

## ARIZONA

**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).

## ARIZONA

### A. General and Health Demographics

<b>Total Population</b>	5,130,632
Percent Black Population	2.9
Percent American Indian and Alaskan Native Population	4.5
Percent Asian Population	1.7
Percent Native Hawaiian and Other Pacific Islander Population	0.1
Percent Hispanic Population (of any race)	25.3
Percent White Population	63.8
Other (some other race and two or more races)	1.6
<b>Language Use - 1990 census data</b>	
Percent Limited English Proficiency (LEP) Population	6.07 (11.37)
<b>Health Care Delivery Profile</b>	
Percent of Total Non-elderly Population Privately Insured (1997-99)	64.3
Percent of Total Population Enrolled in HMOs	32.2
Medicaid Enrollment (as of June 30, 2000)	821,748 (16.02%)
Medicaid Managed Care Enrollment	757,837 (92.22%)
Percent of Total Non-elderly Population Uninsured (1997-99)	26.4

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

1. Statutes, Regulations, Policies and Other Written Materials

Arizona uses the term “health care insurer” to include disability insurers,<sup>1</sup> health care services organizations (HCSO - similar to an MCO),<sup>2</sup> hospital, medical, dental or optometric service corporations (HMSC),<sup>3</sup> or any other health care service contractors offering health coverage.<sup>4</sup> This state summary will use the term “health care insurer” to refer to all of these entities and any distinctions among each type of health insurance entity will be noted if relevant to the issue being discussed.

All health care insurers are regulated by the Department of Insurance (DOI)<sup>5</sup> and must have their insurance policy forms and applications approved by DOI.<sup>6</sup> Arizona insurance statutes and regulations “do not expressly address the ... collection and reporting of racial, ethnic and primary language information by health insurers and managed care organizations.”<sup>7</sup> Health insurers and managed care plans are not required to file any information directly related to race, ethnicity and primary language, and there does not appear to be any such data available.<sup>8</sup>

## 2. Discrimination

An HCSO cannot cancel an enrollee’s evidence of coverage because of the enrollee’s or dependent’s race or national origin, as well as several other factors.<sup>9</sup> Moreover, the state has a “general statute which prohibits health care insurers from discriminating ‘unfairly’ between individuals of the same class and of essentially the same hazard in the amount of premium[,] policy fees or rates charged for any policy or contract of disability insurance or in the benefits payable or in any of the terms or conditions of the contract, or in any other manner whatever.”<sup>10</sup>

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<sup>1</sup> Ariz. Rev. Stat. Ann. § 20-253. The definition of disability insurance includes health insurance and for this report, includes group and blanket disability insurance.

<sup>2</sup> Ariz. Rev. Stat. Ann. § 20-1052(A). HCSOs conduct one or more health plans to provide basic health care services on a prepaid basis. Ariz. Rev. Stat. Ann. § 20-1051(6) & (8).

<sup>3</sup> Ariz. Rev. Stat. Ann. § 20-822.

<sup>4</sup> Ariz. Rev. Stat. Ann. §§ 20-106; *see e.g.*, Ariz. Rev. Stat. Ann. §§ 20-120, 20-181 and 20-1379.

<sup>5</sup> Ariz. Rev. Stat. Ann. §§ 20-115, 20-206, 20-824 ((HMSC), 20-152 (HCSO) and 20-2302.

<sup>6</sup> Ariz. Rev. Stat. Ann. § 20-1110.

<sup>7</sup> Letter of Gerrie L. Marks, Executive Assistant for Regulatory Affairs, Department of Insurance, dated February 1, 2001 (hereinafter “Marks Letter.”)

<sup>8</sup> *Id.*

<sup>9</sup> Ariz. Rev. Stat. Ann. § 20-1057(H) (regarding group plan enrollees.) Also, an evidence of coverage cannot contain any provisions or statements which are unjust, unfair, inequitable, misleading or deceptive. *Id.* at § 20-1057(F).

<sup>10</sup> *See* Marks Letter at 1 (discussing Ariz. Rev. Stat. Ann. § 20-448(B)).

