MICHIGAN

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).

MICHIGAN

A. General and Health Demographics

Total Population	9,938,444
Percent Black Population	14.1
Percent American Indian and Alaskan Native Population	0.5
Percent Asian Population	1.8
Percent Native Hawaiian and Other Pacific Islander Population	0.0
Percent Hispanic Population (of any race)	3.3
Percent White Population	78.6
Other (some other race and two or more races)	1.7
Language Use - 1990 census data	
Percent Limited English Proficiency (LEP) Population	1.40 (3.18)
Health Care Delivery Profile	
Percent of Total Non-elderly Population Privately Insured (1997-99)	74.4
Percent of Total Population Enrolled in HMOs	27.27
Medicaid Enrollment (as of December 31, 2000)	1,191,456 (11.99%)
Medicaid Managed Care Enrollment	894,060 (75.04%)
Percent of Total Non-elderly Population Uninsured (1997-99)	13.5

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

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

The Department of Health (DOH) and the Department of Insurance (DOI) jointly regulate health maintenance organizations (HMOs). Michigan uses the term "health maintenance organization" to refer to any health care delivery system that provides health care services in exchange for a fixed prepaid payment.[1]

[1] MSA § 14.15(21005).

Michigan has neither statutes nor regulations that prohibit or mandate the collection or reporting of racial and ethnic data. However, certain statutory and regulatory provisions, including those that address issues of quality assurance and discrimination, may result in racial and ethnic data collection.

First, an HMO must have an ongoing quality assurance program that assesses the quality and appropriateness of delivered health care services and assures that data collected is based on the total enrolled population.[2]

Second, an HMO seeking state licensure must submit for approval its marketing and enrollment plan, which includes promotional and informational materials, enrollment applications and any related forms.[3] It is not clear what materials or elements Michigan allows to be included in these HMO materials.

4. Discrimination

The DOH, with the concurrence of the DOI, issues licenses to HMOs once the HMO demonstrates, among other things, that "the proposed contract and the proposed rates . . . between the [HMO] and its subscribers . . . do not discriminate on the basis of race, color, [or] . . . national origin. . .."[4] Not only must HMOs have contracts which are nondiscriminatory to their subscribers, they must also have an open enrollment period in which enrollment does not discriminate on the basis of race.[5] Michigan also has an unfair trade practices provision which forbids those in the business of insurance from "refusing to insure, or refusing to continue to insure . . . because of . . . race, color, . . . or national origin."[6]

Michigan has a general civil rights statute that addresses discrimination with regard to services and public accommodations.[7] Although the civil rights statute does not specifically include an insurer within its definition of public accommodation, the Michigan Supreme Court has recognized that an insurer may be a "place of public accommodation" within the statute's meaning.[8]

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[2] Mich. Admin. Code R. 325.6601.
[3] Mich. Admin. Code R. 325.6501(2)(e).
[4] MSA § 14.15(21034)(b).
[5] MSA § 14.15(21071)(1).
[6] MSA § 24.12027(a)(i).
[7] MSA § 3.548(302)(a).
[8] *Kassab v. Michigan Basic Property Insurance Association, et al.*, 491 N.W.2d 545, 547 (Mich. 1992)(stating that the defendant insurer "may be a 'place of public accommodation' because it is a 'business . . . whose . . . services . . . are extended, offered, sold, or otherwise made available to the public'", but citing *South Dakota Division of Human Rights v. Prudential Ins. Co.*, 273 N.W.2d 111, 113 (SD, 1978) (which held that "solicitation and selling through individual agents dealing with selected groups and selected risks on matters of private contract does not constitute a public accommodation.") in support of the possibility that insurers that solicit business may not be seen as a "public accommodation".

Therefore, a health insurer may be held liable under the state's civil rights statute for discriminating against an applicant or enrollee based on his race. However, in light of the insurance laws prohibiting discrimination on the basis of race, color or national origin, the issue of liability of an insurer under Michigan's civil rights law does not raise much concern.

