OREGON FOR ALL

SAFEGUARDING OREGON HEALTHCARE FACILITIES:

A Toolkit to Protect Immigrant Patients Threatened with Immigration Enforcement



JULY 2025

CREATED BY:
INNOVATION LAW LAB

Safeguarding Oregon Healthcare Facilities: A Toolkit to Protect Immigrant Patients Threatened with Immigration Enforcement

Innovation Law Lab, July 2025
Author: Allison Crennen-Dunlap
Design: Melina Peña

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I. Introduction

Since January 2025, the Trump Administration has aggressively pursued measures to terrorize, imprison, and deport immigrant members of our community. With each passing day, the threats seem to intensify—immigrants must now wonder whether an interaction with immigration officials will result not only in their detention and deportation, but in their banishment to Guantanamo Bay[1] or a notorious prison in El Salvador.[2]

As part of its agenda to stoke fear in immigrant members of our community, the Administration has threatened to make immigration arrests at sensitive locations, including schools, churches, hospitals and other medical facilities—rescinding three decades of protections against immigration enforcement at these sacred spaces.[3] This move—which is the subject of ongoing legal action[4]—has left many community members afraid to access essential services, including healthcare. For healthcare providers, the possibility of immigration enforcement in emergency rooms, clinics, and doctor's offices creates serious uncertainty about how to provide care to immigrant patients and their loved ones.

Fortunately, Oregon healthcare facilities can take steps now to prepare for potential immigration enforcement, thus making healthcare more accessible for immigrant patients and their loved ones and empowering healthcare providers to continue providing needed preventative and life-saving care to their patients. This toolkit offers a starting point to help Oregon healthcare facilities strengthen their policies and practices so that all Oregonians can access healthcare in an environment where they feel safe and welcome.

This toolkit provides general information relevant to Oregon medical facilities. It does not provide legal advice. Healthcare facility personnel should consult with counsel as they develop policies and guidance for responding to immigration enforcement.

[1]See Sergio Martínez-Beltrán, Venezuelan Men Allege Mistreatment while in Detention in Guantánamo Bay (Feb. 25, 2025), https://www.npr.org/2025/02/25/nx-s1-5306433/guantanamo-detainee-speaks-venezuela-trump-immigration-abuse.

[2]See Annie Correal, Inside the 'Tropical Gulag' in El Salvador Where U.S. Detainees Are Being Held, NYTimes (Apr. 18, 2025), https://www.nytimes.com/2025/04/18/world/americas/bukele-abrego-garcia-elsalvador-prison.html.

[3]See Dep't of Homeland Security, Enforcement Action in or near Protected Areas (Jan. 20, 2025), https://www.dhs.gov/sites/default/files/2025-03/25_0120_S1_enforcement-actions-in-near-protected-areas.pdf; DHS, Statement from a DHS Spokesperson on Directives Expanding Law Enforcement and Ending the Abuse of Humanitarian Parole (Jan. 21, 2025), https://www.dhs.gov/news/2025/01/21/statement-dhs-spokesperson-directives-expanding-law-enforcement-and-ending-abuse.

[4]Pineros y Campesinos Unidos Del Noreste v. Noem, No. 25-cv-00699-AA (D. Or. filed Apr. 28, 2025); Denver Public Schools v. Noem, No. 1:25-cv-00474 (D. Colo. filed Feb. 12, 2025), https://www.courtlistener.com/docket/69952662/pineros-y-campesinos-unidos-del-noreste-v-noem/; https://www.courtlistener.com/docket/69635800/denver-public-schools-v-noem/; Mennonite Church USA v. U.S. Dep't Homeland Security, No. 1:25-cv-00403, (D.D.C. filed Feb. 11., 2025), https://www.courtlistener.com/docket/69628285/mennonite-church-usa-v-us-department-of-homeland-security/; Philadelphia Yearly Meeting of the Religious Society of Friends v. U.S. Dep't Homeland Security, No. 8:25-cv-00243-TDC (D. Md. filed Jan, 27, 2025), https://www.courtlistener.com/docket/69580474/philadelphia-yearly-meeting-of-the-religious-society-of-friends-v-us/.

II. Immigration Enforcement in Medical Facilities and the Harm It Causes

For the past three decades, immigration officials operated under official guidance that restricted immigration enforcement in or near areas where people access essential services, including hospitals, clinics, urgent care centers, doctor's offices, vaccination and testing sites, sites that serve pregnant individuals, and other medical and mental healthcare facilities.[5] The Department of Homeland Security ("DHS"), however, has rescinded the guidance that protected these spaces, which means that immigration enforcement may now occur at or near medical and mental healthcare facilities at the discretion of immigration agents.[6]

Unencumbered by safeguards against enforcement, immigration officials, including officials working for either Immigration and Customs Enforcement (ICE) or Customs and Border Protection (CBP), may now appear at a healthcare facility to engage in any of the following activities:


Looking for evidence;


Issuing subpoenas;


Questioning staff, patients, and other visitors;


Serving charging documents;


Making arrests;


And general surveillance.

The cruelty inherent in this sort of enforcement is hard to overstate. During the first Trump administration, there were many examples of the impacts: one man was arrested while visiting his injured son in an intensive care unit; another when he appeared at a hospital to pick up his newborn baby; another while driving his pregnant wife to the hospital for a caesarian section, leaving her to deliver the baby alone; and

[5] See DHS, Guidelines for Enforcement Activities in or near Protected Areas 2 (Oct. 27, 2021), https://web.archive.org/web/20250123181221/https://www.dhs.gov/sites/default/files/publications/21_1027_opa_guidelines-enforcement-actions-in-near-protected-areas.pdf.

[6] See DHS, Enforcement Action in or near Protected Areas (Jan. 20, 2025), https://www.dhs.gov/sites/default/files/2025-03/25_0120_S1_enforcement-actions-in-near-protected-areas.pdf.

a 10-year-old girl with cerebral palsy was also arrested upon her discharge from the hospital following emergency surgery.[7] More recently, CBP officials have set up camp outside a Tucson hospital room, insisting that they have custody over a woman who just gave birth,[8] and ICE officials have arrested a hospital worker in the basement of a Minnesota hospital.[9]

Actions like these create a climate of fear that keeps many from seeking care.[10] A recent survey found that the current climate around immigration enforcement has caused pervasive fear, resulting in dangerous delays, untreated conditions, and avoidable suffering.[11] Notably, **this reluctance to access healthcare is affecting large swaths of our community. People without lawful immigration status, visa holders, mixed-status families, and some U.S. citizens are now less likely to access the care they need for fear that they or their loved ones will face immigration consequences as a result.**[12]

Healthcare providers have reported that patients are delaying care, skipping preventive services, and experiencing treatment interruptions.[13] Individuals are arriving to healthcare facilities with more advanced illness and declining critical services, such as post-surgical rehabilitation.[15]

Indeed, immigration enforcement at healthcare facilities could have significant effects on the healthcare system itself, with immigrant community members making up almost 20 percent of the healthcare workforce.[16]

[7] Sarah Stoughton & Kathryn Hampton, Not in My Exam Room: How U.S. Immigration Enforcement Is Obstructing Medical Care, Physicians for Human Rights, 5-6 (June 2019), https://phr.org/our-work/resources/not-in-my-exam-room/.

[8] Emily Bregel, Border Agents Posted at Tucson Maternity Ward to Quickly Deport Migrant Mom, Arizona Daily Star (May 2, 2025), https://tucson.com/news/local/border/article_b024b264-ab3a-4ab9-b39b-cb2a2ff5e7a7.html?utm_source=substack&utm_medium=email.

[9] Billal Rahman, Father Detained By ICE In Hospital After Student Visa Revoked, Newsweek (Apr. 14, 2025), https://www.newsweek.com/aditya-harsono-detained-ice-hospital-student-visa-2059471 (reporting immigration arrest of hospital supply chain manager in hospital basement).

[10]See, e.g., Eduardo Cuevas, People are Becoming Wary of Hospitals, Leaving Waiting Rooms Empty and Doctors Concerned, USA Today (Feb. 7, 2025), https://www.usatoday.com/story/life/healthwellness/2025/02/07/ice-immigration-policy-impacting-hospitals/78299746007/; Eilís O'Neill, Amid Fears of Deportation, Immigrants are Missing Appointments at Seattle-Area Clinics, KUOW NPR (Feb. 18, 2025), https://www.kuow.org/stories/fearing-deportation-immigrants-are-missing-appointments-at-seattle-area-clinics.

