# CALIFORNIA

**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).

# CALIFORNIA

## A. General and Health Demographics

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| **Total Population** | 33,871,648 |
| Percent Black Population | 6.4 |
| Percent American Indian and Alaskan Native Population | 0.5 |
| Percent Asian Population | 10.8 |
| Percent Native Hawaiian and Other Pacific Islander Population | 0.3 |
| Percent Hispanic Population (of any race) | 32.4 |
| Percent White Population | 46.7 |
| Other (some other race and two or more races) | 2.9 |
| **Language Use** - 1990 census data | |
| Percent Limited English Proficiency (LEP) Population | 10.69 (19.98) |
| **Health Care Delivery Profile** | |
| Percent of Total Non-elderly Population Privately Insured (1997-99) | 63.2 |
| Percent of Total Population Enrolled in HMOs | 55.2 |
| Medicaid Enrollment (as of June 30, 2000) | 6,190,430 (18.28%) |
| Medicaid Managed Care Enrollment | 3,279,796 (52.98%) |
| Percent of Total Non-elderly Population Uninsured (1997-99) | 23.5 |

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

### 1. Department of Insurance (DOI)

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

California differentiates between different types of "health insurers." Those providing health or disability insurance[1] through indemnity, preferred provider organizations (PPO), or entities other than health care service plans are regulated by the Department of Insurance (DOI).[2]

[1] Cal. Ins. Code § 106 (health insurance within definition of disability insurance).
[2] Cal. Ins. Code §§ 20, 688.5, 700, 740, 742 and 12921.

Health care service plans, otherwise known as prepaid, health maintenance, or managed care health organizations (MCOs), are regulated by the Department of Managed Health Care (DMHC).[3] This state summary will use the term "health insurer" to refer to those entities under the jurisdiction of DOI, and MCOs for those regulated by DMHC.

The DOI must approve all health insurers' application forms, policies, and contracts.[4] California is one of the few states that has a provision in the Insurance Code that prohibits health insurers from identifying or requesting the applicant's race, color, religion, ancestry, or national origin on an insurance application.[5] It is doubtful that health insurers are collecting such data in other ways.[6] Since MCOs are not under the jurisdiction of the Insurance Code, they are not bound by this provision.

2. Discrimination

Insurers may not discriminate in the acceptance or cancellation of insurance based on race, color, ancestry, or national origin, or use such characteristics, by themselves, to constitute a condition or risk for which a higher rate, premium, or charge will be required of the insured.[7]

The state's Unruh Civil Rights Act declares that all persons in the state are entitled to full and equal accommodations and service in all business establishments of every kind whatsoever.[8] The Unruh Act has been found to apply to insurers.[9]

3. Confidentiality

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[3] Cal. Health & Safety Code § 1341.

[4] Cal. Ins. Code § 10291.5.

[5] Cal. Ins. Code § 10141. There is an analogous statute prohibiting other types of insurers from asking for the applicant's race, color, religion, national origin, or ancestry. Cal. Ins. Code § 679.73. By contrast, however, California now requires automobile, homeowners, commercial multiple peril, and fire insurers, among others, to collect data on the race and national origin of each of its insureds in order to allow DOI to determine whether the insurer is declining coverage to applicants in any underserved community for improper reasons. Cal. Code Regs. Tit. 10, § 2646.6. To accomplish this, the DOI has set up a mechanism that requires the insurer to collect the applicant's race or ethnicity information on a separate, detachable form that refers to the application. In this way, the application itself does not include any of the identifying information. The form states that the information is requested by the state to monitor the insurer's compliance with the law, and that the applicant is not required, but is encouraged, to provide it. The form also states that the insurer may not use the information for underwriting or rating purposes. Telephone conversation with Natasha Ray, Public Advisor, Department of Insurance on April 11, 2001.

[6] *Id.*

[7] Cal. Ins. Code § 10140.

[8] Cal. Civ. Code § 51.

[9] *See e.g., Kote v. First Colony Life Insurance Co.*, 927 F. Supp. 1316 (C.D. Ca.1996) and *Wolitarsky v. Blue Cross of California*, 53 Cal. App. 4th 338, 61 Cal. Rptr. 2d 629 (1997).

