



GOVERNOR JOSH SHAPIRO

Advisory Relating to Immigration Enforcement Activities in Health Care and Social Services Facilities

Under the current federal administration, the U.S. Department of Homeland Security (U.S. DHS) has [lifted restrictions](#) that previously prohibited Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP) officers from carrying out immigration enforcement actions, including arrests, in protected areas such as medical and behavioral health care facilities and social services establishments.

These protected areas had [previously included](#): hospitals, doctor's offices, health clinics, vaccination or testing sites, urgent care centers, sites that serve pregnant women, community health centers, crisis centers, domestic violence shelters, victims services centers, child advocacy centers, supervised visitation centers, family justice centers, community-based organizations, facilities that serve disabled persons, homeless shelters, drug or alcohol counseling and treatment facilities, child care centers, before- or after-school care centers, foster care facilities, or group homes for children. It is now possible that U.S. DHS may attempt to conduct immigration enforcement activities at these and other health care and social services locations.

The Pennsylvania Departments of Health, Human Services, Drug and Alcohol Programs, and Aging are issuing this non-regulatory advisory to provide general information about federal law applicable to potential immigration enforcement activities at health care and social services facilities. The Departments also advise facility leadership to develop a written policy and standard operating procedures for what to do if immigration enforcement agents arrive on facility property or seek information about patients, residents, participants, visitors, or staff for immigration enforcement reasons.

This advisory does not provide legal advice. Consult a licensed attorney or accredited representative for legal questions about a specific situation.

HIPAA and Protected Health Information (PHI)

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule limits disclosure of protected health information.

PHI includes, among other things, a patient's name, date of birth, demographic information, immigration status, and when the patient is supposed to be seen or discharged.

A covered entity (such as a health care provider) may not disclose PHI to law enforcement officers for law enforcement purposes unless a specific exception under the HIPAA Privacy Rule applies (for example, to comply with a valid judicial search warrant).

Consult with legal counsel before disclosing PHI to ensure HIPAA compliance.

Interacting with Immigration Enforcement Agents

If immigration enforcement agents come to a health care or social services facility, staff have the right to:

- Ask for valid identification and a law enforcement badge to confirm the agent's agency and identity.
- Ask the agent why they are there and on what authority they are relying (judicial warrant, immigration warrant, etc.).
- Have facility counsel review warrants or other legal documents for authenticity and validity.

Staff should not physically interfere with agents or immigration enforcement activity.



Judicial Versus Administrative Warrants and Subpoenas

Immigration enforcement agents generally cannot access non-public spaces and non-public information without consent, a judicial warrant signed by a federal or state judge, or exigent circumstances (e.g., necessary to avoid imminent harm to the public, national security, or staff and patients). This list is not intended to be exhaustive; consult with legal counsel for advice about specific situations.

Documents that may be used during immigration enforcement include:

- **A judicial search warrant:** an order signed by a state or federal judge that permits access to spaces where individuals have a reasonable expectation of privacy, or to records in which individuals have a reasonable expectation of privacy. A search warrant must identify the place or records to be searched.
- **A judicial subpoena:** an order issued under the authority of a state or federal court to compel production of documents and papers or to compel a person to testify in court at a future date. A subpoena recipient may challenge the subpoena in court before complying. A judicial subpoena does not permit disclosure of PHI without consent unless it is signed by a judicial officer.
- **A judicial arrest warrant:** an order signed by a state or federal judge that authorizes law enforcement to take custody of a specific individual based on a finding of probable cause that the individual committed a crime. An arrest warrant alone does not authorize disclosure of non-public information or entry into non-public spaces to search, but law enforcement officers may collect evidence in plain sight or incident to arrest.
- **An administrative warrant** (sometimes called an immigration warrant, Form I-200, or Form I-205 when issued by ICE) or **administrative subpoena:** a document issued by a federal agency official. Administrative warrants and subpoenas do not authorize access to non-public spaces without consent. Administrative warrants do not permit disclosure of non-public information (including PHI) without consent. Administrative subpoenas do not permit disclosure of non-public information (including PHI) without consent unless a specific exception under the HIPAA Privacy Rule applies.



Considerations for Facility Leadership in Formulating Policies

The Departments advise that facility leadership establish a **written policy and standard operating procedures** for what to do if immigration enforcement agents arrive on facility property or seek information about patients, residents, participants, visitors, or staff for immigration enforcement reasons.

Facility leadership should **ensure that all staff are aware that a policy exists** and know whom to contact with questions. Front-line staff at points of entry (e.g., reception, security) should be trained to recognize immigration agents and implement the facility's procedures. Consider creating a one-page set of action steps for front-line staff who are focused on patient care.

The Departments also advise that facility leadership **promptly communicate to staff** about actual or rumored immigration activity on facility property. Clear communications and reinforcement of facility policies can help minimize incidents that threaten public safety.

When adopting policies and procedures, the Departments advise that facility leadership consider the following principles:

- 1. Designate legal and administrative point person(s) by name and phone number who will interact with immigration agents and review legal documents.**

Staff should know to immediately notify the point person if they encounter agents engaged in immigration enforcement activities. This ensures that front desk staff, health care and social services practitioners, and security personnel are not put in the position of examining warrants, determining whether exigent circumstances exist, or engaging with immigration agents.

- 2. Prepare policies and procedures appropriate for your facility.**

Consider what spaces in your facility are public (e.g., parking lots, lobbies, waiting areas) and what spaces are non-public (e.g., offices, inpatient units, resident rooms, treatment rooms, records storage).

Consider what patient and resident information is publicly available (e.g., listed in your patient directory) and what is not publicly available.



3. Plan for how your facility will respond to various scenarios.

I. Immigration agents ask for information about an individual (patient, resident, participant, visitor, or staff).

- Without a warrant or with only an administrative warrant/subpoena.

Remember that administrative warrants do not permit disclosure of non-public information (including PHI) without consent, and administrative subpoenas do not permit disclosure of non-public information (including PHI) unless a specific exception under the HIPAA Privacy Rule applies.

- With only a valid judicial arrest warrant.

Remember that arrest warrants alone do not authorize disclosure of non-public information (including PHI).

- With a valid judicial subpoena.

- With a valid judicial search warrant.

II. Immigration agents ask to enter a part of the facility not generally open to the public to arrest an individual (patient, resident, participant, visitor, or staff).

- Without a warrant or with only an administrative warrant/subpoena.

Remember that administrative warrants and administrative subpoenas do not authorize entry into non-public areas without consent.

- With a valid judicial arrest warrant.

If the warrant is for a patient or resident, consider whether discharging them to law enforcement custody is safe given their current clinical condition.

III. Immigration agents engage in immigration enforcement activity in an area open to the public (e.g., lobby, waiting area, parking lot).



4. Engage in advance with stakeholders and necessary resources.

Consider what internal and external resources are needed to support your response (e.g., in-house counsel, outside counsel, facility security, local law enforcement).

5. Minimize disruption to patients, residents, participants, visitors, and staff.

For example, consider designating a conference room to confer with immigration agents, and having facility security escort immigration agents to execute a valid judicial arrest warrant.

