MAINE

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).

MAINE

A. General and Health Demographics

Total Population	1,274,923
Percent Black Population	0.5
Percent American Indian and Alaskan Native Population	0.5
Percent Asian Population	0.7
Percent Native Hawaiian and Other Pacific Islander Population	0.0
Percent Hispanic Population (of any race)	0.7
Percent White Population	96.5
Other (some other race and two or more races)	1.0
Language Use - 1990 census data	
Percent Limited English Proficiency (LEP) Population	0.64 (1.99)
Health Care Delivery Profile	
Percent of Total Non-elderly Population Privately Insured (1997-99)	75.7
Percent of Total Population Enrolled in HMOs	24.43
Medicaid Enrollment (as of June 30, 2000)	221,230 (17.35%)
Medicaid Managed Care Enrollment	117,946 (53.31%)
Percent of Total Non-elderly Population Uninsured (1997-99)	14.9

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

1. Statutes, Regulations, Policies and Other Written Materials

Maine uses the term "health maintenance organization (HMO)" to describe any health care delivery system that provides health care services in exchange for a prepaid sum.[1] Maine includes within its HMO definition point-of-service (POS) plans.[2] Preferred provider

[1] 24-A M.R.S. § 4202-A.
[2] *Id.*

arrangements are defined separately, but both HMOs and preferred provider arrangements are regulated in the same manner with regard to data collection practices, anti-discrimination provisions, and confidentiality provisions.[3]

The Maine Bureau of Insurance, the regulating authority for health insurers and HMOs, has no rules and has issued no bulletins that address the collection of racial and ethnic data by these entities. According to a state regulator, Maine is unaware of any problems with insurers with regard to discrimination on the basis of race, color or national origin.[4]

Maine requires that all insurance policy forms receive approval from the Bureau of Insurance prior to their use.[5]

The Consumer Health Care Division was established within the Bureau of Insurance to address such issues as accessibility to services, grievances and complaints, and quality assurance. Based on its authorizing statute, the Consumer Health Care Division must collect certain data to effectuate its delineated duties. One of the more important duties of the Division is acting as an information resource by identifying practices and policies that may affect access to quality health care for "vulnerable populations".[6]

2. Discrimination

Maine's Human Rights Act prohibits any person who owns, operates, or manages any "place of public accommodation"[7] from refusing access to or denying the full enjoyment of such a place because of race, color, national origin or ancestry.[8] Because an insurance office is included within the definition of a "place of public accommodation," insurers are therefore subject to this prohibition.[9]

3. Confidentiality

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[3] 24-A M.R.S. § 2671.

[4] Letter from Thomas Record, Senior Staff Attorney, Maine Department of Professional and Financial Regulation, Bureau of Insurance.

[5] 24-A M.R.S. § 2412. The term "form" includes: (1) a basic form and any renewal form; (2) an application form that is part of the insurance policy; and (3) a certificate of coverage under a group policy.

[6] 24-A M.R.S. § 4321(4)(G)(2) (1999). The term "vulnerable population" is not defined by statute, but some may consider racial and ethnic minorities a "vulnerable populations" with regard to access to quality health care services.

[7] A place of public accommodation is any establishment that caters to, or offers its goods or services to the general public. 5 M.R.S. § 4553(8)(N).

[8] 5 M.R.S. § 4592(1).

[9] 5 M.R.S. § 4553(8)(F).

Any data or information collected by an HMO during its course of operation that pertains to the diagnosis, treatment or health of an enrollee or applicant must be kept confidential.[10] Exceptions to this mandate include releases as a result of: the enrollee's express consent; a statute or court order; or a claim or litigation between the enrollee and the HMO where the information is pertinent.[11]

In addition, an insurer "may not disclose any personal information[12] about a consumer collected or received in conjunction with the insurance transaction unless the disclosure is made with due consideration for the safety and reputation of all persons affected."[13] An insurer[14] may disclose such information under certain circumstances including, but not limited to: (1) express consent of the consumer; (2) disclosure to an insurer to detect criminal activity or perform administrative functions; (3) disclosure to a health care provider to verify coverage or to inform the consumer of a medical problem; and, (4) in response to an administrative or judicial order, including a search warrant or subpoena.

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

1. Department of Human Services, Bureau of Medical Services

a. Statutes, Regulations, Policies and Other Written Materials

Maine's Medicaid program is under the authority of the Department of Human Services, Bureau of Medical Services. The Medicaid program does collect racial, ethnic and primary language data for its eligibility files.[15] The information is available for federal reporting (HCFA Form 2082) and to assist workers in explaining benefits to recipients.

Maine's Medicaid Managed Care Initiative imposes several obligations on HMOs that entail the use of racial, ethnic and primary language data. First, the managed care organization must provide interpretative services to Medicaid enrollees who are non-English speaking.[16]

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[10] 24-A M.R.S. § 4224(1) (1999).
[11] *Id.*
[12] Personal information means "any information that identifies an individual . . . from which judgments can be made about an individual's character, habits, . . ., health or any other personal characteristics." 24-A M.R.S. § 2204(20).
[13] 24-A M.R.S. § 2215(1).
[14] *Id.*, § 2215(1)(A), (C), (D), (G).
[15] Letter from James H. Lewis, Asst. Bureau Director, Bureau of Medical Services, Department of Human Services. Interestingly, unlike other states, Maine does not request racial and ethnic information on its application for Cub Care benefits. Cub Care is Maine's SCHIP Program.
[16] Maine Medical Assistance Manual, Chapter VII, § 2.06-2(D).

