NEW YORK

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).

NEW YORK

A. General and Health Demographics

Total Population	18,976,457
Percent Black Population	14.8
Percent American Indian and Alaskan Native Population	0.3
Percent Asian Population	5.5
Percent Native Hawaiian and Other Pacific Islander Population	0.0
Percent Hispanic Population (of any race)	15.1
Percent White Population	62.0
Other (some other race and two or more races)	2.3
Language Use - 2000 census data	
Percent Limited English Proficiency (LEP) Population	6.51 (13.02)
Health Care Delivery Profile	
Percent of Total Non-elderly Population Privately Insured (1997-99)	65.5
Percent of Total Population Enrolled in HMOs	37.89
Medicaid Enrollment (as of December 31, 2002)	3,388,931 (17.86%)
Medicaid Managed Care Enrollment	1,512,491 (44.63%)
Percent of Total Non-elderly Population Uninsured (1997-99)	19.4%

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

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

New York uses the term "insurer" to encompass health insurance companies. A health maintenance organization (HMO) may be classified as insurers if not certified by the Department

of Health as an HMO.[1] This state summary will use the term "insurer" to refer to health insurance companies and will refer to HMOs and other managed care organizations (MCOs) individually.

The New York Insurance Department supervises all insurance business transacted in the state, including some HMOs. New York does not have any statutes or regulations that require or prohibit the collection or reporting of racial and ethnic data.

Like many states, New York requires that all health insurance policies and any application related to the policies be filed with the Insurance Department and receive departmental approval prior to its use.[2]

2. Discrimination

New York's general civil rights statute prohibits a person from denying another individual, on the basis of race, color or national origin, access to the services and facilities of any place of public accommodation.[3] The statute does not explicitly include an insurance company within the meaning of "place of public accommodation," and one lower court has held that they are not covered by this provision.[4]

However, insurers are bound by New York's Insurance Law, pursuant to which they may not, because of race, color or national origin: (1) charge different premiums or rates for insurance policies; (2) reject any application for an insurance policy; or (3) refuse to issue, renew or sell such a policy after application has been made.[5]

In addition, neither an MCO[6] nor an HMO [7] may discriminate in enrollment or service provision on the basis of race, color or national origin.[8]

3. Confidentiality

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[1] If an HMO receives a certificate of authority and complies with standards set forth to receive that certificate from the Department of Health, it is not subject to the licensing requirements and certain chapters of the Insurance Code.

[2] N.Y. CLS Ins. § 3201(b).

[3] N.Y. CLS Civ. R. § 40; N.Y. CLS Exec. § 296(2)(a).

[4] *Rochester Hospital Service Corp. v. Division of Human Rights*, 401 N.Y.S.2d 413, 415-16.

[5] N.Y. CLS Ins. § 2606(a)-(b).

[6] 10 NYCRR § 730.2(d)(1)(vii).

[7] 10 NYCRR § 98.11(g)(7).

[8] Under this provision, an entity, such as an HMO or insurance company is eligible for certification as an MCO.

An HMO may not disclose any information which it acquired while rendering health care services to an individual.[9] In addition, neither an insurer nor an HMO may disclose "nonpublic personal health information about a consumer or customer" unless consent is obtained from the consumer or customer.[10] However, an insurer and HMO may disclose such information for the performance of various insurance functions, including; claims administration; disease management; scientific, medical or public policy research; or, utilization review.[11]

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

1. Department of Health (DOH), Medicaid Division

a. Statutes, Regulations, Policies and Other Written Materials

The DOH administers New York's Medicaid program. There are no state statutes or rules that either require or prohibit the collection or reporting of racial, ethnic or primary language data by the DOH. However, Medicaid managed care organizations are required to conduct a health assessment for all new enrollees and this assessment tool may include questions concerning race and/or ethnicity for purposes of identifying individuals who should be screened for genetic diseases or conditions.[12]

In addition, each county administers a health screening tool that collects information concerning an enrollee's primary language.[13] This information is provided to MCOs for their use in assigning a language compatible primary care provider (PCP) to the enrollee in the event the enrollee fails to choose a PCP.[14] MCOs are not required to report to the DOH any information regarding race, ethnicity or language of Medicaid enrollees. Such information is obtained, when available, directly from the State's Medicaid enrollment database.[15]

Medicaid MCOs "must make available written marketing and other information materials (such as enrollee handbooks) in languages other than English whenever at least 5 percent (5%) of

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[9] N.Y. CLS Pub. Health § 4410(2).