[11] Physicians for Human Rights, Consequences of Fear: How the Trump Administration's Immigration Policies and Rhetoric Block Access to Healthcare 6 (Apr. 2025), https://phr.org/our-work/resources/consequences-of-fear/.

[12]Id.

[13]Id.

[14]Id.

[15]See Altaf Saadi, Welcoming and Protecting Immigrants in Healthcare Settings: A Toolkit Developed from a Multi-State Study, Doctors for Immigrants, 3, available at https://doctorsforimmigrants.com/ourwork/ (last access Apr. 22, 2025).

[16] Jeanne Batalova, Immigrant Health-Care Workers in the United States, Migration Policy Institute (Apr. 7, 2023), https://www.migrationpolicy.org/article/immigrant-health-care-workers-united-states-2021 ("Nearly 2.8 million immigrants were employed as health-care workers in 2021, accounting for more than 18 percent of the 15.2 million people in the United States in a health-care occupation. This was slightly higher than immigrants' share of the overall U.S. civilian workforce (17 percent) and the foreign born were especially over-represented among certain health-care occupations such as physicians and surgeons (26 percent) as well as home health aides (almost 40 percent). Approximately 1.6 million immigrants were working as doctors, registered nurses, dentists, pharmacists, or dental hygienists.").

To provide adequate healthcare, providers must foster a sense of safety for their patients. But the current threat of immigration enforcement at healthcare facilities undermines that safety, forcing providers to confront difficult questions about how to protect immigrant patients. While healthcare facilities cannot entirely prevent immigration enforcement, they can adopt policies that promote a safer, more welcoming environment for immigrant patients and their families.

III.Patients' Rights

To formulate policies that protect immigrant patients, healthcare facilities should begin by understanding immigrant patients' rights. Indeed, although both federal and state law provide certain protections to immigrant patients, it takes people—whether they be healthcare providers, administrative staff, immigrants themselves, or other community members—to breathe life into those protections.

Note:

The law governing immigration enforcement in healthcare settings differs depending on whether the facility is public or private. Generally, all Oregon healthcare facilities are protected by and subject to federal laws, such as the Health Insurance Portability and Accountability Act (HIPAA), which protects patient privacy; the Emergency Medical Treatment and Labor Act (EMTALA), which provides for non-discrimination in the provision of emergency treatment; and the United States Constitution, which requires immigration officials to respect certain boundaries. Public healthcare facilities are also regulated by Oregon's Sanctuary Promise laws,[17] which limit the degree to which "public bodies" may interact with immigration officials.[18] Oregon's Sanctuary Promise laws provide

[17] ORS 180.805, 180.810, and 181A.820 to 181A.829.

[18]See ORS 180.805, 180.810, and 181A.820 to 181A.829; Oregon Dep't of Justice, Hospitals and Healthcare Settings, https://www.doj.state.or.us/oregon-department-of-justice/civil-rights/sanctuary-promise/hospitals-and-healthcare-settings/ (last accessed Apr. 18, 2025). Healthcare facilities that are uncertain whether they are "public bodies" for purposes of Oregon's Sanctuary Promise laws should consult with counsel.

greater protections for immigrant community members than federal laws.[19] **Although only public healthcare facilities are legally bound by Oregon's Sanctuary Promise laws, it is best practice for all healthcare settings in Oregon to, at minimum, voluntarily conform to the requirements of these laws to ensure that immigrant patients can access the care they need.**

Together, federal and state laws provide immigrant patients in Oregon with the following rights (discussed in greater detail in the sections that follow):

01 The right to privacy.

Under federal and Oregon law, immigrant patients have the right to the protection of their personal information, including information related to their immigration status.[20] Healthcare facilities generally may not share patient information with immigration officials unless officials present a valid judicial subpoena.

[19] The Trump Administration has indicated that it will target sanctuary jurisdictions and apply sanctions "based on any such jurisdiction's practices that interfere with the enforcement of Federal law." Exec. Order. No. 14159, 3 C.F.R. – (2025), https://www.whitehouse.gov/presidential-actions/2025/01/protecting-the-american-people-against-invasion/; see also Tess Hellgren, Executive Actions Impacting Immigrant Rights, Innovation Law Lab (Jan. 23, 2025), https://innovationlawlab.org/resources/executive-actions-impacting-immigrant-rights/. However, Oregon's sanctuary laws do not interfere with the enforcement of federal law because they do not impede immigration enforcement. Instead, Oregon's sanctuary laws support Oregon's immigrant communities by lawfully requiring that state and local officials not assist with federal immigration enforcement. See generally National Immigration Project, Setting the Record Straight about Sanctuary Policies: A Response to Threats against Sanctuary Cities (Jan. 22, 2025), https://nipnlg.org/sites/default/files/2025-01/DOJ-AFL-response.pdf; Ahilan Arulanantham, "What Just Happened: Sanctuary Policies and the DOJ Memo's Empty Threat of Criminal Liability," Just Security (Jan. 23, 2025), https://www.justsecurity.org/106723/sanctuary-policies-federalism-1324/.

[20] See 45 C.F.R. § 164.502(a) (prohibiting the disclosure of protected health information except in limited, enumerated circumstances); 45 C.F.R. § 164.512(f)(1)(ii)(A) (allowing for disclosure of protected health information as required by a judicial subpoena); ORS 181A.823(1)(c) (providing that public bodies, AKA public healthcare facilities, may not generally share information about an individual in their custody with immigration officials for purposes of civil immigration enforcement unless officials have a judicial subpoena or unless the information is already available to the general public); ORS § 192.553(1)(a) ("It is the policy of the State of Oregon that an individual has … [t]he right to have protected health information of the individual safeguarded from unlawful use or disclosure.").

02 **The right to be free from unreasonable searches and seizures, i.e., the right to have government officials present a judicial warrant before entering non-public spaces.**

Under the Fourth Amendment to the U.S. Constitution, immigration officials generally may not enter areas of a facility that are not open to the public unless (1) they present a valid judicial warrant or (2) a person with authority over the area consents to their entry.[21] Under Oregon law, public healthcare facilities may not—and private facilities should not—allow immigration officials to enter non-public spaces within the facility without a valid judicial warrant.[22]

03 **The right to remain silent.**

Under the Fifth Amendment to the U.S. Constitution, all persons, including immigrant patients, have the right to remain silent if questioned by immigration officials. Individuals do not have to answer questions regarding their immigration or citizenship status, place of birth, or time in the United States.[23]

04 **The right to receive healthcare in a safe setting, free of abuse, harassment, and discrimination.**

Healthcare providers may not deny beneficial medical treatment to a patient or limit medical resources because of a patient's national origin, race, color, or other protected status,[24] and hospital patients have the right to receive healthcare in a safe setting that is free of abuse and harassment.[25]

[21]See Katz v. United States, 389 U.S. 347, 360 (1967) (Harlan, J., concurring) (explaining that the Fourth Amendment protects against government intrusions where individuals have a "reasonable expectation of privacy"); Kentucky v. King, 563 U.S. 452, 459-63 (2011); see also 8 C.F.R. § 287.8(c)(2)(ii) ("A warrant of arrest shall be obtained except when the designated immigration officer has reason to believe that the person is likely to escape before a warrant can be obtained."); 8 C.F.R. § 287.8(f)(2) ("An immigration officer may not enter into the non-public areas of a business, a residence including the curtilage of such residence, or a farm or other outdoor agricultural operation, except as provided in section 287(a)(3) of the Act, for the purpose of questioning the occupants or employees concerning their right to be or remain in the United States unless the officer has either a warrant or the consent of the owner or other person in control of the site to be inspected.").

[22]See ORS 181A.826(2)(a).

[23]See Kastigar v. United States, 406 U.S. 441, 444–45 (1972) (The privilege against self-incrimination "can be asserted in any proceeding, civil or criminal, administrative or judicial, investigatory or adjudicatory; and it protects against any disclosures which the witness reasonably believes could be used in a criminal prosecution or could lead to other evidence that might be so used. This Court has been zealous to safeguard the values which underlie the privilege.") (internal citations omitted).

[24] ORS 659A.142(6)(a).

[25] 42 C.F.R. § 482.13(c)(2), (3).

