

SOUTH DAKOTA

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).

SOUTH DAKOTA

A. General and Health Demographics

Total Population	754,844	
Percent Black Population	0.6	
Percent American Indian and Alaskan Native Population	8.1	
Percent Asian Population	0.6	
Percent Native Hawaiian and Other Pacific Islander Population	0.0	
Percent Hispanic Population (of any race)	1.4	
Percent White Population	88.0	
Other (some other race and two or more races)	1.2	
Language Use - 2000 census data		
Percent Limited English Proficiency (LEP) Population	0.84	(2.33)
Health Care Delivery Profile		
Percent of Total Non-elderly Population Privately Insured (1997-99)	78.1	
Percent of Total Population Enrolled in HMOs	5.20	
Medicaid Enrollment (as of December 31, 2002)	90,766	(12.02%)
Medicaid Managed Care Enrollment	89,564	(98.68%)
Percent of Total Non-elderly Population Uninsured (1997-99)	14.6	

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

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

In South Dakota, the term “health insurer” means an insurance company, a prepaid hospital or medical service plan, a health maintenance organizations (HMO),¹ managed care organization,² or any other entity providing health insurance.³ This state summary will use the term “health insurer” to refer to these entities, unless there is a distinction made within the

¹ S.D. Code §§ 58-41-1 and 58-41-2.

² S.D. Code § 58-17C-1.

³ S.D. Code §§ 58-1-2 and 58-9-3; *see e.g.*, S.D. Code §§ 58-11A-1, 58-17-100, and 58-18B-1.

statutes or regulations regarding the issue being discussed.

All health insurers in the state are under the authority of the Division of Insurance (DOI),⁴ which must approve all applications, forms and policies.⁵ South Dakota has no statutory or regulatory mandate or prohibition regarding the collection of racial, ethnic or primary language data by health insurers. However, as a matter of policy, DOI states that it “would not approve an application form or other insurance document which requests racial or ethnic data.”⁶ Not surprisingly, therefore, a DOI official has stated that the DOI has not seen racial or ethnic data being requested on any insurance documents filed with their office.⁷

2. Discrimination

Under South Dakota law, no insurer may refuse to issue or renew a policy or certificate solely on the basis of the age, residence, race, color, creed, national origin, ancestry, occupation, or marital status of the applicant or insured.⁸ It is this provision that DOI relies upon as support for its policy of not allowing the collection of race or ethnicity data on insurance forms.⁹

South Dakota’s Unfair Trade Practices statute has a health insurance provision which prohibits “unfair discrimination” 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 health insurance, or in any other manner whatever.¹⁰ Moreover, no HMO can discriminate in the rates charged enrollees except in accordance with accepted actuarial principles.¹¹

There is also has a public accommodations statute which prohibits discrimination based on race, color, ancestry, and national origin, among other categories, in any place of public accommodation or in the services or benefits of such accommodations.¹² However, the South Dakota Supreme Court has held that an insurance company that sells group health insurance

⁴ S.D. Code §§ 58-2-21 and 58-2-22. With regard to health maintenance organizations (HMOs), the DOI and the Department of Health (DOH) share joint responsibility. S.D. Code §§ 58-41-1 and 58-41-67.

⁵ S.D. Code §§ 58-11-12, 58-17-12 and 58-17C-16 (MCO).

⁶ Letter from R. J. Moses, Compliance Supervisor, Department of Commerce and Regulation, January 2, 2001 (hereinafter “Moses Letter.”)

⁷ *Id.*

⁸ S.D. Code § 58-11-55. Although the title of this provision mentions only automobile policies, it applies to all types of insurance. S.D. Code § 58-11-55.2. There is another statute that applies to governmentally owned insurers which prohibits “governmental practices that discriminate on the basis of race, color, creed or national origin.” S.D. Code § 58-6-10.

⁹ Moses Letter.

¹⁰ S.D. Code § 58-33-13.

¹¹ S.D. Code § 58-41-45.

¹² S.D. Code § 20-13-23.

privately through individual agents to selected groups and risks is not a public accommodation.¹³

3. Confidentiality

MCOs must ensure that any records used to process claims, perform necessary quality assurance or improvement programs, or to comply with any lawful request are kept confidential, and must not make them available to any other person who is not legally entitled to them.¹⁴ Moreover, HMOs must maintain the confidentiality of any data or information pertaining to any application and cannot disclose that information without the express consent of the enrollee or applicant.¹⁵

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

1. Department of Social Services (DSS)

a. Statutes, Regulations, Policies and Other Written Materials

South Dakota has expanded its Medicaid program to include its State Children's Health Insurance Program (SCHIP).¹⁶ Therefore, the rules regarding the Medicaid program apply to the SCHIP program as well. The Department of Social Services (DSS) is responsible for administration of both programs.¹⁷

There is no statute or administrative rule which requires or prevents the collection of data on race, ethnicity or primary language in conjunction with Medicaid or SCHIP. However, race information is collected on the joint Medicaid/SCHIP application form, which has a category for "Race" that includes: (1) American Indian; (2) White; (3) Hispanic; (4) Asian; and (5) Black. Above this field is a notice that: "Completion of Race, SSN, and Citizenship is optional for individuals NOT requesting assistance for themselves." Also, race data is included in published

¹³ *State ex rel. Ewing v. Prudential Ins. Co. of America*, 273 NW 2d 111, 113 (1978). The court adopted the reasoning of the Oregon Supreme Court in *Thompson v. IDS Life Ins.*, 549 P.2d 510 (1976), and held that "regulation of unfair discrimination in the business of insurance was a matter falling within the domain of the insurance commissioner."

