Creating conditions to support healthy people:

State policies that affect the health of undocumented immigrants and their families

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Background

The health of undocumented immigrants has become a topic of public health concern in recent years, and a growing body of research attempts to understand the impact of immigration policy on the well-being of immigrant communities. While the US economy relies on undocumented immigrants for filling the labor needs in a number of occupations, these individuals remain excluded from many public benefits, rights, and resources that could promote their health and the health of their families. Within a federal policy environment that is often exclusionary, states have increasingly played a role in shaping the social and economic factors that affect the health of undocumented immigrants. The legislation and policies being created at the state level are both inclusive—expanding the social inclusion of undocumented immigrants beyond that of federal policy, as well as exclusive—further restricting benefits, rights and resources for undocumented immigrants. The resulting state laws create variation throughout the nation in the social, economic, and political environment in which undocumented immigrants live and work.

In this report we focus on policies that affect the social determinants of health—the circumstances into which people are born, grow up, live, work, and age—and that impact immigrants' ability to live healthy lives. We review laws and regulations created through ballot initiatives, legislation, or administrative decisions that determine the benefits, rights, or resources for undocumented immigrants. The aims of this report are to identify a range of inclusive and exclusive state policies that directly or indirectly impact the health of undocumented immigrants; create a framework for assessing the level of inclusion of state policies; and identify policies that can be changed to improve the ability of undocumented workers and their families to have healthy lives.

Methods

We selected five policy areas that influence immigrant health, while also being the subject of recent state policy activity: 1) public health and welfare benefits; 2) higher education; 3) labor and employment practices; 4) driver licensing and identification; and 5) the federal enforcement program, Secure Communities. The first three policy areas directly affect access to health care and other social determinants of health. The last two represent two areas of immigration policy that more indirectly impact health and are the focus of highly visible debates in many states. Within these policy areas, we identified instances where federal policy allows for states to establish their own policy or allows variation in the implementation of federal policy. Criteria for selecting policies included: 1) policies that have a direct impact on immigrants based on their legal status; 2) policies that influence the social determinants of health; and 3) policies covered in existing summaries of all 50 states. Selected policies were then assigned a score according to a policy outcome that was either inclusive or exclusive and state policies were scored accordingly. The total inclusion score is the sum of each policy score.

Findings

Public health and welfare benefits include children's health insurance, prenatal care, and eligibility calculations for the Supplemental Nutrition Assistance Program (SNAP). California, Illinois, Washington, District of Columbia, New York, and Massachusetts have the most inclusive score of 3 because they provide health insurance for some or all children regardless of legal status, offer full Medicaid to pregnant undocumented women, and include all family members in calculating the family size when determining income eligibility. Meanwhile, those determined as the most exclusive, Connecticut, Utah, Kansas, Arizona, and Ohio, do not provide any of these benefits to undocumented residents. The remaining states have some combination of inclusive and exclusive policies, with the majority offering only one of the three benefits in this area.

Higher education involves state laws related to in-state tuition and scholarships and financial aid. The most inclusive—California, Illinois, Minnesota, New Mexico and Texas—had a cumulative score of 2 since they offer both in-state tuition and scholarships. Thirty-one states received a score of -2 as they provide no higher education support to undocumented students and 15 states received a score of 0 as they only provide in-state tuition, but no scholarships or financial aid.

Labor and employment practices cover workers' compensation law and employee work authorization under the E-Verify system. Only California received the most inclusive possible score of 2. In contrast, 15 states received the most exclusive score possible of -1, indicating that they both mandate the use of E-Verify and do not explicitly include undocumented workers in their workers' compensation laws. Thirty states received a score of 0, indicating their adoption of one of the two exclusive policy positions.

Driver licensing and identification concerns the provision of driver's licenses to undocumented immigrants and opposition to the REAL ID Act. The four states—Colorado, Illinois, Washington, and Utah—that received the highest score of 2 provide undocumented immigrants with driver's licenses and oppose the REAL ID Act. The seven states that scored a 1—California, Nevada, District of Columbia, New Mexico, Maryland, Connecticut, and Vermont—only provide driver's licenses; whereas the 21 states that scored 0 only oppose the REAL ID Act. The remaining 19 neither oppose REAL ID nor grant licenses.

Federal enforcement: Secure Communities entails state legislation to limit the federal Secure Communities (SComm) enforcement program. Only three states—California, Colorado, and Connecticut—scored the highest possible score of 1, as they are the only states that have succeeded in limiting SComm.

Total inclusion scores show California having the most inclusive set of policies that foster conditions beneficial to the health of undocumented immigrants. Illinois, Washington, Colorado, and Texas round out the top five inclusive states. The states with the most exclusionary policies are Ohio, followed by Alabama, Arizona, Indiana, Mississippi, and West Virginia. The average score of -2.5 for the 50 states and the District of Columbia indicates that most states have policy environments that exclude undocumented immigrants from some protections in several key domains of life that can impact their health.

Recommendations

There are many opportunities for policy makers to strengthen state laws that improve the legal, social, and economic environments that foster the health of undocumented immigrants. In addition, policy makers should work to limit federal laws that actively restrict undocumented immigrants' rights or access to resources. Public policy areas where changes should be considered so that they promote healthy conditions for everyone living the US, including undocumented immigrants, are:

- **A wider variety of social welfare policies that provide basic rights.** Following the Universal Declaration of Human Rights, of which the United States is a signatory, political, economic, and social rights (including health) should be extended to all residents who contribute to the society and the economy of the state.
- **Policies specific to health issues** (e.g., end-of-life care) **and labor issues** (e.g., preventing wage theft or occupational injury, etc).
- **Administrative and implementation policies at the state and local levels that promote immigrant integration**, such as free ESL classes, legal assistance in seeking deferred action or other options for obtaining lawful status, and professional licenses without regard to immigration status.
- **Policies that create a climate of acceptance of all immigrants** and that would reduce immigrants' fear and avoidance of public authorities.

