NORTH DAKOTA

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).

NORTH DAKOTA

A. General and Health Demographics

Total Population	642,200	
Percent Black Population	0.6	
Percent American Indian and Alaskan Native Population	4.8	
Percent Asian Population	0.6	
Percent Native Hawaiian and Other Pacific Islander Population	0.0	
Percent Hispanic Population (of any race)	1.2	
Percent White Population	91.7	
Other (some other race and two or more races)	1.0	
Language Use - 2000 census data		
Percent Limited English Proficiency (LEP) Population	0.59	(1.82)
Health Care Delivery Profile		
Percent of Total Non-elderly Population Privately Insured (1997-99)	76.4	
Percent of Total Population Enrolled in HMOs	2.99	
Medicaid Enrollment (as of December 31, 2002)	52,913	(8.24%)
Medicaid Managed Care Enrollment	32,906	(62.19%)
Percent of Total Non-elderly Population Uninsured (1997-99)	16.2	

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

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

North Dakota uses the term "health insurer" to include insurance companies,[1] managed care organizations such as health maintenance organizations (HMOs),[2] prepaid limited health service organizations, and nonprofit health service corporations.[3] This summary will use the

[1] N.D. Cent. Code § 26.1-02-01; *see e.g.*, N.D. Cent. Code §§ 26.1-03.1-01, 26.1-04-03 and 26.1-36.4-02.
[2] N.D. Cent. Code § 26.1-18.1-01.
[3] N.D. Cent. Code § 26.1-17-01.

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 Commissioner of Insurance (Commissioner) regulates all health insurers in the state[4] and must approve all forms and policies.[5]

North Dakota has no statutes or regulations that prohibit or require the collection or reporting of racial, ethnic, or primary language data by health insurers. But an HMO must establish procedures to assure that the health care services provided to its enrollees meet "reasonable standards of quality of care consistent with prevailing professionally recognized standards of medical practice."[6]

2. Discrimination

North Dakota has several provisions which prohibit discriminatory insurance practices based on race. A provision within "Prohibited Practices in Insurance Business" prohibits health insurers from refusing to insure risks solely because of race, color, creed, sex, or national origin.[7] An HMO cannot discriminate against any enrollee or applicant based on race, national origin, ancestry, or several other bases,[8] nor decline or terminate a policy based solely upon race or ethnicity.[9]

North Dakota also has a public accommodations statute which appears broad enough to include health insurers within its prohibition of discrimination based on race, color, national origin, and a range of other protected classifications by any person who provides public accommodations.[10]

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[4] N.D. Cent. Code § 26.1-01-03.

[5] N.D. Cent. Code §§ 26.1-30-19 and 26.1-36-04.

[6] N.D. Cent. Code § 26.18.1-06. One statement must include a description of its system of focused activities based on representative samples of the enrolled population.

[7] N.D. Cent. Code § 26.1-04-03(11). There is another section in this statute, common among states, prohibiting any health insurer from making or permitting any "unfair" discrimination between persons of the same class and of essentially the same hazard in the amount of premium, policy fees, or rates charged for any or in the benefits, terms or conditions, or in any other manner. *Id*. at § 26.1-04-03(7)(b).

[8] N.D. ADC 45-06-07-05(2).

[9] N.D. Cent. Code § 26.1-30.1-01.1.
Interestingly, health insurers are prohibited from discriminating against preferred providers on the basis of race. N.D. Cent. Code § 26.1-47-04.

[10] The definition of prohibited practices includes any discriminatory practice that "fails to provide . . . the use of any benefit from the services " or offers "unequal treatment . . . with respect to the availability of the services" or with regard to price because of the person's race, color, or national origin. N.D. Cent. Code § 14-02.4-14. However, no cases interpret the statute's application to insurance companies.

3. Confidentiality

Every health insurer must ensure that all patient identifiable information regarding the health, diagnosis, and treatment of the insured remains confidential.[11] There is a separate provision for HMOs requiring similar protections for its enrollees and applicants.[12] The HMO's confidentiality policies and procedures must be included in its written quality assurance plan.[13]

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

1. Department of Human Services (DHS)

a. Statutes, Regulations, Policies and Other Written Materials

DHS is the single state agency responsible for administering both Medicaid and Healthy Steps, North Dakota's State Children's Health Insurance Program (SCHIP).[14] There are no state statutes or regulations that prohibit or require the collection or reporting of racial, ethnic or primary language data regarding Medicaid or SCHIP applicants or recipients.