¹⁴ S.D. Code § 58-17C-14. A recently passed statute authorizes the DOI to promulgate rules to protect the privacy of personally identifiable health care and medical information, but no such rules have yet been promulgated. S. D. Code § 58-2-40 (2000).

¹⁵ S.D. Code § 58-41-74. Other exceptions permit disclosure when "necessary to carry out the purposes" of the chapter, pursuant to statute or court order, or if there is a claim or litigation between the person and provider or HMO, if the information is pertinent.

¹⁶ See Model Application Template for State Child Health Plan Under Title XXI of the Social Security Act under Children's Health Insurance Program at: www.state.sd.us/social/medicaid/CHIP/chip8.html.

¹⁷ S.D. Code §§ 28-1-1 and 28-6-1; *see also* S.D. Admin. Rule 67:16:01:01.

SCHIP reports on enrollment numbers in the program.¹⁸

b. Discrimination

Providers cannot discriminate or withhold services to any eligible individual because of race, color, creed, ancestry, national origin, or a number of other protected categories.¹⁹ Also, the state Human Relations Act prohibits, as an “unfair or discriminatory practice,” any failure or refusal by the state or its political subdivisions to provide public services to any person because of race, color, creed, ancestry, national origin, or several other protected bases.²⁰

c. Confidentiality

All records concerning any applicant or recipient of public assistance must be kept confidential and can only be disclosed to state and federal government authorities in connection with their official duties, or for fair hearings.²¹ Information concerning applicants and recipients may only be used for purposes directly connected with the administration of the Medicaid program and can only be released upon approval of the subject.²²

2. Department of Health (DOH)

a. Data Collection

DOH is in charge of the registration of births, deaths, fetal deaths, burials, marriages, and divorces.²³ Although race and ethnicity are not specified as data elements regarding birth and death certificates, the statutes do require “personal data,”²⁴ and the web site includes race as a data element for births and deaths.²⁵ DOH also collects and reports race data for communicable diseases²⁶ and registries that are part of a central cancer data collection system.²⁷

b. Discrimination

¹⁸ See e.g., “Framework for State Evaluation of Children’s Health Insurance Plans Under Title XXI of the Social Security Act.” South Dakota state website, at: <http://www.state.sd.us/social/Medicaid/CHIP/CHIPrpt1999/ffy99chiprpt.pdf>, Table, Section 4.1.1. Race in this table is divided into “White,” “American Indian”, and “Other.” As noted in the report, the largest minority group in South Dakota is Native Americans, or “American Indians” as they are designated in the report.

¹⁹ S.D. Admin. Rules 67:16:01:18 and 67:42:01:13.

²⁰ S.D. Code § 20-13-24.

²¹ S.D. Code § 28-1-29.

²² S.D. Admin. Rules 67:16:01:12 and 67:46:01:06.

²³ S.D. Code § 34-25-1.

²⁴ S.D. Code §§ 34-25-9 & 34-25-25.

²⁵ “Selected Health Statistics 1997-1998,” at: <http://www.state.sd.us/doh/Stats/vstats.htm>.

²⁶ S.D. Admin. Rule 44:20:02:05 (2001); see also S.D. Code §§ 34-22-9 and 34-22-12.

²⁷ S.D. Admin. Rule 44:22:02:06 (2001); see also S.D. Code §§ 1-43-11 and 1-43-13.

DOH is subject to the state Human Relations Act which prohibits discrimination based on a person's race, color, creed, ancestry, national origin, or several other protected bases.²⁸

c. Confidentiality

Certified copies of birth records are available to any person who can identify the record by providing certain information.²⁹ Reports of communicable diseases are strictly confidential medical records that cannot be released except that, upon written consent of the subject, medical or epidemiological information can be released for statistical purposes without any patient identifiers, or to extent necessary to protect the health or life of any person.³⁰ Any information obtained in medical studies for the purpose of reducing morbidity or mortality, such as information from the cancer data collection system, is also strictly confidential and can only be used for medical research.³¹

D. Observations

South Dakota has no statutory or regulatory mandate or prohibition regarding the collection of racial, ethnic or primary language data by health insurers. However, a DOI official stated that the DOI would prohibit the collection of race, ethnicity, and primary language data on insurance applications because of South Dakota's general prohibition against race discrimination.

²⁸ S.D. Code § 20-13-24.

²⁹ S.D. Code §§ 34-25-9 and 34-25-52. The information can also be released if the person named on the record cannot be identified or after a certain period of time has elapsed.

³⁰ S.D. Code § 34-22-12.1.

³¹ S.D. Code § 34-14-1.