Although filings and records of DOI are public records, there are exemptions from disclosure: (1) for medical and other similar records that would constitute an unwarranted invasion of personal privacy if disclosed; (2) applications filed with an agency responsible for the regulation of insurance companies; and (3) information received in confidence by such a state agency.[10]

Moreover, California has a detailed statutory scheme to protect insurance information and privacy.[11] It prohibits pretext interviews, requires notices of information practices to all applicants, mandates specific disclosure authorization forms, specifies procedures to follow upon an individual's request to access personal information, allows amendment or correction to recorded personal information, explains prohibited grounds for adverse decisions, and provides explicit guidelines for limited disclosures of personal and privileged information.[12]

2. Department of Managed Health Care (DMHC)

a. Statutes, Regulations, Policies and Other Written Materials

DMHC was created on July 1, 2000 to regulate MCOs.[13] The DOI prohibition against collecting race and ethnicity data on an insurance applications does not apply to MCOs, and there are no similar provisions that do.[14]

In fact, DMHC is collecting information from each MCO to determine how they address any cultural and linguistic (C&L) barriers faced by their members. The Office of the Patient Advocate recently surveyed all the MCO Chief Executive Officers concerning their cultural and linguistic access policies.[15] Responses are voluntary and will be incorporated into a Consumer Report Card to be issued later this year.[16]

In the regulations describing health plan applications, there are several requirements for

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[10] Cal. Gov't Code § 6254(c), (d)(1) & (d)(4).

[11] Cal. Ins. Code §§ 791-791.26 (Insurance Information and Privacy Act)(IIPA).

[12] *Id*. at 791.03-791.13.

[13] Cal. Health & Safety Code §§ 1341 *et seq*.; *see also* "About the Department" at: http://www.dmhc.ca.gov/info/aboutdmc/.

[14] Letter of G. Lewis Chartrand, Jr., Assistant Deputy Director, Office of Legal Services, DMHC, dated May 1, 2001 at 1 (stating that Cal. Ins. Code § 10141 "likely does not apply to health care service plans.")

[15] Plans were asked, for example: (1) how they determine the C&L needs of their enrollees; (2) about their compliance with Title VI of the Civil Rights Act of 1964, if applicable; (3) whether they have a written language-assistance policy; (4) whether they provide notice of free interpreter services; (5) whether they provide training about the plan's LEP policy to their staff and providers; (6) how they evaluate their provider network's capacity to meet C&L needs; and (7) how they assess health disparities of the enrollees. March 2001 letter of Angela Mora, Patient Advocate, Office of Patient Advocate, DMHC.

[16] Telephone conversation with Angela Mora, DMHC on April 5, 2001.

individual contract insurers to submit enrollment projections which contain: (1) a "description (e.g. ethnic, demographic, economic, etc) of each target population"; (2) the estimated number of persons in each target population; (3) the distribution of the target population within and around the applicant's service area; (4) the projected number of subscribers and enrollees expected to be obtained from each target population; and (5) substantiation of the projections by furnishing documentation, including reliable market surveys.[17] Although this information is gathered before a plan is operational, the system created to collect such race, ethnicity, and primary language data could continue to provide useful information for the insurer.

b. Discrimination

No MCO may refuse to enter into any contract, cancel, or decline to renew or reinstate any contract because of the race, color, ancestry, national origin, or a range of other characteristics, of any subscriber, enrollee, member, or any other contracting party.[18]

c. Confidentiality

As with the confidentiality provisions which apply to DOI, records and information held by DMHC are open to public inspection,[19] but certain records are exempt, including medical and similar files and information received in confidence.[20]

## 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

DHS is the state agency directing the Medicaid program, known as Medi-Cal.[21] 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.

However, the Medi-Cal Managed Care Contract (MMCC) has provisions which encourage contracting health plans to collect race, ethnicity, and primary language data to ensure they can provide culturally and linguistically competent services.[22] The contract language was explained in five Medi-Cal Managed Care Letters issued by DHS to provide additional guidance for the MCOs.[23] Several requirements strongly support the collection of key demographic data.

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[17] CCR Tit. 28, § 1300.51.
[18] Cal. Health & Safety Code § 1365.5.
[19] Cal. Health & Safety Code § 1341.5.
[20] Cal. Govt. Code § 6254.
[21] Cal. Welf. & Instit. Code §§ 10740 & 14100.
[22] *See* MMCC § 6.10.
[23] Medi-Cal Managed Care Division All Plan Letter 99005 (Cultural Competency in Health Care - Meeting the Needs of a Culturally and Linguistically Diverse Population); Policy Letter 99-01

For example, there are various numerical triggers for determining when the provision of interpreter services for a particular language group becomes mandatory.[24] The MCO must be able to determine which languages meet those thresholds. Also, each MCO must conduct a health education and cultural and linguistic group needs assessment to identify the needs of its members.[25] Related to this provision is the establishment of a Community Advisory Committee which would advise the MCO on the needs of LEP members and the provision of culturally competent care.[26] This Committee must be reflective of the Medi-Cal population in the MCO's service area.[27] These are all part of the MCO's obligation to develop and implement a "Cultural and Linguistic Services Plan", and together they assume an ability to ascertain at least the ethnic and linguistic make-up of the population being served.[28]