05 The right to receive emergency medical care.

Under federal and Oregon law, all patients, regardless of their immigration status or ability to pay, have the right to receive emergency medical care.[26]

06 The right to bodily autonomy and to make informed decisions.

Under federal and Oregon law, immigrant patients have the right to make their own healthcare decisions; to be informed about their health status; to participate in the development and implementation of their plans of care; and to request or refuse treatment.[27] These rights extend to individuals in custody.[28] This means that **immigrant patients, including those in custody, must be empowered to make their own decisions—immigration officials may not make medical care decisions on their behalf.**[29]

[26] 42 U.S.C. § 1395dd(b); ORS 441.094(2).

[27]See ORS 127.507; ORS 677.097; 42 C.F.R. § 482.13(b)(2); Cruzan by Cruzan v. Dir., Missouri Dep't of Health, 497 U.S. 261, 278 (1990) (recognizing a constitutionally protected liberty interest in refusing unwanted medical treatment).

[28]See, e.g., Winston v. Lee, 470 U.S. 753, 766 (1985) (government could not force criminal suspect to undergo surgery under general anesthetic to retrieve bullet likely to be useful in criminal prosecution without running afoul of the Fourth Amendment); George v. Edholm, 752 F.3d 1206, 1220 (9th Cir. 2014) (forced sedation, anoscopy, intubation, and bowel evacuation of arrestee could constitute Fourth Amendment violation); U.S. Immigration and Customs Enforcement, Performance Based National Detention Standards § 4.3, Medical Care V.AA (2011) ("All examinations, treatments, and procedures are governed by informed consent practices applicable in the jurisdiction.").

[29] Law enforcement officials sometimes ask medical providers to perform procedures on people in custody against their will. When this happens, important constitutional limits apply. See, e.g., Winston, 470 U.S. at 756-57; George, 752 F.3d at 1210-13. Immigration officials enforce civil immigration law and generally should not be asking medical providers to perform forced procedures in order to obtain evidence. There are limited scenarios where this might arise as part of an "extended border search." See ACLU Border Rights of Texas, National Immigration Law Center & Physicians for Human Rights, Healthcare Providers: Preserve Access to Care and Protect Your Patients from Border Patrol and ICE Interference, 3 n.9 (Aug. 2020), https://www.nilc.org/resources/health-care-providers-a-guide-to-best-practices-for-protecting-your-rights-and-your-patients-rights/ (quoting Santiago v. S. Health Partners, 2016 WL 4435229 at *3 (M.D.N.C. August 19, 2016). In the event this happens, providers should consult with counsel and should not perform any procedures without the informed, voluntary consent of the patient or a judicial warrant.

Oregon's Sanctuary Promise Laws

Under Oregon's Sanctuary Promise laws, public healthcare facilities MAY NOT do the following:

- Ask individuals about their country of birth, immigration status, or citizenship status or otherwise collect that information, unless specific, narrow exceptions apply (for instance, where it is necessary to confirm eligibility for certain benefits)[30];
- Provide information about an individual to federal immigration authorities where that information will be used to enforce civil immigration laws, unless subject to a valid judicial subpoena[31];
- Allow federal immigration authorities to access an area of the facility that is not normally open to the public, unless required by a valid judicial warrant[32];
- Support or assist a federal agency with immigration enforcement[33]; or
- Otherwise use public facilities, property, or personnel to investigate, apprehend, or detain individuals for immigration enforcement purposes.[34]

If there is a violation of one of these laws, anyone can bring a civil action against the public health facility to stop the violation.[35]

Oregon's Sanctuary laws also create the following **affirmative obligations** for public healthcare facilities:

- If a public healthcare facility "receives a communication or request from a federal agency that relates to immigration enforcement," the facility "**must decline the request,** document the communication or request, and report back to the Oregon Criminal Justice Commission."[36]
- Public healthcare facilities must also adopt internal procedures to ensure that they comply with these obligations.[37]

[30] ORS 181A.823(1)(b).
[31] ORS 181A.823(1)(c). The law also allows for release of information that is available to the general public, "under the same terms and conditions as the information is available to the general public." See id.
[32] ORS 181A.826(2)(a).
[33] ORS 181A.826(2)(b).
[34] ORS 181A.826(2).
[35] ORS 181A.823(4); ORS 181A.826(5).
[36] ORS 181A.826(3)(a), (b).
[37] ORS 181A.826(3)(c).

IV. Safeguarding Spaces in Healthcare Settings

Immigration officials may attempt to enforce immigration laws inside healthcare facilities by entering the facility to question staff, patients, and visitors; to find and arrest specific individuals; or to otherwise glean information that could eventually lead to an immigration arrest. If immigration officials have free, unregulated access to healthcare facilities, those facilities become unsafe spaces for immigrant Oregonians, seriously limiting their access to healthcare. Fortunately, healthcare facilities are legally entitled to safeguard their physical facilities in ways that limit immigration officials' access to facilities. **Key to safeguarding physical spaces is understanding that healthcare facilities can exclude immigration officials from non-public spaces (unless officials present a judicial warrant), but they cannot exclude them from spaces that are open to the public.**

Under the Fourth Amendment of the United States Constitution,[38] immigration officials generally may not enter spaces where an individual has a "reasonable expectation of privacy" unless they have (1) a valid judicial warrant or (2) consent.[39] Similarly, under Article 1, section 9 of the Oregon Constitution, government officials cannot generally enter private spaces unless they have a warrant or an exception to the warrant requirement (e.g. consent).[40] In other words, without a warrant or the consent of the healthcare facility, immigration officials cannot generally enter spaces such as exam rooms, recovery rooms, staff rooms, administrative offices, or other locations where only authorized persons—such as staff, patients, or patients' guests—are allowed. They could, however, enter spaces that are open to anyone, like a lobby or public waiting room or areas within an emergency room where anyone could enter.

Businesses, such as healthcare facilities, have the right to require officials to present a valid judicial warrant before entering non-public spaces.[41] Additionally, **public health facilities in Oregon have the obligation to require a valid judicial warrant before immigration officials may enter such spaces.**[42]

[38] The Fourth Amendment protects all persons, regardless of immigration status, from unreasonable searches and seizures. U.S. Const. amend. IV. ("The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated."); see, e.g., Almeida-Sanchez v. United States, 413 U.S. 266, 273 (1973) (finding that search of Mexican citizen violated his Fourth Amendment rights).

[39]Katz v. United States, 389 U.S. 347, 360 (1967) (Harlan, J., concurring); Kentucky v. King, 563 U.S. 452, 459-63 (2011) (discussing various exceptions to the warrant requirement).

[40]State v. Paulson, 313 Or. 346, 351, 833 P.2d 1278, 1281 (1992); State v. Zamora, 237 Or. App. 514, 518, 240 P.3d 91, 94 (2010).

[41]See, e,g., Marshall v. Barlow's, Inc., 436 U.S. 307, 311 (1978) ("The Warrant Clause of the Fourth Amendment protects commercial buildings as well as private homes."); Morris v. Commonwealth, 208 Va. 331, 334, 157 S.E.2d 191, 194 (1967) (finding warrantless search of patient's hospital room unlawful);
see also 8 C.F.R. § 287.8(f)(2) ("An immigration officer may not enter into the non-public areas of a business, a residence including the curtilage of such residence, or a farm or other outdoor agricultural operation, except as provided in section 287(a)(3) of the Act, for the purpose of questioning the occupants or employees concerning their right to be or remain in the United States unless the officer has either a warrant or the consent of the owner or other person in control of the site to be inspected."); 8 C.F.R. § 287.8(c)(2)(ii) ("A warrant of arrest shall be obtained except when the designated immigration officer has reason to believe that the person is likely to escape before a warrant can be obtained.").

[42] ORS 181A.826(2)(a).

Note:

Officials may enter non-public spaces without a warrant and without consent when there are **"exigent circumstances."** This is a rare exception to the general rule requiring a warrant, and it only justifies warrantless entry when there is an emergency—for instance, if officials are in hot pursuit of a fleeing felon[43] or evidence of a crime is being imminently destroyed.[44] In cases of immigration enforcement at healthcare facilities, the default rule is more likely to apply: "[W]hen the officer has time to get a warrant, he must do so."[45]

To safeguard physical spaces to minimize the threat of immigration enforcement, healthcare facilities can take the following steps:

Check-In Policy

- Establish a **policy requiring all visitors to register** at a designated place before they can access the facility.
    - Post signs at entrances explaining how and where to register to ensure that all visitors are aware of the policy.
    - Consider posting signs specifically requiring the registration of law enforcement officials, including immigration officials.
- Identify a staff member responsible for ensuring that all visitors to the facility have registered. The designated staff member should periodically scan entry areas and waiting rooms, identify anyone who has not registered, and ask them to register.