Conclusion

Our analysis of each state's policies brings to light the critical role states play in promoting or hindering the well-being of undocumented immigrants throughout the nation, and it sets the stage for additional research, advocacy, and action to ensure the advancement of policies that include undocumented immigrants.

Introduction

The health of undocumented immigrants has become a topic of public health concern in recent years,[1–3] and a growing body of research attempts to understand the impact of immigration policy on the well-being of immigrant communities.[1, 4] While the US economy relies on undocumented immigrants for filling the labor needs in a number of occupations,[5] these individuals remain excluded from many public benefits, rights, and resources that could promote their health and the health of their families. The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA; Pub.L. 104–208, 110 Stat. 3009-551, Sec. 505) and the Personal Responsibility and Work Opportunity Act (Public Law 104-193, a major "welfare reform" bill) created the current policy framework with decreased health care benefits for undocumented immigrants and increased border and interior enforcement. States were allowed to spend their own money to extend benefits, but it required affirmative action to do so. Since then, proposals to create a path to citizenship for the nation's undocumented immigrants have repeatedly been blocked in Congress. Within this exclusionary environment, states have increasingly played a role in shaping the social and economic factors that affect the health of undocumented immigrants.[6]

The legislation and policies being created at the state level are both inclusive—expanding the social inclusion of undocumented immigrants beyond that of federal policy, as well as exclusive—further restricting benefits, rights and resources for undocumented immigrants. The resulting state laws create variation throughout the nation in the social, economic, and political environment in which undocumented immigrants live.[6] In this report, we focus on policies that affect the social determinants of health—the circumstances into which people are born, grow up, live, work, and age—and that impact immigrants' ability to live healthy lives.

It is important to preface the discussion of state policies with a brief definition and description of the undocumented immigrant population. The term *undocumented* or *unauthorized* is generally used to describe individuals who lack some form of lawful presence in the country, such as *lawful permanent residence* (LPR) or a *lawful temporary status*, such as a temporary worker, student, or short-term tourist. The state of being undocumented, however, is not static. While the majority of undocumented residents enter the country without authorization, as many as 40% are admitted with a valid visa (tourist, student, etc.) and remain beyond the authorized period.[7] Some undocumented individuals may be eligible to obtain some form of lawful status, such as asylum or lawful permanent resident status through spousal or other family sponsorship. Others are eligible for one of the many "twilight statuses" that are not formally considered undocumented, such as *deferred action* (a reprieve from deportation that does not confer lawful status, such as DACA[a]), *temporary protected status* (TPS),[b] or parole. These twilight statuses neither confer LPR status nor guarantee permanent authorization to be in the country, and while they provide employment authorization they typically do not confer eligibility for any federally funded benefits.[8]

Legal status and the category of undocumented are the result of federal immigration policy, as the federal government has sole power to determine who can or cannot officially enter the country. The full constellation of policies that create the rights and resources of those who have the status of being undocumented are governed by federal, state, and local laws, regulations, and court rulings, as well as the way that those laws and regulations are applied in practice.

For the purpose of this report the term *undocumented* applies to those individuals who lack legal

a Deferred Action for Childhood Arrivals (DACA), see www.uscis.gov/humanitarian/consideration-deferred-action-childhood-arrivals-daca.

b For example, after a 2010 earthquake devastated populated areas of Haiti and created a humanitarian crisis, the US Department of Homeland Security designated Haitians already living in the United States as having TPS if they registered. Over 50,000 Haitians in the US have since been given TPS status, which currently runs until 2016. www.gpo.gov/fdsys/pkg/FR-2014-03-03/html/2014-04593.htm.

documentation or permission to be in the country. It is important to note, however, that the specific definition of undocumented varies across laws and policies and the specific mechanisms of inclusion or exclusion of undocumented individuals varies by law or policy (hereafter, we use the term "policy" to refer to both laws and policies). For example, exclusionary policies generally do not use the word "undocumented" or even "immigrant;" but by virtue of not being listed as eligible, undocumented immigrants are legally excluded. In contrast, many policies that include undocumented immigrants explicitly state that those lacking lawful status are included, or proxy classifications are used, such as "individuals who do not have a social security number."

It is estimated that there are 11.2 million undocumented immigrants in the United States, with the largest numbers living in California, Texas, Florida, and New York. The undocumented immigrant population is heterogeneous; for example, Florida has the third largest number of undocumented immigrants, with 13% from Mexico, whereas two-thirds of immigrants in California and Texas are from Mexico.[9] At the same time, the undocumented immigrant population has increased in the past decade in "new destination" states such as Virginia, Georgia, and North Carolina. In addition, about four million US-born citizen children have at least one undocumented parent; these "mixed status" families account for almost half of all families with undocumented adults.[10]

Objectives

The information presented in this report provides an overview of the policy landscape in the 50 states and the District of Columbia, and is intended to inform public health researchers and practitioners in their work to advance the health of all members of their communities. The overall goal of this state-level policy report is to present a broad picture of the policies that can have an impact, directly or indirectly, on the health of undocumented immigrants and their families. Specifically, this report identifies a range of inclusive and exclusive state policies that shape the social inclusion and health of undocumented immigrants, and provides an overview of state policies that demonstrates the variation across states. Our aim is not to provide a comprehensive listing of all areas of policy that impact health. Rather, we provide examples across several policy areas of how states include or exclude undocumented immigrants and their families. Many policies examined here were enacted through state legislatures, while others were passed by voters through ballot initiatives; a small number were created via regulations or rules determined by a state administrative agency (e.g., Department of Motor Vehicles or the state university regents). We have selected only policies that affect the social determinants of health and that have recently been the focus of advocacy or legislative action. We offer a discussion on the implications of our findings for the health and well-being of undocumented immigrants and provide recommendations of policy areas that merit further attention.