There are also some local efforts to collect race, ethnicity, and primary language information from Medi-Cal and Healthy Families health insurers. For example, in Los Angeles, LA Care Health Plan, the county oversight plan for Medi-Cal and Healthy Families programs, collects race, ethnicity and primary language data from its contracting health plans and has conducted a preliminary audit to assess those plans on their cultural and linguistic competence.[29]

DHS also collects vital statistics[30] and other health data including: (1) race and ethnicity of live births and infant deaths;[31] (2) race and ethnicity of the parents for birth certificates;[32] (3) race or color of foundlings;[33] (4) race or color of adoptee's birth certificate[34] or amended

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(Community Advisory Committee); Policy Letter 99-02 (Health Education and Cultural and Linguistic Group Needs Assessment); Policy Letter 99-03 (Linguistic Services); and Policy Letter 99-04 (Translation of Written Informing Materials) dated April 2, 1999.

[24] MMCC § 6.10.2. The MCO must: "provide linguistic services to a population group of mandatory Medi-Cal eligibles residing in the proposed Service Area who indicate their primary language as other than English and who meet a numeric threshold of 3,000, or to a population group of mandatory Medi-Cal eligibles residing in the proposed Service Area who indicate their primary language as other than English and who meet the concentration standards of 1,000 in a single ZIP code or 1,500 in two contiguous ZIP codes."

[25] MMCC § 6.10.6; MMCD Policy Letter 99-02. The letter suggested many possible data sources for the MCOs to use: (1) demographic information including cultural, ethnic and language characteristics; (2) prevalence, incidence, and risk-reduction data from national, state, and local agencies by ethnicity group; (3) consumer survey data; (4) community advisory board input; (5) Health Status and Behavioral Risk Data; (6) focus group surveys, etc. *Id*.

[26] MMCC § 6.10.5

[27] Policy Letter 99-01 at 1-2.

[28] MMCC § 6.10.6; All Plan Letter 99005.

[29] Telephone Conversation with Beatriz Solis, Director, Cultural & Linguistic Services Department, LA Care Health Plan on April 9, 2001.

[30] Cal. Health & Safety Code § 100150.

[31] Cal. Welf. & Instit. Code § 14148.91.

[32] Cal. Health & Safety Code § 102425.

[33] Cal. Health & Safety Code § 102505.

[34] Cal. Health & Safety Code § 102645.

certificate;[35] and (5) race or color on death certificates.[36]

b. Discrimination

California has a statute analogous to Title VI to prohibit state-funded entities from discriminating.[37] It states that no person in the state shall, on the basis of ethnic group identification, color, or a number of other protected categories, be unlawfully denied the benefits of, or be unlawfully subjected to discrimination under any program or activity that receives any financial assistance from the state.[38] Moreover, county departments cannot discriminate against any applicant or beneficiary on the basis of race, color, creed, ethnic origin, or several other reasons.[39]

Prepaid health plans and Primary Care Case Management plans participating in the medical assistance program must certify their willingness and ability to enroll members regardless of their race, creed, color, national origin, or a number of other categories.[40] Also, the MMCC includes a provision that the contractor must ensure compliance with Title VI, which prohibits recipients of federal financial assistance from discriminating against persons based on race, color, or national origin.[41]

c. Confidentiality

All types of information, whether written or oral, concerning a person, made or kept by any public employee or agency in connection with the administration of any public assistance program must be kept confidential and can only be used to administer the program directly.[42] Information about applicants which must be safeguarded includes names and addresses, medical services provided, social and economic conditions or circumstances, agency evaluation of personal information, and medical data, including diagnosis and past history of disease or disability.[43] There are limited exceptions to the general rule of non-disclosure if it is related to an issue of a conservatorship for the person involved, for a criminal prosecution, or to another agency.[44]

With regard to vital records, medical and health reports must be kept confidential except for statistical tabulations, where disclosure is limited to the state and local registrar's staff or

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[35] Cal. Health & Safety Code § 102675.
[36] Cal. Health & Safety Code § 102875. Notably, race or color of the parties is no longer allowed on marriage certificates. Cal Health & Safety Code § 103175.
[37] Cal. Gov't Code §11135.
[38] *Id*.
[39] CCR Tit. 22, § 50107.
[40] CCR Tit. 22, §§ 53500 and 56500.
[41] MMCC § 3.8.
[42] Cal. Welf. & Inst. Code § 14100.2.
[43] *Id*. at § 14100(b).
[44] *Id*.

health department, or persons with a valid educational or scientific interest for health purposes.[45]

2. Major Risk Medical Insurance Board (MRMIB)

a. Statutes, Regulations, Policies and Other Written Materials

The agency which administers California's SCHIP, called Healthy Families (HF), is MRMIB.[46] There is a state statute requiring all participating health plans to submit an annual report containing information on its provider network as it relates to its linguistic services, and the ethnic population served by its providers.[47] The health insurers must collect race, ethnicity, and primary language information from their providers in order to comply with the statute.

