

MARYLAND

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).

MARYLAND

A. General and Health Demographics

Total Population	5,296,486	
Percent Black Population	27.7	
Percent American Indian and Alaskan Native Population	0.3	
Percent Asian Population	4.0	
Percent Native Hawaiian and Other Pacific Islander Population	0.0	
Percent Hispanic Population (of any race)	4.3	
Percent White Population	62.1	
Other (some other race and two or more races)	1.8	
Language Use - 1990 census data		
Percent Limited English Proficiency (LEP) Population	2.25	(4.98)
Health Care Delivery Profile		
Percent of Total Non-elderly Population Privately Insured (1997-99)	79.2	
Percent of Total Population Enrolled in HMOs	33.67	
Medicaid Enrollment (as of December 31, 2000)	662,755	(12.51%)
Medicaid Managed Care Enrollment	465,543	(70.24%)
Percent of Total Non-elderly Population Uninsured (1997-99)	15.8	

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

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

Maryland uses the term “insurer” to encompass health insurance companies.¹ A health maintenance organization (HMO) is an entity that “provides or otherwise makes available to its members health care services . . . on a prepaid basis” directly through physicians who are either

¹ Md. Code Ann. [Insurance] § 1-101.

employees of the HMO or under arrangements with one or more groups of physicians.² This state summary will use the term “insurer” to refer to these entities, unless there is a distinction made within the statutes or regulations regarding the issue being discussed.

The Maryland Insurance Administration (MIA) is an independent state agency that supervises all insurance business transacted in the state, including HMOs. However, the Maryland Department of Health and Mental Hygiene also has regulatory authority over HMOs.

Maryland does require that all health insurance policies and any application related to the policies receive approval from the MIA prior to its use.³ Maryland is one of the very few states that has a statute that prohibits the collection of certain racial and ethnic data.⁴ The statute provides that “an insurer . . . may not make an inquiry about race, . . ., color, or national origin in an insurance form, questionnaire, or other manner of requesting general information that relates to an application for insurance.”

The Maryland Health Care Commission⁵ conducts consumer satisfaction surveys with members of HMOs. Using the Consumer Assessment of Health Plans Study (CAHPS), the state asks HMO members about their experiences with their health plan. The CAHPS collects the racial and ethnic background of each HMO member who completes the survey.⁶

2. Discrimination

An insurer may not “cancel or refuse to underwrite or renew a particular insurance risk or class of risk” because of race or color.⁷ An HMO is prohibited from denying health care services to any enrollee on the basis of race or national origin.⁸

In addition, one of Maryland’s civil rights statutes prohibits businesses and corporations licensed and regulated by the Department of Labor, Licensing, and Regulation from denying access

² Md. Code Ann. [Health-General] § 19-701. An HMO may offer a point-of-service option (POS).

³ Md. Code Ann. [Insurance] § 12-203.

⁴ Md. Code Ann. [Insurance] § 27-501(c).

⁵ The Maryland Health Care Commission (MHCC) was established to carry out several health care reforms in the state. It is a public regulatory commission appointed by the governor.

⁶ Maryland utilizes an independent organization (Market Facts, Inc.) to administer the survey. *See Comparing the Quality of Maryland HMOs: Consumer Guide to Commercial HMOs*, State of Maryland, available at: <http://www.mhcc.state.md.us/hmo/consumerguide2000.pdf>.

⁷ Md. Code Ann. [Insurance] § 27-501(a)(1)

⁸ Md. Code Ann. [Health-General] § 19-710(h); Md. Code Ann. [Insurance] § 27-910(b) (prohibits discrimination by a “health network”). A health network includes an HMO.

to the accommodations and services of those businesses and corporations because of race, color or national origin.⁹

3. Confidentiality

An HMO must keep the medical records of a patient confidential.¹⁰ Similarly, an insurer may not disclose the contents of an insured's medical records to anyone but the insured, the insured's agent or representative, or a physician of the insured's choice.¹¹ In addition, specific medical information contained in the insured's medical records may be disclosed if the insured authorizes the disclosure.¹²

Finally, an insurer may disclose information without the insured's authorization: "(1) to a medical review organization, accreditation board, or commission; (2) in response to legal process; (3) to investigate possible insurance fraud; or (4) to evaluate, settle or defend a claim or suit for personal injury."¹³

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

1. Department of Health & Mental Hygiene, Health Care Financing (DHMH)

a. Statutes, Regulations, Policies and Other Written Materials

DHMH administers Maryland's Medicaid program and the Maryland Children's Health Program (MCHP). There are no state statutes or rules that prohibit or require the collection or reporting of racial, ethnic or primary language data by DHMH regarding Medicaid or MCHP applicants or recipients. However, the Medicaid eligibility form collects data on race and primary

⁹ Md. Ann. Code of 1957 (art. 49B), § 8(a). In 1981, when the Department of Insurance was part of the Department of Labor, Licensing and Regulation, Maryland's highest court held that the Human Relations Commission had jurisdiction over insurance companies under this provision to investigate alleged discriminatory practices, even though the Insurance Commissioner also investigated discriminatory practices. *The Equitable Life Assurance Society v. Maryland Comm'n on Human Relations*, 290 Md. 333, 337 (Md. 1981). The Insurance Division is no longer under the Department of Labor, Licensing and Regulation, but the same court has held that the Human Relations Commission continues to have concurrent jurisdiction with the Insurance Commissioner in this arena. *The Insurance Comm'r of the State of Maryland, et al. v. Equitable Life Assurance Society*, 339 Md. 596 (Md. 1995). See Md. Code Ann. [Insurance] § 2-202.

