COLORADO

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).

COLORADO

A. General and Health Demographics

Total Population	4,301,261
Percent Black Population	3.7
Percent American and Alaskan Native Population	0.7
Percent Asian Population	2.2
Percent Native Hawaiian and Other Pacific Islander Population	0.1
Percent Hispanic Population (of any race)	17.1
Percent White Population	74.5
Other (some other race and two or more races)	1.8
Language Use - 1990 census data	
Percent Limited English Proficiency (LEP) Population	3.70 (6.68)
Health Care Delivery Profile	
Percent of Total Non-elderly Population Privately Insured (1997-99)	77.9
Percent Total Population Enrolled in HMOs	38.5
Medicaid Enrollment (as of June 30, 2000)	313,183 (7.28%)
Medicaid Managed Care Enrollment	292,080 (93.26%)
Percent of Total Non-elderly Population Uninsured (1997-99)	17.2

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

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

The Commissioner of the Division of Insurance (DOI) regulates all health care insurers in the state.[1] Colorado defines a "health insurer" as any entity that provides health coverage in the

[1] Colo. Rev. Stat. §§ 10-1-108 & Colo. Rev. Stat. § 10-16-107.2 (the Commissioner must approve all sickness and health applications and policies before a certificate of authority can be issued.)

state, which includes a sickness or accident insurance company, a managed care organization (MCO) or a health maintenance organization (HMO).[2] The term "health insurer" will be used in this summary to refer to all of these entities unless the law makes distinctions among them relative to the issue being discussed.

There are no statutes, regulations or other written materials requiring or prohibiting the collection of race, ethnicity or primary language data by health care insurers. However, MCOs must include in their statutorily mandated access plans their "efforts to address the needs of covered persons with limited English proficiency and illiteracy and with diverse cultural and ethnic backgrounds."[3] This statute strongly suggests the need for collection of race, ethnicity and primary language information from applicants and enrollees.

2. Discrimination

HMOs cannot "unfairly" discriminate against any enrollee based on race, color, creed, ancestry, national origin, or several other enumerated characteristics.[4]

Although there is no statute which explicitly forbids the use of race or ethnicity in determining health insurance coverage, there is a general insurance statute prohibiting "unfair discrimination" between individuals of the same class and of essentially the same hazard for any policy, benefits, terms and conditions of the contact, or in any other manner.[5] Another provision of this statute states that rates for any sickness or health insurance policy cannot be "excessive, inadequate, or unfairly discriminatory."[6]

Colorado also has a public accommodations statute which prohibits the denial or refusal of the full and equal enjoyment of the goods, services, or facilities of a place of public accommodations because of race, creed, color, ancestry or national origin, among several other protected classifications.[7]

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[2] Colo. Rev. Stat. § 10-16-102 (8).

[3] Colo. Rev. Stat. §§ 10-16-704 (MCOs) & 10-16-401(4)(p)(HMOs).

[4] 3 Colo. Code Regs. § 4-7-2 (6).

[5] Colo. Rev. Stat § 10-3-1104.

[6] Colo. Rev. Stat § 10-16-107(1).

[7] Colo. Rev. Stat. § 24-34-601. The Colorado Civil Rights Commission has jurisdiction to enforce the public accommodations statute. Colo. Rev. Stat. § 24-34-305. The issue of whether insurance companies are covered by the statute has not been decided, but the definition of "public accommodation" appears to encompass health insurers: "any place of business engaged in any sales to the public and any place offering services, facilities, privileges, advantages, or accommodations

3. Confidentiality

Although Colorado law provides that all public records of public agencies, including the Department of Insurance (DOI), are open for inspection by any interested person,[8] there is an exception to this rule for "medical" data about individuals.[9] If the DOI considers information confidential, it is maintained in a separate, confidential file and will not be released.[10]

All applications, filings, and reports of HMOs are considered public records,[11] but any data or information pertaining to the diagnosis, treatment, or health of any applicant or enrollee is confidential and must not be disclosed, except: (1) to meet the HMO's statutory obligations; (2) upon the express consent of the applicant or enrollee; (3) pursuant to statute or court order; or (4) if the information is relevant to litigation between the applicant or enrollee and the HMO.[12] The HMO must place confidential information in a separate file with an explanation of why the document is considered confidential.[13]