A regulation describing the eligibility, application, and enrollment requirements for HF states that the application should ask for the ethnicity of each person applying.[48] Actual reporting of this data element is optional unless the person is Native American.[49] The HF application also asks what language the applicant reads and speaks best.[50]

In addition, MCOs participating in HF must comply with HF contract language requiring a "Cultural and Linguistic Needs Assessment" of its members. The contracts also establish a threshold of 5% or 3,000 subscribers who speak a given language which triggers the provision of written materials in that language.[51] Finally, by policy, the reporting forms that health plans must submit require collection of race, ethnicity, and primary language.[52]

b. Discrimination

Healthy Families must be administered without regard to race, creed., color, national origin, or several other classifications.[53] There is also an anti-discrimination statement on the HF Application.[54] The application also states that the applicant can ask for an interpreter.[55] Each HF contractor must ensure compliance both with Title VI and the California statute which forbids

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[45] Cal. Health & Safety Code § 102460.
[46] Cal. Ins. Code § 12693.20.
[47] Cal. Ins. Code § 12693.37(2). Although MRMIB can use DMHC's determination of a health plan network's adequacy, the statute directs MRMIB to collect and review demographic, census and other data to provide prospective health plans target areas with significant numbers of uninsured children. *Id*. at § 12693.37(c)(1).
[48] Cal. Code Reg. Tit. 10, § 2699.6600(c)(G).
[49] *Id*.
[50] Healthy Families Application at A1.
[51] HFMC at 11.
[52] Telephone conversation with Lorraine Brown, Deputy Director, Benefits & Quality Monitoring, MRMIB on April 11, 2001.
[53] Cal. Ins. Code § 12693.28 and Cal. Code Regs. tit. 10, § 2698.200(a).
[54] HF Application at 7.
[55] *Id*.

recipients of state funds from discriminating on the basis of race, color, or national origin.[56]

c. Confidentiality

All applications and records concerning any individual made or kept by any public officer or agency in connection with the administration of public social services must be kept confidential and must not be disclosed unless for a purpose directly connected with the administration of the program, or for any investigation, prosecution, or criminal or civil proceeding conducted in connection with the program.[57] The HF Application informs the applicant that the information given in the application is private and confidential under California law and that the information will be disclosed only in accordance with those laws.[58]

## D. Observations

California is trying to strike a balance between collecting demographic information such as race, ethnicity and primary language data to address the needs of its diverse population, and protecting the privacy and equal treatment of its citizens. Despite the prohibition on the collection of such data on the application forms of certain types of health insurers, California is in fact doing much more than many other states, and may serve as a useful model.

For example, the Office of Statewide Health Planning and Development (OSHPD), within the Health and Human Services agency, collects demographic information, including race, ethnicity, or primary language, from California's licensed hospitals, long-term care facilities and primary care clinics.[59] In this extensive effort: (1) the Patient Discharge Data reporting system collects the race and ethnicity of discharged patients from all California hospitals; (2) the Annual Report of Hospitals collects a snapshot of race and ethnicity information from patients in the hospitals' long-term care beds; (3) the Annual Long-Term Facility Report collects a similar snapshot of race/ethnicity information from patients in those facilities; (4) the Annual Utilization Report of Home Health Agencies and Hospice collects facility level information on hospice patient's race and ethnicity; and (5) the Annual Utilization Report of Primary Care Clinics provides facility level information on the languages spoken by clinic staff and race/ethnicity and primary language spoken by the patient population.[60] In 2002, OSHPD will begin to collect patient level data on race and ethnicity for emergency rooms and ambulatory care, as well.[61]

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[56] HFMC 2000-2003 at 9 and Cal. Gov't Code §11135.

[57] Cal. Welf. & Instit. Code §10850; *see also* Cal. Welf. & Instit. Code § 14100.2. There are some limited exceptions to the general rule. Cal. Welf. & Instit. Code § 10850.

[58] HF Application at 7.

[59] Letter from David Carlisle, M.D., Ph.D., Director, OSHPD, dated March 12, 2001 at 1.

[60] *Id.* at 1-2. The statute regarding the collection of race, ethnicity and primary language is the only one requiring this information to be reported by the clinic, even without a specific request from OSHPD. Cal. Health & Safety Code §1216.

[61] *Id.* at 2.

With over 16 million people enrolled in MCOs in California,[62] the new DMHC will have a large influence over the direction of health care in the state. The establishment of the Patient Advocate system and its consumer rights orientation will hopefully prove useful in ensuring a high quality health care system for Californians of all races and ethnicities.

[62] Cal. Health & Safety Code § 1342.1.