However, the Medicaid program does collect race, ethnicity and primary language data in various ways. The sources of these collection requirements include the North Dakota Medicaid Managed Care Contract,[15] a Managed Care member survey, the Medicaid Customer Service Survey, and a report from the department's new support system, MedStat, concerning race and program enrollment. These documents either request race, ethnicity, and primary language information or contain requirements supporting the collection of such demographic information.[16]

All managed care contractors must survey all enrollees at least once a year to determine the level of customer satisfaction.[17] At least one of the managed care providers uses a survey that asks: (1) if the member is of Hispanic or Latino origin; (2) for the member's primary language spoken at home; and (3) the member's race (providing the options of White, Black or

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[11] N.D. Cent. Code § 26.1-36-12.4(1). There are limited exceptions to this provision, including written approval by the covered person. *Id.* at § 26.1-36-12.4(1)(a).

[12] N.D. Cent. Code § 26.1-18.1-23.

[13] N.D. Cent. Code § 26.1-18.1-06(2)(b)(4).

[14] N.D. Cent. Code §§ 50-06-01.4(8), 50-06-05.1(2) & § 50-29-02.

[15] Letter of Tom Solberg, Administrator, Managed Care, Medical Services Department, Department of Human Services, dated January 12, 2001 (Solberg Letter.)

[16] For example, in the Medicaid Customer Services Survey 2000, Question #65, race information is requested using the options of American Indian or Alaska Native, Asian or Pacific Islander, Black (not of Hispanic origin), Hispanic, and White (not of Hispanic origin). Solberg Letter, Attachments.

[17] North Dakota Medicaid Managed Care Contract ("North Dakota Contract"), Attachment C, p. 19; Solberg Letter at 5. The survey results must distinguish, by demographic category, among enrollees provided services under the contract with DHS. *Id.*

African American, Asian, Native Hawaiian or other Pacific Islander, or American Indian or Alaska Native).[18]

An HMO contracting with DHS to provide Medicaid services must have enrollee handbooks "available in languages other than English if, *in the [DHS'] determination*, a significant number of enrollees are conversant only in those other languages."[19]

DHS must also report annually to the legislative council and describe enrollment statistics and costs associated with Healthy Steps.[20] Although the statute does not refer to the race of the enrollee, the Healthy Steps application form requests the race of the applicant[21] and the program's web site provides a race-based breakdown of enrollment.[22]

b. Discrimination

Each local human service center must provide clients with a written statement assuring that they will be provided services regardless of race, color, religion, national origin, sex, age, political beliefs, or handicap.[23] The state's anti-discrimination statute applies to publicly funded health programs. It prohibits "anyone providing public services from discriminating on the basis of race, color, religion, sex, national origin, age, physical or mental disability, or marital or public assistance status."[24] This applies to public benefit programs such as Medicaid and Healthy Steps.

In addition, the North Dakota Contract requires all contractors and subcontractors providing services or supplies under the Medicaid managed care program to abide by Title VI of the Civil Rights Act of 1964 and the North Dakota Human Rights Act.[25]

c. Confidentiality

The use and disclosure of information concerning applicants for or recipients of medical

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[18] Altrucare Health Plan, "1999 Altrucare Member Satisfaction Survey," Question #'s 64-66, Solberg Letter at 8-9.

[19] North Dakota Contract, Attachment C, p. 14. (Emphasis added.)

[20] N.D. Cent. Code § 50-29-02.

[21] North Dakota Healthy Steps Insurance Application from Healthy Families (hereinafter HS Application), from state website at: http://www.state.nd.us/childrenshealth/application.pdf.. The categories provided are: American Indian or Alaskan Native (I), Asian (A) or Pacific Islander (P), Black (B)(not of Hispanic origin), Hispanic (H), or White (W)(not of Hispanic origin.) There is no indication on the application that providing this information is voluntary.

[22] "Ethnicity of children participating in Healthy Steps Insurance" lists the ethnic breakdown as follows: 88% White, 9% American Indian, 1% Black, 0% Asian, and 2% Hispanic. Healthy Steps website at: http://www.state.nd.us/childrenshealth/enrollment.htm

[23] N.D. ADC 75-05-01-10.

[24] N.D. Cent. Code § 14-02.4-15.