Identifying Public & Private Areas

- Conduct a **walkthrough of the facility**, ideally with an attorney, to identify which areas of the facility are open to the general public and which are open only to authorized persons, such as staff, registered patients, and registered guests.
- After the walkthrough, **develop a written policy** specifying which areas of the facility are open to the public and which are open only to authorized persons.

[43]E.g., United States v. Santana, 427 U.S. 38, 42–43 (1976).
[44]Schmerber v. California, 384 U.S. 757, 770–71 (1966).
[45]Lange v. California, 594 U.S. 295, 313 (2021).

Minimize the number and size of spaces that are open to the public.

- Use **signs and physical barriers** to clearly differentiate spaces that are open to the public (such as an entry area or small initial waiting area) from non-public spaces.

Policies & Protocols for ICE Encounters

- Adopt a **protocol** for responding to immigration officials who appear at the facility.
- Establish **policy statements** that staff can easily print and share with immigration enforcement officials. For example, "It is the policy of this healthcare facility to require all law enforcement officials to present a judicial warrant before they may enter any non-public spaces inside the facility."
- Set a **code or announcement** that can be shared with staff if immigration officials appear on the premises. If the code or announcement is activated, staff should allow patients and their guests to move to spaces that are not open to the public, pass out know-your-rights materials, and remind patients and other visitors that they have the right to remain silent if an immigration official or other law enforcement official questions them.
- **Designate liaisons** to handle all interactions with immigration officials. Ensure that staffing schedules account for the need for at least one such person to always be on duty. Train designated staff members on the protocol for responding to immigration officials, including by providing training on the difference between judicial and administrative warrants (discussed below).
- **Train all staff** so they know:
    - how to identify ICE agents (who may be in plain clothes without visible badges);
    - how to respond to the designated code;
    - that they should not consent to entry by immigration officials or behave in a manner that might otherwise indicate consent;
    - that they should decline to answer questions from immigration officials but never lie; and
    - that they should ask officials to wait outside the building or in an empty room with the door closed until the designated liaison can meet with them.

Note:

When training personnel on interactions with immigration officials, include role-play and practice scripts, which makes such trainings more effective.[46] Additionally, provide ongoing opportunities to revisit the information learned; for instance, by sending e-mails to staff with reminders about policies regarding interactions with immigration enforcement and other relevant updates.

For sample scripts, see ACLU of Northern California, Protecting Immigrant Community Members: Accessing Healthcare (July 2018), https://www.aclunc.org/docs/kyr-accessing_health_care.pdf; Working Group on Policing and Patient Rights, Police in the Emergency Department: A Medical Provider Toolkit for Protecting Patient Privacy (2021), https://www.law.georgetown.edu/health-justice-alliance/wp-content/uploads/sites/16/2021/05/Police-in-the-ED-Medical-Provider-Toolkit.pdf.

What if if Immigration Officials Have a Warrant?

Immigration officials may claim that they are entitled to enter non-public spaces inside a healthcare facility because they have a warrant or court order. But not all documents that immigration officials present will give them legal authority to enter. In fact, as of the time of this writing, it is relatively uncommon for immigration officials to have a valid judicial warrant.[47]

Immigration officials may lawfully enter non-public spaces inside a healthcare facility if they have a judicial warrant—that is, a valid warrant issued by a judge or magistrate.[48] Be aware that while immigration officials frequently state that they have a "warrant," they typically only have an administrative warrant—that is, a warrant issued by a federal administrative agency, usually the Department of Homeland Security (DHS). **An administrative warrant does not authorize immigration officials to enter non-public areas of a healthcare facility.[49] But a valid judicial warrant does.** A valid judicial

[46] Altaf Saadi, Welcoming and Protecting Immigrants in Healthcare Settings: A Toolkit Developed from a Multi-State Study, Doctors for Immigrants, 9, available at https://doctorsforimmigrants.com/ourwork/ (last access Apr. 22, 2025).

[47] Immigrant Defense Project, ICE Ruses, available at https://www.immigrantdefenseproject.org/ice-ruses/ (last accessed Jan. 23, 2025).

[48] A warrant must describe with particularity the place to be searched or the person to be seized, U.S. Const. amend. IV, and officers generally may not search beyond the areas named in a warrant unless they have consent to do so (or some exceptional circumstance). See Stanford v. Texas, 379 US 476, 486 (1965). In other words, if a judicial warrant only authorized the search of the emergency room, officers cannot insist that they may also enter the ICU under the authority granted by the warrant. Questions about the scope of any particular warrant should be directed to an attorney.

[49]See Federal Law Enforcement Training Centers, ICE Administrative Removal Warrants, available at https://www.fletc.gov/audio/ice-administrative-removal-warrants-mp3 (last accessed Apr. 25, 2025) (stating that "unlike a criminal warrant issued by the federal court, a[n ICE] removal warrant does not authorize the ICE officer to enter into an REP [reasonable expectation of privacy] area to execute the warrant").

warrant will be signed by a judge and have in the header the name of the authorizing federal or state court. It must describe with specificity the authorized time, location, and nature of the search. An administrative warrant, in contrast, will be signed only by an immigration officer and will reference the Department of Homeland Security (DHS) or Immigration and Customs Enforcement (ICE).

To learn more about the difference between judicial and administrative warrants, see National Immigration Law Center, Warrants and Subpoenas: What to Look Out For and How to Respond (Jan. 2025) https://www.nilc.org/wp-content/uploads/2025/01/2025-Subpoenas-Warrants_.pdf.

Model Protocol for Responding to the Presence of Immigration Officials at Healthcare Facilities

- If immigration officials **enter a healthcare facility**, staff members should:
  - Inform officials that they do not have permission to enter the facility without a judicial warrant or court order and ask officials to wait outside the building or in a private room with the door closed until the designated liaison can meet with them.[50]
  - Immediately contact the liaison designated to handle interactions with immigration officials.
  - Alert staff to the presence of immigration officials by activating a pre-designated code.
  - Decline all requests from the immigration officials and explain that only the designated liaison is authorized to handle any of their requests.

- The designated liaison **should**:
  - Inform officials that they do not have permission to enter the facility unless they have a judicial warrant or court order.
  - Ask officials to identify what agency they work for and describe the purpose of their visit.
  - Ask officials for their names, contact information, and badge numbers. Record this information.
  - Ask officials to produce any warrants, court orders, or other documents that entitle them to enter.
  - Make copies of any documents presented.
  - Inform officials that an attorney will need to review the documents presented before the officials may proceed further.

[50] Whether it is preferable to have officials wait in a private room with the door closed as opposed to outside the building will differ depending on the physical space. In a small doctor's office, it will often be preferable to ask officials to wait outside. In a large facility with a private room near the entrance, it may be preferable to ask officers to wait in the private room with the door closed to avoid having them question the many people coming and going, thus deterring some community members from accessing care.

- Contact an attorney.
- Call the Portland Immigrant Rights Coalition (PIRC) hotline at 1-888-622-1510 to report suspected ICE activity. (Hotlines outside the Portland area may be added. For now, all facilities can contact PIRC to see if it can provide assistance.)
- In all interactions, do not lie to officials, but do not volunteer information. Remember that anyone can exercise their right to remain silent when interacting with government officials.

- If an immigration official **claims to have a warrant,** the designated liaison should:
  - Inform officials that they are only permitted to enter if the warrant is a judicial warrant.
  - Review any documents presented to determine whether officials have a judicial warrant or administrative warrant, ideally with the assistance of an attorney.
    - A **judicial warrant** is issued by a judge or magistrate, and it will bear the name of a court, usually the "United States District Court for the District of Oregon."
    - An **administrative warrant** will be signed by an immigration officer or immigration judge and will usually bear the name of the "Department of Homeland Security" or "DHS."
  - Make copies of any documents presented.
  - If officials have presented an administrative warrant, inform them that they do not have permission to enter any private spaces and ask them to leave. They must obtain a judicial warrant before they can enter.
  - If officials have presented a valid judicial warrant, the law requires prompt compliance with the warrant.
    - **If the warrant is a search warrant**, it will describe the places the officials can enter. If officials attempt to search areas beyond those authorized by the warrant, tell officials that the facility does not consent to that search and document the interaction.
    - **If the warrant is an arrest warrant**, it will name the person to be arrested. The law requires that staff members refrain from interfering with the arrest of the named person. However, staff members may inform the person being arrested (as well as anyone nearby) that they

have the right to remain silent. They may also object if officers attempt to do anything beyond arresting the person named in the warrant, such as questioning other people or otherwise searching the facility.

