

TENNESSEE

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).

TENNESSEE

A. General and Health Demographics

Total Population	5,689,283	
Percent Black Population	16.3	
Percent American Indian and Alaskan Native Population	0.2	
Percent Asian Population	1.0	
Percent Native Hawaiian and Other Pacific Islander Population	0.0	
Percent Hispanic Population (of any race)	2.2	
Percent White Population	79.2	
Other (some other race and two or more races)	1.1	
Language Use - 2000 census data		
Percent Limited English Proficiency (LEP) Population	1.11	(2.04)
Health Care Delivery Profile		
Percent of Total Non-elderly Population Privately Insured (1997-99)	78.1	
Percent of Total Population Enrolled in HMOs	39.86	
Medicaid Enrollment (as of December 31, 2002)	1,324,011	(23.27%)
Medicaid Managed Care Enrollment	1,324,011	(100.00%)
Percent of Total Non-elderly Population Uninsured (1997-99)	14.1	

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

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

The Department of Commerce and Insurance is the regulatory authority for insurers. Tennessee uses the term "insurer" to refer to health insurance companies and health maintenance organizations (HMOs).¹ HMOs provide or arrange to provide health care services on a prepaid basis; however, HMOs may also contract with a prepaid limited health service organization

¹ HMOs may also offer a point of service option (POS) as part of its plan. Tenn. Code Ann. § 56-32-228.

(PLHSO) to deliver limited health services.² This state summary will use the term “insurer” to refer to insurance companies and HMOs. Any distinctions between each type of health insurance entity will be noted if relevant to the issue being discussed.

Tennessee does not have any statutes, regulations, or policies that mandate, prohibit, or discuss the collection or reporting of racial and ethnic data.³

Tennessee requires that all health insurance policies or any application related to the policies be filed with the Department of Insurance and receive departmental approval prior to use.⁴ If any of the documents appear to be unfair or deceptive, the Department will disapprove the form and forbid its use.⁵

2. Discrimination

Tennessee’s civil rights statute prohibits a person from denying another individual “the full and equal use” of the services and facilities in any place of public accommodation.⁶ The statute, however, does not explicitly include insurance companies within the meaning of public accommodation, and there is no case law addressing this matter.⁷

Under Tennessee’s unfair competition provisions, an insurer may not discriminate between “individuals of the same class involving and of essentially the same hazards” in premiums, rates or fees charged for any health insurance policy.⁸ However, the statute does not contain a direct prohibition against discriminating on the basis of race or national origin. A PLHSO, on the other hand, cannot “expel or refuse to renew the coverage of or refuse to enroll any individual member of a subscriber group through an HMO” on the basis of race, color or national origin.⁹

3. Confidentiality

² A PLHSO is an “entity which, in return for a prepayment from a[n] [HMO] or a state or federal agency, undertakes to provide or arrange for, or provide access to, the provision of a limited health service to enrollees through an exclusive panel of providers.” Tenn. Code Ann. § 56-51-102. Limited health service encompasses dental care, vision care, mental health services, substance abuse services, and pharmaceutical services.

³ According to a letter from Victoria Stotzer, Tennessee has no requirements in the Insurance Code which address racial and ethnic data. Ms. Stotzer stated “[t]here are no limitations set forth and only the court can decide if discrimination exists.” February 16, 2001 letter from Victoria Stotzer, Compliance Analyst, Department of Commerce and Insurance.

⁴ Tenn. Code Ann. § 56-26-102(a); *See also* Letter from Victoria Stotzer.

⁵ *Id.*; Tenn. Code Ann. § 56-26-103 (withdrawal of approval by Commissioner of Insurance).

⁶ Tenn. Code Ann. § 4-21-501.

⁷ Tenn. Code Ann. § 4-21-102. A place of public accommodation is “any place . . . which supplies goods or services to the general public or which solicits or accepts the patronage . . . of the general public. . . .”

⁸ Tenn. Code Ann. § 56-8-104.

⁹ Tenn. Code Ann. § 56-51-117.

An insurer must not release information "that directly identifies [a] patient . . . and that relates to the physical or mental health of that patient or to the provision of health care to that patient, unless the patient has authorized the release in writ[ing]. . ."¹⁰

Information that pertains to an HMO enrollee's diagnosis, treatment or health is confidential and may not be disclosed, except in limited circumstances.¹¹ The exceptions are: (1) express consent of the enrollee and (2) a claim or litigation between the enrollee and the HMO where the data is relevant to the claim or litigation.¹²

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

1. Department of Finance and Administration, Bureau of TennCare (TennCare)

a. Statutes, Regulations, Policies and Other Written Materials

TennCare is Tennessee's state Medicaid program.¹³ 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. However, TennCare captures information related to the racial and ethnic status of its participants.¹⁴ The provision of this information by program enrollees is strictly voluntary at the time of application for the program.¹⁵

In addition, the TennCare Program Contract requires each participating HMO to have written materials in the languages of the "major population groups served".¹⁶

b. Discrimination

Under the TennCare Contract, a contracting health plan must comply with Title VI of the Civil Rights Act of 1964.¹⁷ Moreover, "no person on the grounds of . . . race, color, . . . or national origin, shall be excluded from participation in, . . ., or be denied benefits of, or be otherwise

¹⁰ Tenn. Code Ann. § 56-7-124.