Moreover, all written materials must be presented in additional languages if 200 enrollees or 5% of the enrolled population have limited English proficiency.[17]

Second, materials provided to enrollees must reflect sensitivity to the diverse cultures served, and the HMO must make efforts to address the special health needs of enrollees who are members of a minority population group.[18] In addition to establishing policies that are sensitive to cultural diversity, an HMO is expected to ensure that its staff and providers respect the enrollee's cultural background.[19]

Finally, a Medicaid managed care plan must implement a system approved by the state to promote quality and accessibility of care.[20] As part of its quality improvement program, an HMO must administer an annual enrollee satisfaction survey to ascertain enrollees' possible barriers to health care services and the quality of the services received.[21]

b. Discrimination

The Maine Medical Assistance Manual contains clear anti-discrimination provisions. The manual states that:

> A contractor or subcontractor with the Medicaid Managed Care Initiative shall not, on the grounds of race, color, [or] . . . national origin:
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> 1. Deny any individual any services or other benefits under the Initiative
> 2. Provide any services or other benefits to any individual that are different, or that are provided in a different manner, from those provided to others under the Initiative;
> 3. Subject an individual to unlawful segregation, separate treatment, or discriminatory treatment in any manner related to the receipt of any services or other benefits provided under the Initiative; or
> 4. Deny any individual an opportunity to participate in any program provided by the contractor or subcontractor through the provision of services or otherwise, or afford an opportunity to do so that is different from the opportunity afforded others under the Initiative.[22]

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[17] *Id.*
[18] *Id.*, § 2.06-2(E).
[19] *Id.*
[20] Maine Medical Assistance Manual, Chapter VII, § 2.08-1(D)
[21] *Id.*
[22] *Id.*, § 2.10.

In addition, the Maine Department of Human Services establishes and applies written policies and procedures for taking applications and determining eligibility for assistance in accordance with Title VI of the Civil Rights Act of 1964.[23]

c. Confidentiality

All information and records maintained by the Department of Human Services regarding Medicaid eligibility, delivery of Medicaid services to a beneficiary, or other related issues must be kept in strict confidence.[24] However, information from an individual's record will be released under certain circumstances, including: (1) release to the individual himself; (2) financial information relating to eligibility being given to general assistance administrators; (3) eligibility status information being given to a hospital, physicians, etc.; and (4) disclosure of information to other social service agencies upon receipt of consent from the beneficiary.[25]

2. Maine Health Data Organization

Maine has established a Health Data Organization ("Organization") to improve the health of its citizens through a useful and reliable health information database.[26] The Organization is an independent executive agency that collects data and information from various health care providers, including hospitals, ambulatory surgical facilities, and public health clinics.[27] The collection includes hospital discharge data, ambulatory center encounter data and financial data.[28]

Any information or data maintained by the Organization that directly identifies a patient cannot be included in information released to the public.[29] This includes racial data that may indirectly identify a patient.[30]

3. Department of Human Services, Bureau of Health

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

The Bureau of Health collects racial and ethnic data for specified conditions and diseases, including cancer[31] and "notifiable diseases" such as HIV, tuberculosis, and sexually transmitted

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[23] CMR 10-144-332.
[24] *Id.*
[25] *Id.*
[26] 22 M.R.S. § 8703(1) (1999).
[27] 22 M.R.S. § 8704(1)(A)(6) (1999).
[28] CMR 90-590-100(3) (2000).
[29] CMR 90-590-120(A)(1) (2000).
[30] *Id.* at (A)(2)(g).
[31] CMR 10-144-255.

diseases (STDs).[32] Also, Maine maintains a chronic disease surveillance database that collects racial data from hospitals and physicians.[33] In addition, although not statutorily required, Maine collects and reports the racial background of women who have given birth.[34]

b. Discrimination

The Bureau of Health is a public accommodation as defined by statute.[35] Thus, all services and programs administered by the Bureau must be offered without discrimination on account of race, color or national origin.

c. Confidentiality

The Bureau of Health is bound by Maine's public records provisions, and its records containing medical data are therefore not available for public inspection. Also, any records that are designated as confidential by statute, such as the cancer registry[36] and the notifiable conditions provisions,[37] are not considered public records.

D. Observations

Maine does not have any statutes, regulations, or policies that mandate, prohibit, or discuss the collection of racial and ethnic data by health insurers.

The Consumer Health Care Division within the Bureau of Insurance is charged with assessing the quality of health care services delivered to vulnerable populations (which may include racial and ethnic minorities).

Within the Medicaid Managed Care program, health plans must provide linguistically appropriate services. In order to implement this policy, managed care organizations need to have access to primary language information. In addition, in order to address the special health needs of the minority enrollment population, health plans must have access to accurate and consistent racial and ethnic data. Presently, health plans operating in the Medicaid managed care market have this information furnished to them by the state Medicaid agency. However, since the provision of this information by the applicant/beneficiary is voluntary, the data being given to

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[32] CMR 10-144-258.
[33] CMR 10-144-253.
[34] *See* http://janus.state.me.us/dhs/bohodr/datapage.htm.
[35] Public accommodation means a public entity that operates a "place of public accommodation." In turn, a public entity is any state government, department, or agency. For meaning of "place of public accommodation," *see* 5 M.R.S. § 4553(8)(N).
[36] CMR 10-144-255.
[37] CMR 10-144-258.

health plans by the Medicaid agency may not provide an accurate picture of its minority population.