Approach

While this is not a legal analysis, it is a review of specific policies that define laws and regulations that determine a right, benefit, or resource for undocumented immigrants and their families. We focus on five policy areas at the state level that shape the social determinants of health for undocumented immigrants: public health and welfare benefits, higher education, labor and employment practices, driver licensing and identification, and the federal enforcement program Secure Communities.[c]

Policy areas

We selected five policy areas that have an influence on immigrant health and have been the subject of recent state policy activity. The first three policy areas—public health and welfare benefits, higher education, and labor and employment practices—directly affect access to health care and other social determinants of health.[11] The last two—driver licensing and identification and the federal enforcement program, Secure Communities—represent two areas of immigration policy that have recently been under debate in many states and indirectly impact health. These latter two also represent opposite ends of the inclusive-exclusive spectrum. Providing a driver's license provides an undocumented immigrant with not just the right to drive, but also the means to establish an identity under state law. Policies such as Secure Communities, in contrast, involve state and local governments in helping to enforce federal immigration laws that aim to deport immigrants, creating a "chilling effect" that discourages immigrants from using public services and being in public places.

We selected specific policies where federal law allows for states to establish their own policy or allows variation in the implementation of federal policy. Policies that are determined solely at the federal level, and for which there is no state variation, were not included. However, this does not mean that federal policies are implemented in the same manner across all states (see Discussion). Criteria for selecting these policies included: 1) policies that have a direct impact on immigrants based on their legal status; 2) policies that influence the social determinants of health; and 3) policies for which information was available and previously reviewed by another established policy or legal organization for all 50 states (See Appendix: Policy Sources and the supplemental Methodology[d]). We searched existing policy resources including reports, legal articles, government websites and reports, and other sources that systematically summarized policy for all 50 states. For each policy area, we documented whether or not a policy existed; a description of the policy; the legislation number or code; date, and source (See Appendix).

Categorization as inclusive or exclusive

To score the policies in each state, we determined what outcome constituted an inclusive or exclusive policy. In addition, a neutral category was created when appropriate. The inclusive outcomes were given a score of 1 and the exclusive outcomes were given a score of -1 and a neutral outcome was given a score of 0.[vii] For example, we classified legislation that mandates the use of E-Verify as exclusive since it is intended to limit the employability of undocumented residents; legislation that limits the use of E-Verify was classified as inclusive. In many cases, the absence of a policy is an indication of the policy environment since the absence allows a restrictive

c After the time period that this policy review covers, Secure Communities was replaced with a revised program called the "Priority Enforcement Program." It reduces, but does not eliminate, the jail holds that ICE requests local law enforcement to conduct of those who are arrested and who may also be undocumented immigrants. While the new policy may reduce the number of immigrants who are deported and/or shift the characteristics of those deported, it remains to be seen if the "chilling effect" of the new program is any less than the old one. www.nytimes.com/2015/01/16/us/secure-communities-immigration-program-battle.html.

d The separate detailed methodology document is available at healthpolicy.ucla.edu/publications/search/pages/detail.aspx?PubID=1373.

federal policy to apply. For example, not having legislation that grants a driver's license to undocumented immigrants is exclusive because the lack of a policy prohibits undocumented immigrants from driving privileges due to a federal default rule in the REAL ID Act of 2005 (Pub. L. No. 109-13, 119 Stat. 302). This similarly applies to prenatal care for undocumented women, in-state college tuition for undocumented students who graduate from local high schools, and coverage of undocumented workers through workers' compensation. States were assigned a total inclusion score based on the tally of their policies.

Findings

The Table (page 12) presents each state's total score in each policy area. Below we discuss the importance of each policy, including harmful and beneficial effects for the health of undocumented immigrants and their families and provide recommendations for future policy development.

Policy Area 1: Public health and welfare benefits

The policies identified for this area are children's health insurance, prenatal care, and funding formulas for the Supplemental Nutrition Assistance Program (SNAP, sometimes also referred to using the old program name, Food Stamps).

Child health insurance and prenatal care

Child health insurance increases the timely use of preventative care[12] and can contribute to an environment in which undocumented immigrants can access services without fear.[13] Similarly, receiving timely and good quality prenatal care is an important factor for both maternal and infant health.[14] In mixed status families, if only some family members are eligible for services it may be a disincentive for the eligible family members to seek care for a variety of reasons, including, but not limited to, concerns about protecting undocumented family members in the household.[15]

Supplemental nutrition programs

For SNAP funding, the USDA provides two options for how non-eligible immigrants who are unable provide documentation of lawful presence are included in a family's income calculation. In calculating family income for eligibility, either a prorated adjustment is made that includes ineligible family members, or those who are ineligible are excluded in family size but included in family income calculations, thereby artificially inflating the amount of income per family member in eligibility calculations.