[25] North Dakota Contract, Attachment A, p. 1.

assistance is limited to purposes directly connected with the administration of the program.[26] Managed Care HMO contractors must protect the confidentiality of any material and information concerning an applicant for or recipient of DHS services in accordance with relevant laws and policies, including the North Dakota DHS Manual, Chapter 110-01.[27]

Medical information and certain health information is also protected. This includes genetic, demographic or diagnostic test information which is created or received by a health care provider or insurer, if the information relates to: (1) the past, present or future physical or mental health or condition of the person, (2) the provision of health care to an individual, (3) the past, present or future payment for the provision of health care, and (4) the information identifies an individual or there is a reasonable basis to believe the person can be identified by the information.[28] This provision should protect personal identifiers such as the person's race, ethnicity, or primary language ability.[29]

2. Department of Health (DOH)

According to a letter from the North Dakota Department of Health (DOH) there are no "specific rules or policies regarding the collection of racial, ethnic, or primary language information in connection with the Department's various health information and surveillance programs."[30] However, several of DOH's programs in its Disease Control Division follow the Communicable Disease Center (CDC) guidelines, which include racial and ethnicity information submitted to the CDC.[31]

DOH must conduct a continuous program to review and improve the quality of health care in the state, and to evaluate the costs, quality and outcomes of health care.[32] Through its Health Council, DOH also establishes standards, rules and regulations necessary for the maintenance of public health and hospitals and related medical institutions.[33] Although patient race or ethnicity information is not specified as a data element, hospitals and other institutions where people receive treatment must record all the "personal and statistical particulars relative to such person," a requirement that certainly supports the collection of race and ethnicity data.[34]

The Health Statistics Act requires anyone assuming custody of a living infant of unknown parentage to

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[26] N.D. ADC 75-01-02-01.

[27] Solberg Letter at 4. Access to patient information, records, and data is limited to certain purposes outlined. *Id.*

[28] N.D. Cent. Code § 23-01.3-01.

[29] There is a limited exception to the disclosure rules when necessary to deal with a potential public health emergency. N.D. Cent. Code § 23-01.3-04 to 07.

[30] Letter of Michael J. Mullen, Senior Advisor for Health Policy, Department of Health, dated November 28, 2000 (hereinafter "Mullen Letter").

[31] *Id.*

[32] N.D. Cent. Code § 23-01-24.

[33] N.D. Cent. Code §§ 23-01-01, 23-01-03, & 23-01-03.2.

[34] N.D. Cent. Code § 23-01-12.

report the race of the child.[35] However, other vital statistics records such as birth, death or fetal death certificates do not contain a specific requirement to record the race of the child. Rather, only "personal data" is required, which presumably encompasses racial information about the child and/or parents.[36]

b. Discrimination

When DOH accepts federal funds, it must adopt rules to enable the state to comply with any federal laws, including Title VI of the Civil Rights Act of 1964.[37] As with DHS, the nondiscrimination statute that applies to public services applies to DOH.[38] Other areas where discrimination based on race is prohibited include home health agencies[39] and hospices.[40]

c. Confidentiality

Reports of communicable diseases are strictly confidential and may not be disclosed except for statistical purposes, or to the extent necessary by law, or to protect the health or life of any individual.[41] All information, records of interviews, written reports, statements, notes, memoranda, or any other data obtained by DOH in connection with its studies for research purposes of reducing the morbidity or mortality from any cause or condition of health is confidential and must be used solely for the purposes of medical or scientific research.[42] Finally, vital records are confidential,[43] as are data submitted to the Health Data Committee, for which no patient identifier can be released to the public.[44]

D. Observations

North Dakota has no statutes or regulations that prohibit or require the collection or reporting of racial, ethnic, or primary language data by health insurers.

HMO coverage in the state is relatively low, less than 3%, yet for Medicaid managed care, the enrollment rate is over 55%. Therefore, it appears that the vast majority of enrollees in managed care or

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[35] N.D. Cent. Code § 23-02.1-14.
[36] N.D. Cent. Code §§ 23-02.1-13, 23-02.1-19, & 23-02.1-20.
[37] N.D. Cent. Code § 23-01-11.
[38] N.D. Cent. Code § 14-02.4-15.
[39] N.D. ADC 33-03-10.1-10.
[40] N.D. ADC 33-03-15-11.
[41] N.D. Cent. Code § 23-07-02.2. DOH advises that "information about various populations, the elderly, children, racial or ethnic groups, is disclosed only if the information is aggregated so that it does not disclose the identity of the any particular individual." Mullen Letter.
[42] N.D. Code § 23-01-15.
[43] N.D. ADC 33-04-13.1-02. The registrar may issue certified copies or release information for statistical purposes if authorized by a court of competent jurisdiction. *Id*.
[44] N.D. Cent. Code § 33-03-23-05.

health maintenance organizations are those in the state Medicaid program. Because Medicaid does collect data on race, ethnicity and primary language on a voluntary basis, some demographic information is captured for this hefty segment of the HMO market.