

**Administrative Rules Committee Request
September 14, 2010**

During the June 2010 Administrative Rules Committee meeting, Representative Kasper requested the following information from the Department of Human Services.

1. How are illegal aliens applying for or receiving aid and is the department required to report the illegal alien status to any other agency?
2. Do programs administered by the department capture information on illegal alien status?

Program: Aging Services

How are aliens applying and is the department required to report the illegal alien status?

Aging Services does not capture any information on illegal alien status so it is unknown whether or how aliens are applying.

Does this program capture information on illegal alien status? No.

Program: TANF

How are aliens applying and is the department required to report the illegal alien status?

Under federal law illegal aliens may not receive TANF assistance. Illegal aliens do at times apply for assistance through the county social service agency. Verification of citizenship or "lawfully admitted for permanent residence" status is verified to prevent the receipt of assistance.

Does this program capture information on illegal alien status?

The Department's Vision system does capture information on illegal alien status.

Program: Child Care Assistance

How are aliens applying and is the department required to report the illegal alien status?

Under federal law illegal aliens may not receive Child Care assistance. Illegal aliens do at times apply for assistance through the county social service agency. Verification of citizenship or "lawfully admitted for permanent residence" status is verified to prevent the receipt of assistance. Under Child Care Assistance, citizenship or "lawfully admitted for permanent residence" status applies to children only.

Child Care Assistance subsidy does not have any provisions under which client information may be released to law enforcement.

Does this program capture information on illegal alien status? No.

Program: Medicaid and CHIP (Healthy Steps) and Basic Care Assistance

How are aliens applying and is the department required to report the illegal alien status?

Both Medicaid and CHIP are required to verify citizenship or alien status as part of the eligibility determination. Any individual who wants Medicaid or CHIP coverage must be a US citizen or an alien who is in the country legally for permanent residence. Failure to provide the proper verification results in a denial of coverage for failure to provide information. Illegal aliens do not have documentation and usually inform the eligibility worker that they are not here legally.

Medicaid is required to provide emergency coverage only for illegal aliens. There is no CHIP coverage available for illegal aliens.

Federal Medicaid and CHIP confidentiality regulations prohibit reporting illegal alien status to any other agency.

Does this program capture information on illegal alien status? Yes.

Program: Vocational Rehabilitation

How are aliens applying and is the department required to report the illegal alien status?

The incidence of illegal aliens applying for services with ND Vocational Rehabilitation (NDVR) is quite rare. The division is not aware of any specific incidences. If an illegal alien would apply, there are no agencies to whom NDVR is required to report them.

To apply for NDVR services, a person must show appropriate documentation that indicates the applicant is available for work

Does this program capture information on illegal alien status? No.

Program: Human Service Centers

How are aliens applying and is the department required to report the illegal alien status?

Generally, if applicants for services have a North Dakota address, they can access services.

Does this program capture information on illegal alien status? No.

Program: Low Income Home Energy Assistance Program (LIHEAP)

How are aliens applying and is the department required to report the illegal alien status?

Aside from a question on the LIHEAP application ("Are you a citizen of the United States?" Yes___ No___), LIHEAP doesn't collect immigration status. If it is answered in the negative, workers have been trained to ask for documentation, and if the person provides documentation of legal status, they are eligible. Citizenship is not required.

Unlike some programs, LIHEAP's basic unit of eligibility is the household, rather than the individual. For example, while SNAP could provide food assistance benefits to one individual in a household, the same does not apply to providing heat. So, if LIHEAP encounters a household with a member who is undocumented, LIHEAP could disregard that member and that member's income, but that's an imperfect solution. These cases are very rare.

LIHEAP is not required to report the information to any other agency.

Does this program capture information on illegal alien status? No.

Program: SNAP (Food Stamps)

How are aliens applying and is the department required to report the illegal alien status?

Treatment of illegal aliens applying for assistance is covered under department policy, Aliens 430-05-30-60; Determining Eligibility 430-05-30-60-05.

Illegal Alien

USCIS makes the determination if an individual is an illegal alien. The worker does not make this determination and federal regulations do not allow the worker to report an individual to USCIS as an illegal alien unless the following has occurred:

- a. unlawful presence must be a finding of fact or conclusion of law that is made as part of a formal determination that is subject to administrative review on an alien's claim, and
- b. the finding or conclusion of unlawful presence must be supported by a determination by USCIS or the Executive Office of Immigration Review, such as a Final Order of Deportation.

Illegal aliens are excluded household members and are treated the same as an ineligible alien.

Ineligible Alien

Individuals who do not meet the eligible alien status and those who do not attest to alien status at the time of application are not eligible. Among those excluded are alien visitors, tourists, diplomats and students who enter the United States temporarily with no intention of abandoning their residence in a foreign country. Ineligible aliens are excluded household members meaning these individuals cannot receive SNAP benefits.

Non-Applicants

An individual who chooses not to provide information on citizenship, alien status or social security number; can choose to be a non-applicant and declare that early in the application process instead of pending the application and waiting for the verification before processing the application. If an individual chooses to be considered a "non-applicant" they are ineligible for SNAP and must be coded accordingly in the system. Federal regulations do not allow the worker to report these individuals to USCIS.

Does this program capture information on illegal alien status?

The Department's TECS system does capture information on illegal alien status.

Program: Child Support Enforcement

How are aliens applying and is the department required to report the illegal alien status?

If Child Support Enforcement gets a referral from TANF, Medicaid, or Foster Care, Child Support Enforcement works the referral without regard to the status of the custodian as an illegal alien.

Child Support Enforcement's application for services requests the parent's SSN, but the failure to provide one would not automatically stop Child Support Enforcement from starting to work on the case. If the child lives here, Child Support Enforcement would work the case and probably assume that the parent's status as an alien was legal rather than illegal. If Child Support Enforcement learns that an applicant is an illegal alien, it would be a close call on whether Child Support Enforcement would be able to share the information. Revised federal confidentiality rules allow Child Support Enforcement to share information of illegal activity stemming from program activities, but a person's illegal status really doesn't pertain to Child Support Enforcement's activities. Information would also be reviewed under North Dakota Century Code § 50-06-15, which discusses the confidentiality of records held by the Department.

Does this program capture information on illegal alien status? No.

Program: Children and Family Services Division

How are aliens applying and is the department required to report the illegal alien status?

We rarely see aliens, legal or illegal, requesting services from our Children and Family Services Division. We assess the needs of these cases as they arise. There is no requirement to report the illegal alien status.

Does this program capture information on illegal alien status? No.