We assigned values for these policies as +1 (inclusive) or -1 (exclusive). States that provide health insurance for children regardless of legal status were coded as +1; those without child health insurance for undocumented immigrants were coded as -1. Similarly, states that offer full Medicaid to pregnant, undocumented women were coded as +1 and those not offering any health coverage for prenatal care were coded as -1.[e] States including all family members in calculating family size for SNAP, regardless of legal status, were coded as +1, while states that exclude undocumented family members from the calculation were coded as -1. Those with a total score of 3—California, Illinois, Washington, District of Columbia, New York, and Massachusetts—have the most inclusive public health and welfare benefits, as they provide health insurance for some or all children regardless of legal status, offer Medicaid to pregnant undocumented women, and include all family members in calculating family size for SNAP eligibility. Meanwhile, those identified as most the exclusive—Connecticut, Utah, Kansas, Arizona, and Ohio—do not provide any of these benefits.

Policy Area 2: Higher education

The policies identified for this area are in-state tuition and scholarships and financial aid for undocumented college students. Higher education provides future economic opportunities that both facilitate immigrants' economic and social integration into society, and increases access to resources that promote well-being.[10,16] Financial assistance is critical for low-income students to pursue higher education.[17] Further, higher education policies can be viewed as a representation of each state's choice of opportunities provided to undocumented individuals who arrived in the United States as children.

e Note that these policies may vary in implementation and scope, but due to how our data sources provided information, they are all coded simply dichotomously.

This symbolic aspect of education policies reflects states' social and political attitudes toward undocumented individuals, and youth in particular.

In-state tuition

The 1982 US Supreme Court Case, *Plyler v. Doe*, 457 US 202 (1982), held that undocumented children have a constitutional right to K-12 public education. There is no such federal right to higher education for undocumented immigrants. As a result, access to higher education for undocumented students, particularly those who immigrated as young children and have grown up in the United States, has been an area of vigorous state-level advocacy by undocumented youth and their supporters. While there is no federal policy that bars undocumented immigrants from seeking higher education, the Personal Responsibility and Work Opportunity Act (Public Law 104-193, a major "welfare reform" bill passed in 1996) created a variety of restrictions on the types of public benefits, including in-state tuition benefits, that can be granted to undocumented individuals.[18] One example of state-led policy in this area is California's legislation, AB 540, an inclusive policy that allows undocumented students to qualify for in-state tuition without violating federal statutes.[f]

Scholarships and financial aid

The next step in expanding higher education rights for undocumented students is access to scholarships and financial aid, which make even the reduced costs of in-state tuition more affordable for undocumented students. California, for example, has extended the right to receive private and public forms of aid to undocumented students through the California Development, Relief, and Education for Alien Minors (DREAM) Act, which was passed as AB 130 and AB 131 in 2011.

States that provide in-state tuition and offer scholarships and financial aid to undocumented students were coded +1 for each policy. Those that do not provide in-state tuition or do not provide access to scholarships and financial were coded -1 for lacking each policy. Those that are most inclusive—California, Illinois, Minnesota, New Mexico, and Texas—had a total score of 2 since they offer both in-state tuition and state-financed financial aid and scholarships. Thirty-one states received a score of -2 as they provide no higher education support to undocumented students, and 15 states received a score of 0 as they only provide in-state tuition, but no scholarships or financial aid.

f Federal law prohibits states from giving undocumented residents educational benefits that are not also available to any citizen or national regardless of their legal state of residence. States have dealt with this restriction by providing eligibility based on a student's enrollment in a high school in the state for a specified time and graduating or obtaining a GED in the state.

Policy Area 3: Labor and employment practices

The policies identified for this area are workers' compensation law and employee work authorization under the E-Verify system. These employment policies are directly related to health in that workers' compensation is designed as a no-fault system of providing injured workers with relief, while the strictness of work authorization screening may increase the level of job insecurity undocumented workers face, putting downward pressure on their wages as well as on their ability to organize around and improve unhealthy and dangerous working conditions.[19]

Workers' compensation laws

Workers' compensation laws were first established at the turn of the 20th century to address concerns about the high rates of workplace injuries among foreign-born workers.[20] More recently, a 2002 court case, *Hoffman Plastic Compounds, Inc. v. NLRB*, 535 US 137 (2002), dramatically changed the policy landscape for the forms of remedies and benefits available to workers trying to form unions. While this case is not directly about workers' compensation, it emphasized undocumented workers' unlawful status over their workplace rights. As a result, unless undocumented immigrants are explicitly included in state-level worker protection and compensation laws, the applicability of those laws to them is tenuous.

Employee work authorization

A variety of both federal and state policies have been created to enforce immigration laws through the workplace by requiring that immigrant workers demonstrate their authorization to work. For example, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA; Pub.L. 104–208, 110 Stat. 3009-551, Sec. 505) authorized the creation of an electronic database that combines data from the Social Security Administration and US Citizenship and Immigration Services (USCIS). This system, now called E-Verify, is intended to provide information about whether or not an individual is authorized to work in the United States. One concern about E-Verify is that it has been shown to have a high error rate, erroneously identifying authorized workers as unauthorized.[21] A second concern is that employment eligibility enforcement can be used to intimidate undocumented workers who seek to organize or improve their working conditions.[22] Policies that impose employment verification checks may also increase the marginalization of undocumented workers into informal, poorly protected employment. Currently, there is no federal legislation requiring the use of E-Verify other than for federal employment. Twenty-one states, however, have created policies that require use of E-Verify by some or all employers. States such as Alabama, Arizona,[g] and Tennessee require that most or all employers use E-Verify. Others, including Colorado, Georgia, Florida, and Michigan, require its use by most public employers and their contractors. Two states—Minnesota and Pennsylvania—require it only by public contractors. In contrast, California and Illinois have policies that attempt to limit the use of E-Verify. For example, California's law prohibits local jurisdictions from mandating the use of E-Verify among local business.