REMEMBER: Judicial warrants authorize entry. Administrative warrants do not.

- If an immigration officer claims to have emergency authority to enter a healthcare facility or otherwise enters without consent, personnel should document the interaction. Attempting to physically stop the officer may be unlawful and dangerous.

- If healthcare personnel are uncomfortable interacting with immigration officials for any reason, they should immediately contact a colleague or supervisor who is comfortable managing these interactions.

- After immigration officials make any requests of a healthcare facility, personnel should document everything they remember about the request, inform their supervisors, and consult with an attorney to determine next best steps.

V. Protecting Patient Privacy

Immigration officials may attempt to enforce immigration laws at healthcare facilities by using those facilities, and the records they hold, to obtain information to make it easier to deport patients, staff, or their loved ones. Officials could attempt to gather information by observing individuals inside the facility, questioning people, informally requesting records maintained by the healthcare facility, formally requesting records via subpoenas, going through people's belongings, or looking at documents or other objects that are in "plain view." This sort of surveillance threatens access to healthcare by making immigrants and their loved ones feel that it is not safe to go to healthcare facilities or to speak openly with healthcare providers. Moreover, many of these practices violate the laws protecting patient privacy. Healthcare facilities should thus ensure that they are familiar with their obligations to protect patient privacy and enact policies to safeguard patient privacy rights.

Immigrant Patient Privacy Under Oregon's Sanctuary Promise Laws

All public healthcare facilities in Oregon must comply with the privacy guarantees written into Oregon's Sanctuary Promise laws, and all private facilities ought to do so as a best practice. Under these laws, **public healthcare facilities in Oregon may not generally ask individuals about their country of birth, immigration status, or citizenship status,[51] nor may they share information about patients with federal immigration authorities unless required by a judicial subpoena or other court order.[52]** In fact, if immigration officials request information related to immigration enforcement from a public healthcare facility, the facility "**must decline** the request, document the communication or request, and report back to the Oregon Criminal Justice Commission."[53] (The duty to decline the request does not apply if the request comes in the form of a judicial subpoena.[54])

For more information about Oregon's Sanctuary Promise Laws, see guidance from the Oregon Department of Justice: https://www.doj.state.or.us/oregon-department-of-justice/civil-rights/sanctuary-promise/.

[51] ORS 181A.823(1)(b). They may inquire into this information if it "is required to advance an investigation into a violation of state or local criminal law," submitted as part of an Oregon court proceeding, or "[a]s necessary to determine the individual's eligibility for a benefit that the individual is seeking." Id.
[52] ORS 181A.823(1)(c).
[53] ORS 181A.826(3)(a), (b).
[54]Id.

Patient Privacy Under HIPAA

Additionally, both public and private healthcare facilities generally must comply with the privacy guarantees established by federal law—the Health Insurance Portability and Accountability Act (HIPAA).[55] **HIPAA (and its Oregon equivalent) generally prohibits the use or disclosure of a patient's personal health information (PHI) without the patient's consent.**[56] The law protects from disclosure "individually identifiable health information," including any information that could reasonably be used to identify the individual, such as a name, birth date, address, or Social Security number.[57] Immigration status or place of birth, when used in combination with any other information that could reasonably be used to identify an individual (such as name, address, date of birth, etc.), is protected by HIPAA's Privacy Rule.[58]

Although HIPAA has exceptions that allow covered entities to release individually identifiable health information in certain circumstances,[59] these exceptions allowing disclosure are generally permissive, rather than mandatory. In other words, **HIPAA does not require covered entities to release a patient's protected information to immigration officials. To the contrary, depending on the circumstances, the release of patient information to immigration officials could violate HIPAA or other laws.**

HIPAA's general prohibition on disclosure of patient information is subject to the following limited exceptions (among others):

01 Complying with judicial subpoenas and other court orders

Like Oregon's Sanctuary Promise laws, HIPAA allows healthcare facilities to release information to immigration officials in response to a valid judicial subpoena or other

[55] 42 USC § 1320d to 1320d-9; see also HIPAA's implementing regulations, 45 C.F.R. Parts 160 and 164. HIPAA applies to health plans, healthcare clearinghouses, and healthcare providers "who transmit[] any health information in electronic form in connection with" transactions regulated by the U.S. Department of Health and Human Services. 45 C.F.R. § 160.103.

[56] 45 C.F.R. § 164.502(a); see ORS § 192.553(1)(a) ("It is the policy of the State of Oregon that an individual has … [t]he right to have protected health information of the individual safeguarded from unlawful use or disclosure."); ORS § 192.558 (enumerating circumstances where disclosure are permitted); See generally Dep't Health & Human Services, Summary of the HIPAA Privacy Rule https://www.hhs.gov/hipaa/for-professionals/privacy/laws-regulations/index.html (last accessed Apr. 21, 2025).

[57] "Individually identifiable health information is information that is a subset of health information, including demographic information collected from an individual, and:

(1) Is created or received by a healthcare provider, health plan, employer, or healthcare clearinghouse; and

(2) Relates to the past, present, or future physical or mental health or condition of an individual; the provision of healthcare to an individual; or the past, present, or future payment for the provision of healthcare to an individual; and

(i) That identifies the individual; or

(ii) With respect to which there is a reasonable basis to believe the information can be used to identify the individual."

45 C.F.R. § 160.103. See also Oregon Health & Sci. Univ. v. Oregonian Publ'g Co., LLC, 362 Or. 68, 88, 403 P.3d 732, 743 (2017) (explaining that Oregon's version of HIPAA uses a definition of "individually identifiable health information" that is substantively comparable to that definition employed by HIPAA).

[58]See Oregon Health & Sci. Univ. v. Oregonian Publ'g Co., LLC, 362 Or. 68, 80, 88, 403 P.3d 732, 739, 743 (2017) (finding that claimant names, attorney names, and dates on which alleged torts occurred—in combination—constituted protected health information under HIPAA).

[59]See 45 C.F.R. §§ 164.502(a)(1), 164.512 (describing circumstances where disclosures without patient consent are permitted); see also ORS § 192.558 (same under state law).

court order.[60] However, even then, HIPAA limits the information that healthcare facilities can share, **requiring that any release of personal health information in response to a court order be limited by the requirements of that document.**[61] To best protect patient privacy, healthcare facilities should not (and public healthcare facilities may not) release information to immigration officials unless required by law; for instance because there is a judicial subpoena or court order.

02 Reporting crimes that occurred "on the premises"

HIPAA also allows healthcare facilities to release PHI to law enforcement if they believe in good faith that the information "constitutes evidence of criminal conduct that occurred on the premises of the covered entity."[62] **This exception to HIPAA's general prohibition on disclosure generally should not be used to release information about immigration status to immigration officials.** Although there are a few immigration crimes, for instance, illegal entry or illegal re-entry,[63] those crimes typically occur at the border, not "on the premises" of healthcare facilities. Simply being present in the United States without authorization is not an ongoing crime.[64] Immigration laws—including what constitutes an immigration crime—is complex. Rather than attempting to determine whether certain conduct constituted an immigration crime that occurred "on the premises" of a healthcare facility, healthcare facilities should require a judicial warrant or other court order before releasing information to immigration officials. For public facilities, this practice also assures compliance with Oregon's Sanctuary Promise laws.

03 Releasing basic directory information when specifically asked about a patient by name

HIPAA also allows healthcare facilities to release "directory information."[65] Under this exception to HIPAA's privacy requirements, healthcare facilities *can* – but are not required to – release certain information about a patient—name, location in the facility, general condition—to anyone who asks about the individual by name.[66] Healthcare

[60]See 45 C.F.R. § 164.512(e)(1), (f)(1). HIPAA also allows disclosures in response to orders of "administrative tribunals." 45 C.F.R. § 164.512(e)(1). Although immigration courts may qualify as "administrative tribunals," their power to issue subpoenas arises after DHS has already initiated removal proceedings—that is, DHS must already have evidence against a non-citizen before the immigration judge would be in a position to issue a subpoena. See 8 C.F.R. § 1003.35(b)(1) ("In any proceeding before an Immigration Judge, other than under 8 CFR part 335, the Immigration Judge shall have exclusive jurisdiction to issue subpoenas requiring the attendance of witnesses or for the production of books, papers and other documentary evidence, or both."); 8 C.F.R. §§ 239.1, 1239.1 (explaining that DHS commences removal proceedings by filing a notice to appear). Thus, this HIPAA provision cannot be used to allow DHS to use the immigration court's subpoena power to go on a fishing expedition for the initial evidence it requires to commence removal proceedings.

