

NEW HAMPSHIRE

DISCLAIMER: The views, statistical analysis, findings, and opinions expressed herein are not necessarily those of the Office of Minority Health, the Office of Public Health and Science nor the Department of Health and Human Services. The National Health Law Program, Inc. (NHeLP), under contract #282-00-0026, reviewed and analyzed existing state policies related to collecting racial and ethnic data by managed care organizations and health insurers. The information in this draft report contains the findings of NHeLP and not that of the Office of Minority Health, the OPHS, nor the U. S. Department of Health and Human Services. The study was conducted between October 2000 and May 2001. The policies and/or data per state may have changed since that time. The findings that have been updated in this draft report are the U.S. Census data (updated so that all data is from the 2000 Census) and the Center for Medicare & Medicaid Services (CMS)/HHS Medicaid data (updated from the June 30, 2000 to the December 31, 2002 reports).

NEW HAMPSHIRE

A. General and Health Demographics

Total Population	1,235,786	
Percent Black Population	0.7	
Percent American Indian and Alaskan Native Population	0.2	
Percent Asian Population	1.3	
Percent Native Hawaiian and Other Pacific Islander Population	0.0	
Percent Hispanic Population (of any race)	1.7	
Percent White Population	95.1	
Other (some other race and two or more races)	1.0	
Language Use - 2000 census data		
Percent Limited English Proficiency (LEP) Population	0.90	(2.42)
Health Care Delivery Profile		
Percent of Total Non-elderly Population Privately Insured (1997-99)	78.9	
Percent of Total Population Enrolled in HMOs	33.60	
Medicaid Enrollment (as of December 31, 2002)	90,028	(7.29%)
Medicaid Managed Care Enrollment	10,925	(12.14%)
Percent of Total Non-elderly Population Uninsured (1997-99)	12.4	

B. Collection and Reporting of Racial and Ethnic Data by Health Insurers and Managed Care Organizations

1. Statutes, Regulations, Policies, and Other Written Materials

New Hampshire uses the term “insurer” to encompass health insurance companies and health maintenance organizations (HMOs).¹ This state summary will use the term “insurer” to refer to these entities, unless there is a distinction made within the statutes or regulations regarding the issue being discussed.

¹ N.H. Rev. Stat. Ann. § 420-J:3.

The New Hampshire Insurance Department (NHID) supervises all insurance business transacted in the state, including HMOs. New Hampshire is one of four states that has a statute or regulation that prohibits the collection of certain racial data.² An NHID regulation provides that “questions of race or color are prohibited” with regard to all “application forms used in connection with an insurance contract, whether or not attached to that contract.”³

New Hampshire requires that all health insurance policies and any application related to the policies be filed with the NHID and receive departmental approval prior to its use.⁴

2. Discrimination

New Hampshire’s civil rights statute prohibits a person from denying another individual access to the services and facilities of any place of public accommodation.⁵ The statute does not explicitly include insurance companies within the definition of public accommodation, and there is no case law which has addressed this matter.⁶

However, under New Hampshire’s unfair trade practices statute, an insurer may not refuse to “insure risks solely because of . . . race, color, . . . , national origin, [or] ancestry. . . .”⁷

3. Confidentiality

An insurer must hold in confidence any data or information pertaining to an insured’s diagnosis, treatment, or health.⁸ This information may only be disclosed if: (1) the enrollee expressly consents to its disclosure; (2) there is a statute or court order for the production of evidence; or, (3) there is a claim or litigation between the enrollee and the insurer.⁹ In addition, all managed care plans must establish procedures to safeguard the privacy of “individually identifiable” patient information.

² N.H. Admin. Rules, Ins. 401.01.

³ N.H. Admin. Rules, Ins. 401.01(i)(5). In a letter from the NHID, Maureen Hart, Life & Health Compliance Manager, cites this regulation as the only provision addressing the collection of racial and ethnic data by health care entities.

⁴ N.H. Rev. Stat. Ann. § 415:1.

⁵ N.H. Rev. Stat. Ann. § 354-A:17.

⁶ N.H. Rev. Stat. Ann. § 354-A:2(XIV).

⁷ N.H. Rev. Stat. Ann. § 417:4(VIII)(e).

⁸ N.H. Rev. Stat. Ann. § 420-J:10(I).

⁹ *Id.*

C. Collection and Reporting of Racial and Ethnic Data by Other Health Care Entities

1. Department of Health and Human Services (DHHS)

a. Statutes, Regulations, Policies and Other Written Materials

DHHS administers New Hampshire's Medicaid program and N.H. Healthy Kids, the SCHIP program. Supervisory Releases published in the Family Assistance Manual (FAM) require the collection of "racial and ethnic heritage information about all applicants" and the "primary language spoken in the individual's household."¹⁰

The Healthy Kids application requests racial, ethnic, and primary language information for all members of the applicant's household. Instructions inform applicants that it is optional to provide this information, and that failure to do so will not affect the applicant's eligibility for Medicaid. The application provides racial categories from which the applicant may choose. They are White, African-American, Hispanic and Asian.