The state’s civil rights or public accommodations statute<sup>11</sup> is broad enough to cover health insurers and facilities since it includes “all public places which are conducted for the ... benefit, use or accommodations of those seeking health or recreation and all establishments which cater or offer their services, facilities or goods to or solicit patronage from the members of the general public.”<sup>12</sup>

### 3. Confidentiality

Although all official transactions of DOI are public records, Arizona has adopted the Insurance Information and Privacy Act, which applies to all health care insurers who collect, receive or maintain information connected with insurance transactions, and has strict disclosure limitations.<sup>13</sup> Health care insurers cannot disclose any personal or privileged information about a person obtained through an insurance transaction without the written authorization of the person or unless the disclosure meets certain requirements.<sup>14</sup>

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

### 1. Department of Health Services (DHS)

#### a. Statutes, Regulations, Policies and Other Written Materials

The Arizona Department of Health Services (DHS) has overarching authority for both the Medicaid and SCHIP programs, which it administers through the Arizona Health Care Cost Containment System (AHCCCS),<sup>15</sup> as well as for the state’s Vital Statistics agency.<sup>16</sup> There are no state statutory or regulatory provisions that prohibit or require the collection of race, ethnicity, or primary language data by DHS or AHCCCS. However, AHCCCS prescribes uniform Medicaid and SCHIP application forms, which do collect race and ethnicity data.<sup>17</sup> The requested information is

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<sup>11</sup> The statute states that discrimination “in places of public accommodations against any person because of race, color, creed, national origin or ancestry is contrary to the policy of this state and shall be deemed unlawful.” Ariz. Rev. Stat. Ann. § 41-1442.

<sup>12</sup> Ariz. Rev. Stat. Ann. § 41-1441. Pursuant to the state civil rights statute, the Civil Rights Division may make periodic surveys of the existence and effect of discrimination because of race, color, or national origin and issue studies, investigate or research the elimination of such discrimination. This authority would support the collection of data from health insurers if there were evidence to indicate the existence of such discrimination.

<sup>13</sup> Ariz. Rev. Stat. Ann. § 20-2101 *et seq.* The Act defines medical record, personal, and privileged information. *Id.* at § 20-2102.

<sup>14</sup> There are many exceptions to the general non-disclosure rule. Ariz. Rev. Stat. Ann. § 20-2113.

<sup>15</sup> Ariz. Rev. Stat. Ann. §§ 36-104(8), 36-2903 and 36-2903.01(5)(Medicaid), and 36-2982(A) (SCHIP). The program relies heavily on prepaid capitated health plans.

<sup>16</sup> Ariz. Rev. Stat. Ann. §§ 36-104(1)(a) & 36-132 (3).

<sup>17</sup> Ariz. Rev. Stat. Ann. §§ 36-2903.01(B)(1) & 36-2986(L).

only for statistical purposes and is not required.<sup>18</sup> In addition, Arizona has utilized a managed care delivery system since it began participating in the Medicaid program, and AHCCCS can therefore read claims data uniformly from the various participating health plans.

Health plans that contract with DHS to provide Medicaid services must provide plan information “in English and a second language when 200 members or 5% of the [health plan’s] enrolled population, whichever is greater, are non-English speaking.”<sup>19</sup> This requirement implies the need to collect primary language data.

SCHIP also requires development of an outreach program, which should include strategies to inform communities, including “tribal communities,” about the program and submission of encounter data. Since information regarding tribal communities is required, data on the individual tribes (similar to ethnicity) would be useful to collect.<sup>20</sup>

Data collections by DHS regarding noncommunicable diseases, such as its cancer registry<sup>21</sup> communicable diseases,<sup>22</sup> such as anonymous testing for HIV infection;<sup>23</sup> and vital statistics, such as its founding registry,<sup>24</sup> birth certificates,<sup>25</sup> and death certificates,<sup>26</sup> all include the race or ethnicity

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<sup>18</sup> See e.g., AHCCCS, “KidsCare Application,” p. 2 at: <http://www.ahcccs.state.az.us/Content/Downloads/KidsCare%20Apps/KidsCare%20English.pdf>. The application allows the individual to choose among the following categories: African American, Native American, Asian, White, Hispanic, and Other. See also, “AHCCCS Medicare Cost Sharing Programs Application Form,” which collects ethnic group data and states that it will not affect eligibility. This form uses the term “ethnic group” rather than “race,” and offers the following categories: White, Hispanic, Black, American Indian and Other (Specify). See <http://www.ahcccs.state.az.us/Services/altcs/de-103.pdf>.

