

OHIO

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).

OHIO

A. General and Health Demographics

Total Population	11,353,140
Percent Black Population	11.4
Percent American Indian and Alaskan Native Population	0.2
Percent Asian Population	1.2
Percent Native Hawaiian and Other Pacific Islander Population	0.0
Percent Hispanic Population (of any race)	1.9
Percent White Population	84.0
Other (some other race and two or more races)	1.3
Language Use - 2000 census data	
Percent Limited English Proficiency (LEP) Population	0.89 (2.21)
Health Care Delivery Profile	
Percent of Total Non-elderly Population Privately Insured (1997-99)	78.2
Percent of Total Population Enrolled in HMOs	25.46
Medicaid Enrollment (as of December 31, 2002)	1,545,000 (13.61%)
Medicaid Managed Care Enrollment Population	403,497 (26.12%)
Percent of Total Non-elderly Population Uninsured (1997-99)	12.5

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

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

Ohio uses the term “insurer” to encompass insurance companies and “health insuring corporations”.¹ A “health insuring corporation” includes a health maintenance organization, preferred provider organization, and any other corporation that provides services through a

¹ Ohio Rev. Code Ann. § 3902.02(B).

closed or open panel plan.² This state summary will use the term “insurer” to refer to all of these entities, unless there is a distinction made within the statutes or regulations regarding the issue being discussed. However, the term “managed care organization (MCO)” will be used to denote only an HMO, PPO, and any other health insuring corporations.

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

Ohio requires approval by the Superintendent of Insurance of any policy of accident or 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.

2. Discrimination

Ohio’s general civil rights statute prohibits discrimination on the basis of race, color or national origin 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.”⁴ Ohio includes insurance companies in its definition of “place of public accommodation.”⁵

With regard to its unfair trade practices law, Ohio 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 “unfair discrimination between individuals of the same class of essentially the same hazard” when setting policy rates.⁶

Finally, Ohio corporation law provides that “no [managed care organization], or health care facility or provider through which the [managed care organization] has made arrangements to provide health care services, shall discriminate against any individual with regard to enrollment, disenrollment, or the quality of health care services rendered, on the basis of the individual’s race [or] color. . .”⁷

² Ohio Rev. Code Ann. § 1751.01(N). A closed panel plan means “a health care plan that requires enrollees to use participating providers”, while a open panel plan is “a health care plan that provides incentives for enrollees to use participating providers and that also allows enrollees to use providers that are not participating providers.”

³ Ohio Rev. Code Ann. § 3923.02.

⁴ Ohio Rev. Code Ann. § 4112.02 (G).

⁵ Ohio Admin. Code § 4112-5-02(I).

⁶ Ohio Rev. Code Ann. § 3901.21(M).

⁷ Ohio Rev. Code Ann. § 1751.18(A)(2).

3. Confidentiality

An insurer must not disclose any “personal or privileged” information about an individual collected or received in connection with an insurance transaction.⁸ Disclosure is allowable if there is, among other things: (1) written consent by the individual; (2) a need by an insurance company in order to detect criminal activity or to perform administrative functions; (3) a need by a medical care institution for the purpose of verifying coverage or benefits; and (4) a release to a law enforcement or government authority.⁹

All applications, filings and reports submitted by a managed care organization are treated as public documents.¹⁰ However, any information pertaining to the diagnosis, treatment, or health of an enrollee, or any application obtained from any person may not be disclosed.¹¹ Exceptions to this prohibition include: (1) the express consent of the enrollee or applicant; (2) a statute or court order for the production of evidence; and (3) a claim or litigation between the person and the provider or HMO wherein such data or information is pertinent.¹²

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

1. Ohio Department of Job and Family Services

a. Statutes, Regulations, Policies and Other Written Materials

The Ohio Department of Job and Family Services (ODJFS) is the single state agency with responsibility for implementation and administration of the Ohio Medicaid program. ODJFS is required to submit an annual report to the Ohio Health Care Data Center (described below) which contains the total number of Medicaid recipients and the number of the recipients who received medical services, with each group categorized by race.¹³

In addition, ODJFS collects information regarding the race and primary language of applicants and their household members on its application for several health care programs,

⁸ Ohio Rev. Code Ann. § 3904.13. Personal information is “any individually identifiable information . . . from which judgments can be made about an individual’s character, habits, health . . . or any other personal characteristics” including name and address. Privileged information is “information that (i) relates to a claim for insurance benefits or a civil or criminal proceeding . . . , and (ii) is collected in connection with or in reasonable anticipation of a claim for insurance benefits or civil or criminal proceeding. . .” Ohio Rev. Code Ann. § 3904.01(R), (U).

⁹ *Id.*

¹⁰ Ohio Rev. Code Ann. § 1751.52(A).

¹¹ Ohio Rev. Code Ann. § 1751.52(B).

¹² *Id.*, § 1751(B)(2)-(4).

¹³ Ohio Rev. Code Ann. § 3729.26(A).

including Medicaid and SCHIP.¹⁴ The applications neither indicate whether it is voluntary for applicants to give this information nor does it provide any racial categories from which the applicants may choose.

