a Free Public Education Is Guaranteed under Federal and State Law; Schools Cannot Discourage or Deny Access Based on Immigration Status

Under state and federal law, Minnesota schools must provide equal access to education to all students regardless of race, color, creed, religion, national origin, sex, marital status, public assistance status, disability, or immigration status.¹ Schools should ensure that their policies do not discourage or deny access to school based on immigration or citizenship status. While schools may require proof of a student’s age and where they reside for enrollment purposes, schools and districts may want to review their enrollment policies to ensure that they are collecting *only* the information required to verify enrollment eligibility. Institutions should review their policies and procedures to confirm they are not unnecessarily collecting or maintaining sensitive data, such as immigration status, Social Security numbers or passport information.

Student Privacy Is Protected under Federal and State Law

Under the federal Family Educational Rights and Privacy Act (FERPA) and the Minnesota Government Data Practices Act, schools are required to protect the privacy of students’ educational records. Both laws allow schools to share limited “directory information” under specific conditions, but otherwise generally prohibit disclosing private student data without consent. Directory information is information that is largely not considered harmful or a violation of privacy if disclosed. Examples of directory information include a student’s name, dates of attendance, and honors and awards received.

¹ In 1982, the U.S. Supreme Court held in *Plyler v. Doe*, 457 U.S. 202 (1982), that the Equal Protection Clause prohibits public schools from limiting access to education based on immigration status. The Minnesota Human Rights Act also provides protection against identity-based discrimination in access to a free public education. Minn. Stat. § 363A.13, subd. 1.

Minnesota law defines “directory information” more narrowly than FERPA, and explicitly prohibits K-12 institutions from designating “a student’s home address, telephone number, email address, or other personal contact information” as directory information. Minnesota law also requires schools to give parents and students notice of the right to opt-out of the disclosure of a student’s directory information. Schools should review their current procedures to ensure proper communication about directory information and the right to opt-out of disclosure is being effectively shared with their communities. Schools may want to proactively provide an opportunity for parents and students to review and change their preference relating to disclosure of a student’s information.

The Federal Government Cannot Compel State or Local Officials to Administer or Enforce a Federal Program

Under the Tenth Amendment to the United States Constitution and well-established precedent from federal courts, including the United States Supreme Court, the federal government cannot compel state or local officials to administer or enforce a federal program. This was true before recent changes to federal immigration policy and continues to be true now.

If schools see a change or an increase in requests from immigration authorities for information about or access to their students, schools should know that there are no legal or constitutional changes in how schools should respond to those requests.

Responding to Requests for Student Information

Disclosure of otherwise private student data is allowed in limited circumstances. Schools should prepare their staff for how to appropriately respond to written or oral requests for student information from third parties, such as Immigrations and Customs Enforcement (ICE) agents. There are many different types of documents that immigration enforcement officers may be using to support their requests, and staff members should not be expected to determine whether the requestor is entitled to the requested information. Any request and accompanying supporting documentation should be immediately provided to a designated district employee, who can consult with legal counsel to determine appropriate next steps.

In general, schools are required to comply with judicial warrants, which are documents issued by a judicial court and signed by a federal or state judge or magistrate. In contrast, schools are not required to comply with administrative warrants, which are issued by a federal agency and signed by an official such as an ICE agent or immigration judge. Common examples of administrative warrants used by ICE include Form I-200 (Warrant for the Arrest of Alien) and Form I-138 (Administrative Subpoena).

Responding to Requests to Meet with or Interview Students

If a member of law enforcement, including an ICE agent, requests access to a student, staff should refer the agent to a designated district employee to ensure proper protocol is followed. An example protocol can be found in [this guidance](#) from the School Superintendents Association. The school or district should also immediately notify the student’s parent or guardian, unless prevented from

doing so by the terms of a judicial warrant or subpoena. The district's legal counsel should be consulted on an appropriate response before proceeding.

Staff members should not attempt to physically prevent an ICE agent or other law enforcement officer from entering the building, even if the agent does not appear to be authorized to enter. The staff member should immediately notify a designated district employee and document the agent's actions while on campus. Audio or video recording by staff members of any interaction is allowed.

How Schools Can Support Their Students and Communities

By taking proactive steps to establish, enforce, and communicate policies about how school officials plan to respond to federal immigration enforcement on their campuses and in their communities, districts can help build trust with students and families and mitigate negative impacts that may result from recent changes. To the extent they have not already done so, school districts may want to consider the following:

- Affirm to your community your commitment to providing all children with a free public education, protecting student privacy, and maintaining a school environment conducive to learning.
- Share with staff and community your district's policies related to requests from federal immigration enforcement officials for information or access to students. Identify an appropriate district employee who can answer questions and receive feedback.
- In conjunction with legal counsel, provide training on student and employee rights and responsibilities in complying with their legal duties. Ensure that School Resource Officers or their equivalent employee understand that Minnesota law prohibits state and local law enforcement officials from holding an individual on an immigration detainer, as described in a recent [Minnesota Attorney General Advisory Opinion](#).
- Let staff members know that federal officials cannot compel their assistance in enforcing federal immigration laws, and that they should not obstruct the actions of federal officials.
- Designate an appropriate district employee to serve as the individual who will ensure that ICE agents or law enforcement follow legal protocol when requesting access to students or student records.
- Ensure that student data privacy policies are up to date, and all staff, volunteers, and/or third-party vendors who may have access to student data receive regular training on their obligations to protect student privacy.
- Provide parents/guardians with regular opportunities to update their student's emergency contact information, alternative caretaker contacts, and authorized pick-up contacts.
- Consider flexible or alternate options for student transportation.
- Offer students and staff members mental-health resources, such as counseling and peer support groups.
- Ensure that all reports of bullying or harassment are thoroughly investigated.
- Share resources for developing an emergency plan with families, such as [this guide](#) from American Federation of Teachers.
- Review your district's policy or guidance to ensure it includes information on what to do if a student cannot safely return home.