WISCONSIN

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).

WISCONSIN

A. General and Health Demographics

Total Population	5,363,675	
Percent Black Population	5.6	
Percent American Indian and Alaskan Native Population	0.8	
Percent Asian Population	1.6	
Percent Native Hawaiian and Other Pacific Islander Population	0.0	
Percent Hispanic Population (of any race)	3.6	
Percent White Population	87.3	
Other (some other race and two or more races)	1.1	
Language Use - 2000 census data		
Percent Limited English Proficiency (LEP) Population	1.42	(2.97)
Health Care Delivery Profile		
Percent of Total Non-elderly Population Privately Insured (1997-99)	80.5	
Percent of Total Population Enrolled in HMOs	31.15	
Medicaid Enrollment (as of December 31, 2002)	676,395	(12.61%)
Medicaid Managed Care Enrollment	328,638	(48.59%)
Percent of Total Non-elderly Population Uninsured (1997-99)	11.5	

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

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

Wisconsin uses the term "health insurer" to encompass health insurance companies and health maintenance organizations (HMOs). This state summary will use the term "health insurer" to refer to these entities, unless there is a distinction made within the statutes or regulations regarding the issue being discussed.

The Department of Insurance (DOI) is the state agency with regulatory oversight of health insurers. Wisconsin has no statutes or regulations that prohibit or require the collection or reporting of racial and ethnic data.

The state does require that all insurance policy forms and applications be filed with DOI for approval prior to their use.[1] The collection of racial and ethnic data is not grounds for disapproval by the Commissioner.[2]

2. Discrimination

Wisconsin's unfair marketing statute prohibits unfair discrimination "among policyholders by charging different premiums or by offering different terms of coverage except on the basis of classifications related to the nature and the degree of the risk covered. . .."[3] However, the statute does not contain a direct prohibition against discriminating on the basis of race or national origin.

Wisconsin's civil rights statute prohibits a person from denying another individual access to, or giving preferential treatment to some classes of persons in providing the services and facilities of any place of public accommodation because of race, color, national origin or ancestry.[4] The statute's definition of "public accommodation" does not specifically include insurance companies, and there is no case law which addresses this matter.[5]

3. Confidentiality

An MCO[6] must establish written policies and procedures for the handling of medical records and enrollee communications to ensure their confidentiality.[7]

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

1. Department of Health and Family Services (DHFS), Division of Health Care Financing (DHCF)

a. Statutes, Regulations, Policies and Other Written Materials

There are no state statutes or rules that prohibit or require the collection or reporting of racial, ethnic or primary language data regarding Medicaid applicants or recipients. However,

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[1] Wis. Stat. § 631.20(1)(a).

[2] *Id.* It is grounds for disapproval if the form is "inequitable, unfairly discriminatory, misleading, deceptive, obscure or encourages misrepresentation. . .."

[3] Wis. Stat. § 628.34(3).

[4] Wis. Stat. § 106.52(3)(a).

[5] *Id.* "Public place of accommodation" is a "place of business . . . and any place where . . . goods or services are available either free or for a consideration. . .."

[6] Wis. Stat. § 609.01. An MCO includes an HMO, PPO, POS, or any other entity that requires or creates incentives for enrollees to use providers that are managed, owned, under contract with or employed by the MCO.

[7] Wis. Stat. § 609.36(2).

during the Medicaid and Badgercare (Wisconsin's SCHIP program) eligibility interview, DHFS does now or soon will collect racial, ethnic, and primary language data.[8] The language information is used to generate language-appropriate letters, notices and requests for additional information.[9] The ethnicity information, however, is not reported or used at this time.[10]

Currently, the DHCF is developing a Health Needs Assessment Enrollment Survey that will collect primary language information from Medicaid and Badgercare participants. The data, provision of which is voluntary, will be collected by the Wisconsin Medicaid managed care enrollment broker at the time Medicaid and Badgercare participants select an HMO. The broker will forward the language information to the participant's selected HMO, which in turn will use it to perform language-appropriate outreach and distribute language-appropriate written materials such as notices and beneficiary handbooks.[11]

The Wisconsin Medicaid managed care contract requires that contracting HMO's "enrollee handbooks . . . be made available in at least the following languages: Spanish, Lao, and Hmong if the HMO has enrollees who are conversant only in those languages."[12] Instead of having the entire enrollee handbook in those languages, however, an HMO may include a few sentences in the alternative language directing those enrollees to customer service for assistance through its interpreter services.[13]

In addition, the Wisconsin contract requires the HMO to have interpreter services available for enrollees 24 hours a day, 7 days a week.[14] Interpreters must be conversant in languages spoken by the population in the HMO's service area, including at least Spanish and Hmong.[15]

Finally, the HMO must "address the special health needs of enrollee who are poor and/or members of a minority population group."[16] HMOs must foster cultural competency among its providers and permit enrollees to choose or change providers from among the HMO's network

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[8] Letter from Peggy Bartels, Administrator, Division of Health Care Financing, DHFS, dated January 23, 2001.

