

# Reporting requirements: Who has a duty to report undocumented immigrants?

## Fact sheet

Undocumented immigrants are non-U.S. citizens who are living in the U.S. without permission because they do not have the right paperwork. These immigrants are often very afraid of being reported to the immigration officials and being deported.

Laws about reporting can be very confusing. Different agencies and organizations have different reporting rules to follow. It is important to remember that even though they are not U.S. citizens, undocumented immigrants still have rights. You should be very careful you are following the laws about reporting. This fact sheet explains these laws.

### Individuals

Individual citizens have **no duty** to report people they suspect or find out are undocumented immigrants.

### Hospitals

Hospitals have **no duty** to report people that they suspect or find out are undocumented immigrants. Hospital employees should only ask questions about immigration status to figure out if the patient is eligible for services, not to report them. It is important to note that hospitals must give emergency medical services to all immigrants, including undocumented immigrants. Sometimes hospitals will report undocumented immigrants who refuse to pay their hospital bills. Not paying hospital bills can also affect getting legal status. If an immigrant requires long-term hospital care, the hospital might call immigration. This is because if the immigrant requires round the clock care, but does not have Medicaid, Medicare, or private insurance to cover their costs, the hospital cannot let the immigrant go to their home in the U.S., because there is no one who has the proper skills to care for him.

### Schools

All children have a right to a public education for grades kindergarten through twelve, even if they are undocumented. Students cannot be stopped from attending a public school because they are undocumented. Schools cannot require undocumented students or their parents to tell their immigration status. School employees, like teachers and principals, have **no duty** to report undocumented students or their parents.

### Law enforcement

Under South Carolina's Illegal Immigration Reform Act, law enforcement has to make reasonable efforts to find out the legal status of every non-U.S. citizen they arrest. Two programs allow law enforcement to do this after someone is arrested. One program allows Sheriff's offices to enter into agreements with Immigration and Customs Enforcement (ICE). Called 287(g)

agreements, these permit certain Sheriff's Deputies to be trained to enforce federal immigration laws. The other program, Secure Communities, helps jails determine whether immigrants under arrest are deportable. Under Secure Communities, participating jails send inmates' fingerprints to databases, which allow ICE to find out who is in jail. All jurisdictions in South Carolina are either have a 287(g) or are part of Secure Communities.



## Department of social services (DSS), social security administration (SSA), department of health and human services (DHHS), department of labor (DOL), department of housing and urban development (HUD)

These agencies do have a duty to report undocumented immigrants, but only in very specific situations. The duty to report only applies to people who are trying to get Supplemental Security Income (SSI) benefits, Temporary Assistance for Needy Families (TANF) benefits, or federal public housing benefits.

These agencies only have to report if they “know” an immigrant is not in the U.S. legally. An agency only really “knows” an immigrant is not in the U.S. legally if two things happen:

1. The immigrant gives the agency a copy of their immigration paperwork that says they are not here legally; (e.g. the immigrant hands over their deportation order to the caseworker) AND
2. The agency makes a formal determination that the immigrant is not here legally, and that determination is subject to administrative review within that agency.

There is **no duty** to report if the immigrant only makes an oral or written admission to the agency that they are undocumented. This means that if an immigrant tells his caseworker that he is undocumented, the caseworker does **not** have a duty to report.

The duty to report **never** applies to non-applicants. Non-applicants are family or household members who apply for benefits on behalf of other eligible people in their household. For example, if an undocumented mother applies for TANF benefits that are really for her U.S. citizen child, the state agency will not have a duty to report the mother, because she is a non-applicant.