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

1. Department of Health Care Policy & Financing (DHCPF)

a. Statutes, Regulations, Policies and Other Written Materials

DHCPF is the state agency responsible for administration of the Medicaid program[14] and SCHIP.[15] There is no state statutory or regulatory provision that prohibits or requires the collection

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to the public, ... or other establishment conducted to serve the health, appearance, or physical condition of a person." *Id.*

[8] Colo. Rev. Stat. § 24-72-201. Public records are defined as "all writings, made, maintained, or kept by the state, any agency, institution, or political subdivision of the state." Colo. Rev. Stat. §24-72-202(6)(a)(1).

[9] Colo. Rev. Stat. § 24-72-204(3)(a)(I).

[10] 3 Colo. Code Regs. § 4-7-1 (16).

[11] Colo. Rev. Stat. § 10-16-422; 3 Colo. Code Regs. 4-7-1(16).

[12] Colo. Rev. Stat. § 10-16-423.

[13] 3 Colo. Code Regs. 4-7-1 (16).

[14] Colo. Rev. Stat. §§ 26-4-104(1) & 26-4-110(1) & (5); *see also* DHCPF homepage at: http://www.chcpf.state.co.us.

[15] Colo. Rev. Stat. § 26-19-103(2).

of race, ethnicity, or primary language data by DHCPF.[16] However, DHCPF does require its contractors, including MCOs, to gather such information.[17] Contracting MCOs must develop policies and procedures to include self-disclosed racial, ethnic and primary language information in its information management system.[18] In addition, DHCPF "contracts with an enrollment broker agency, acting under the supervision of DHCPF and selected through a competitive bidding process, to gather some of this data when newly eligible Medicaid clients are choosing their medical providers."[19] By statute, the enrollment broker or facilitator must attempt to ascertain and consider, among other things, their linguistic and special medical needs.[20] The Contract also requires MCOs to provide culturally and linguistically appropriate materials and services, and to "routinely survey their members for information on primary expressive and written language needs."[21]

According to DHCPF, Medicaid and SCHIP applications are processed at the county level by the Department of Social/Human Services (DSHS).[22] The application contains an ethnicity

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[16] Letter of Jeanette Hensley, Manager, Acute Care Benefits Section, DHCPF dated January 17, 2001 at 1 ("Hensley Letter").

[17] *Id.*

[18] Colorado Contract, pp. 57-58.

[19] Hensley Letter. The enrollment broker requests from the client their primary spoken language in order to match clients with appropriate physicians and MCOs.

[20] Colo. Rev. Stat. § 26-4-117. Colorado is unusual in considering cultural and language barriers as akin to a special *medical* need. This statutory approach is reflected in the Contract, which defines "language or comprehension barriers" to be "special health care needs." Colorado Contract, p. 3. In addition, one of the factors use to select MCOs to deliver the state's health care services is an assessment of the special needs of the client populations, including their cultural and language needs. Colo. Rev. Stat. § 26-4-703; *see also* 10 Colo. Code Regs. § 8.207.41.

[21] Colorado Contract, pp. 57-58; *See* Hensley Letter. Other contractual components of culturally competent services include: (1) outreach to specific cultural and ethnic communities for diseases prevalent in those groups; (2) good faith efforts to identify enrolled members whose cultural norms and practices may affect their access to health care; (3) cultural competence training programs for network providers and staff about health care attitudes, values, customs, beliefs, and parenting practices, as well as the medical risks associated with the client population's race; (6) written translated materials in any non-English languages spoken by 500 or more members; (7) procedures for responding to providers' and members' needs for interpreter services at no cost to members; and (9) good faith efforts to implement a strategy to recruit and retain qualified, diverse and culturally competent clinical providers that represent the racial and ethnic communities being served..

