

PENNSYLVANIA

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).

PENNSYLVANIA

A. General and Health Demographics

Total Population	12,281,054	
Percent Black Population	9.8	
Percent American Indian and Alaskan Native Population	0.1	
Percent Asian Population	1.8	
Percent Native Hawaiian and Other Pacific Islander Population	0.0	
Percent Hispanic Population (of any race)	3.2	
Percent White Population	84.1	
Other (some other race and two or more races)	1.0	
Language Use - 2000 census data		
Percent Limited English Proficiency (LEP) Population	1.37	(3.19)
Health Care Delivery Profile		
Percent of Total Non-elderly Population Privately Insured (1997-99)	77.4	
Percent of Total Population Enrolled in HMOs	44.79	
Medicaid Enrollment (as of December 31, 2002)	1,458,694 (11.88%)	
Medicaid Managed Care Enrollment	1,152,109 (78.98%)	
Percent of Total Non-elderly Population Uninsured (1997-99)	11.6	

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

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

The Department of Insurance regulates the financial and marketing activities of health insurers, including health maintenance organizations (HMOs) and preferred provider organizations (PPOs), as well coordinates with the Department of Health in the licensing of

HMOs.¹ The Department of Health licenses HMOs and other MCOs, such as PPOs and integrated delivery systems (IDSs), and reviews, approves and monitors the nature and quality of their benefit packages and health care delivery.² This summary will use the term “insurer” to refer to health insurance companies and HMOs, and the term “managed care organizations (MCOs)” to refer to HMOs, PPOs, and IDSs.³

Pennsylvania does not have any statutes, regulations, or policies that mandate or prohibit the collection or reporting of racial and ethnic data.

Pennsylvania requires that all health insurance policies and any applications related to the policies be filed with the Insurance Commissioner and receive departmental approval prior to use.⁴

In addition, an MCO must file with the Department of Health “a description of how the [MCO] addresses the needs of non-English speaking enrollees.”⁵

2. Discrimination

Pennsylvania’s civil rights statute prohibits a person from denying another individual access to the services and facilities in any place of public accommodation.⁶ The statute does not mention insurance companies within the definition of public accommodation, and there is no case law which has addressed this matter.⁷

¹ A PPO is considered health insurers when it is a “risk-assuming [PPO]”. 31 Pa. Code § 152.2. A “risk-assuming PPO” is an entity that “establishes, operates, maintains or underwrites in whole or in part a preferred provider arrangement.” In addition, a risk-assuming PPO must have one or more of the following characteristics: (1) assumes financial risk; (2) participates in financial gains or losses of the plan; (3) participates in financial risk by capping future premiums; or (4) takes part in other arrangements which place the PPO at financial risk.

² An IDS is an “entity which enters into contractual arrangements with an HMO; employs or has contracts with providers and agrees . . . to provide or arrange for the provision of . . . health care services to HMO members. . .” 28 Pa. Code § 9.402.

³ The Department of Health regulations define a managed care plan or MCO as a plan or entity that: (1) uses a gatekeeper to manage the utilization of health care services; (2) integrates the financing and delivery of health care services to enrollees by arrangements with health care providers selected to participate in the plan; and (3) provides financial incentives for enrollees to use participating health care providers. 28 Pa. Code § 9.502.

⁴ 40 Pa. Stat. § 477b.

⁵ 28 Pa. Code § 9.519.

⁶ 43 Pa. Stat. § 955(i)(1).

⁷ 43 Pa. Stat. § 954(1). A place of public accommodation is “any accommodation . . . which is open to, accepts or solicits the patronage of the general public. . .”

Under Pennsylvania’s unfair competition provisions, an insurer may not discriminate between “individuals of the same class involving essentially the same hazard with regard to underwriting standards and practices or eligibility requirements by reason of race, . . . , nationality or ethnic group.”⁸

Finally, an insurer cannot discriminate in “availability of [individual] policy forms or other restrictions or limitations in underwriting practices or eligibility standards” on the basis of race, national origin, or ethnicity.⁹

3. Confidentiality

A managed care organization must ensure that “all identifiable information regarding enrollee health, diagnosis and treatment is adequately protected and remains confidential. . . .”¹⁰ This provision, however, does not prevent managed care plans and health care providers from accessing this information for the sole purpose of “providing patient care management, outcomes improvement and research.”¹¹ In those circumstances, the enrollee must provide consent and remain anonymous to the greatest extent possible.¹²