<sup>19</sup> AHCCCS Request for Proposal (RFP) (“Arizona RFP”), p. 18. AHCCCS advises the health plan when and if this requirement applies.

<sup>20</sup> Ariz. Rev. Stat. Ann. § 36-2986.

<sup>21</sup> Arizona Cancer Registry (ACR), “1997 Cancer in Arizona Annual Report - Cancer Incidence and Mortality in Arizona, 1997,” at: <http://www.hs.state.az.us/phs/phstats/acr/97annual.2.htm>; see also Ariz. Rev. Stat. Ann. § 36-133(7) and

<http://www.hs.state.az.us/phs/phstats/acr/aboutacr.htm> (one of the purposes of the ACR to identify population subgroups at high risk for cancer). Although the regulation only specifies patient identification and demographic information and does not explicitly require race as a data element, the online cancer registry reveals that statistics are collected on the race of the cancer patient. Compare Ariz. Admin. Code R9-4-401 with website.

<sup>22</sup> Ariz. Admin. Code R9-6-203.

<sup>23</sup> Ariz. Admin. Code R9-6-331 (race).

<sup>24</sup> Ariz. Rev. Stat. Ann. § 36-323 (color or race).

<sup>25</sup> Ariz. Admin. Code R9-19-206 (race or color on delayed birth registration).

<sup>26</sup> Ariz. Admin. Code R9-19-119 (race) & Ariz. Admin. Code R9-19-307 (race on delayed death certificate).

of the patient. DHS reports race and ethnicity of vital statistics on its state website.<sup>27</sup> Hospitals must also include race and ethnicity information for each patient discharged.<sup>28</sup>

b. Discrimination

Arizona's Title VI compliance requirements also support the collection of race, ethnicity and primary language data. AHCCCS programs, including its Medicaid program and SCHIP, are subject to an anti-discrimination regulation which prohibits discrimination because of race, color, creed, religion, ancestry, marital status, sexual preference, national origin, age, sex, or physical or mental disability in accordance with Title VI of the Civil Rights Act of 1964.<sup>29</sup> More importantly, both SCHIP and the Medicaid program require federally funded contractors to take "affirmative action to ensure that members are provided covered services without regard to race, color, creed, national origin, ancestry, and the other classifications listed above."<sup>30</sup> This requirement is reflected in the state's contract with participating health plans.<sup>31</sup> Such "affirmative action" would comfortably include the collection of data on race, ethnicity, national origin and primary language.

In all programs administered by AHCCCS, including HCG plans,<sup>32</sup> marketing representatives cannot engage in any marketing or other pre-enrollment practices that discriminate against an eligible person or member because of race, creed, age, color, sex, religion, national origin, ancestry, marital status, sexual preference, physical or mental disability, or health status.<sup>33</sup>

c. Confidentiality

DHS must promulgate rules concerning the confidential nature of its records, and the statute requires that no names or other information of any applicant, claimant or recipient can be released

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<sup>27</sup> See e.g., "Statistics by Ethnic Group," at: <http://www.hs.state.az.us/plan/ethnic.htm>.

<sup>28</sup> Ariz. Admin. Code R9-11-302; see also <http://www.hs.state.az.us/plan/hosp/magtapeto.htm> (race options specify 1=American Indian, Aleut, Eskimo; 2=Asian, Pacific Islander; 3=Black; 4=Caucasian, Hispanic; 5=Caucasian, Non-Hispanic; and 6=Other).

<sup>29</sup> Ariz. Admin. Code R9-22-513(A)(Medicaid) & R9-31-513(A)(SCHIP). AHCCCS also regulates prepaid health plans, called the "Healthcare Group Plan" (HCG plan) for small uninsured businesses and political subdivisions within the state. Ariz. Admin. Code R9-27-101. The HCG plans have similar prohibitions against discrimination because of the applicant or member's race, color, creed, religion, ancestry, national origin, and the other categories listed above. Ariz. Admin. Code R9-27-510. This regulation also requires affirmative action to ensure that members are provided services without regard to race, national origin, and the other protected classifications.

