HAWAII

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).

HAWAII

A. General and Health Demographics

Total Population	1,211,537
Percent Black Population	1.7
Percent American Indian and Alaskan Native Population	0.2
Percent Asian Population	40.8
Percent Native Hawaiian and Other Pacific Islander Population	9.0
Percent Hispanic Population (of any race)	7.2
Percent White Population	22.9
Other (some other race and two or more races)	18.3
Language Use - 1990 census data	
Percent Limited English Proficiency (LEP) Population	4.97 (12.65)
Health Care Delivery Profile	
Percent of Total Non-elderly Population Privately Insured (1997-99)	77.9
Percent of Total Population Enrolled in HMOs	44.53
Medicaid Enrollment (as of June 30, 2000)	177,531 (14.65%)
Medicaid Managed Care Enrollment	140,594 (79.19%)
Percent of Total Non-elderly Population Uninsured (1997-99)	11.1

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

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

Hawaii uses the term "health insurer" or "carrier" to describe any entity authorized to issue health insurance, such as a nonprofit health service or hospital service organization, managed care organization (MCOs), or health maintenance organizations (HMOs).[1] This state summary will use the term "health insurer" to refer to these entities, unless there is a distinction

[1] Haw. Rev. Stat. § 431:10-102; *see e.g.* Haw. Rev. Stat. §§ 431:13-108(a) & (i), § 431L-1, § 432D-1, § 432E-1, and 323C-1. Hawaii includes health insurance within its definition of "disability insurance." Haw. Rev. Stat. § 431:1-205.

made within the statutes or regulations regarding the issue being discussed.

The Department of Insurance (DOI) regulates all health insurers in the state[2] and must approve all their filings.[3] Hawaii has no statutes or regulations that prohibit or require the collection or reporting of racial, ethnic, or primary language data.

MCOs, including HMOS,[4] must submit annual reports on performance, including measures of quality, outcomes, access, satisfaction, and utilization of services using a "core data and information set that builds upon nationally recognized measurement systems."[5] The Hawaii Patient's Rights and Responsibilities Task Force[6] intends to add an "ethnicity" question this year to its CAPHS survey for a report card to be distributed internally to health plans.[7] In addition, Hawaii uses a survey similar to but more comprehensive than BRFSS to capture race and ethnicity data as it relates to adult health behaviors.[8]

2. Discrimination

The Hawaii Insurance Code prohibits as an "unfair practice" discrimination in favor of or between insureds having substantially like insuring factors or expense elements in the terms and conditions, rates, benefits, or any other rights of any insurance contract.[9] However, this provision does not directly prohibit discrimination based on race, ethnicity, or national origin.[10]

The state's civil rights statute prohibits "unfair" practices which deny a person the full and equal enjoyment of the services of a place of public accommodation on the basis of race, color, ancestry, or other protected characteristics.[11] A "public accommodation" includes a

---

[2] Haw. Rev. Stat. §§ 431:2-201 and 431:3-201.

[3] Haw. Rev. Stat. §§ 431:2-202.5 , 431:3-301, and 432D-2.

[4] Haw. Rev. Stat. § 432E-1.

[5] Haw. Rev. Stat. § 432E-10.

[6] *See* Notes, Haw. Rev. Stat. § 431:2-102.

[7] Telephone conversation with Susan Forbes, Executive Director, Hawaii Health Information Corporation on 4/3/01.

[8] Conversation with Dr. Alvin Onaka, Chief and State Registrar of State Vital Statistics, Office of Health Status Monitoring, April 3, 2001; *see also* "The Hawaii Health Surveys," at: www.state.hi.us/health/stats/surveys/hs_hsp.html.

[9] Haw. Rev. Stat. § 431:13-103(7)(B) (2000).

[10] By contrast, three statutes which deal with motor vehicle insurance do prohibit discrimination based on race, creed, ethnic extraction, and other characteristics. Haw. Rev. Stat. §§ 431:10C-111(c), 431-10C-207, and 431C-409(3)(D) (2000). There is a similar prohibition against the use of risk classifications based on race, creed, or national origin of the insured in the setting of rates for casualty, surety, property, marine and transportation insurance. Haw. Rev. Stat. § 431:14-103(a)(5) (2000). In addition, Hawaii does have an explicit prohibition against the use of genetic information in health insurance coverage by health insurers. Haw. Rev. Stat. §§ 431:10A-118 (individual health plans), 423D-26 (HMOs), & 432:1-607 (mutual benefit society).

