NEBRASKA

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).

NEBRASKA

A. General and Health Demographics

Total Population	1,711,263
Percent Black Population	3.9
Percent American Indian and Alaskan Native Population	0.8
Percent Asian Population	1.3
Percent Native Hawaiian and Other Pacific Islander Population	0.0
Percent Hispanic Population (of any race)	5.5
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	2.04 (3.62)
Health Care Delivery Profile	
Percent of Total Non-elderly Population Privately Insured (1997-99)	79.0
Percent of Population Enrolled in HMOs	10.91
Medicaid Enrollment (as of December 31, 2002)	211,712 (12.37%)
Medicaid Managed Care Enrollment Population	157,988 (74.62%)
Percent of Total Non-elderly Population Uninsured (1997-99)	11.6

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

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

Nebraska uses the term "insurer" to encompass health insurance companies, including health maintenance organizations (HMOs) and preferred provider organizations (PPOs).[1] This state summary will use the term "insurer" to refer to all of these entities, unless there is a distinction made

[1] Neb. Rev. Stat. Ann. § 44-4103.

within the statutes or regulations regarding the issue being discussed. The term "managed care organizations" will be used to refer to HMOs and PPOs.[2]

The Department of Insurance (DOI) has authority over Nebraska's insurers. The DOI does not have any statutes, regulations, or policies that mandate or prohibit the collection of racial and ethnic data by health insurers.

Nebraska requires approval by the Director of Insurance of any policy of accident and sickness insurance that is issued in the state, or any application used in connection with such a policy.[3] The standards for disapproval do not include the collection of or inquiry into the applicant's racial or ethnic background, but do include "any provision which [is] unjust, unfair, inequitable, [or] misleading. . .."[4]

2. Discrimination

Nebraska's civil rights statute prohibits discrimination on the basis of race, color, national origin, or ancestry with regard to access to "places of public accommodation" and the "full and equal enjoyment" of the services and facilities of a "place of public accommodation."[5] While it appears that access to health care services or health insurance would be encompassed by the definition of a "public accommodation," there is no case law that addresses this issue.[6]

With regard to its unfair trade practices law, Nebraska does not explicitly prohibit discrimination on the basis of race when issuing or continuing to issue a health insurance policy. The insurance statute only provides that there must not be any "discrimination between individuals of the same class involving essentially the same hazards" when setting policy rates.[7]

3. Confidentiality

Information that pertains to an MCO enrollee's diagnosis, treatment or health is confidential and may not be disclosed, except in limited circumstances.[8] The exceptions are: (1) express consent

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[2] HMOs and PPOs are treated similarly with regard to data collection, anti-discrimination, and confidentiality standards.

[3] Neb. Rev. Stat. Ann. § 44-710.

[4] *Id.* Some state insurance officials have indicated that they would disapprove or question any policy form or application that collected racial and ethnic data. Our research did not reveal what Nebraska's position is on this issue.

[5] Neb. Rev. Stat. Ann. §§ 20-132 and 20-134.

[6] Places of public accommodation are "all places or businesses offering or holding out to the general public goods, services, privileges, . . . [and] facilities. . .." Neb. Rev. Stat. Ann. § 20-133.

[7] Neb. Rev. Stat. Ann. § 44-1525(7)(b).

[8] Neb. Rev. Stat. Ann. §§ 44-32,172 and 44-4110.01

of the enrollee; (2) a statute or court order for the production of evidence; or (3) a claim or litigation between the enrollee and the MCO where the data is relevant to the claim or litigation.[9]

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

1. Department of Health and Human Services, Finance and Support (DHHS)

a. Statutes, Regulations, Policies and Other Written Materials

DHHS is the regulatory agency that administers Nebraska's Medicaid program. 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.

Nonetheless, DHHS collects information regarding the race of the applicant and his or her household members on the application for Kids Connection, Nebraska's Title XXI SCHIP program. The application neither indicates whether it is voluntary for the applicant to give this information nor does it provide any racial categories from which the applicant may choose.

In addition, the Nebraska Medicaid Managed Care Contract (the "Nebraska contract") establishes several standards that suggest the need for racial and ethnic data. First, the contracting health plan must "demonstrate an understanding of the medical, social, and cultural needs of the . . . client population. . .."[10] Second, the health plan must "complete at least one activity to promote cultural diversity and sensitivity. . . [and] [c]ontractor staff must receive cultural competency training on an annual basis."[11] Third, the MCO's Enrollment Broker (EB) must develop informational and marketing materials in manner that "ensures . . . that a client's special needs (*i.e.* language barriers, cultural/socioeconomic sensitivity, . . . etc.) are appropriately addressed."[12] Finally, while conducting its satisfaction surveys, the EB must, at a minimum, focus on the "understanding of cultural differences."[13]

b. Discrimination

The DHHS is bound by Nebraska's civil rights statute because it is considered a place of public accommodation.[14] Therefore, no services or programs administered by DHHS may discriminate on the basis of race, color or national origin.