[61]See 45 C.F.R. § 164.512(e)(1), (f)(1).

[62] 45 C.F.R. § 164.512(f)(5).

[63] 8 U.S.C. §§ 1325, 1326.

[64] American Immigration Council, Prosecuting People for Coming to the United States 2 (2021), https://www.americanimmigrationcouncil.org/sites/default/files/research/prosecuting_people_for_coming_to_the_united_states.pdf; *but see* Dep't of Justice, Whether Eluding Inspection Under 8 U.S.C. § 1325(a)(2) Is a Continuing Offense (June 21, 2025), https://www.justice.gov/olc/media/1404581/dl?inline (authorizing prosecution for 'eluding inspection' on an ongoing basis).

[65] 45 C.F.R. § 164.510(a).

[66]Id. § 164.510(a)(1).

facilities that choose to do so *must* tell the patient what information they release as directory information and to whom they may disclose it, and they must allow the patient to object.[67] Where a patient cannot practically object due to incapacity or other emergency, the facility may release this information consistent with prior expressed permissions of the patient and where, in the exercise of the healthcare provider's professional judgment, it is in the best interest of the patient.[68]

To best protect patient privacy and the best interests of immigrant patients, healthcare facilities should adopt a policy of never releasing directory information to immigration officials unless required by a judicial subpoena. It is never in a patient's best interest for a healthcare facility to release information to immigration officials for purposes of immigration enforcement.

04 HIPAA Violations

Failure to comply with HIPAA's privacy requirements may result in civil penalties for covered entities or criminal punishment for individuals.[69] Individuals whose HIPAA rights are violated may have a cause of action under Oregon tort laws, and individual medical providers who violate HIPAA may face discipline by the Oregon Medical Board.

Patient Privacy Under the Fourth Amendment

As discussed above, the Fourth Amendment of the U.S. Constitution protects individuals from warrantless government intrusions into spaces where they have a reasonable expectation of privacy. Although patients themselves may not always have the right to exclude the government from spaces within the healthcare facility (though hospital personnel generally do have this right),[70] patients have the right to refuse a search of their personal belongings by government officials.[71] **Healthcare facility personnel should not infringe on this right by purporting to consent to the search of a patient's belongings on behalf of the patient or otherwise turning patient belongings over to immigration officials without a judicial warrant.**[72]

[67]Id. § 164.510(a)(2).
[68]Id. § 164.510(a)(3).
[69] Dep't Health & Human Services, Summary of the HIPAA Privacy Rule https://www.hhs.gov/hipaa/for-professionals/privacy/laws-regulations/index.html (last accessed Apr. 21, 2025).
[70]State v. Cromb, 220 Or. App. 315, 327, 185 P.3d 1120, 1127 (2008) (finding that patient did not have reasonable expectation of privacy in curtained off area inside emergency room); see also State v. Villasenor-Sibrian, 337 Or. App. 465, 470, 563 P.3d 999, 1002 (2025) (finding that patient in back of ambulance did not have right to restrict police access to back of ambulance but implying that medic in ambulance did have such a right).
[71]See, e.g., Bond v. United States, 529 U.S. 334, 338 (2000) (border patrol officer violated bus passenger's Fourth Amendment rights by feeling his opaque bag in an exploratory manner without a warrant or permission); United States v. Neely, 345 F.3d 366, 369 (5th Cir. 2003) ("Numerous courts have held that an emergency room patient does not forfeit his possessory rights to clothing simply by walking (or in many cases being carried) through the hospital door.").
[72]See, e.g., Morris v. Commonwealth, 208 Va. 331, 334, 157 S.E.2d 191, 194 (1967) (patient's rights were violated where nurse, at direction of law enforcement, entered sedated patient's hospital room, took patient's clothes, and delivered them to officers).

It is important to keep in mind that the Fourth Amendment does not prevent government officials from acquiring information that is in **"plain view"**—that is, if officials are in a place where they have the lawful right to be, the Fourth Amendment allows them to look at anything that is out in the open or otherwise take in information with their senses, for instance, by hearing it.[73] If there are documents or other sources of information left out at a front desk or in other areas where officials may enter or are given permission to enter, the officials may look at those documents. Likewise, officers could overhear information about patients or others. Should this happen, patient privacy may be compromised, potentially in violation of HIPAA or other laws. Healthcare facilities should thus ensure that personnel keep documents enclosed in files or in another appropriate protected space and that they take precautions when speaking about sensitive subjects.

A Note on Subpoenas

Immigration officials may attempt to obtain information from healthcare facilities through a subpoena—a formal written document requiring testimony or the production of evidence. This can be a judicial subpoena—that is, a subpoena issued by a judge or magistrate—or this can be an administrative subpoena—that is, a subpoena issued by an administrative agency, like DHS.[74] The law requires healthcare facilities to comply with valid judicial subpoenas.

A DHS-issued administrative subpoena, however, is only enforceable after DHS goes to federal court and obtains a court order that requires compliance.[75] Put differently, an administrative subpoena is only enforceable after it becomes a judicial subpoena via court order. This statutory scheme provides individuals who receive administrative subpoenas a "meaningful day in court" so they may resist responding to an administrative subpoena where appropriate.[76]

A public healthcare facility's compliance with a DHS-issued administrative subpoena alone—without any additional court order—likely violates Oregon's sanctuary laws prohibiting information sharing about patients for the purposes of enforcing civil immigration laws.[77] For private facilities, there is also some risk that

[73]See Minnesota v. Dickerson, 508 U.S. 366, 375–76 (1993); Arizona v. Hicks, 480 U.S. 321, 324-25 (1987).

[74]See 8 U.S.C. § 1225(d)(4)(A) (establishing immigration officers' administrative subpoena power).

[75]See 8 U.S.C. § 1225(d)(4)(B) (establishing a process for making immigration officers' subpoena's judicially enforceable); In re Nat'l Sec. Letter, 33 F.4th 1058, 1063 (9th Cir. 2022) ([W]hile an agency may issue a subpoena without prior judicial approval, it must invoke the aid of a federal court to enforce it."); see also United States v. Sec. State Bank & Trust, 473 F.2d 638, 641–42 (5th Cir. 1973); Shasta Minerals & Chem. Co. v. SEC, 328 F.2d 285, 286 (10th Cir. 1964); Interstate Com. Comm'n v. Brimson, 154 U.S. 447, 485, 14 S. Ct. 1125, 1136, 38 L. Ed. 1047 (1894) ([T]he power to impose fine or imprisonment in order to compel the performance of a legal duty imposed by the United States can only be exerted, under the law of the land, by a competent judicial tribunal having jurisdiction in the premises."); Off. Legal Pol'y, U.S. Dep't Just., Report to Congress on the Use of Administrative Subpoena Authorities by Executive Branch Agencies and Entities, Section II.A.2 (2002), https://www.justice.gov/archive/olp/rpt_to_congress.htm#2a2 ("Congress has consistently required that agencies and departments seek enforcement of administrative subpoenas through a federal district court.").

[76]See United States v. Sec. State Bank & Tr., 473 F.2d 638, 642 (5th Cir. 1973).

[77] Under Oregon law, public healthcare facilities generally may not provide information to federal immigration authorities about individuals in the healthcare facility's custody where that information will be used to enforce civil immigration laws. ORS 181A.823(1)(c), (2). The statute creates two exceptions to this rule. Public bodies may provide this information, "[a]s may be required by a judicial subpoena issued as part of a court proceeding or by another compulsory court-issued legal process" or "[t]o the extent that the information is available to the general public and under the same terms and conditions as the information is available to the general public." Id.

compliance with a DHS-issued administrative subpoena could violate HIPAA. Although HIPAA allows for the release of protected information to comply with an administrative subpoena, this is only true when specific circumstances are met: "(1) The information sought is relevant and material to a legitimate law enforcement inquiry; (2) The request is specific and limited in scope to the extent reasonably practicable in light of the purpose for which the information is sought; and (3) De-identified information could not reasonably be used."[78] Moreover, response to the administrative subpoena must be "required by law."[79] Due to the nature of administrative subpoenas, immediate compliance will not always be "required by law."