[11] Haw. Rev. Stat. § 489-3.

"professional office or a health care provider ... or other similar service establishment."[12] Although it is not certain that a health insurer would be included in this definition, another provision prohibits any entity to aid in such discrimination, which should, at a minimum, cover entities like HMOs where the insurance and service are directly linked.[13] Moreover, the DOI is also covered by this statute, as it applies to any state or governmental entity or agency.[14]

3. Confidentiality

There are fairly extensive statutory provisions which limit the disclosure of protected health information by health insurers.[15] The statute distinguishes between "nonidentifiable health information" and "protected health information",[16] and ensures the confidentiality of the latter under most circumstances.

Although all records and public filings of the DOI are open to public inspection,[17] information related to medical history, diagnosis, conditions, treatment or records are an exception to the general public records rule.[18] An Attorney General opinion has found that an individual's ethnicity and medical information are examples of information that fall within this exception.[19] Moreover, the identities of enrollees in managed care plans' required annual reports are protected from disclosure.[20]

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

1. Department of Human Services (DHS)

a. Statutes, Regulations, Policies and Other Written Materials

---

[12] Haw. Rev. Stat. § 489-2(10).

[13] Haw. Rev. Stat. § 489-5. There have been no cases interpreting whether this statute would be preempted by the anti-discrimination provision of the insurance statute. However, there is a provision stating that nothing in this section limits any cause of action based on any other unfair discrimination statute. Haw. Rev. Stat. §489-7.

[14] Haw. Rev. Stat. § 489-2.

[15] Haw. Rev. Stat. §§ 323C-1, *et seq.* Provisions include: (1) disclosure to the individual involved, with certain exceptions (§ 323C-11); (2) a notice of confidentiality form informing persons of their rights (§§ 323C-13 & 323C-22); (3) safeguards for the confidentiality of protected health information (§ 323C-14); and (4) restrictions on use and disclosure (§ 323C-21-39).

[16] Haw. Rev. Stat. §§ 323C-11 and § 323C-21-39.

[17] Haw. Rev. Stat. § 431:2-209(b).

[18] Haw. Rev. Stat. §§ 92F-13, 92F-14 and Haw. Weil's Code §§ 16-54-5 & 6 and Haw. Rev. Stat. §§ 432D-20 and 423D-21 (HMOs are subject to similar provisions, with provisions allowing disclosure only if necessary to comply with other HMO provisions, upon the express consent of the enrollee or applicant, pursuant to court order, or for litigation between the person and the HMO).

[19] Atty. Gen. Op. No. 94-6 (April 28, 1994)

[20] Haw. Rev. Stat. § 432E-13.

DHS administers the state's Medicaid program and SCHIP using both fee-for service and six HMOs through its Med-QUEST Division (Med-QUEST.)[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 Med-QUEST Application for Medical Assistance (the "Application") does ask for the reporting of race.[22] The Medicaid Consumer Assessment of Health Plans Study (CAHPS) also asks race, ethnicity, and primary language information.[23] Interestingly, although the Med-QUEST Application does not request primary language data, applicants have a right to an interpreter to assist with the application process.[24]

The Hawaii Medicaid Managed Care RFP requires that member materials, including information booklets and pamphlets, be prepared in "at least" the following languages: English, Ilocano/Tagalog, Chinese, Samoan, Vietnamese, and Korean.[25] In addition, the health plan must identify "health practices and behaviors of the recipients to design programs, interventions and services which effectively address . . . language barriers. . .."[26]

Finally, in the Hawaii Behavioral Health RFP, DHS requires the health plan to identify the "linguistic needs (*e.g.* interpretation services). . ." and "cultural needs. . ." of its enrollees.[27]

b. Discrimination

By regulation, providers in the fee for service program must comply with the non-discrimination provisions of Title VI of the Civil Rights Act of 1964 by not discriminating against beneficiaries on the basis of race, color, or national origin.[28] The Application itself states that applicants have the right to receive program services regardless of their race, color, national origin, or other covered characteristics.[29] Although race, ethnicity, and national origin are not specifically identified in the rules regulating the QUEST program, DHS may impose civil or administrative monetary penalties against health insurers that discriminate among enrollees.[30]

---

[21] Haw. Rev. Stat. §§ 346-59 and 346-59.4 & Haw. Weil's Code § 17-1700; *see also* "DHS Report on Fiscal Year 1999," p. 28-29, 32 at: http://www.state.hi.us/dhs/99Rpt-Net.PDF.