<sup>30</sup> *Id.* at R9-31-513(B)(SCHIP) and Ariz. Admin. Code R9-22-513(B)(Medicaid).

<sup>31</sup> Arizona RFP, p. 18.

<sup>32</sup> Ariz. Admin. Code R9-27-503.

<sup>33</sup> Ariz. Admin. Code R9-22-504.

for “any political, commercial or other unofficial purpose.”<sup>34</sup> AHCCCS will not release a member’s medical record without the member’s consent unless fraud or abuse is suspected by an AHCCCS officer who has submitted a written request for the record.<sup>35</sup> The regulations contain many provisions to limit the release of “safeguarded information”<sup>36</sup> by AHCCCS, its subcontractors, providers, and non-contracting providers. Disclosure is only allowed to the member or applicant, to his/her authorized person, to a person or agency for official purposes, or to subcontracting providers.<sup>37</sup>

Although DHS reports, such as hospital discharge data, are generally considered public records, privileged medical information cannot be disclosed.<sup>38</sup> Moreover, personally identifying information collected in the state’s chronic disease surveillance system, such as its cancer registry, is confidential and can only be used for the purposes of that system.<sup>39</sup>

## 2. Department of Economic Security (DES)

### a. Statutes, Regulations, Policies and Other Written Materials

DES determines Medicaid eligibility for the AHCCCS, and administers the Temporary Assistance for Needy Families (TANF) program.<sup>40</sup> According to regulation, DES must report data regarding the number of minority groups in federally funded assistance payments programs to ensure compliance with Title VI.<sup>41</sup> DES maintains records and submits reports as required by federal

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<sup>34</sup> Ariz. Rev. Stat. Ann. § 36-107.

<sup>35</sup> Ariz. Rev. Stat. Ann. §§ 36-2903(J) and 36-2986(E).

<sup>36</sup> “Safeguarded information” includes the applicant or member’s name, address, and social security number; social and economic conditions; evaluation of personal information; medical data and services; and information tapes and data from the Social Security Administration and DES. Ariz. Admin. Code R9-22-512 (Medicaid), R9-30-512 (Premium Sharing Demonstration Project), R9-31-512 (SCHIP), & R9-27-507 (Private employer groups).

<sup>37</sup> *Id.* The restrictions do not apply to data that do not identify the person.

<sup>38</sup> Ariz. Rev. Stat. Ann. § 36-125.05(H).

<sup>39</sup> Ariz. Rev. Stat. Ann. § 36-133(E). With regard to Vital Statistics, certified copies of any certificates, record or report can only be issued to a person who is eligible to receive such a copy, and data from vital records can only be used for statistical or research purposes with the assurance of anonymity of specific persons. Ariz. Rev. Stat. Ann. §§ 36-340 & 36-341. There is also a limitation on disclosure of any patient record or patient identifier information from health care institutions. Ariz. Rev. Stat. Ann. § 36-404. Many restrictions also apply to the disclosure of communicable disease information. Ariz. Rev. Stat. Ann. § 36-664.

<sup>40</sup> Ariz. Rev. Stat. Ann. §§ 36-2903.01(B)(2), 46-101, 46-291, & 46-341; *see also* AHCCCS, “Welcome to AHCCCS - Agency Profile,” available at: <http://www.ahcccs.state.az.us/Default.asp>.

<sup>41</sup> Ariz. Admin. Code R6-1-501(C)(2)(i)

authorities to assure compliance with Title VI.<sup>42</sup> This requires that DES collect data on the race and ethnicity of its applicants and recipients.