In addition, an HMO enrollee “has the right to have records pertaining to his medical care treated as confidential unless disclosure is necessary to interpret the application of his contract or unless disclosure is provided for by law.”¹³

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

1. Department of Public Welfare (DPW)

a. Statutes, Regulations, Policies and Other Written Materials

The DPW is the state agency that oversees Pennsylvania’s Medicaid and SCHIP programs. There are no state statutes or rules that prohibit or require the collection or reporting of racial, ethnic or primary language data regarding Medicaid applicants or recipients. However, the application¹⁴ for Medicaid and SCHIP benefits requests from each applicant information regarding the racial background of all household members. The application indicates that

⁸ 40 Pa. Stat. § 1171.5(a)(7)(iii).

⁹ 31 Pa. Code § 89.84.

¹⁰ 40 Pa. Stat. § 991.2131; 28 Pa. Code § 9.516.

¹¹ 40 Pa. Stat. § 991.2131.

¹² *Id.*

¹³ 28 Pa. Code § 9.77(a)(8).

¹⁴ The *Application for Health Care Coverage* is a single application used by families with children or by pregnant women who are applying for health care benefits under the Medicaid program or SCHIP.

providing this information is optional, and it offers several racial categories from which the applicant can choose. The categories are: African American, Asian, Caucasian, Native Alaskan/American Indian, Native Hawaiian/Pacific Islander, and Asian (Indian subcontinent). It also offers choices for ethnicity: Hispanic or Non-Hispanic.

The Medicaid Sterilization Consent Form also requests race and ethnicity information. Again, the provision of this information is optional and the patient is given the following racial categories from which to choose: Black (not of Hispanic origin), White (not of Hispanic origin), Hispanic, American Indian or Alaskan Native, and Asian or Pacific Islander.

The Pennsylvania Medicaid Managed Care RFP includes standards that implicate the need for racial, ethnic, and primary language data. First, the HMO “must agree to make available member handbooks in alternative languages (other than English) when more than five percent (5%) of the total population in any one of the HealthChoices’ counties or districts speak the alternative language.”¹⁵ Also, the HMO must provide interpreter services, by telephone and/or in-person, if the 5% population standard is satisfied.¹⁶

Second, during the enrollment process, the DPW “will seek to identify program enrollees who speak a language other than English as their first language.”¹⁷ Once the DPW identifies these enrollees, it will notify the HMO and inform the HMO which enrollees have selected or been assigned to the HMO.¹⁸

Finally, the HMO and its participating providers “must demonstrate cultural competency and must understand that cultural differences (between provider and patient) cannot be permitted to present barriers to accessing and receiving quality health care”¹⁹

b. Discrimination

All providers who deliver health care services under the Medicaid program must comply with Title VI of the Civil Rights Act of 1964.²⁰ Pennsylvania interprets this to mean that no provider in the Medicaid program may deny services or otherwise discriminate against a recipient on the grounds of race, color or national origin.²¹

¹⁵ Pennsylvania RFP, p. 32. HealthChoices is the name for Pennsylvania’s Medicaid managed care program.

¹⁶ *Id.*, p. 25-26.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*, p. 63. Cultural Competency is defined as “the ability of individuals, as reflected in personal and organization responsiveness, to understand the social, linguistic, moral, intellectual, and behavioral characteristics of a community or population. . . .”

²⁰ 55 Pa. Code § 1101.51(b)

²¹ *Id.*

The Pennsylvania RFP requires that contracting HMOs “agree to enroll any eligible program recipient . . . regardless of the recipient’s race, color, . . . national origin, [or] ancestry.”²² The RFP prohibits the following actions based on race, color, national origin, or ancestry: 1) denying or not providing a member any Medicaid covered service or availability of a facility within the HMO’s Medicaid network; 2) providing to a member any Medicaid covered service which is different, or is provided in a different manner or at a different time from that provided to other members; or, 3) subjecting a member to segregation or separate treatment in any manner related to the receipt of any Medicaid covered services.²³

c. Confidentiality

The DPW must safeguard the names of applicants and recipients, their addresses, the amount of assistance received and any information in applications and medical records related to the “condition and circumstances” of applicants and recipients.²⁴ Consequently, each Medicaid applicant or recipient “has the right to have the information given to the [DPW] about his circumstances kept confidential and used only for purposes related to the administration of the assistance.”²⁵

