

RESPONDING TO IMMIGRATION ENFORCEMENT

A GUIDE FOR SUBSTANCE USE DISORDER TREATMENT PROGRAMS

In January 2025, the Department of Homeland Security (DHS) rescinded guidance that previously limited immigration enforcement actions in "sensitive locations," including healthcare settings.¹ This announcement has sparked fear and uncertainty within substance use disorder (SUD) treatment programs, causing some patients to cancel appointments or avoid services.

SUD treatment programs should prepare for potential immigration enforcement actions, provide accurate information to patients, and understand their legal obligations to maintain patient confidentiality.

Introduction: Limits on Immigration Enforcement in Healthcare Settings

The U.S. Constitution prohibits immigration enforcement agents from entering **non-public spaces** without a valid search or arrest warrant; a valid warrant must be issued by a judge based on probable cause and name a specific individual.² Immigration agents can enter **public spaces** without a warrant, but anyone questioned by immigration agents in a public area of a healthcare facility has the right to remain silent.³

There may be a mix of public and non-public spaces within a program treating people who use drugs and people with substance use disorders. A program's waiting room may be considered "public" because anyone can walk in, but it may be possible to create a "non-public" waiting room by restricting it to patients and the people accompanying them. Other non-public spaces may include offices, meeting spaces for group sessions, and medical records areas. Whether any given space is considered "non-public" is fact-specific and depends on whether there is a "reasonable expectation of privacy."⁴

Privacy Protections for SUD Programs: 42 CFR Part 2

In addition to the Constitutional privacy protections, many providers offering SUD treatment, diagnosis, or referral for treatment must follow strict federal privacy protections for their patient records.⁵ These protections, known collectively as "Part 2," strictly prohibit sharing information in response to inquiries from federal, state, or local law enforcement absent written patient consent or a Part 2-specific court order.⁶ **Part 2's privacy protections apply equally to inquiries by immigration enforcement officials.**

It is unlikely that immigration enforcement officials will have patient consent or a Part 2-court order authorizing the use or disclosure of Part 2 records. A Part-2 court order requires a number of procedural and substantive steps, including:

- **Notice.** A Part 2 court order is only valid when the patient *and* the treatment program have an opportunity to be heard by the court before it issues the court order.⁷
- **Good Cause Criteria.** When determining whether there is “good cause” to authorize the disclosure of Part 2 records, the court must find that:
 - Other ways of obtaining the information are not available or would not be effective; and
 - The public interest and need for the use or disclosure outweigh the potential injury to the patient, the physician-patient relationship, and the treatment services.⁸
- There are additional requirements for the confidentiality of the court order application and hearing, and the content of the court order.⁹

Part 2 program staff should be prepared to explain to law enforcement, including immigration enforcement officials: “Federal law prohibits me from disclosing any information without a Part 2-specific court order or the individual’s written consent.”

Bottom Line: Know Your Rights, Know Your Patients’ Rights

In the event of an immigration enforcement action or inquiry at a Part 2 program, staff must be prepared to **(1)** evaluate the officials’ authority to enter any non-public space within the program, and **(2)** maintain confidentiality of their patients’ identities and records, without interfering with the lawful execution of a valid judicial warrant. Staff should be clear that they are not consenting to immigration enforcement entering or conducting a search or arrest that is not authorized by a valid warrant.¹⁰

There is risk that immigration enforcement officials may threaten staff with arrest for impeding an investigation or obstruction of justice. Staff should not assist patients in escaping or hiding. Staff may tell patients that they have a right to remain silent, but not direct patients not to answer questions. Staff should document all interactions with immigration enforcement officials, including their names and badge numbers.

Practical Steps for Part 2 Programs

Part 2 programs serving immigrant clients can take the following practical steps to protect clients and staff.