If a healthcare facility is issued a subpoena—whether judicial or administrative—it should consult with an attorney to determine the best course of action. There may be legal grounds for quashing (suppressing) the subpoena if the facility acts quickly. Failure to comply with a valid judicial subpoena or other valid court order may result in contempt of court or other serious consequences.

Strengthening Patient Privacy

Healthcare facilities can strengthen their patient privacy safeguards by taking the following steps:

- **Establish** a protocol for responding to requests for information from immigration officials.
- **Create** a written policy providing that personnel will not ask patients about immigration status, citizenship, or country of birth unless required by law.
- **Adopt** a written policy providing that the healthcare facility will never release patient information—including directory information—to immigration officials for purposes of immigration enforcement absent a valid judicial subpoena or court order.
- **Designate** liaisons to handle all interactions with immigration officials. Ensure that staffing schedules account for the need for at least one such person to be on duty at all times. Train designated staff members on the protocol for responding to requests for information from immigration officials, including by providing training on the difference between judicial and administrative subpoenas.
- **Train** personnel so that they know the following:
    - No law requires healthcare providers to ask individuals about their immigration status (unless necessary to verify benefits eligibility).
    - Personnel employed by public healthcare facilities are generally prohibited by Oregon law from asking about country of birth, immigration status, or citizenship status. They are also generally prohibited by Oregon law from

[78] 45 C.F.R. § 164.512(f)(1)(ii)(C).
[79]Id.

sharing information with immigration officials or otherwise assisting with immigration enforcement.

- If an individual volunteers information about their country of birth or immigration status, personnel should not record or collect this information. If it is necessary to record this information to provide quality medical treatment, use language unrelated to immigration status or country of birth, such as "legal issue stressors."
- Personnel should not answer questions from immigration officials and should instead direct officials to the designated liaison.
- Personnel must keep patient records in safe locations and closed files that are not visible to anyone other than those who are authorized to see them. Physical documents must be covered or enclosed, and computer screens must be shielded from public view.
- Personnel should not discuss sensitive information, such as information related to immigration status or county of birth, in areas or at volumes where anyone besides the intended recipient of the communication may hear them. Such information should only be discussed if necessary to provide medical treatment.
- Personnel may not consent to the search of a patient's belongings on behalf of the patient or turn a patient's belongings over to immigration officials without a judicial warrant.

- **Establish** a written policy explaining that patients retain control over their belongings even when they cannot personally safeguard them and requiring that patient belongings be protected; for instance, by placing them in an opaque bag and/or locker within a storage area.

Model Protocol for Responding to Immigration Officials' Requests for Information at Healthcare Facilities

- If immigration authorities **request information** from a healthcare facility, facility personnel should decline to comment and direct the request to the designated liaison. The designated liaison should:
  - Ask officials to identify what agency they work for;
  - Ask officials for their names, contact information, and badge numbers. Record this information.
  - Ask officials to produce any warrants, court orders, or other documents related to their request for information;
  - Make a copy of all documents the immigration officials present;
  - Inform the officials that they cannot share any information without first consulting an attorney; and
  - Consult an attorney.

REMEMBER: An administrative subpoena alone is not enforceable. The law requires compliance with a valid judicial subpoena or court order.

- In any interaction with immigration officials, **avoid sharing information** as much as possible. For example, if immigration officials ask facility personnel about a specific patient or staff member, do not confirm whether that person has a relationship to the healthcare facility. **You should never lie to immigration officials, but you can maintain silence or decline to answer a question.**

- If personnel are uncomfortable interacting with immigration officials for any reason, they should immediately contact a colleague or supervisor who is comfortable managing these interactions.

- After immigration officials make any requests, document everything you remember about the request, inform a supervisor, and consult with an attorney to determine next best steps.

VI. Protecting Patients Who Are in Custody

In addition to entering healthcare facilities to make arrests or to gather information to support future arrests, immigration officials may enter healthcare facilities to obtain medical care for individuals who are already in their custody. When this happens, healthcare providers must remember that patients do not lose all of their rights because they are in government custody. Rather, patients who are in custody retain important rights, including those to privacy and personal autonomy.[80]

Both Oregon and federal laws recognize that patients have the right to make their own healthcare decisions; to be informed regarding their health status; to participate in the development and implementation of their plans of care; and to request or refuse treatment.[81] These rights extend to individuals in custody.[82] This means that **immigrant patients, including those in custody, must be empowered to make their own healthcare decisions—immigration officials generally may not make medical care decisions on their behalf.**[83]

Additionally, although officials may insist on accompanying a detained person at all times within the healthcare facility,[84] the facility can nonetheless place limits on the officers' access to the facility. In the event that immigration officials appear at a healthcare facility seeking medical care for someone in immigration custody, healthcare facilities can take the following steps to protect the patient and others present in the facility as much as possible:

[80]See, e.g., Winston v. Lee, 470 U.S. 753, 761 (1985) (recognizing constitutional limits on government "intrusion upon the individual's dignitary interests in personal privacy and bodily integrity").

[81]See ORS 127.507; ORS 677.097; 42 C.F.R. § 482.13(b)(2); Cruzan by Cruzan v. Dir., Missouri Dep't of Health, 497 U.S. 261, 278 (1990) (recognizing a constitutionally protected liberty interest in refusing unwanted medical treatment).

[82]See, e.g., Winston v. Lee, 470 U.S. 753, 766 (1985) (government could not force criminal suspect to undergo surgery under general anesthetic to retrieve bullet likely to be useful in criminal prosecution without running afoul of the Fourth Amendment); George v. Edholm, 752 F.3d 1206, 1220 (9th Cir. 2014) (forced sedation, anoscopy, intubation, and bowel evacuation of arrestee could constitute Fourth Amendment violation); U.S. Immigration and Customs Enforcement, Performance Based National Detention Standards § 4.3, Medical Care V.AA (2011) ("All examinations, treatments, and procedures are governed by informed consent practices applicable in the jurisdiction.").

[83] Law enforcement officials sometimes ask medical providers to perform procedures on people in custody against their will. When this happens, important constitutional limits apply. See, e.g., Winston, 470 U.S. at 756-57; George, 752 F.3d at 1210-13. Immigration officials enforce civil immigration law and generally should not be asking medical providers to perform forced procedures in order to obtain evidence. There are limited scenarios where this might arise as part of an "extended border search." See ACLU Border Rights of Texas, National Immigration Law Center & Physicians for Human Rights, Healthcare Providers: Preserve Access to Care and Protect Your Patients from Border Patrol and ICE Interference, 3 n.9 (Aug. 2020), https://www.nilc.org/resources/health-care-providers-a-guide-to-best-practices-for-protecting-your-rights-and-your-patients-rights/ (quoting Santiago v. S. Health Partners, 2016 WL 4435229 at *3 (M.D.N.C. August 19, 2016). In the event this happens, providers should consult with counsel and should not perform any procedures without the informed, voluntary consent of the patient or a judicial warrant.

[84] See U.S. Immigration and Customs Enforcement, Performance Based National Detention Standards § 4.3, Medical Care V.B (2011) ("The facility administrator, in collaboration with the CMA and HSA, negotiates and maintains arrangements with nearby medical facilities or healthcare providers to provide required healthcare not available within the facility, as well as identifying custodial officers to transport and remain with detainees for the duration of any off-site treatment or hospital admission.").

- **Inform** officials that the facility's consent to their entry without a judicial warrant is limited only to the purpose of accompanying the detained person who is in need of medical attention. Ask officers to wait outside the facility or in an empty room with the door closed without entering other spaces inside the facility.

- If officials insist on escorting the patient, clearly explain limits to the officers:

    - The facility authorizes officers' entry only to the extent necessary to provide the patient with medical care.

    - The facility does not consent to immigration enforcement on the premises.

    - The facility expects that officials will not speak with others in the facility or enter any spaces besides those necessary to accompany the patient.

- **Inform** the officials that the patient's health information is private, and ask them to move to areas where they cannot hear any conversations between providers and the patient, ideally by waiting in an empty room with the door closed. If officers refuse to wait in an empty room with the door closed, inform them that they may wait outside the patient's room. Reiterate that they do not have consent to enter any other areas within the facility and that they do not have the facility's consent to conduct immigration enforcement on the premises.