States that affirmatively include undocumented immigrants in the definition of employee, and, therefore, explicitly include workers who are not lawfully present in their workers' compensation statutes, were coded as +1. Those who do not include undocumented immigrants in their definition of employee were coded as 0 since undocumented workers are not explicitly included or excluded, leaving them in an ambiguous status. States that require use of E-Verify in some manner were coded -1 and states that limit employers' use of E-Verify were coded +1. Only California received the most inclusive possible score of 2. In contrast, fifteen states received the most exclusive score possible of -1, indicating that they both mandate the use of E-Verify and do not explicitly include undocumented workers in their worker's compensation laws. The remaining thirty states received a score of 0, indicating their adoption of one of the two exclusive policy positions.

Policy Area 4: Driver licensing and identification

The policies identified for this area are the provision of driver's licenses to undocumented immigrants and opposition to the REAL ID Act.

g Chamber of Commerce v. Whiting, 131 S. Ct. 1968 (2011) upheld Arizona's employment verification law, ruling that required employment verification and subsequent sanctions were not preempted by federal authority.

Driver licensing

Government-issued forms of identification provide access to a wide range of public and private resources. Undocumented immigrants have a limited number of personal identification options available to them. Some are able to obtain an ID card from their nation's consular office, such as the Mexican *matricula consular.*[23] Some local municipalities, such as Oakland, San Francisco, and Chicago, offer municipal ID cards.[24] The aforementioned identification allows undocumented individuals to open bank accounts or engage in other transactions. A driver's license also confers the right to navigate the nation's roads and obtain car insurance, and increases safety and mobility for undocumented immigrants who live in areas that require a car for work, school, or shopping.

REAL ID Act

Federal policy through the REAL ID Act (Pub. L. No. 109-13, 119 Stat. 302) imposes restrictions on states that have policies to grant a driver's license or other form of identification to undocumented immigrants. Passed in 2005 as part of an anti-terrorism law, the act requires that state-issued identification cards comply with new federal regulations to be able to be used for "official" federal purposes (e.g., boarding commercial aircraft). For various reasons, including concerns about the cost of implementation, individual's privacy, and the exclusion of immigrants, many states have passed legislation or resolutions expressing their opposition to the law and limiting the state's involvement in its full implementation.

States that offer drivers' licenses to undocumented immigrants were coded +1 and those with no policy to provide driver's licenses, a de facto exclusion of undocumented immigrants, as -1. States that affirmatively oppose the REAL ID Act received a +1 and those with no opposition received a 0. The four states—Colorado, Illinois, Washington, and Utah—that received the highest score of 2 provide undocumented immigrants with drivers' licenses and oppose the REAL ID Act. The seven states that scored a 1—California, Nevada, District of Columbia, New Mexico, Maryland, Connecticut, and Vermont—only provide driver's licenses; whereas the 21 states that scored 0 only oppose the REAL ID Act. The remaining 19 states are the most exclusive, with a score of -1.

Policy Area 5: Federal enforcement: Secure Communities

The policy identified for this area is state legislation to limit the federal Secure Communities (SComm) enforcement program. SComm has resulted in enforcement collaboration between immigration officials and local law enforcement. Through this program, local law enforcement checks the fingerprints of arrested individuals in FBI and USCIS databases to determine their legal status. SComm began with just 14 law enforcement jurisdictions in 2008, and was quickly adopted around the country. By January 2013, cooperation with SComm was the policy in all 50 states and the District of Columbia, as well as in five US Territories, encompassing a total of 3,181 jurisdictions that were sharing law enforcement information with federal immigration enforcement authorities. While the program purported to identify only high priority criminal cases, the information sharing between the local and federal levels allowed ICE to identify anyone who had been arrested, regardless of the outcome of their arrest or the type of infraction. As a result, this program has contributed to hundreds of thousands of deportations each year. In addition, evidence suggests that this program has had a negative impact on immigrant communities by creating barriers to health. Regardless of the presence of enforcement, evidence also demonstrates that undocumented immigrants are less likely to access health care due to fears about being deported, even when care is available or when they have health insurance.[25] SComm, therefore, may exacerbate these barriers, decreasing access to health care and increasing psychosocial stress related to fear of deportation.[2, 26]

Policies to limit the impact of SComm

Because of the disruptive impact of this policy on local communities, it has been the target of state and national advocacy. At the state level, advocacy groups have targeted state legislators to mitigate the impact of the program. California, Massachusetts, New York, Illinois, and the District of Columbia try to limit the scope of SComm by attempting to opt-out of the program or passing laws instructing law enforcement to ignore specific ICE requests. California, for example, passed the Transparency and Responsibility Using State Tools or (TRUST) Act in 2013 (Gov. Code, §§ 7282, 7282.5; Stats. 2013, Ch. 570). This legislation sets a minimum standard across the state to ensure that people with low-level, non-violent offenses are not held for deportation purposes; it does not, however, bar all forms of collaboration between local law enforcement agencies and immigration enforcement authorities. Connecticut and Colorado have adopted similar legislation.

Despite the importance of these state policies, the enforcement landscape is quickly changing. At the national level, President Obama announced the end of SComm as part of a sweeping executive action taken in November 2014. SComm will be replaced by the Priority Enforcement Program (PEP). PEP will end the practice of local law enforcement transferring individuals to ICE custody, but may continue to involve local law enforcement in enforcement activities and will likely continue to result in significant numbers of deportations.[27] Therefore, it remains to be seen what role legislation such as the TRUST Act will have in protecting the health of undocumented immigrants or what future state policies will be needed to mitigate the impact of federal enforcement on these individuals and their families.