- **Do not request or record data about immigration status.** Avoid asking for patients' immigration status.¹¹ If you must collect such information, or if a patient self-discloses their own or anyone else's immigration status, avoid including it in the patient's electronic health record or billing record.
- **Evaluate waiting room protocols and public areas.** Consider ways to minimize patients' time spent in the program's public areas. For example, invite patients to wait for their provider in an office, rather than in the waiting room. Or move waiting areas behind closed doors, which can only be entered upon authorization by designated staff.
- **Clearly mark non-public areas within the Part 2 program.** For example, mark doors "private." Make sure staff and patients understand the significance of public and non-public spaces within the program. Immigration enforcement officials cannot access non-public areas of the Part 2 program without a judicial warrant – unless an authorized person allows them to enter.
- **Support frontline staff with protocols, scripts, and resources.** Programs should have a clear protocol for responding to immigration enforcement; New York Lawyers for the Public Interest's [model policies](#) for non-profits are a helpful starting point. Scripts can also help staff de-escalate interactions with immigration enforcement while following the law and program policy. See our sample scripts below.
- **Refresh staff training on standard confidentiality measures.** Training ensures that staff know how to assert legal rights – their own and patients'. No patient-identifying information should be in "plain view," such as files and computer screens that are visible from a public space, and staff should never discuss identifying information within earshot of non-Part 2 program staff.
- **Designate an authorized person to review warrants, subpoenas, and court orders.** There are legally significant differences between subpoenas, warrants, and court orders. Designating an authorized person to review these documents relieves the immediate pressure on front-desk staff and makes it more likely the program will respond lawfully without violating patient confidentiality.
- **Direct patients to resources.** Consider making available know-your-rights materials for patients to use, take home, and share with their communities. For example, the Immigrant Legal Resource Center's [Red Cards](#) can help people assert their rights while remaining silent. In addition to all the resources cited here, check with local non-profits offering free immigration legal services for good sources of accurate, reputable information and resources.

Supporting frontline staff with scripts and resources.

Scripts can be useful for helping staff de-escalate an encounter with any type of law enforcement, including immigration enforcement. Scripts should emphasize: the individual staff person is trying to cooperate while following applicable law and program policies. Staff can also hand over a copy of **Legal Action Center's [Letter to Law Enforcement re: 42 CFR Part 2](#)** to provide more information about the law. Staff should have easy access to the protocols and contact information for the designated person(s) authorized to review warrants, subpoenas, and court orders.

Sample scenario and script #1: Agents say they are investigating a crime and need the program's help identifying an individual.

I understand you are looking for an individual as part of your investigation. This program is covered by the federal privacy law for addiction treatment records, which prohibits me from sharing any information without a special court order or an individual's written consent. This letter from the Legal Action Center explains the federal privacy protections in more detail. Please leave your contact information or wait here while I contact my supervisor. [The supervisor can confirm that the program cannot share any patient-identifying information without a Part 2 court order or the individual's written consent.]

Sample scenario and script #2: Agents seek to enter a non-public area of the program because they are looking for a named individual.

This is a private area, and I do not consent to you entering without a valid judicial warrant. If you have a warrant, please share it with me and wait in the lobby/other public area while I notify my supervisor. [Once the supervisor evaluates the warrant, they can follow script #3 or #4 below.]

Sample scenario and script #3: ICE agents present a valid warrant to arrest a patient at the Part 2 program and ask staff to identify the patient.

I understand you have a valid warrant authorizing you to enter the program and arrest [name]. We will cooperate and we are not interfering with the warrant, but we are still prohibited under federal law from sharing any information without a 42 CFR Part 2-specific court order or an individual's written consent. This letter from the Legal Action Center explains the federal privacy protections in more detail. Please wait in the lobby/other public area while I notify my supervisor. [The supervisor can assess the best way for the agents to execute the warrant, while taking steps to protect the confidentiality of other patients.]

Sample scenario and script #4: ICE agents present an invalid warrant (e.g., signed by an immigration officer, not a judge or magistrate).

