

VERMONT

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).

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A. General and Health Demographics

Total Population	608,827	
Percent Black Population	0.5	
Percent American Indian and Alaskan Native Population	0.4	
Percent Asian Population	0.8	
Percent Native Hawaiian and Other Pacific Islander Population	0.0	
Percent Hispanic Population (of any race)	0.9	
Percent White Population	96.2	
Other (some other race and two or more races)	1.2	
Language Use - 2000 census data		
Percent Limited English Proficiency (LEP) Population	0.56	(1.62)
Health Care Delivery Profile		
Percent of Total Non-elderly Population Privately Insured (1997-99)	70.8	
Percent of Total Population Enrolled in HMOs	26.06	
Medicaid Enrollment (as of December 31, 2002)	132,502	(21.76%)
Medicaid Managed Care Enrollment	82,714	(62.42%)
Percent of Total Non-elderly Population Uninsured (1997-99)	11.8	

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

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

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

The Department of Banking, Insurance, Securities and Health Care Administration, Division of Health Care Administration is the state agency with regulatory oversight of health insurers. Vermont has no statutes or regulations that prohibit or require the collection or

reporting of racial and ethnic data.

Vermont does require that all insurance policy forms and applications be filed with the Department of Insurance and obtain approval prior to their use.¹ The collection of racial and ethnic data is not explicitly listed as grounds for disapproval by the Commissioner.²

2. Discrimination

No health insurer may permit unfair discrimination "between individuals of substantially the same hazard" with regard to the rates and premiums charged for a health insurance policy.³ In addition, Vermont's unfair trade statutes prohibits unfair discrimination "between insureds of the same class and equal risk" with regard to the rates charged or any other terms and conditions of the contract.⁴ However, the statutes do not contain a direct prohibition against discriminating on the basis of race or national origin.

Vermont's civil rights statute prohibits a person from denying another individual access to the services and facilities of any place of public accommodation because of race, color or national origin.⁵ The statute, however, excludes "an insurer underwriting risks, classifying risks or administering risks that are based on or are not inconsistent with" the unfair trade practices and health insurance advertising practice provisions.⁶

3. Confidentiality

A managed care plan⁷ must "establish and implement policies, standards and procedures to protect the confidentiality, security and integrity of individually-identifiable health care information in its possession or used by it. . . ."⁸

¹ 8 V.S.A. § 5104; 8 V.S.A. § 3541.

² 8 V.S.A. § 5104(a); 8 V.S.A. § 3542.

³ 8 V.S.A. § 4083.

⁴ 8 V.S.A. § 4724(7)(A).

⁵ 9 V.S.A. § 4502(a).

⁶ 9 V.S.A. § 4502(g)(2). The health insurance advertising practices provision does not contain any prohibition against discrimination on the basis of race, color or national origin with regard to advertising.

⁷ A managed care plan is "a health benefit plan offered by a health insurer that either requires a member to use, or creates incentives, . . . , for a member to use health care providers . . . managed, owned, under contract or employed by the health insurer. . . ." CVR 21-040-010, § 10.100(Z). Any requirements imposed on a managed care plan are imposed on the health insurer as well.

⁸ CVR 21-040-010, § 10.203(H). Individually-identifiable health care information is "any data or information, . . . , that directly identifies an individual, . . . , [and] relates to the individual's health history, health care or health status. . . ."

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

1. Department of Prevention, Assistance, Transition and Health Access (PATH)
 - a. Statutes, Regulations, Policies and Other Written Materials

PATH administers Vermont's Medicaid program and the Dr. Dynosaur (SCHIP) program. 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, during the enrollment process, Vermont "seek[s] to identify Vermont Health Access Plan (VHAP)⁹ enrollees who speak a language other than English as their first language" in order to provide contracting health plans with this information.¹⁰ In turn, the health plans must offer interpreter services in an alternative language if more than 100 VHAP members speak that language.¹¹

A health plan providing services under the VHAP contract must "make available member handbooks in languages other than English" if the health plan has more than 100 VHAP members who speak a single language other than English as a primary language.¹²