Outside contractors helping to implement TANF in certain regions of the state must employ staff, “if necessary,” to meet the needs of participants who are refugees or who have cultural and linguistic barriers to participation in the program.<sup>43</sup> Because Arizona uses a joint application for both the Medicaid and TANF programs, this mandate seems to require that race, ethnicity and language data be collected in order to ascertain the cultural and linguistic needs of the participants in both programs. Finally, DES also collects race and ethnicity data on several of its application forms for other programs, such as short-term crisis services,<sup>44</sup> adult developmental home licenses,<sup>45</sup> children in residential group homes,<sup>46</sup> and child placement services.<sup>47</sup>

b. Discrimination

DES has one of the strongest Title VI compliance regimens.<sup>48</sup> It specifically defines compliance and methods of administration.<sup>49</sup> Significantly, the regulation requires that policies and procedures must provide “effective verbal and written communication with non-English speaking applicants and recipients” and must be made known to all DES employees.<sup>50</sup>

c. Confidentiality

The DES confidentiality provisions are similar to those of AHCCCS, and protect personally identifiable information such as the person’s name, address, telephone number, date of birth, unique identifying numbers such as a driver’s license or SSN.<sup>51</sup> The information can only be disclosed to the applicant or recipient, his/her authorized representative, or persons or agencies for official purposes.<sup>52</sup> DES appears to have had much experience collecting confidential information and developing safeguards to preserve a participant’s anonymity.

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<sup>42</sup> *Id.* at R6-1-501(B)(6).

<sup>43</sup> Ariz. Rev. Stat. Ann. § 46-342(D)(3).

<sup>44</sup> Ariz. Admin.Code R6-13-802 (ethnicity).

<sup>45</sup> Ariz. Admin. Code R6-6-1104.03 (ethnicity).

<sup>46</sup> Ariz. Admin. Code R6-5-7428.

<sup>47</sup> Ariz. Admin. Code R6-5-6907.

<sup>48</sup> Ariz. Admin. Code R6-1-501. The Statement of Compliance states that no person in the state of Arizona will be excluded from participation in, denied the benefits of, or subjected to discrimination under assistance payment programs on the basis of race, color, religion, sex, or national origin. *Id.* at R6-1-501(A).

<sup>49</sup> *Id.* at R6-1-501(B)

<sup>50</sup> *Id.* at R6-3-103(2)(f).

<sup>51</sup> Ariz. Admin. Code R6-12-102 (cash assistance), R6-13-1201 (state assistance program), & R6-15-111 (Arizona Works).

<sup>52</sup> *Id.*



## D. Observations

Arizona has no statutes, regulations, or other written materials requiring or prohibiting the collection or reporting of race, ethnicity or primary language data by health care insurers.

Arizona has chosen to implement its Medicaid and SCHIP program primarily using capitated managed care plans (HCSOs),<sup>53</sup> as evidenced by the relatively high Medicaid managed care participation rate of 92.37%. There are likely HCSOs which provide prepaid health plans for both the public and private sectors.<sup>54</sup> Since race and ethnicity information is collected on the application forms for SCHIP, it would not seem overly burdensome to encourage those HCSOs to collect similar information from its other applicants and members.

It is worth noting that in the most recent changes to Arizona's non-communicable diseases regulations, the state has chosen to eliminate the collection of race and ethnicity data for pesticide illness and blood lead levels.<sup>55</sup> It is unclear if this change is due to a concern for privacy issues outweighing the public interest in eliminating race-based health disparities.

On a more positive note, Arizona has taken extensive measures to insure the confidentiality of personally identifying information that it collects in conjunction with the operation of its health system. These protections should go a long way toward assuaging apprehensions that applicants and recipients might otherwise have about the use of the information that they provide to the state and its agents.

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<sup>53</sup> *Supra*, fn. 15; *see also* Ariz. Rev. Stat. Ann. § 36-2904; Arizona DHS, "AHCCCS Managed Care," at: <http://www.ahcccs.state.az.us/Services/Overview?AcuteModel.asp>.

<sup>54</sup> *See e.g.* Ariz. Rev. Stat. Ann. § 36-2906. Commercial health plans can contract with AHCCCS to provide health care services, but they must establish a separate affiliated organization whose only authorized business is for Medicaid eligible persons and such entities must comply with AHCCCS requirements. Ariz. Rev. Stat. Ann. § 36-2906.01.

<sup>55</sup> *Compare* Ariz. Admin. Code R9-4-201 and R9-4-301 with unofficial Ariz. Admin. Code section from website, at: [http://www.sosaz.com/public\\_services/Title\\_09/9-04.htm](http://www.sosaz.com/public_services/Title_09/9-04.htm). (R9-4-201 effective 7/18/00 and R9-4-301 effective 12/12/00).