2. Department of Health

a. Statutes, Regulation, Policies, and Other Written Materials

The Department of Health (DOH) collects and requires health care providers to report racial and ethnic information for various medical conditions, diseases or procedures. These are cancer,²⁶ births,²⁷ hospital discharge data,²⁸ and abortions.²⁹ In addition, although not statutorily required, the DOH collects and reports race and Hispanic origin information with regard to birthing mothers³⁰ and

²² Pennsylvania RFP, p. 25.

²³ *Id.*, p. 67.

²⁴ 55 Pa. Code § 105.1

²⁵ *Id.*

²⁶ 28 Pa. Code § 27.31.

²⁷ 35 Pa. Stat. § 491. This provision applies to those persons who were either born before 1906 or whose record of birth is incomplete or incorrect. The person may have his birth filed and recorded with the Orphan’s court with the following information: father’s and mother’s race.

²⁸ 35 Pa. Stat. § 449.6

²⁹ 28 Pa. Code § 29.38.

³⁰ See *1998 Vital Statistics* at <http://www.health.state.pa.us/pdf/hpa/stats/98vs/98statebirth.pdf>. The racial categories are Black and White. The chart also lists Hispanic origin (of any race). If the race is unknown, it is included in the White category.

deaths.³¹

b. Discrimination

Under Pennsylvania’s civil rights provisions, a person has a right to fully enjoy any place of public accommodation without being discriminated against because of his race or national origin.³² The DOH is a “place of public accommodation” as statutorily defined and thus may not deny health care services to a person because of his race, color, or national origin.³³

A health care facility³⁴ must have a non-discrimination policy which applies to all patients. The policy must address discrimination on the basis of race, color, national origin, and ancestry with regard to the following: (1) inpatient and outpatient care; (2) assigning patients to rooms, floors and sections; and (3) utilization of the health care facility.³⁵ Moreover, such facilities are required to comply with Title VI of the Civil Rights Act of 1964 and the Pennsylvania Human Relations Act (the state civil rights statute).³⁶

c. Confidentiality

The DOH imposes confidentiality standards for the various data collection systems it oversees.³⁷ While Pennsylvania’s public records statute provides that records of state agencies, such as DOH, are open for inspection by the public, some records are not deemed “public.” They include any “record, document, . . . or other paper, which access to is prohibited, restricted or forbidden by statute law, . . . or which would operate to the prejudice or impairment of a person’s reputation . . .”³⁸

D. Observations

³¹ See *1998 Vital Statistics* at <http://www.health.state.pa.us/pdf/hpa/stats/98vs/98statedeath.pdf>.

³² 43 Pa. Stat. § 955.

³³ *Id.*, § 954. A place of public accommodation is “any accommodation . . . which is open to, accepts or solicits the patronage of the general public, including but not limited to . . . clinics, hospitals, . . . and all [Pennsylvania] facilities and services. . . .”

³⁴ A health care facility is a facility licensed by the Department of Health. These facilities are: ambulatory surgical facilities, general hospitals, special hospitals, long-term care nursing facilities, birth centers, home health care agencies, and cancer treatment centers. 28 Pa. Code § 51.2.

³⁵ 28 Pa. Code § 51.12(a).

³⁶ 28 Pa. Code § 51.12(b).

³⁷ 28 Pa. Code § 27.31 (cancer); 35 Pa. Stat. § 7606 (HIV-related information); 28 Pa. Code § 29.38 (abortions).

³⁸ 65 Pa. Stat. § 66.1. Unlike other states, Pennsylvania’s public records statute does not specifically provide for an exemption for medical records.

Pennsylvania does not have any statutes, regulations, or policies that mandate or prohibit the collection or reporting of racial and ethnic data.

Pennsylvania requires MCOs to file with the Department of Health a description of how the MCO addresses the needs of non-English speaking enrollees. It would appear that, at a minimum, MCOs would have to collect information regarding the primary language of its enrollees in order to assess what those needs are.