The Ohio Medicaid Managed Care regulations impose several standards that imply the need for racial, ethnic and primary language data. Each subcontract that an MCO has with a provider must specify that “the subcontractor must provide the services of . . . bilingual language assistance in the primary language of a . . . LEP enrollee. . . .”¹⁵ Second, an MCO must print member materials in the primary language(s) of the “major population group(s) served.”¹⁶ Third, an MCO must have available a 24-hour toll-free call-in system that has bilingual language assistance in the primary language of an LEP enrollee.¹⁷ Finally, the MCO must “provide the services of . . . bilingual assistance in the primary language of a[n] . . . LEP enrollee who [sic] will assist the enrollee with the membership materials.”¹⁸

b. Discrimination

A managed care organization must enroll an eligible individual into the plan without regard to the individual’s race, color, national origin or ancestry.¹⁹ In addition, “no enrollee may be encouraged to disenroll due to . . . the enrollee’s . . . race, color, . . . national origin . . . , or ancestry.”²⁰ Moreover, a managed care organization cannot request the disenrollment of an enrollee because of his race, color, national origin or ancestry.²¹

Finally, the Healthy Start, Healthy Families application states that an application will be considered without regard to race, color or national origin.

c. Confidentiality

¹⁴ Healthy Start, Healthy Families is Ohio’s Medicaid program and includes the SCHIP program. The application allows Ohioans to apply for several Ohio programs -- Healthy Start, Healthy Families, Women, Infants & Children (WIC), the Child & Family Health Services program, and the Children with Medical Handicaps program.

¹⁵ Ohio Admin. Code § 5101:3-26-05(D)(29).

¹⁶ *Id.*, § 5101:3-26-082(B)(2). A “major population group” is 10% or more of the MCO’s Medicaid enrollees residing in the MCO’s service area.

¹⁷ *Id.*, § 5101:3-26-031(C)(3).

¹⁸ *Id.*, § 5101:3-26-082(B)(2).

¹⁹ *Id.*, § 5101:3-26-02(B)(1)(a).

²⁰ *Id.*, § 5101:3-26-021(C)(10).

²¹ *Id.*, § 5101:3-26-021(D)(1).

All information and records concerning an applicant for or client recipient of public assistance, including Medicaid and SCHIP, are confidential.²² However, information may be released to, among others:

- (1) a provider with the public assistance programs where the information is essential to render services or assistance;
- (2) third-party payers, such as health insurers, for purposes of determining health care coverage; and
- (3) the U.S. Department of Health and Humans Services.²³

In addition, under the Medicaid managed care program, an MCO must ensure that all staff members “hold all enrollee information related to [an enrollee’s] care confidential and not divulge the information without the enrollee’s authorization” except under limited circumstances.²⁴ Those circumstances are: (1) required by law; (2) necessary for the coordination of the enrollee’s care; or, (3) necessary “in compelling circumstances” to protect the health or safety of an individual.²⁵

2. Department of Health (DOH)

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

The DOH collects and requires health care providers to report racial and ethnic information for various medical conditions, diseases or occurrences. These are abortions,²⁶ cancer,²⁷ and communicable diseases, including STDs and HIV.²⁸ In addition, although not statutorily required, DOH collects and reports with regard to births²⁹ and deaths.³⁰

In addition, the DOH houses the Ohio Health Care Data Center (“Data Center”). The Data Center is responsible for, among other things: (1) coordinating the collection and dissemination of health care data among providers, payers, and consumers; (2) conducting research to assist in policy-making efforts regarding access to health care in Ohio; and (3) establishing an integrated health care data base in consultation with other state agencies.³¹

²² *Id.*, § 5101:1-1-03(A).

²³ *Id.*, § 5101:1-1-03(B)(1), (4), (6).

²⁴ *Id.*, § 5101:3-26-071(A)(2)(c)(i)(b).

²⁵ *Id.* The regulations do not provide standards for this type of release of an enrollee’s medical information.

²⁶ Ohio Admin. Code § 3701-47-03(C)(6).

²⁷ *Id.*, § 3701-4-02(B)(12).

²⁸ *Id.*, § 3701-3-22(A)(1), (B)(1).

²⁹ DOH collects and reports the race of the natural mother. *See* <http://www.odh.state.oh.us/Data/whare/bth/AtGlance.htm>.

³⁰ *See* <http://www.odh.state.oh.us/Data/whare/dth/QAAsr.htm>.

³¹ Ohio Rev. Code Ann. § 3729.02.

The Data Center must analyze the data collected by the different state agencies and health care providers.³² Using this data, the Data Center examines and identifies the “high priority health risks of selected population categories, including [by] . . . race. . .”³³ In addition, in its annual report, the Data Center must report on, to the extent possible, “the relationship between (1) health care costs, access, outcomes, continuity of care . . . ; and (2) an individual’s . . . race. . .” for 100 high priority diagnoses and 100 high priority medical procedures.³⁴

b. Discrimination

The DOH is bound by Ohio’s civil rights statute because it is considered a place of public accommodation.³⁵ Therefore, no services and programs administered by DOH may discriminate on the basis of race, color or national origin.

c. Confidentiality

All data collected and all analyses, studies and research conducted by the Data Center are public records.³⁶ However, the Data Center and its employees must maintain the confidentiality of any information that identifies an individual, including information regarding his medical history, diagnosis, prognosis, and treatment.³⁷

D. Observations

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

The Ohio Health Care Data Center has established a data collection and reporting system that assures the confidentiality of the data collected. In addition, the analyses and reports generated by it already utilize racial and ethnic data.

³² *Id.*, § 3729.10(A).

³³ *Id.*, § 3729.10(A)(4).

³⁴ *Id.*, § 3729.12(B)(1)-(2).

³⁵ A place of public accommodation includes “any . . . place. . . of which the accommodations, advantages, facilities, or privileges are available to the public.” Ohio Rev. Code Ann. § 4112.01(A)(9).

³⁶ Ohio Rev. Code Ann. § 3729.46(A).

³⁷ Ohio Rev. Code Ann. § 3729.46(B).