[22] DSHS is the agency that accepts Medicaid applications at its county offices and determines Medicaid eligibility. Colo. Rev. Stat. §§ 26-4-106(1), 26-1-111(2)(e) and (6), and 10 Colo. Code

field,[23] but because the information "is not consistently and specifically asked to all clients" and is not confirmed by the client, DHCPF "does not rely on these populated fields for data extraction."[24]

DHCPF does collect race data on its Consumer Assessment of Health Plans Study (CAHPS) which asks several questions related to race, ethnicity and primary language.[25]

b. Discrimination

DHCPF must comply with federal Medicaid requirements,[26] and it prominently declares on its website that no person can be excluded from participation in its programs or denied benefits, or otherwise discriminated against because of race, color, national origin, or several other protected bases.[27] All Medicaid and SCHIP applicants and clients are eligible for enrollment in MCOs without regard to race, ethnicity, creed, color, ancestry, national origin, and several other protected characteristics.[28]

DHCPF also regulates health care coverage cooperatives (HCCCs), which provide health coverage and health care purchasing services for members and their eligible employees.[29] These entities cannot differentiate between classes of membership on the basis of race, among other protected bases.

Regs. § 8.205.51; *see also* Hensley Letter.

[23] On the SCHIP application, the child's "ethnicity" is requested and gives the applicant the following choices: White, Hispanic, Black, Native American, Asian, Alaskan Native, and Other. It also informs them that they can choose not to answer the question. SCHIP Application at 2.

[24] Hensley Letter at 1. Moreover, MCOs must access and compile data concerning health data and outcomes, as well as the overall change in the health status of populations served. Colo. Rev. Stat. § 24-4-121(1).

[25] "Consumer Assessment of Health Plans Study: 1999 Client Satisfaction Survey of Adults and Children," p. 8, 1/21/00 at: http://www.chcpf.state.co.us/qa/1999CAHPSRpt.pdf.

[26] Colo. Rev. Stat. § 26-4-105; *see also* 10 Colo. Code Regs. § 7.00071 (DSHS county staff must comply with Title VI and cannot deny benefits solely on the basis of race, color, or national origin).

[27] "Who Does What in Colorado Health Care," at: http://www.chcpf.state.co.us/refmat/wdwichc.html.

[28] 10 Colo. Code Regs. § 8.205.51 (Medicaid) and Colo. Rev. Stat. § 26-19-110(2)(SCHIP).

[29] Colo. Rev. Stat. § 6-18-201(4).

In addition, a contracting MCO providing services under the Medicaid managed care program must comply with Title VI of the Civil Rights Act of 1964.[30]

c. Confidentiality

Although the records of DHCPF's and DSHS' are public records,[31] there is an exception for "medical data" on individuals.[32] It is unlawful for any person to solicit, disclose or use any information concerning people who apply for medical assistance, except to the Colorado Bureau of Investigation upon request or for purposes directly related to the administration of the program.[33] DSHS county staff must treat al information as confidential, including the names and addresses of applicants and any medical information.[34]

HCCCs must also protect individually identifiable information which they collect and must implement safeguards to protect the privacy of that information.[35] Disclosure is prohibited unless authorized by the individual, made to federal, state, or local law enforcement for lawful purposes, or for research projects, and must be kept to the minimum amount necessary.[36]

2. Department of Public Health and Environment (DPHE)

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

The department responsible for collecting vital statistics and investigating and controlling communicable diseases is DPHE.[37] It collects the ethnicity of each patient receiving electroconvulsive treatment,[38] and race and ethnicity for communicable diseases such as

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[30] Colorado Contract, p. 33.

[31] Colo. Rev. Stat § 24-72-201.

[32] Colo. Rev. Stat. § 24-72-204(3)(a)(I).

[33] *Id.* at § 26-1-114(3)(a)(I) & (III). Insurance companies that provide data to state agencies cannot be held liable for providing such information or for the use of the information.

[34] Colo. Rev. Stat. § 26-1-114(1); 10 Colo. Code Regs. § 7.000.72 (prior to any release of information, the county shall obtain written permission from the subject).

[35] Colo. Rev. Stat. §§ 6-18-103(1) & (2).

[36] *Id.*

[37] Colo. Rev. Stat. § 25-1-107(a) & (f).