States that have a policy to limit SComm in their state were coded +1 and those that do not have any policy, a de facto endorsement of federal enforcement policy, were coded -1. Only three states—California, Colorado, and Connecticut—scored 1, as they are the only states that have attempted to limit SComm.

Table: Scoring of policies related to undocumented immigrants' health, total and policy area scores

State	State immigrant inclusion score total	Public health and welfare benefits	Higher education	Labor and employment practices	Driver licensing and Identification	Secure Communities
California	9	3	2	2	1	1
Illinois	7	3	2	1	2	-1
Washington	4	3	0	0	2	-1
Colorado	2	-1	0	0	2	1
Texas	2	1	2	1	-1	-1
District of Columbia	1	3	-2	0	1	-1
Minnesota	1	1	2	-1	0	-1
New Mexico	1	-1	2	0	1	-1
New York	1	3	0	0	-1	-1
Oregon	0	1	0	0	0	-1
Connecticut	-1	-3	0	0	1	1
Maryland	-1	-1	0	0	1	-1
Massachusetts	-1	3	-2	0	-1	-1
Michigan	-1	1	0	-1	0	-1
Oklahoma	-1	1	0	-1	0	-1
Rhode Island	-1	1	0	0	-1	-1
Arkansas	-2	1	-2	0	0	-1
Hawaii	-2	-1	0	0	0	-1
Nevada	-2	-1	-2	1	1	-1
Utah	-2	-3	0	0	2	-1
Florida	-3	-1	0	0	-1	-1
Louisiana	-3	1	-2	-1	0	-1
Montana	-3	-1	-2	1	0	-1
Nebraska	-3	-1	0	-1	0	-1
New Jersey	-3	-1	0	0	-1	-1
Vermont	-3	-1	-2	0	1	-1
Wisconsin	-3	1	-2	0	-1	-1
Alaska	-4	-1	-2	0	0	-1
Maine	-4	-1	-2	0	0	-1
New Hampshire	-4	-1	-2	0	0	-1
North Dakota	-4	-1	-2	0	0	-1

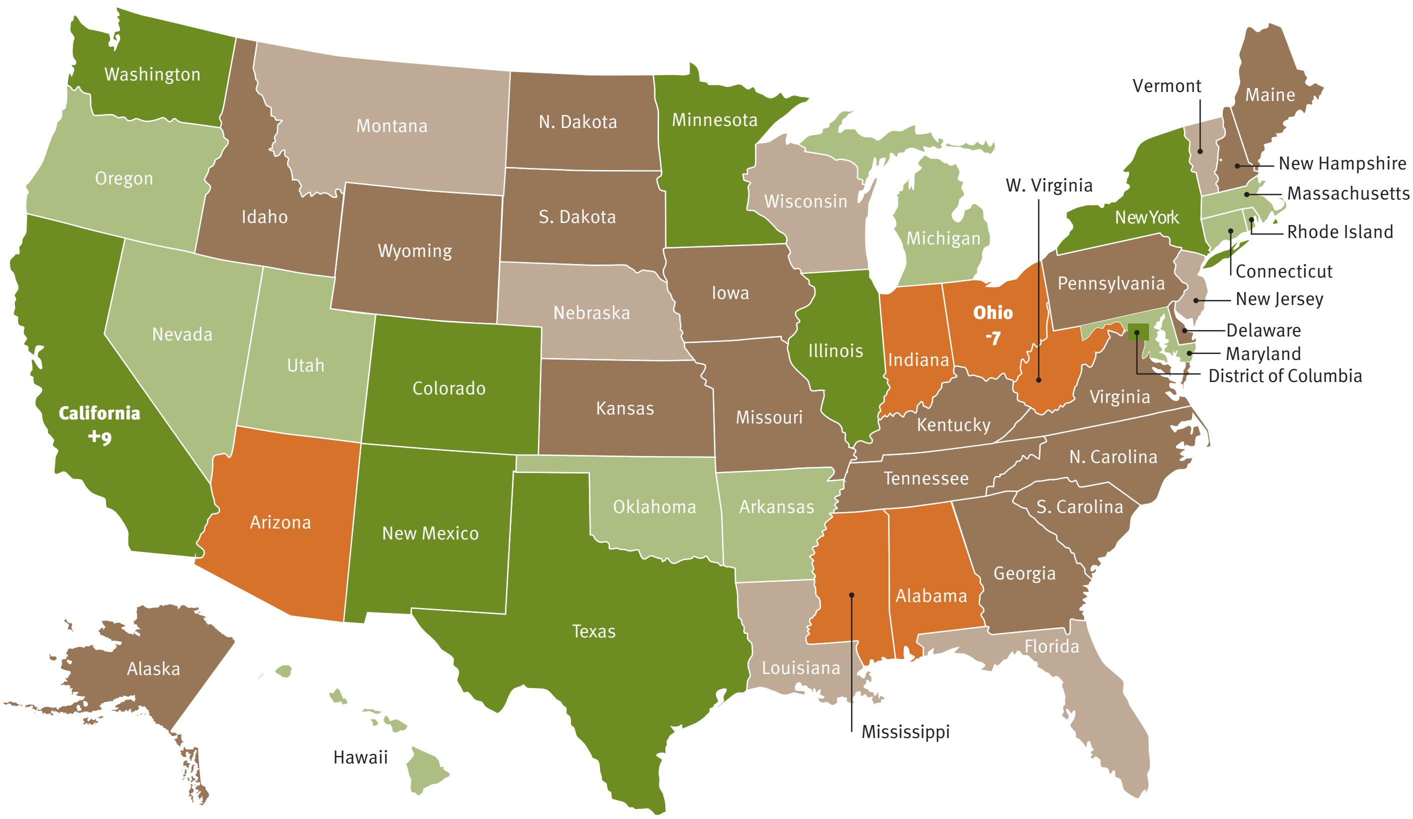
State	State immigrant inclusion score total	Public health and welfare benefits	Higher education	Labor and employment practices	Driver licensing and Identification	Secure Communities
South Carolina	-4	-1	-2	0	0	-1
South Dakota	-4	-1	-2	0	0	-1
Tennessee	-4	1	-2	-1	-1	-1
Delaware	-5	-1	-2	0	-1	-1
Georgia	-5	-1	-2	-1	0	-1
Idaho	-5	-1	-2	-1	0	-1
Iowa	-5	-1	-2	0	-1	-1
Kansas	-5	-3	0	0	-1	-1
Kentucky	-5	-1	-2	0	-1	-1
Missouri	-5	-1	-2	-1	0	-1
North Carolina	-5	-1	-2	0	-1	-1
Pennsylvania	-5	-1	-2	-1	0	-1
Virginia	-5	-1	-2	-1	0	-1
Wyoming	-5	-1	-2	0	-1	-1
Alabama	-6	-1	-2	-1	-1	-1
Arizona	-6	-3	-2	0	0	-1
Indiana	-6	-1	-2	-1	-1	-1
Mississippi	-6	-1	-2	-1	-1	-1
West Virginia	-6	-1	-2	-1	-1	-1
Ohio	-7	-3	-2	0	-1	-1

