

WYOMING

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).

WYOMING

A. General and Health Demographics

Total Population	493,782	
Percent Black Population	0.7	
Percent American Indian and Alaskan Native Population	2.1	
Percent Asian Population	0.5	
Percent Native Hawaiian and Other Pacific Islander Population	0.1	
Percent Hispanic Population (of any race)	6.4	
Percent White Population	88.9	
Other (some other race and two or more races)	1.3	
Language Use - 2000 census data		
Percent Limited English Proficiency (LEP) Population	0.86	(1.93)
Health Care Delivery Profile		
Percent of Total Non-elderly Population Privately Insured (1997-99)	74.4	
Percent of Total Population Enrolled in HMOs	2.89	
Medicaid Enrollment (as of December 31, 2002)	54,656	(11.07%)
Medicaid Managed Care Enrollment	0	(0.00%)
Percent of Total Non-elderly Population Uninsured (1997-99)	18.2	

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

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

Wyoming uses the term “health insurer” to cover health insurers,¹ prepaid health plans,² or health maintenance organizations (HMOs).³ This state summary will use the term “health insurer” to refer to these entities, unless there is a distinction made within the statutes or

¹ Wyo. Stat. Ann. §§ 26-1-108 & 26-19-306. Wyoming defines “disability insurance” to include health insurance. Wyo. Stat. Ann. § 26-5-103.

² Wyo. Stat. Ann. § 22-301.

³ Wyo. Stat. Ann. § 26-34-103.

regulations regarding the issue being discussed.

The Insurance Commissioner (Commissioner) has authority over all health insurers,⁴ who must obtain a certificate of authority from the Commissioner to operate in the state.⁵ Wyoming has no statutes or regulations that prohibit or require the collection or reporting of racial, ethnic, or primary language data.⁶

In order to meet the needs of “historically underserved populations,” Wyoming allows health care providers to engage in cooperative arrangements that might otherwise violate anti-trust laws.⁷ Collecting data on the race, ethnicity or primary language of the target population is presumably necessary in this context in order to demonstrate that the proposed service qualifies for the statutory anti-trust exemption.

2. Discrimination

Health insurers, except HMOs,⁸ cannot classify any risk, “in whole or in part on the basis or race, color, creed or national origin.”⁹ HMOs cannot issue health plans that contain provisions or statements which are unjust, unfair, or inequitable.¹⁰

The Commissioner may disapprove any application form if it does not comply with the Insurance Code, or if the rates or classifications are excessive, inadequate or unfairly discriminatory.¹¹ It is possible therefore that the Commissioner might disapprove an application form seeking race or ethnicity information unless it could be shown that the data was being sought for non-discriminatory purposes. The Commissioner also has the authority to require any form reasonably necessary to provide for the effective administration of licensing HMOs.¹²

The Wyoming criminal code provides that all persons are entitled to the full and equal enjoyment of the services of all accommodations and privileges of all public places or agencies without any distinction, discrimination or restriction on account of race, color, national origin or several other protected characteristics.¹³

3. Confidentiality

⁴ Wyo. Stat. Ann. § 26-2-109.

⁵ Wyo. Stat. Ann. § 26-3-101.

⁶ However, HMOs are required to have quality assurance programs which must include a “written statement describing the system of focused quality assurance activities based on *representative samples of the enrolled population*.” Wyo. Stat. Ann. § 26-34-108(b)(iv).

⁷ Wyo. Stat. Ann. § 35-24-101 (underserved populations include the indigent).

⁸ Wyo. Stat. Ann. §§ 26-1-104 & 26-34-128.

⁹ Wyo. Stat. Ann. § 26-14-105.

¹⁰ Wyo. Stat. Ann. § 26-34-109.

¹¹ Wyo. Stat. Ann. § 26-15-111.

¹² Wyo. Stat. Ann. § 26-34-118(a)(ix).

¹³ Wyo. Stat. Ann. § 6-9-101. There is no cases addressing whether health insurers would be covered under this statute.