- b. Discrimination

The policies and procedures for determination of eligibility for aid, benefits and services must "respect the . . . legal rights of individuals, under relevant provisions of Federal (*sic*) and state law, including . . . Title VI of the Civil Rights Act of 1964."¹³ Moreover, PATH must assure "that no individual shall be subject to discrimination under [Medicaid] on the grounds of race, color, [or] national origin."¹⁴

In addition, any contracting health plan "must enroll any VHAP beneficiary and any eligible siblings and/or dependents . . . without discrimination and regardless of the beneficiary's language needs. . . [or] ethnicity. . ."¹⁵

- c. Confidentiality

The names and information pertaining to "applicants for or recipients of assistance or benefits shall not be disclosed to anyone, except for the (*sic*) purposes directly connected with the administration of [PATH]."¹⁶

⁹ VHAP is Vermont's health insurance program for uninsured adults who are ineligible for Medicaid.

¹⁰ VHAP Contract, p. 28.

¹¹ *Id.*

¹² VHAP Contract, p. 28.

¹³ CVR 13-170-001, § 2000.

¹⁴ Vermont Medicaid State Plan, § 7.2.

¹⁵ VHAP Contract, p. 24.

¹⁶ 33 V.S.A. § 111(a).

2. Department of Health (DOH)

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

The DOH collects and requires health care providers to report racial and ethnic information for those persons diagnosed with a venereal disease.¹⁷

In addition, a patient of a hospital or a nursing home, “who does not speak or understand the predominant language of the community” has a right to an interpreter if the language barrier presents a continuing problem in delivering health care services.¹⁸

b. Discrimination

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.¹⁹

c. Confidentiality

In general, “all information as to personal facts and circumstances obtained . . . [by the DOH] shall be held confidential . . . and shall not be disclosed . . . without the consent of the individual concerned.”²⁰ However, this provision does not prohibit the disclosure of information in a summary or statistical form which does not identify individuals.²¹ In addition, information may be disclosed to other agencies that are providing needed services to the individual, provided that the agency agrees to safeguard the confidential nature of the disclosed information.²²

Vermont’s public records law provides that medical or psychological information about an individual is not open for public inspection.²³ In addition, Vermont has confidentiality standards for various health information and state registries. These are: (1) the cancer registry;²⁴

¹⁷ 18 V.S.A. § 1092 (reporting by physicians); 18 V.S.A. § 1101 (reporting by public institutions such as hospitals, dispensaries, clinics, etc.)

¹⁸ 18 V.S.A. § 1852(a)(15).

¹⁹ A place of public accommodation is “any . . . facility at which services, facilities, goods, . . . [or] benefits are offered to the general public.” 9 V.S.A. § 4501.

²⁰ CVR 13-140-009(1).

²¹ *Id.*

²² *Id.*

²³ 1 V.S.A. § 317(c)(7).

²⁴ 18 V.S.A. § 154. All identifying information regarding an individual patient must be kept confidential and privileged. The Commissioner of Health may exchange confidential information with other state and federal cancer registries, but only if the Commissioner first obtains an agreement in writing that the recipient will keep the identifying information confidential and privileged.

(2) venereal diseases diagnoses;²⁵ and (3) lead poisoning diagnoses.²⁶

D. Observations

Vermont has no statutes or regulations that prohibit or require the collection or reporting of racial and ethnic data.

Vermont has a 3.8% minority population and less than 1% of its population is limited English proficient. The lack of racial and ethnic data collection may be influenced by these numbers. Unlike most states, even Vermont's Department of Health has very limited racial data collection requirements.

In addition, Vermont has few provisions addressing discrimination on the basis of race, color or national origin with regard to access to health insurance. The public accommodations statute does not cover insurers and their underwriting practices if health insurers are complying with the standards set in the unfair trade practices and health insurance advertising statutes.

Interestingly, Vermont VHAP's contract only prohibits discrimination on the basis of ethnicity, not race, with regard to enrollment into a health plan. It is not clear how Vermont defines ethnicity, as some states use it interchangeably with race, while others do not.

²⁵ 18 V.S.A. § 1099. All information and reports regarding persons who have been diagnosed with venereal diseases must be regarded as confidential and not available to the public.

²⁶ 18 V.S.A. § 1755. The Commissioner of Health must establish procedures to ensure the confidentiality of children who are screened and tested for lead poisoning, and that of their families as well.