[38] Colo.. Rev. Stat. § 25-2-120.

tuberculosis,[39] and listed reportable diseases.[40] Although not required in the statute creating its cancer registry, Colorado also provides race information in its cancer report.[41] Similarly, although not statutorily required, race information is collected for the state's birth and death statistics.[42]

One of the factors which DPHE considers when evaluating the need to establish local or regional health departments is the social characteristics of the population, which specifically includes the proportion of ethnic groups and health service needs as related to those of the national population.[43] Obtaining such information would seem to call for the collection of race and ethnicity data.

b. Discrimination

The state public accommodations statute applies to DPHE since it covers the state and its agencies and political subdivisions.[44] Moreover, as the regulator of skilled and intermediate nursing facilities which receive federal funding, DPHE has the authority to impose remedies to enforce federal Medicaid regulations.[45] It also must ensure that hospital facilities provide services for all persons without discrimination based on race, creed, or color.[46]

c. Confidentiality

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[39] Colo. Rev. Stat. § 25-4-503.

[40] 6 Colo. Code Regs. § 1009-1.

[41] "Colorado Cancer Incidence - 1998 Rates and Counts by Sex, Site, and Race/Ethnicity," at: http://www.cdphe.state.co.us/pp/cccr/CC98IncAndMort.pdf. However, race is only broken down into White/ Non-Hispanic, White/Hispanic and Black.; *See also* 6 Colo. Code Regs. § 1009-3.

[42] *See* Colo. Rev. Stat. §§ 25-2-110 (death certificate), 25-2-112 (birth certificate), and "Colorado Births and Deaths 1999," p. 4, 7 at: http://www.cdphe.state.co.us/hs/county1999/Colorado99.pdf.

[43] Colo.. Rev. Stat. § 25-1-702.

[44] Colo. Rev. Stat. §§ 24-34-301 & 24-34-601.

[45] Colo. Rev. Stat. § 25-1-107.5.

[46] Colo. Rev. Stat. § 25-3-401.

Vital statistics records are treated as confidential.[47] Cancer cases are also strictly confidential and are specifically included in the "medical records" exception to the public records statute.[48]

With respect to the investigations of communicable and non-communicable diseases, any reports or records are strictly confidential and cannot be disclosed except: (1) medical and epidemiological information if no individual can be identified, or such information is kept to the minimum necessary for public health purposes, or (2) to comply with child abuse requirements.[49]

D. Observations

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

Over 90% of the state's Medicaid population is enrolled in MCOs. Each of the MCOs contracting with Medicaid is already supposed to be gathering and storing in its information management system data on race, ethnicity, and primary language of its enrollees. Extending such collection and reporting practices to those MCOs serving the private sector would therefore not appear a burdensome proposition at this point.

The Division of Planning (Division) is the primary state agency responsible for collecting and reporting the state's population statistics. It includes data on racial and ethnic populations in its projections.[50] The Division cooperates with other agencies to ensure that its statistics, estimates, and projections are as accurate as possible, and can authorize other agencies to prepare and maintain similar demographic information.[51] Therefore, if there were a recognized need for universal information on race, ethnicity, and primary language, such as to address racial and ethnic health disparities, Colorado would be well situated to accomplish that goal.

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[47] Colo. Rev. Stat. § 25-2-117(1). The Registrar must protect the integrity of the vital records and cannot disclose any information unless satisfied that the applicant has a direct and tangible interest in the record, or that it is for statistical or research purposes. 5 Colo. Code Reg. § 1006-1.

[48] 6 Colo. Code Rev. § 1009-3(IV); *see also Eugene Cervi Co. v. Russell*, 31 Colo. App. 525, 506 P.2d 748 (1972), aff'd, 184 Colo. 282, 519 P.2d 1189 (1974)(vital statistics records held to be confidential and exempt from any right to inspection).

[49] Colo. Rev. Stat. § 25-1-122; 6 Colo. Code Reg. § 1009-1(9).

[50] Colo. Rev. Stat. § 24-32-204(1).

[51] *Id.* at § 24-32-204(2)-(4).