Although records and filings in the Insurance Department, except those containing privileged information,¹⁴ are generally considered public records and open to public inspection,¹⁵ medical and sociological data on individuals, as well as hospital records relating to medical administration, care or information, are exempted from the public records statute.¹⁶ Moreover, with regard to HMOs, any data or information pertaining to the diagnosis, treatment or health of any enrollee or applicant is confidential and cannot be disclosed.¹⁷

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

1. Department of Health (DOH)

a. Statutes, Regulations, Policies and Other Written Materials

The Wyoming Department of Health (DOH) is responsible for implementation of all state and federal medical services laws,¹⁸ including administration of Medicaid and the State Children’s Health Insurance Program (SCHIP), called Kidcare.¹⁹ However, the Department of Family Services (DFS) also promulgates rules and regulations to implement the state welfare laws, and it is DFS that provides the Medicaid and SCHIP application forms.²⁰

While there are no state statutes or regulations that prohibit or require the collection or reporting of racial, ethnic or primary language data regarding Medicaid or SCHIP applicants or recipients, DFS does collect such information on the Medicaid/SCHIP application form. The application for Medicaid, Kidcare, and other programs requests the “Heritage” of the applicant, with a parenthetical offering “White, Black, Hispanic, Am. Indian, etc.”²¹ The application form for “Presumptive Eligibility for Pregnant Women” asks for the race of the applicant, but notes that a response is optional.²²

¹⁴ Wyo. Stat. Ann. § 26-34-129 (excluding quality assurance information).

¹⁵ Wyo. Stat. Ann. § 26-2-113.

¹⁶ Wyo. Stat. Ann. § 16-4-203(d)(i) and (d)(vii) (also covers hospital records). *See also* WCWR 044-000-025 §10 (an individual’s medical records will only be disclosed to a third party pursuant to a written authorization of the person who is named in the record); *but see* WCWR 044-000-025(h)(if a medical record is introduced at a public hearing, it may become public without the individual’s consent).

¹⁷ Wyo. Stat. Ann. § 26-34-130 (exceptions are: as necessary to carry out the purposes of the chapter, upon the express consent of the applicant or enrollee, pursuant to statute or court order, or if the information is relevant in any litigation between the person and the HMO).

¹⁸ Wyo. Stat. Ann. §§ 9-2-106 & 42-4-104; WCWR 048-130-008.

¹⁹ Wyo. Stat. Ann. § 35-25-101.

²⁰ Wyo. Stat. Ann. § 9-2-2104(a)(vii); WCWR 049-183-002 § 2, 049-183-002 § 4 and 048-153-001 § 5.

²¹ “Application for Medicaid, Kidcare, and Other Programs”(Medicaid Form), DFS 100 (10/00).

²² “Application for Presumptive Eligibility for Pregnant Women, Medicaid for Pregnant Woman and Children, MCH, Referral to WIC” (Presumptive Eligibility Form), DFS-667 (12/97).

Although DOH's vital records statutes and regulations do not require racial, ethnic or primary language information on the form, the statutes do ask for "personal data."²³ It is likely that "personal data" includes such demographic information since published statistics on the state website include race elements for some categories.²⁴ However, DOH is required to collect race and ethnicity data from: (1) hospitals,²⁵ (2) records of foundlings,²⁶ (3) cardiopulmonary resuscitation directive forms,²⁷ and (4) psychiatric advance directive forms.²⁸

b. Discrimination

No applicant or recipient for the state Medicaid and SCHIP programs can be discriminated against on the basis of race, creed, color, national origin, sex or mental or physical handicap.²⁹ The Medicaid application explains that DOH will consider the application without regard to race, color, sex, age, handicap, religion, national origin, or political belief.³⁰

DOH, as a public agency, appears to be covered by the public accommodations statute's prohibition against discrimination based on race, color, or national origin, but there is no case law that addresses this issue.³¹

c. Confidentiality

Generally, records of DOH are public records. However, confidential records cannot be released without the prior written consent of the subject, except in a few limited circumstances.³² Medical data, whether on individuals or groups, are not open to public inspection.³³

Under the Medicaid program, any application, information or record obtained, compiled or maintained for an applicant or recipient is confidential and cannot be disclosed or used for any

²³ See e.g., Wyo. Stat. Ann. § 35-1-410 (birth registration requires personal data); Wyo. Code § 35-1-418 (personal data from next of kin required for death certificate).