New Hampshire's Medicaid managed care contract ("New Hampshire Contract") requires the health plans' member services representatives to be able to "speak directly with, or arrange for someone else to speak with, enrollees in their primary language or through an alternative language device."¹¹

b. Discrimination

The FAM provides that "[i]t is [DHHS'] policy not to discriminate against individuals because of their race, . . . ,color, . . . , [or] national origin. . .",¹² and that "[DHHS] will not tolerate discrimination in accessing, accepting, or providing services in any . . . program or activity."¹³

The Healthy Kids program application informs applicants in its "Rights and Responsibilities" section that it is unlawful to discriminate against anyone because of race, color or national origin.

The New Hampshire Contract provides that a contracting health plan must "refrain . . . from discriminating among participants . . . on the basis of race, color . . . or national origin."¹⁴ Discrimination on these grounds includes, but is not limited to, actions that:

1. Deny any individual any services or other benefits;

¹⁰ FAM, § 103.01 (racial and ethnic data); § 103.03 (primary language)

¹¹ New Hampshire Contract, p. 14.

¹² FAM, § 103.

¹³ *Id.*

¹⁴ New Hampshire Contract, p. 8-9.

2. Provide any services or other benefits to any individual that are different, or that are provided in a different manner, from those provided to others;
 3. Subject an individual to segregation or separate treatment in any manner related to the receipt of any services; or
 4. Deny any individual an opportunity to participate in any program provided by the contractor or subcontractor through the provision of services or otherwise, or afford an opportunity to do so that is different from the opportunity afforded others.¹⁵
- c. Confidentiality

The DHHS is bound by New Hampshire's public records statute which provides generally that state agencies' records are open for public inspection. However, any DHHS records containing medical information are not available for public inspection.¹⁶

2. Department of Health and Human Services, Division of Public Health (DPH)
 - a. Statutes, Regulation, Policies, and Other Written Materials

The DPH collects and requires health care providers to report racial and ethnic information for various medical conditions, diseases or registries. These are cancer,¹⁷ emergency medical services,¹⁸ lead poisoning,¹⁹ hospital discharge data (acute care and specialty),²⁰ nursing home discharge data,²¹ and communicable diseases, including HIV/AIDS.²² In addition, DPH collects and reports the race and Hispanic origin information with regard to births and deaths.²³

- b. Discrimination

Under New Hampshire's civil rights provisions, a person has a right to have access to any place of public accommodation without being discriminated against because of his race or

¹⁵ *Id.*

¹⁶ N.H. Rev. Stat. Ann. § 91-A:5.

¹⁷ N.H. Admin. Rules, He-P § 304.02.

¹⁸ N.H. Admin. Rules, He-P § 1202.09. The racial categories provided are: White (non-Hispanic); White (Hispanic); Black (non-Hispanic); Black (Hispanic); American Indian/Alaska Native; Asian/Pacific Islander; and Other.

¹⁹ N.H. Admin. Rules, He-P § 1610.02.

²⁰ N.H. Admin. Rules, He-C § 1502.02 (acute care hospitals); § 1503.02 (specialty hospitals)

²¹ N.H. Admin. Rules, He-C § 1504.02.

²² N.H. Admin. Rules, He-P § 301.03.

²³ Although not statutorily required, New Hampshire reports this information in the *New Hampshire Vital Statistics Report*. See

<http://www.dhhs.state.nh.us/CommPublicHealth/HealthStats.nsf/vMain?Openview>.

national origin.²⁴ The DPH is a “place of public accommodation” as statutorily defined and thus may not deny services to a people because of their race, color, or national origin.²⁵

c. Confidentiality

DPH’s records are generally open for public inspection; but there is an exception for any record that contains medical information.²⁶ In addition, information regarding a patient’s HIV or cancer diagnosis is confidential.²⁷

D. Observations

Unlike most other states, New Hampshire has a provision of law that prohibits the collection of racial data on insurance policy applications. In addition, New Hampshire explicitly prohibits discrimination on the basis of race and national origin when issuing an insurance policy. Interestingly, New Hampshire has extensive protections for its minority health insurance consumers, but has only a five percent (5%) minority population.

²⁴ N.H. Rev. Stat. Ann. § 354-A:17.

²⁵ N.H. Rev. Stat. Ann. § 354-A:2. Public accommodation “includes any . . . health care provider, . . . or other establishment which caters or offers its services or facilities or goods to the general public.”

²⁶ N.H. Rev. Stat. Ann. § 91-A:5.

²⁷ N.H. Rev. Stat. Ann. § 141-F:8 (HIV confidentiality); N.H. Admin. Rules, He-P § 304.05. (report to cancer registry).