[10] 11 NYCRR § 420.17(a). Nonpublic personal health information is that which "identifies [the] individual" or presents "a reasonable basis to believe that the information could be used to identify [the] individual." 11 NYCRR § 420.3(t).

[11] 11 NYCRR § 420.17 (b).

[12] Letter from Elizabeth Macfarlane, Director, Bureau of Program Planning, Office of Managed Care, DOH, dated March 5, 2001. Ms. Macfarlane noted that New York does not dictate to MCOs what information is to be collected.

[13] *Id.*

[14] *Id.*

[15] *Id.*

enrollees in a MCO's service areas speak a [primary] language other than English."[16] In addition, interpreter services must be made available to enrollees whose primary language is not English.[17]

b. Discrimination

A Medicaid provider must not discriminate in the furnishing of medical care, services, or supplies based upon a recipient's race, color or national origin.[18] Further, MCOs providing services in the Medicaid managed care program "may not refuse an assignment or seek to disenroll a member or otherwise discriminate against a member on the basis of . . . race, . . ., [or] national origin."[19]

c. Confidentiality

Medicaid MCOs "must ensure that all individually identifiable information relating to Medicaid enrollees is kept confidential. . .."[20] Any files that contain individually identifiable information "must be kept in locked files or in rooms that are locked when the records are not in use."[21] The MCO or its providers may only use such information "for a purpose directly connected with the performance of the MCO's obligations under [the Medicaid] program.[22]

Similarly, officers and employees of DOH must "not reveal information obtained in the course of administering public assistance for purposes other those directly connected with the administration of public assistance . . .."[23]

2. Department of Health, Public Health Division

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

The DOH is the state agency responsible for overseeing the operation of various health care facilities, including hospitals.[24] In addition, the DOH monitors and works on improving the health status of New York residents by collecting and reporting data on various public health concerns.

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[16] *The Managed Care Organization (MCO) Qualification Guidelines*, § 2.9 available at: http://www.health.state.ny.us/nysdoh/mancare/mco/mco_main.htm.
[17] *Id.*
[18] 18 NYCRR § 515.2(13). *See also* 18 NYCRR § 303.5 (stating that in accordance with Title VI, "applicants for or recipients of public assistance and care may not be placed in or referred to a public, private nonprofit or private proprietary facility which discriminates on the basis of race, color, or national origin. . ..")
[19] *The Managed Care Organization (MCO) Qualification Guidelines*, § 2.4.5 available at: http://www.health.state.ny.us/nysdoh/mancare/mco/mco_main.htm.
[20] *Id.*, § 2.11.8.
[21] 18 NYCRR § 357.5(a).
[22] *Id.*
[23] 18 NYCRR § 357.2(a).
[24] N.Y. CLS Pub. Health § 2800.

The DOH collects and requires health care providers to report racial and ethnic information for various medical conditions, diseases or registries. These are births,[25] deaths,[26] adoption,[27] and lead poisoning.[28]

In addition, hospitals must make available “interpreter services and translation/transcription of significant hospital forms and instructions” for non-English speaking groups “comprising more than one percent (1%) of the total hospital service area population . . ..”[29]

b. Discrimination

The DOH is a “place of public accommodation” as statutorily defined and thus cannot discriminate on the basis of race, color, or national origin with regard to access to service.[30] Further, hospitals must provide treatment without discrimination as to the patient’s race, color, national origin, or language.[31]

c. Confidentiality

The DOH is bound by New York’s public records statute which provides that state agencies’ records are open for public inspection. However, any DOH records containing medical information are not available for public inspection.[32]

D. Observations

New York does not have any statutes or regulations that require or prohibit the collection or reporting of racial and ethnic data.

New York is a state that has a very large and diverse minority population, including an LEP population of approximately 5%. The Department of Health has established standards within the Medicaid program and hospital settings which require the availability of adequate translation and interpreter services.

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[25] N.Y. CLS Pub. Health § 4130
[26] N.Y. CLS Pub. Health § 4141.
[27] N.Y. CLS Pub. Health § 4138-c.
[28] 10 NYCRR § 67-3.1(d).
[29] 10 NYCRR § 405.7(a)(7)(i). The hospital service area population is calculated by demographic information available form the U.S. Census Bureau.
[30] N.Y. CLS Civ. R. § 40; N.Y. CLS Exec. § 292(9). Public accommodation “includes . . . dispensaries, clinics, hospitals, . . . [and] agencies.”
[31] 10 NYCRR § 405.7(b)(1)-(2).
[32] N.Y. CLS Pub. O § 89.