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[9] *Id.*
[10] Nebraska Contract, § 8.2.3.
[11] *Id.*, § 4.1.3.
[12] *Id.*, § 5.2. The Enrollment Broker is a contracted entity responsible for initial client marketing, education, and outreach; enrollment activities; health assessment, and member satisfaction surveys.
[13] *Id.*, § 5.14.
[14] A place of public accommodation includes any place that is owned, operated, or managed by or on behalf of Nebraska or any agency. Neb. Rev. Stat. Ann. § 20-133(5).

The DHHS Manual provides that an applicant has the right to "have his/her civil rights upheld."[15] Specifically, "no person may be subjected to discrimination on the grounds of his/her race, color, . . ., [or] national origin . . .."[16]

The Nebraska Contract requires each contracting health plan to comply with Title VI of the Civil Rights Act.[17] Also, a health plan "shall not refuse an assignment or disenroll a client or otherwise discriminate against a client solely on the basis of . . . race, . . . or. . . national origin . . .."[18] Finally, the contractor must ensure "that no person is subjected to discrimination in any [D]HHS program or activity based on his/her race, color, . . . [or] national origin . . .."[19]

Finally, the Kids Connection application states that an application will be considered without regard to race, color or national origin.

c. Confidentiality

Confidential information "which identifies individuals who apply for or receive assistance, benefits, or services from the [DHHS] must be safeguarded."[20] A client's information may be shared, however, with other agencies that administer federal or federally-assisted programs which provide assistance.[21]

Before releasing information about any client, DHHS staff must obtain the client's permission,[22] except in emergencies, when the information may be released to another agency without first notifying the client.[23] In those instances, DHHS must inform the client "as soon as possible after the information has been released."[24]

The Nebraska contract provides that any information exchanged by DHHS and the health plan "is made available only to the extent necessary to assist in the valid administrative needs of the program receiving the information. . .."[25] Moreover, the contracting health plan "must have criteria

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[15] 468 N.A.C 1-007.
[16] *Id.*
[17] Nebraska Contract, § 2.3
[18] *Id.*, § 7.25.
[19] *Id.*, § 11.2.3.
[20] 465 N.A.C. 2-005. Confidential information is "all information contained in the files or available to staff members concerning applicants, clients, or other persons, under any program administered by the [DHHS]. . .."
[21] 465 N.A.C. 2-005.02C.
[22] 465 N.A.C. 2-005.02B.
[23] 465 N.A.C. 2-005.02C.
[24] *Id.*
[25] Nebraska Contract, § 2.33(1).

that govern the types of information about applicants and recipients that are safeguarded."[26] The information must include at least: (1) names and addresses; (2) medical services provided; (3) social and economic conditions or circumstances; and (4) medical data, including diagnosis and past history of disease and disability.[27]

2. Department of Health and Human Services, Regulation and Licensure

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

The Division of Regulation and Licensure (DRAL) collects and requires health care providers to report racial and ethnic information for brain injuries,[28] lead poisoning,[29] and sexually transmitted diseases.[30] Although not statutorily required, Nebraska collects and reports race and ethnicity information with regard to births, deaths, marriages and divorces.[31]

b. Discrimination

As noted above, DHHS is a place of public accommodation and is bound by Nebraska's civil rights statute.

c. Confidentiality

All "case-specific and patient-identifying data obtained from medical records of individual patients shall be for the confidential use of [DHHS] and the public health agencies. . . ."[32] Moreover, none of this information may be disclosed so as to reveal the identity of the individual whose medical records and health information have been used.[33] However, aggregate data is open to the public.[34]

D. Observations

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

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[26] *Id.*, § 2.33(3).
[27] *Id.*
[28] Neb. Rev. Stat. Ann. §§ 81-657-58.
[29] 173 N.A.C. 1-004.02C2. Race and ethnicity of the patient should be reported *if known*. This suggests that the regulation envisions reporting by observation, not self-declaration.
[30] 173 N.A.C. 1-008..
[31] *See* Nebraska Vital Statistics Report at: http://www.hhs.state.ne.us/ced/vs.htm.
[32] Neb. Rev. Stat. Ann. § 81-668.
[33] *Id.*
[34] *Id.*

The standards established within the Medicaid managed care program suggest the need for racial and ethnic data. However, most of the standards that require the use of such data are imposed upon the Enrollment Broker and not the contracted health plan. Therefore, it appears that the Enrollment Broker would, if deemed necessary to carry out its responsibilities, collect the racial and ethnic information from Medicaid enrollees and not the health plan.

In addition, it is not specified whether the "social and economic conditions" information that Medicaid contracting health plans must safeguard includes racial and ethnic information.