¹⁰ Md. Code Ann. [Health-General] § 4-302.

¹¹ Md. Code Ann. [Insurance] § 4-403(a).

¹² *Id.*

¹³ *Id.*

language and race is coded as a variable in DHMH's Medicaid Management Information System (MMIS).¹⁴

In addition, the MCHP application does request from each applicant information regarding the racial background of all household members. The application does not indicate whether providing this information is voluntary, nor does it provide any racial categories from which the applicant could choose.

Moreover, an MCO contracting with DHMH to provide Medicaid services in Maryland's HealthChoice program¹⁵ must "prepare all publications . . . in a culturally sensitive manner, . . . and in the enrollee's native tongue if the enrollee is a member of a substantial minority. . ."¹⁶ The MCO must on request "accommodate the special access needs of enrollees who . . . do not speak English and require qualified interpreters. . ."¹⁷

Information about race and the need for interpreter services is collected on the Local Health Services Request Form.¹⁸ The race categories provided are: White, Native American, Asian/Pacific Islander, African American and Unknown. Aggregate race information from this form is then reported by the local health department on its monthly report.¹⁹

Finally, an MCO's health care delivery system must accommodate the cultural and ethnic diversity of the population to be served.²⁰

b. Discrimination

Medicaid providers must offer services without regard to race, color or national origin.²¹ In addition, an MCO applying to provide services within Maryland's Medicaid managed care program must provide "documentary assurances that the [MCO] and its health care providers furnish access on a nondiscriminatory basis, . . . , to all their enrollees regardless of race . . . [or] national origin."²²

¹⁴ Letter dated April 4, 2001, from Anne Langley, Center for Health Program Development and Management, University of Maryland, Baltimore County (Langley Letter).

¹⁵ HealthChoice is the name of Maryland's Medicaid managed care program, which was implemented pursuant to a federal waiver from HCFA.

¹⁶ Md. Regs. Code § 10.09.65.02(H)(3).

¹⁷ Md. Regs. Code § 10.09.65.06.

¹⁸ Langley Letter. This form is used by providers and MCOs in the HealthChoice program to request outreach services from Local Health Departments' Administrative Care Coordination Units. The form serves as a primary method to make a written referral to the local health department as required in the Medicaid Managed Care Program regulations.

¹⁹ *Id.*

²⁰ Md. Regs. Code § 10.09.66.05B.

²¹ Md. Regs. Code § 10.09.36.03(A)(7).

²² Md. Regs. Code §§ 10.09.64.07(C) and 10.09.65.02.

c. Confidentiality

All Medicaid providers must maintain the confidentiality of all recipient information, which may not be released without authorization from the recipient.²³

2. Department of Health & Mental Hygiene, Community & Public Health Administration (CPHA)

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

The CPHA collects and requires health care providers to report racial and ethnic information for various medical conditions, diseases or registries. These are communicable diseases,²⁴ hospital discharge data,²⁵ ambulatory care data,²⁶ and HIV.²⁷ The CPHA also collects racial and ethnic data with regard to births.²⁸

b. Discrimination

The CPHA is a “place of public accommodation” as statutorily defined and thus may not deny health care services to a person because of his race, color, or national origin.²⁹

c. Confidentiality

Maryland’s public records law provides that certain state data and information, including medical records, are not available for public inspection.³⁰ This includes any public record that contains medical or psychological information about an individual.³¹ In addition, hospital records that relate to medical care or other medical information are not available for public inspection.³²

²³ Md. Regs. Code § 10.09.36.03(A)(12).

²⁴ Md. Code Ann. [Health-General] § 18-201.

²⁵ Md. Regs. Code § 10.37.06.02. The choices in this race data field are: White, African American, Asian or Pacific Islander, American Indian/Eskimo/Aleutian, Other, and Unknown. The choices in the ethnicity field are: Spanish/Hispanic Origin, Not of Spanish/Hispanic Origin, and Unknown.

²⁶ Md. Regs. Code § 10.37.04.03. The choices in this race data field are the same as the hospital discharge data field.

²⁷ Md. Regs. Code § 10.52.09.01-1

²⁸ Md. Code Ann. [Health-General] § 4-209. This provision governs the reporting of the race of a child of unknown parentage taken into custody by an individual.

²⁹ Md. Ann. Code of 1957 (art. 49B), § 5. Public accommodation includes any place that “is operated by a public entity . . .”

³⁰ Md. Code Ann. [State Government] § 10-612.

³¹ *Id.* § 10-617.

³² *Id.* § 10-616.

D. Observations

Maryland is one of four states that prohibit the collection of certain racial and ethnic data by health insurers. Specifically, insurers cannot seek racial and ethnic data on an insurance application, form or questionnaire, or any other document seeking information that relates to an application for insurance. Although Maryland provides several protections against discrimination on the basis of race, color or national origin with regard to insurance, enforcement of these provisions in the absence of reliable racial and ethnic data would seem problematic.