Based on our review, this warrant does not authorize you to enter and we do not consent to you entering. I cannot answer any questions. Please leave your contact information.

Additional Resources

<u>Health Care Providers and Immigration Enforcement: Know Your Rights, Know Your Patients' Rights</u>	National Immigration Law Center, www.nilc.org
<u>Guidance to Nonprofits Regarding Immigration Enforcement</u>	New York Lawyers for the Public Interest, www.nylpi.org
<u>Immigrants and Substance Use Disorders: A Legal and Medical Perspective</u>	Immigrant Legal Resource Center, www.ilrc.org
<u>Fundamentals of 42 CFR Part 2 and SUD Treatment Privacy</u>	Legal Action Center, www.lac.org

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Legal Action Center is a non-profit law and policy organization that fights discrimination, builds health equity, and restores opportunity for people with arrest and conviction records, substance use disorders, and HIV/AIDS.

REFERENCES

¹ DEP'T OF HOMELAND SECURITY, 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>. See NAT'L IMMIGR. L. CTR., "Trump's Rescission of Protected Area Policies Undermines Safety for All" (Jan. 21, 2025), <https://www.nilc.org/resources/factsheet-trumps-rescission-of-protected-areas-policies-undermines-safety-for-all/>.

² See NAT'L IMMIGR. L. CTR., "Warrants & Subpoenas: What to Look Out For and How to Respond" (Jan. 28, 2025), <https://www.nilc.org/resources/warrants-and-subpoenas-facts/>.

³ In some states, you may be required to give your real name if asked to identify yourself.

⁴ See *Katz v. United States*, 389 U.S. 347, 360 (1967) (Harlan, J., concurring). Courts have held that the existence of a federal law protecting the confidentiality of substance use disorder-related records can be used as evidence supporting a "reasonable" expectation of privacy. See, e.g., *Doe v. Broderick*, 225 F.3d 440, 450 (4th Cir. 2000).

⁵ 42 USC § 290dd-2 and 42 CFR Part 2. Covered providers are called "Part 2 programs." See 42 CFR § 2.11. Most Part 2 programs are also covered entities under the Health Insurance Portability and Accountability Act (HIPAA), but this resource focuses on Part 2 because it is more protective than the HIPAA Privacy Rule when it comes to law enforcement inquiries. See 45 CFR § 164.512(e), (f). See also DAVIS WRIGHT TREMAINE, "Guidelines for Healthcare Providers Responding to Immigration

Enforcement Actions” (Jan. 30, 2025), <https://www.dwt.com/insights/2025/01/healthcare-privacy-trump-immigration-orders>.

⁶ 42 CFR § 2.12(d). Written patient consent must include all the required elements in Section 2.31, and a written consent for uses and disclosures in civil, criminal, administrative, or legislative proceedings cannot be combined with consent for any other purpose. 42 CFR § 2.31.

⁷ 42 CFR § 2.64(b).

⁸ 42 CFR § 2.64(d).

⁹ See *generally* 42 CFR § 2.64. Separate criteria apply to court orders authorizing uses and disclosures to *criminally* investigate or prosecute the patient or the Part 2 program. See 42 CFR §§ 2.65, 2.66.

¹⁰ An unauthorized search is one that is executed without a valid warrant, or that exceeds the scope of the warrant. See NAT’L IMMIGR. L. CTR., “Warrants & Subpoenas: What to Look Out For and How to Respond” (Jan. 28, 2025), <https://www.nilc.org/resources/warrants-and-subpoenas-facts/>.

¹¹ Be sure to refer also to applicable state law. For example, Texas recently required hospitals to collect information about patients who are not lawfully present in the United States. OFF. OF THE TEX. GOVERNOR, Executive Order No. GA-46 (Aug. 8, 2024), https://gov.texas.gov/uploads/files/press/EO-GA-46_HHSC_Alienage_Data_IMAGE_08-08-2024.pdf.