Where states rank on policies that affect the health of the undocumented

We examined policies in five areas that affect the health and well-being of undocumented immigrants: public health and welfare benefits; higher education; labor and employment practices; driver licensing and identification; and the federal enforcement program, Secure Communities. We scored each state on whether their policies include or exclude undocumented immigrants; this map shows the total inclusion score for each state.

Total inclusion score: -7 to -6 | -5 to -4 | -3 | -2 to 0 | +1 to +9

Less inclusive → More inclusive



Discussion

The primary goal of this report is to describe the state-level landscape for policies that affect the health and well-being of undocumented immigrants through shaping the social determinants of health. We have identified the variation across states in policies related to public health and welfare benefits, higher education, labor and employment practices, driver licensing and identification, and Secure Communities.

Even having the highest score leaves much room for improvement

Taken as a whole, California scores as the most inclusive state in the country in policies that affect the health and well-being of immigrants, with Illinois closely following. California, similar to other states who rank high for inclusivity, has changed significantly since the 1990s when voters and legislators tried to bar undocumented children from public schools, took away undocumented residents' driver's licenses, and attempted to take away publicly financed prenatal care from undocumented women. Areas where relatively inclusive states such as California, Illinois, Washington, and Oregon can make further progress include passing legislation that provides health insurance to all residents regardless of their immigration status. In California, SB 4, the Health for All Act of 2015, has the potential to expand access to health care coverage by creating a parallel health care exchange with subsidies for undocumented immigrants in California and extending Medi-Cal (California's Medicaid program) to all those who meet income eligibility standards regardless of their immigration status, thereby better promoting immigrant integration into the social and economic fabric of the state.

In addition, state policy can help assure equitable access to benefits, rights and resources for undocumented immigrants at the local level. Although it is beyond the scope of this report, substantial local level variation exists in all states in the inclusion and exclusion of the undocumented immigrant population. For example, Escondido (San Diego County, CA) has integrated ICE officers into city police sobriety checkpoints,[28] some local governments refuse to allow day labor centers to be built,[29] and there is county variation in what services public hospital and health care systems provide undocumented immigrants.[30] Thus, even in states that have become national leaders in promoting policies that create conditions under which undocumented immigrants can be healthy, there is still much room to improve.

Implementation matters

The presence or absence of policies is mediated by their implementation. While not addressed directly in this policy report, states and local governments are responsible for implementing many federal policies, and this local-level implementation becomes an important area that can affect undocumented immigrants. One example of state implementation discretion is how states define "emergency medical care" under emergency Medicaid. While federal law provides matching funding for undocumented immigrants under Medicaid only for medical emergencies, the definition of emergency varies from state to state. As a result, in some states, outpatient dialysis for renal failure is covered under emergency Medicaid, while in other states, dialysis is covered only when a person goes into diabetic shock and dialysis is required to save his or her life. Once the patient recovers, he or she is discharged to the community without further services until renal failure forces re-hospitalization.[31–33]

Even where federal policy appears clear, state and local implementation can work against the intent of the federal policy. For example, decades after the 1982 Supreme Court Case *Plyler v. Doe*, which held that grades K-12 education be made available equally to documented and undocumented students, some states and localities have tried to apply restrictions to undocumented immigrant children. For example, Alabama's HB 56 that passed in 2011 included language to discourage the use of public education by undocumented immigrants by asking for documents they could not provide, thus creating fear of deportation. Key parts of the legislation were subsequently blocked by federal courts. Between 2011–2014, 17 complaints were filed against local school districts claiming violation of *Plyler v. Doe*, prompting the US Department of Education to release a memorandum outlining school districts' responsibilities.[34] In many of these cases, such as in Alabama, schools were asking parents to report Social Security numbers or provide birth certificates[h] for their children without informing them that such information was voluntary.