3. Confidentiality

Michigan has promulgated laws that guarantee the confidentiality of any identifiable personal data. The commissioner of DOI must ensure that records containing personal data are not disclosed, without the individual's written consent, unless to comply with a court order or for adjudication purposes.[9]

In addition, information contained in a clinical patient record held by an HMO must be treated as confidential and only disclosed to authorized persons.[10]

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

4. The Department of Community Health, Medical Services Administration

e. Statutes, Regulations, Policies and Other Written Materials

The Department of Community Health, Medical Services Administration (MSA) is the regulating authority for Michigan's Medicaid program. Although the state does not require or prohibit the collection of racial and ethnic data by health plans who serve Medicaid beneficiaries, the application for Medicaid requests racial information from the applicants and provides that this information is voluntary and does not affect an applicant's ability to receive benefits.[11]

The health plans[12] are required, however, under the terms of their contract with the state, to conduct a survey of the enrollee population using the Consumer Assessment of Health Plans Study (CAHPS). A section of the survey seeks demographic information including race, ethnicity, and primary language. The information is "designed only for health plan evaluation and not considered inclusive enough to constitute an accurate demographic database."[13]

In addition, the State enrollment broker "reports language of the beneficiaries (when they

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[9] MSA § 24.660(604)(1) (2000).

[10] Mich. Admin. Code R. 325.6810(1).

[11] Letter from Robert Smedes, Deputy Director for Medical Services Administration ("Smedes Letter").

[12] The Michigan Medicaid Managed Care Contract defines health plans as "managed care organizations that provide or arrange for the delivery of comprehensive health care services in exchange for a fixed prepaid sum."

[13] Smedes Letter.

are aware that the language is not English) on the daily enrollment file."[14] Moreover, this information is not compiled for submittal to the State.[15] Finally, racial and ethnic information is not shared on any State enrollment files.[16]

The Michigan Medicaid Managed Care Contract requires each health plan to "ensure its proposed provider network responds to the cultural, racial and linguistic needs (including interpretive services as necessary) of the Medicaid population.[17] Member handbooks must be available in languages other than English if more than five percent (5%) of the health plan's Medicaid members speak an alternative language.[18]

In general, under National Committee for Quality Assurance (NCQA) guidelines, health plans usually are requested to submit to NCQA a Health Employer Data Information Service (HEDIS) measure entitled "Diversity of Medicaid Membership" to support NCQA accreditation.[19] It includes the number and percent of Medicaid members by race/ethnicity, Hispanic origin, and spoken language.[20] Health plans only report this information if the data is furnished by the state agency. However, in Michigan, the information is not provided by the MSA.[21]

The Office of Minority Health, a division of Michigan's Department of Community Health, collects racial and ethnic information from OMH grantees.[22] The data form collects information with regard to the population served by the grantees' program. Racial categories used by the OMH are African American/Black, Asian/Pacific Islander, American Indian, White, or Refused/No Response/Unknown.[23] Ethnicity categories are Hispanic and Arab American/Chaldean.[24]

b. Discrimination

Michigan law prohibits discrimination in medical assistance programs. It states that "a provider shall not discriminate in the rendering of medical services to a recipient on the basis of

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[14] Smedes Letter.
[15] *Id.*
[16] *Id.*
[17] Michigan Medicaid Managed Care Contract, § II-M(6)(a).
[18] *Id.*, § II-T(3).
[19] Smedes Letter.
[20] Smedes Letter.
[21] Smedes Letter. A phone conversation on May 22, 2000 with Mr. Smedes indicated that MSA has racial and ethnic information on its Medicaid beneficiaries in its enrollment files if the applicant or beneficiary chooses to provide such information. MSA does not provide this information to health plans because of its unreliability and inconsistency.
[22] Letter from Cheryl-Anderson-Small, Director, Office of Minority Health dated November 17, 2000.
[23] Office of Minority Health FY 1999 - 2000 Funded Projects Data Form, Michigan Department of Community Health.
[24] *Id.*

race, color, [or] . . . national origin.[25]