[22] "Application for Medical Assistance (Application)," p. 1. The application does not list racial categories, nor does it give any indication that it is voluntary to provide the information.

[23] Letter of Susan M. Chandler, Director, Med-QUEST Division, DHS, dated 12/15/00 (Chandler letter). According to Ms. Chandler, the background information is collected to better meet the needs of LEP applicants and recipients.

[24] Haw. Weil's Code § 17-647-3.

[25] Hawaii RFP, pp. 71-72.

[26] *Id.*, p. 31.

[27] Hawaii Behavioral Health RFP, pp. 13, 15.

[28] Haw. Weil's Code § 17-1736-15(2).

[29] Application at 3.

[30] Haw. Rev. Stat. § 346-59.5 and Haw. Weil's Code § 17-1727-61(b)(4); *see also*, Chandler letter (medical assistance benefits are provided on a non-discriminatory basis without regard to race, ethnicity, or language spoken).

In addition to these provisions, DHS is covered by the state public accommodations statute.[31] Moreover, another civil rights provision allows the State Civil Rights Commission to enforce the public accommodations statute's prohibition against discriminatory practices.[32]

The Hawaii RFP states that health plans must "comply with all applicable federal and state laws prohibiting discrimination against any person on the grounds of race, color . . .,[or] national origin. . ..."[33] Similarly, the Behavioral Health RFP requires compliance with the same federal and state laws and mandates that "all . . . plan recipients shall be provided the needed behavioral health services without regards [sic] to race, color. . . [or] national origin . . .."[34]

c. Confidentiality

All applications and records concerning any applicant or recipient must be kept confidential[35] and can only be disclosed: (1) to persons authorized by the state or federal government in connection with the administration of the medical assistance program; (2) for purposes directly connected to any investigation or prosecution in connection with the program; (3) to determine eligibility for the program, including disclosure to financial institutions; (4) upon written waiver by the applicant or recipient; and (5) other limited purposes.[36]

A public records exception prohibits disclosure of information relating to medical records, or eligibility for social services or welfare benefits.[37] Moreover, Med-QUEST records are not subject to any other public records laws and the names and addresses of applicants and recipients are confidential and cannot be disclosed, except to specified persons or upon written authorization.[38] The applicant or recipient must be informed in writing about the confidential nature of the information, unless disclosed for the administration of the program.[39]

Records of investigations from the State Civil Rights Commission are confidential and cannot be disclosed except by court order or if requested by parties to the complaint.[40]

2. Department of Health (DOH)

a. Statutes, Regulations, Policies and Other Written Materials

---

[31] Haw. Rev. Stat. §§ 489-2 & 489-8.
[32] Haw. Rev. Stat. §§ 368-1-3, 11.
[33] Hawaii RFP, p. 79.
[34] Hawaii Behavioral Health RFP, pp. 19, 45.
[35] The Application explains that certain information, such as the person's residence or business address, may be shared for administration of the program. Application at 3.
[36] Haw. Rev. Stat. § 346-10.
[37] Haw. Rev. Stat. §§ 92F-13 & 92F-14.
[38] Haw. Weil's Code §§ 17-1702-3(b)(3), 17-1702(4)-(6).
[39] Haw. Rev. Stat. § 17-1702-3(c).
[40] Haw. Rev. Stat. § 368-4(a).

DOH has recognized the importance of collecting demographic data on race and ethnicity to identify health trends[41] and reduce health disparities.[42] DOH also collects race/ethnicity data for vital statistics,[43] such as gathering data on race and color of foundlings[44] and for foreign born adoptions.[45] Other statistical information on race and ethnicity that DOH collects includes: (1) race information for cancer morbidity and mortality;[46] (2) race or ethnicity data for public health diseases;[47] (3) ethnicity of those participating in needle exchange programs;[48] (4) race and nationality of unclaimed dead bodies;[49] and (5) race for tuberculosis patients.