The interaction of state and federal policies related to implementation of these policies is also demonstrated by the complications California and other states have faced in issuing driver's licenses to undocumented immigrants. California's driver license bill, AB 60, was signed into law in 2013, but implementation has been complicated. In 2014, state officials developed a driver licensing program that sought to achieve a balance between facilitating access to obtaining a license and meeting federal identification requirements under REAL ID for undocumented immigrants. Yet, the federal government rejected a California-designed version of the license for not meeting the REAL ID requirements. At the same time, advocates have opposed versions of the licenses that differ too much from other licenses because they could stigmatize and single out undocumented drivers. Advocates also worked to expand the list of documents that are accepted to establish residence in California and to assure the privacy of individuals who share information with the state's Department of Motor Vehicles.[35] All of these decisions, shaped by federal law and implemented on the local level, have significant ramifications for the success of the policy to extend driving privileges to undocumented immigrants in an environment that protects their privacy.

Finally, state policy provides standards for the laws and policies developed by local jurisdictions. When it comes to immigration and immigration-related policies, local jurisdictions have some flexibility: they can either expand on inclusive policy or structure their implementation in a manner that is ultimately exclusive. As an example, the local-level policy ensuring cooperation with SComm and collaboration with ICE has met with varied implementation throughout the nation. The operation of programs like SComm can include: 1) local police check federal database; 2) federal officials check for immigration status; 3) federal officials notify local police with a detainer (which is a non-binding request); 4) local police hold or not. Some local jurisdictions, e.g., California's San Francisco and Santa Clara Counties, opted to not cooperate with SComm, actions that established a precedent for the state-level TRUST Act described above. In another case, and following the Oregon court ruling that found it a constitutional violation to hold immigrants solely for the purpose of waiting until ICE can pick them up, county law enforcement agencies throughout the country, including the sheriffs' departments of Alameda County and Los Angeles, declared that they will not comply with "ICE holds."[36, 37] Thus, action at both the state and local level in responding to and enforcing laws and policies has an influence on their ultimate impact on the health and well-being of undocumented immigrants.

h The intent of those local regulations was to discourage undocumented immigrant children, who have neither a social security number nor a US-birth certificate, from enrolling in school, based on fears of deportation.

Recommendations

Based on our examination of the state-level policies that affect undocumented immigrants and their families, there are several areas of policy that can be addressed at the state and local level to improve the conditions under which undocumented residents can be healthy:

- **Expand laws that actively grant undocumented immigrants' with rights** beyond the more exclusionary federal standard, such as driver's licenses, access to higher education, and access to health care.
- **Buffer the impact of federal laws that restrict undocumented immigrants' rights or access to resource**s via state and local involvement in enforcement, such as limiting the use of E-Verify or limiting cooperation with the Priority Enforcement Program (formerly SComm).
- **Strengthen laws that are** not explicitly immigration-related, but that create a legal or social environment that is **more inclusive and beneficial to undocumented immigrants**, such as strong labor and employment protections and higher education affordability.
- **Explicitly include undocumented immigrants in policies that apply broadly to the population**, but in which legal status limits the level or type of benefits available, such as through the SNAP funding formula and workers' compensation statutes.

In addition to these policy areas, many other public policies need to be extended in the context of their impact on undocumented immigrant health. These policy areas include:

- **A wider variety of social welfare policies that provide basic rights**. Following the Universal Declaration of Human Rights, of which the United States is a signatory, political, economic, and social rights (including health) should be extended to all residents who contribute to the society and the economy of the state.
- **Policies specific to health issues** (e.g., end-of-life care) **and labor issues** (e.g., preventing wage theft or occupational injury, etc).
- **Administrative and implementation policies at the state and local levels that promote immigrant integration**, such as free ESL classes, legal assistance in seeking deferred action or other options for obtaining lawful status, and professional licenses without regard to immigration status.
- **Policies that create a climate of acceptance of all immigrant**s and that would reduce immigrants' fear and avoidance of public authorities.

Policy deliberations and analysis should also take into account the intersection of immigration and immigrant policies with the policies in other sectors. Evidence suggests that the intersection of policies (e.g., labor and immigration policies, education and immigration policies, and health and immigration policies) affects undocumented immigrants in ways that are not anticipated by one policy sector alone. More research is also needed to understand the impact of these policies in the context of undocumented immigrants' intersecting identities and experiences, such as sex, race, and socioeconomic status. Additional research is needed to ascertain the relationship between policy and health outcomes, as well as the cumulative effect of other social determinants of health.

Conclusion

This report presents state policies in five areas that facilitate access to, or deny, benefits, rights, and resources for undocumented immigrants. It categorizes each state based on its level of inclusion of exclusion in these five areas. The public health literature highlights the critical role that policies such as those discussed here play in ensuring that immigrants are able to integrate economically, politically, and socially; the failure of public policy to include undocumented immigrants may result in inequities in health outcomes for undocumented immigrants compared with other groups.

Research and advocacy are needed to identify and expand inclusive policies toward undocumented immigrants and to identify and challenge exclusive policies that negatively impact the health of undocumented immigrants. Additional research is needed to identify the social and political environments that lead to social norms and political trends that are favorable to the health of all persons living and working in the US, including undocumented immigrants. This analysis of each state's policies brings to light the critical role each state plays in promoting or hindering the well-being of undocumented immigrants throughout the nation, and it sets the stage for additional research, advocacy, and action to ensure the advancement of policies that include undocumented immigrants.

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