²⁴ See e.g. "Wyoming Vital Statistics 1998," pp. 20, 27-29, and 49, at: http://wdhfs.state.wy.us/vital_records/98DATA/98pubb.pdf.

²⁵ WCWR 048-161-003 § 1.

²⁶ Wyo. Stat. Ann. § 35-1-412.

²⁷ Wyo. Stat. Ann. § 35-22-203; see also WCWR 048-145-002 § 2.

²⁸ Wyo. Stat. Ann. § 35-22-303; see also WCWR 048-230-001 § 5.

²⁹ Wyo. Stat. Ann. § 42-4-107; see also WCWR 048-130-003 § 1; WCWR 048-153-001 § 6; & WCWR 048-130-009 § 5.

³⁰ Medicaid Form, "Rights and Responsibilities - Civil Rights."

³¹ Wyo. Stat. Ann. § 6-9-101.

³² WCWR 048-000-001 § 3. There are exceptions for: medical personnel to meet a bona fide emergency; qualified personnel for scientific research; management audits; program evaluations (but not individual identities); the health care rehabilitative system if there is a legitimate need; DOH if need is demonstrated; and, by court order.

³³ Wyo. Stat. Ann. § 16-4-203(d)(vii). Hospitals cannot generally disclose any personally identifying health care information without the patient's written authorization. Wyo. Stat. Ann. §§ 35-2-605, 35-2-606 and 35-2-609.

purpose other than the administration of the medical assistance program.³⁴ Providers cannot release medical records or other information to any individual or entity without first obtaining written authorization or being served with a court order.³⁵ SCHIP also requires the provider to comply with the Medicaid confidentiality rules,³⁶ and all personally identifiable information on the application is confidential.³⁷ The Medicaid and SCHIP application forms contain assurances that the information is kept confidential and explain the limited circumstances in which disclosure is allowed.

Since DFS provides Medicaid and SCHIP applications to potential beneficiaries, it is also prohibited from disclosing or allowing the use of any information from records obtained through the medical programs for purposes not directly related to the administration of those programs.³⁸ Any identifiable information is confidential except as provided by statute.³⁹

D. Observations

Wyoming has no statutes or regulations that prohibit or require the collection or reporting of racial, ethnic, or primary language data.

Managed care has not been implemented in Wyoming to any significant extent, with less than 3% HMO penetration overall and none in Medicaid.

Interestingly, DOH established the Health Care Data Authority to serve as a “clearinghouse for the acquisition, compilation, analysis, correlation, and dissemination of data from health care facilities, state programs, third party payers, and other providers.”⁴⁰ Although it no longer exists,⁴¹ it had the authority to make recommendations on issues of accessibility, quality and cost effectiveness of health care for the state, and to study “patient origin” data to report impact on facilities at various levels.⁴² Therefore, there seems to have been a vehicle in the past to collect critical demographic information such as race, ethnicity and primary language, but the reason for discontinuance of this undertaking could not be ascertained within the scope of this part of the project.

³⁴ Wyo. Stat. Ann. § 42-4-112; WCWR 048-130-038 § 6. The rule details the circumstances in which the information can be released by DOH.

³⁵ WCWR 048-130-038 § 5.

³⁶ WCWR 048-153-001 § 9.

³⁷ WCWR 048-153-001 § 5.

³⁸ Wyo. Stat. Ann. § 42-2-111.

³⁹ WCWR 049-183-002 § 5.

⁴⁰ WCWR 048-161-002 § 1.

⁴¹ Wyo. Stat. Ann. § 35-2-801-807 (repealed)(the act was terminated in 1991).

⁴² WCWR 048-161-002 § 3.