



ISAC Courthouse Screening and Masks FAQ

1) Are employee health screenings confidential?

Yes, employee health screenings are confidential. According to the Equal Employment Opportunity Commission, “[e]mployers must maintain all information about employee illness as a confidential medical record in compliance with the ADA.” You can find more information here:

<https://www.eeoc.gov/laws/guidance/pandemic-preparedness-workplace-and-americans-disabilities-act>.

According to the ADA in 29 CFR § 1630.14, “Confidentiality. Information obtained under paragraph (d) of this section regarding the medical condition or history of any employee shall be collected and maintained on separate forms and in separate medical files and be treated as a confidential medical record, except that: (A) Supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations; (B) First aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment; and (C) Government officials investigating compliance with this part shall be provided relevant information on request.”

The Health Insurance Portability and Accountability Act (“HIPAA”) does not apply to health information found “in employment records held by a covered entity in its role as employer” so HIPAA does not apply to employee health screenings.

2) Are visitor health screenings confidential?

Yes, visitor health screenings are confidential and could fall under a couple different confidentiality laws.

HIPAA may apply to visitor health screenings depending on your status as a HIPAA covered entity.

Protected health information (“PHI”), which is individually identifiable health information, with a few exceptions, held by a covered entity is protected by HIPAA. However, PHI held by a covered entity may not be protected by HIPAA if you’ve completed a hybrid entity designation and the information is not held by a health care component. PHI is not protected by HIPAA if it is not held by a covered entity.

The Iowa Open Records Law is found in Chapter 22 of the Iowa Code. Iowa Code § 22.7(2) requires medical information of patients to be kept confidential: <https://www.legis.iowa.gov/docs/code/22.7.pdf>. This may be applicable depending upon the person’s status with the county and the position of the person conducting the screening on behalf of the county.

3) What are some tips for maintaining confidentiality while performing health screenings of employees and visitors?

There are no definitive rules on how to maintain confidentiality while actively performing health screenings. HIPAA does not require covered entities to eliminate all risks of disclosures but does require covered entities to implement reasonable safeguards to limit incidental disclosures of PHI. Covered entities must evaluate their own practices to determine what is reasonable. The US Department of Health and Human Services gave the following examples:

- Pharmacies could ask waiting customers to stand a few feet back from a counter used for patient counseling.
- In an area where multiple patient-staff communications routinely occur, use of cubicles, dividers, shields, curtains, or similar barriers may constitute a reasonable safeguard. For example, a large clinic intake area may reasonably use cubicles or shield-type dividers, rather than separate

rooms, or providers could add curtains or screens to areas where discussions often occur between doctors and patients or among professionals treating the patient.

You can find more information here: <https://www.hhs.gov/hipaa/for-professionals/faq/197/must-facilities-have-private-or-soundproof-rooms/index.html>.

4) Can a county require that employees wear face masks?

Yes, so long as it is reasonably related to public health recommendations. Counties have the authority to enact measures to preserve the health and welfare of its residents (See Iowa Code § 331.301 <https://www.legis.iowa.gov/docs/code/331.301.pdf>), particularly as it relates to activities occurring on county property. Counties should work with their local public health officials to determine if face mask requirements are reasonably related to public health measures. If face masks will be required for employees, counties will want to consider if any employees have disabilities that may require reasonable accommodations to this requirement as set forth under the Americans with Disabilities Act. Counties will also want to consider if any collective bargaining agreements have applicable terms and if Occupational Health and Safety Administration (“OSHA”) requirements need to be considered. Counties should consult with their county attorneys to assist in making these determinations and work with elected officials and department heads to consider the specific work processes and needs of the various offices.

5) Can a county require the public to wear face masks?

Yes, so long as it is reasonably related to the public health recommendations. Counties have the authority to enact measures to preserve the health and welfare of its residents (See Iowa Code § 331.301 <https://www.legis.iowa.gov/docs/code/331.301.pdf>), particularly as it relates to activities occurring on county property. Counties should work with their local public health officials to determine if face mask requirements are reasonably related to public health measures. Just like with requiring employees to wear face masks, considerations will need to be made for members of the public that may have disabilities that limit a person’s ability to wear face masks or persons with disabilities that need rely on lip reading to communicate. Counties should work with their county attorneys to be informed on what can be asked related to a person’s disability in these situations and what reasonable accommodations may be required. The county will also want to consider if face masks will be provided to members of the public that may not have one, particularly in light of the fact some people have mandatory business at the courthouse (jury duty for example).