[9] *Id.* The language information is coded in DHFS's information system using the following categories: Cambodian; English; Hmong; Laotian; Spanish; Vietnamese; and Other.

[10] *Id.* The racial/ethnic information is coded in DHFS's information system using the following categories: White, Asian or Pacific Islander, Black (not of Hispanic origin), Hispanic Origin, American Indian/Eskimo, Southeast Asian, Other, and Unknown. These categories suggest that Wisconsin is one of the states that, at least in some contexts, uses the terms "race" and "ethnicity" interchangeably.

[11] *Id.* DHFS expects that the survey will be finalized and in use within the new few months.

[12] Wisconsin Contract, p. 20.

[13] *Id.*

[14] Wisconsin Contract, pp. 34-35.

[15] *Id.*

[16] Wisconsin Contract, p. 18.

based on cultural preference.[17]

b. Discrimination

Medicaid providers must comply with Title VI of the Civil Rights Act of 1964. Accordingly, providers may not deny or refuse to provide health care services to Medicaid recipients on the grounds of race, color, or national origin.[18] In addition, all persons applying for or receiving benefits are protected against discrimination based on race or national origin.[19] The Wisconsin Medicaid managed care contract provides the same protections for Medicaid HMO enrollees.[20]

c. Confidentiality

Information about Medicaid recipients must be confidential.[21] In addition, the DHCF's contracts with health plans requires the plans to safeguard Medicaid recipients' information.[22]

2. Department of Health and Family Services, Division of Public Health (DPH)

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

The DPH collects and requires health care providers to report racial and ethnic information for various medical conditions, procedures and diseases. These are: (1) lead poisoning;[23] (2) communicable diseases;[24] (3) ambulatory surgery center procedures;[25] (4)

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[17] *Id.* "Cultural Competency" means "a set of congruent behaviors, attitudes, practices and policies that are formed within an agency, and among professionals that enable the system . . . to work respectfully, effectively, and responsibly in diverse situations. Essential elements of cultural competence include valuing diversity, . . ., institutionalizing cultural knowledge and adapting to and encouraging organizational diversity." Wisconsin Contract, p. 2.

[18] Wis. Admin. Code HFS § 106.02. *See also* Wis. Admin. Code HFS § 104.01(1)(right of Medicaid recipient to receive Medicaid services and benefits regardless of race, color or national origin).

[19] Wisconsin Medicaid Provider Handbook, Appendix 1 - Civil Rights Compliance (Non-Discrimination).

[20] Wisconsin Contract, p. 134.

[21] Wis. Admin. Code HFS § 104.01(3).

[22] Wis. Admin. Code HFS § 107.28.

[23] Wis. Admin. Code HFS 181.06(1)(d). The patient's race is coded as White, Black, Asian, Native American, Other or Unknown.

[24] Wis. Admin. Code HFS 145.04(2).

[25] Wis. Admin. Code HFS 120.13.

hospital discharge data;[26] (5) HIV;[27] (6) abortions;[28] (7) births[29] and (8) deaths.[30]

b. Discrimination

The DPH and its facilities are "places of public accommodation" as statutorily defined and may not deny health care services to a person because of his race, color, or national origin.

c. Confidentiality

The DPH may not release "patient-identifiable" data and "must protect the identity of a patient by all necessary means, including the use of calculated, masked or aggregated variables".[31] Patient-identifiable data may be made available only to: (1) an agent of the DPH who is responsible for data storage and data accuracy; (2) a health care provider to ensure the accuracy of the information; (3) DPH, for purposes of epidemiological investigation; and (4) an entity that is required by federal or state statute to obtain such data for epidemiological research.[32]

D. Observations

Wisconsin has no statutes or regulations that prohibit or require the collection or reporting of racial and ethnic data.

Because Wisconsin is one of the states that uses the terms "race" and "ethnicity" interchangeably, it may be difficult to ascertain the reliability of its data on these two topics.

It is unclear whether insurance providers are covered by the state's civil rights act. This lends itself to the possibility that Wisconsin does not provide any protections from discrimination on the basis of race, color or national origin with regard to the issuance of health insurance policies.

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[26] Wis. Admin. Code HFS 120.12

[27] Wis. Stat. § 252.15.

[28] Wis. Stat. § 69.186.

[29] Wis. Stat. § 69.14.

[30] Although not statutorily required, race information is collected and reported for deaths. *See Wisconsin Deaths, 1998* at: http://www.dhfs.state.wi.us/deaths/pdf/98death.pdf.

[31] Wis. Admin. Code HFS 120.30. Patient-identifiable data elements include a patient's race and ethnicity.

[32] Wis. Stat. § 153.50.