DOH has established a bilingual health education aide program to provide health education and public health services to LEP residents.[50] It is therefore likely that DOH collects primary language information to determine the necessary personnel to employ.

b. Discrimination

The public accommodation statute prohibits DOH from discriminating against persons based on race, color, or ancestry.[51]

c. Confidentiality

Vital statistics records are confidential and can only be disclosed to certain individuals and under limited circumstances.[52] All information collected for diseases threatening the public health is strictly confidential and cannot be disclosed unless: (1) the Director of DOH determines it is necessary to protect the public health and safety; (2) disclosure is for investigatory purposes; or (3) there is no identifying information released with the statistics.[53] Cancer statistics are also confidential as to the names of the persons concerned, except that researchers can use the names to seek

[41] "Health Trends in Hawaii: A Profile of the Healthcare System," p. 36 at: www.hhic.org/healthtrends/index.asp.

[42] "Healthy Hawai`i 2000," at: www.state.hi.us/health/resource/Healthy_Hawaii/opdh2000.htm. (the state component of the national Healthy People 2000 initiative)

[43] Haw. Rev. Stat. § 338-2. Although not required by law, the state reports race data in its Vital Statistics publications. *See e.g.*, "Presentation of Vital Statistics Data," at: www.state.hi.us/health/stats/vr_98/Notes.html.

[44] Haw. Rev. Stat. § 338-7(a)(3).

[45] Haw. Rev. Stat. § 338-20.5(a)(1)(C).

[46] Haw. Rev. Stat. § 321-43.

[47] Haw. Rev. Stat. § 321-311.5 (b).

[48] Haw. Rev. Stat. § 325-116(2).

[49] Haw. Rev. Stat. § 327-33.

[50] Haw. Rev. Stat. § 321-301.

[51] Haw. Rev. Stat. §§ 489-3 and 368-1-3, 11.

[52] Haw. Rev. Stat. § 338-18. Index data such as the name of the registrant can be made available if authorized by the Director of DOH. *Id.* at § 338-18(d).

[53] Haw. Rev. Stat. § 321-311.5(d).

additional information for research purposes.[54] With regard to foundlings, any reports identifying the child must be sealed and may only be opened upon court order.[55]

D. Observations

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

Hawaii has an unusual statute mandating prepaid health care system covering all employers,[56] and also has a broad-based Medicaid program. Its 11.1 percent uninsured population is one of the lowest in the country. According to the state website, in 1997, 84% of Hawaii's residents were enrolled in some form of MCO, either a PPO or HMO.[57] Thus, collection of race, ethnicity and primary language data by these MCOs could provide a fairly accurate picture of patient access to health care services for the large majority of the population.

Hawaii currently collects race, ethnicity, and primary language information using population based surveys on a voluntary basis. It uses the information to study health trends and to work towards eliminating racial and ethnic health disparities.[58] Both DHS and DOH collect and report such demographic data, work cooperatively to maximize health care coverage for all residents, and could easily share such information with each other.[59]

Because Hawaii's population is so racially diverse, it has been able to test the race coding methods of the Office of Management and Budget.[60] And because it has the highest population of Asians and Pacific Islanders in the U.S.,[61] the Office of Health Status Monitoring has been able to refine the categorization of various Asian racial/ethnic groups and develop new ways to interpret and use mixed race data.[62]

For all of these reasons, Hawaii could operate as a veritable laboratory for collecting critical demographic data while preserving patient confidentiality, despite the fact that it does not have

[54] Haw. Rev. Stat. § 321-43.
[55] Haw. Rev. Stat. § 338-7(d).
[56] This program, administered by the Director of Labor and Industrial Relations, requires employers to provide a prepaid group health plan for most "regular employees", with the goal of covering as many employees in the state as possible. Haw. Rev. Stat. §§ 393-1, *et seq*.
[57] "Health Trends in Hawaii: A Profile in the Healthcare System," Hawaii Health Information Corporation, p. 36 at: www.hhic.org/healthtrends/index.asp.
[58] *Id.*; *see also* "Healthy Hawai`i 2000," at: www.state.hi.us/health/resource/Healthy_Hawaii/opdh2000.htm.
[59] *See* footnotes 23 and 41.
[60] "Multi-Race Health Statistics: A State Perspective - Hawaii Health Survey (HHS) 1998,", at: www.state.hi.us/health/stats/surveys/nchs.html.
[61] *Id*.
[62] Telephone conversation with Alvin T. Onaka, Ph.D, Chief, Office of Health Status Monitoring, on April 3, 2001.

the strongest statutory language prohibiting discrimination by health insurers based on race or ethnicity.