Also, a health plan that contracts with Michigan to deliver Medicaid services must have guidelines and a process in place to ensure that enrollees are provided Medicaid services without regard to race, color, national origin or ancestry.[26]

Finally, the Department of Community Health is bound by Michigan's Elliott-Larsen Civil Rights Act, which prohibits discrimination on the basis of race, color, or national origin with regard to access to a "place of public service."[27] Because the Department of Community Health and all of its programs are included within the definition of "public service"[28], neither the Medicaid program itself nor its contracting providers can discriminate on the basis of race, color, or national origin.

c. Confidentiality

Any information regarding an enrollee obtained by a health plan under contract with the Department of Community Health to deliver Medicaid services may not be used or disclosed, except in the administration of services under the contract.[29] In addition, the health plan must have written policies and procedures to maintain the confidentiality of all medical records.[30]

2. Department of Community Health (DCH)

c. Statutes, Regulations, Policies and Other Written Materials

The Department of Community Health is one of the primary collectors and reporters of racial and ethnic information with regard to specific health conditions and diseases. The DCH receives reports from various health care providers that include racial and ethnic data. These include reports on HIV infection,[31] blood lead analysis,[32] communicable diseases (other than HIV),[33] and cancer.[34] In addition, Michigan collects and reports racial information with regard to births and deaths.[35]

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[25] Mich. Admin. Code R. 400.7172(2) (2000).
[26] Michigan Contract, § II-M(6)(b).
[27] M.S.A. § 3.548(302)(a).
[28] Public service means "a public facility, department, agency. . . owned, operated or managed by or on behalf of the state. . .." M.S.A. § 3.548(301)(b).
[29] Michigan Contract, § II-R.
[30] *Id.*, § II-Z(2).
[31] MSA § 14.15(5114)(1)(b) (2000).
[32] Mich. Admin. Code. R. 325.9082 (2000).
[33] Mich. Admin. Code. R. 325.173 (2000).
[34] MSA § 14.15(2619)(2) (2000).
[35] Although not statutorily required, DCH collects and reports race information with regard to births and deaths. *See* http://www.mdch.state.mi.us/PHA/OSR/mainnat.htm (births) and http://www.mdch.state.mi.us/PHA/OSR/MainMort.htm (deaths).

d. Discrimination

As a department of the state, the DCH is bound by Michigan's civil rights law with regard to access to its services.[36]

e. Confidentiality

Because the DCH collects such a voluminous amount of sensitive data, it has established procedures to protect the confidentiality, and regulate the disclosure, of data and records contained in its data system.[37] The DCH has imposed strict conditions that all data be used "solely for statistical, scientific, and medical research purposes relating to the cause or condition of health."[38]

D. Observations

Michigan has neither statutes nor regulations that prohibit or mandate the collection or reporting of racial and ethnic data.

State legislators have demonstrated their concern with racial and ethnic designation in the delivery of state services. In 1995, the state government passed Public Acts 88 and 89, which required that all state agencies, employers, and universities include a multiracial classification if they ask individuals to select a classification to designate their race or ethnicity.[39] This multiracial classification must also be used by state agencies when they categorize reported data.[40] The state has also issued recommendations on how to include a multiracial classification on any state forms or surveys which collect information on race or ethnicity.

While Michigan is one of three states with a 100% Medicaid managed care enrollment rate, the state Medicaid agency does not provide its contracting health plans with the racial or ethnic background of their enrollees.

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[36] M.S.A. § 3.548(302)(a).
[37] MSA § 14.15(2637)(1) (2000).
[38] MA § 14.15(2631) (2000).
[39] August 12, 1996 Memo from Mark Murray, Director, Department of Management and Budget
[40] *Id.*