- **Remember** that the principles of medical ethics still apply. Do not compromise standards in the event of pressure from officials to "clear" a patient for detention. The patient's wellbeing, not pressure from officials, remains paramount.

- **Ensure** that patients in immigration custody are allowed to make their own healthcare decisions and that they receive the same quality of care and respect provided to all other patients. To ensure that patients in immigration custody provide informed consent before any medical procedure, discuss every procedure outside the presence of immigration officials and reiterate that it is voluntary.

- **Provide** patients with a copy of their discharge paperwork.[85]

- **Remind** the patient that when an individual is in government custody, medical care is generally at the government's expense, not the patient's.

- **Ask** the patient if they have an attorney whom they would like to contact. If they do not have an attorney, tell them that they may be eligible for free immigration legal services through the Equity Corps of Oregon (ECO), 1-888-274-7292, https://equitycorps.org/.

[85] Under HIPAA, patients have "a right of access to inspect and obtain a copy of protected health information." 45 C.F.R. § 164.524. "Despite some limitations on the release of medical information to individuals in correctional facilities in certain circumstances, there is not a 'blanket ban on dissemination of health information to inmates.'" ACLU Border Rights of Texas, National Immigration Law Center & Physicians for Human Rights, Healthcare Providers: Preserve Access to Care and Protect Your Patients from Border Patrol and ICE Interference, 3 n.9 (Aug. 2020) (quoting Santiago v. S. Health Partners, 2016 WL 4435229 at *3 (M.D.N.C. August 19, 2016), https://www.nilc.org/resources/health-care-providers-a-guide-to-best-practices-for-protecting-your-rights-and-your-patients-rights/.

Note:

Circumstances where immigration officials seek medical treatment on behalf of an individual in their custody can become complex quickly. Officers may ignore the requests of personnel, for instance, by refusing to leave a room to allow the patient to speak in private about their health condition. How to address this and similar problems will depend on individual circumstances. For example, a patient in stable condition may prefer to speak with their own counsel, or have the healthcare facility speak with its counsel, to find a solution to an unexpected problem before giving up any of their rights, such as their right to speak privately with their healthcare provider. When immigration officials bring people in their custody to a healthcare facility, the facility thus may wish to contact counsel to help troubleshoot any problems that may arise.

For more information, see ACLU Border Rights of Texas, National Immigration Law Center & Physicians for Human Rights, Healthcare Providers: Preserve Access to Care and Protect Your Patients from Border Patrol and ICE Interference (Aug. 2020), https://www.nilc.org/resources/health-care-providers-a-guide-to-best-practices-for-protecting-your-rights-and-your-patients-rights/; Working Group on Policing and Patient Rights, Police in the Emergency Department: A Medical Provider Toolkit for Protecting Patient Privacy (2021), https://www.law.georgetown.edu/health-justice-alliance/wp-content/uploads/sites/16/2021/05/Police-in-the-ED-Medical-Provider-Toolkit.pdf.

VII. Taking the Next Steps to Welcome Immigrant Community Members

In addition to adopting the policies and practices discussed above, healthcare facilities can take a variety of measures to make healthcare more welcoming for immigrants and their loved ones. To begin this process, healthcare facilities should consider the following:

01 Proactively communicate with community members.

- **Send** emails, newsletters, and messages on social media to help immigrant community members understand the healthcare facility's commitment to serving all patients.
- **Tell** the community what steps the healthcare facility has taken to protect immigrant community members; for instance, by publicizing the fact that the healthcare facility will not share any information about patients, including information related to immigration status, unless required by law.
- If there are rumors of immigration enforcement happening at specific healthcare facilities, **share** accurate information with the public. Dispel myths if enforcement is not happening.

02 Educate patients and others regarding their rights.

- **Post** know-your-rights information in visible locations in the facility in multiple, commonly spoken languages. This information should remind visitors that:
  - They have the right to remain silent if questioned by immigration officials or other law enforcement;
  - They have the right to have their attorney present during interactions with immigration officials or other law enforcement;
  - They are not obligated to consent to any searches by immigration officials or other law enforcement; and
  - Oregon residents can contact the Equity Corps of Oregon (ECO) at 1-888-274-7292 to see if they qualify for free immigration legal services.
- In addition to posting this information around the facility, **share** know-your-rights handouts and family emergency preparedness information.
  - See Rachel Landry, Know your Rights, Responses, and Recourses, Innovation Law Lab (Apr. 2025), https://innovationlawlab.org/resources/preparing-for-ice-encounters-know-your-rights-responses-and-recourses/
  - Oregon Law Center & Latino Network, Protect Your Family: Information for Families in Oregon: A Guide to Plan in case of an Unexpected Event (Dec. 2024) https://www.latnet.org/immigration-resources/protect-your-family.

- ACLU of Oregon, Immigrants Rights Resources (Feb. 7, 2025), https://www.aclu-or.org/sites/default/files/field_documents/_aclu_or_immigrants_rights_resources_0.pdf, https://www.aclu-or.org/sites/default/files/_aclu_or_immigrants_rights_resources_sp.pdf (Spanish)

- Immigrant Legal Resource Center, "Red Cards/Tarjetas Rojas," available in several languages at https://www.ilrc.org/red-cards-tarjetas-rojas (last accessed Apr. 22, 2025).

- **Provide** support to staff members who may be impacted by immigration enforcement, including by facilitating access to know-your-rights information for staff members, offering counseling services, and sharing messages from leadership affirming the healthcare facility's commitment to diversity, equity, and inclusion, including inclusion of immigrant community members.

03 Prepare for immigration arrests.

- If an immigration arrest occurs at or near a healthcare facility, personnel should, whenever possible, **ask** immigration officials where they are taking the arrested person. Facilities can also share the following information with anyone who is affected:

  - **ICE's Online Detainee Locator,** https://locator.ice.gov/odls/#/search. Individuals whose loved ones are arrested can use ICE's online detainee locator to find out where their loved one is being detained, though there may be a delay of a few days before someone appears in that system. Although individuals arrested by ICE may be detained throughout the United States, those arrested in Oregon are frequently detained at the Northwest ICE Processing Center in Tacoma, Washington. Families can try to call that facility at (253) 779-6000 to ask whether their loved one is being detained there.

  - See also National Immigration Law Center, How to Find a Loved One after a U.S. Immigration Arrest (Apr. 17, 2025), https://www.nilc.org/wp-content/uploads/2025/04/How-to-Locate-a-ICE-Disappearance.pdf

- **Portland Immigrant Rights Coalition (PIRC),** https://pircoregon.org/
  - Call PIRC at 1-888-622-1510 to report suspected ICE activity. (Hotlines outside the Portland area may be added. For now, all facilities can contact PIRC to see if it can provide assistance.)

- **Equity Corps of Oregon (ECO),** https://equitycorps.org/

  - ECO is a network of organizations that provide immigration legal services to Oregon's immigrant and refugee communities. Affected community members can contact ECO at 1-888-274-7292 to see if they are eligible for free immigration legal services.

04 Build community relationships.

- **Establish** a community advisory board composed of community-based organizations, community leaders, and patients, including immigrant community members. Seek the board's advice to better understand how community members are feeling in the current political climate and to learn how to make healthcare facilities more accessible for all.
- **Partner** with community members who can provide support when developing policies to protect immigration patients and in the event of immigration enforcement, for instance, by connecting with community-based organizations, immigration attorneys, interpreters, social service providers, and government officials.

05 Seek out creative solutions to make healthcare more accessible.

- **Offer** telemedicine services so that patients who do not feel comfortable accessing the physical facility can still access the healthcare they need.
- **Work** with community partners to find places where patients feel safe accessing care, and bring care to those locations.
- **Train** healthcare providers on "sanctuary doctoring," which helps providers create safe spaces for immigrant patients, including by accounting for the ways in which immigration status can contribute to chronic stress and otherwise impact health.
    - For more information on "sanctuary doctoring," see Mark G. Kuczewski, Johana Mejias-Beck, & Amy Blair, Good Sanctuary Doctoring for Undocumented Patients, AMA Journal of Ethics (Jan. 2019), https://journalofethics.ama-assn.org/article/good-sanctuary-doctoring-undocumented-patients/2019-01.
- When developing solutions, **consider** a variety of potential barriers to care, such as language barriers, transportation barriers, or lack of insurance.

Together, we can help make Oregon healthcare facilities safe, welcoming places where everyone can access the care they need.