¹¹ Tenn. Code Ann. § 56-32-225(a).

¹² *Id.*, § 56-32-225(a)(2)-(3).

¹³ Tennessee's entire Medicaid program is operated pursuant to a federal waiver which allows the state to automatically enroll those eligible for Medicaid in TennCare, its managed care system. Letter of December 5, 2000 from Kasi Tiller, Assistant Director, Office of Policy and Planning, Bureau of TennCare.

¹⁴ *Id.* Ms. Tiller notes that TennCare currently does not capture primary language data; however, it is an issue that TennCare is reviewing in light of the recent guidance issued by the HHS Office for Civil Rights regarding Limited English Proficiency (LEP) persons.

¹⁵ *Id.* This occurs at two stages: (1) during the Medicaid eligibility determination or (2) during the application for enrollment in TennCare for a non-Medicaid eligible individual.

¹⁶ Tennessee Contract, p. 13. A "major population group" is one which represents at least 10% of a plan's membership.

¹⁷ Tennessee Contract, p. 64.

subjected to discrimination in the performance of [the Contract].”¹⁸

In addition, the Black Health Care Commission (the “Commission”), created within Tennessee’s Legislative Department, monitors the treatment of blacks within the TennCare program. In particular, the Commission “collect[s] and analyze[s] data and periodically report[s] on the level of compliance with the requirements of Title VI . . . by managed care organizations participating in TennCare.”¹⁹

c. Confidentiality

The Tennessee Contract requires that the HMO must “assure that all material and information, in particular information relating to enrollees or potential enrollees . . . [is] reported as confidential information. . . .”²⁰ In addition, “all information as to personal facts and circumstances concerning enrollees or potential enrollees obtained by the [health plan] . . . shall be held confidential. . .” and the information may not be disclosed without the written consent of TennCare or the enrollee/potential enrollee.²¹ The use and disclosure of information concerning enrollees or potential enrollees “shall be limited to purposes directly connected with the administration of [the Contract].”²²

Because the Medicaid program is administered by a state agency, all records associated with the program and maintained by TennCare are deemed public records.²³ However, under Tennessee’s public records statute, medical records/information and data declared confidential by state statute are not considered public records and are not open to the public for examination or copying.²⁴

2. Department of Health

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

The Department of Health (DOH) collects and requires health care providers to report racial and ethnic information for various medical conditions, diseases or programs. These are traumatic brain injuries,²⁵ cancer,²⁶ communicable diseases,²⁷ lead poisoning,²⁸ sexually transmitted diseases,²⁹

¹⁸ *Id.*, p. 77.

¹⁹ Tenn. Code Ann. § 3-15-404.

²⁰ Tennessee Contract, p. 104.

²¹ *Id.*

²² *Id.*

²³ Tenn. Code Ann. § 10-7-504.

²⁴ *Id.*

²⁵ Tenn. Comp. R. & Regs. 1200-20-13-.02.

²⁶ *Id.* 1200-7-2-.06.

²⁷ *Id.* 1200-14-1-.03.

²⁸ *Id.* 1200-14-1-.42.

²⁹ Tenn. Code Ann. § 68-10-101.

and hospital discharge data.³⁰ In addition, although not statutorily required, DOH collects and reports: (1) the race and Hispanic origin of the mother and father of a newborn infant; (2) the race of a deceased individual; (3) the race of the bride and the groom with regard to marriages; and (4) the race of the wife and husband with regard to divorces.³¹

b. Discrimination

The DOH has an Office of Title VI Compliance. It is responsible for monitoring health care facilities to ensure their compliance with Title VI.³² All health care facilities licensed by the state must not deny any individual access to or the "full and equal enjoyment" of services offered by these health care facilities on the grounds of race, color or national origin.³³

c. Confidentiality

Because DOH is a state agency, it is bound by Tennessee's public records statute. As discussed above, medical records maintained by a public agency, such as the DOH, must be held in confidence and are not open to the public for examination or copying.³⁴

D. Observations

Notably, Tennessee has an Office of Title VI Compliance within its Department of Health that is charged with monitoring state health care facilities' compliance with Title VI of the Civil Rights Act.³⁵

Because Tennessee has a one hundred percent (100%) Medicaid managed care participation rate, it is important to ensure that Medicaid beneficiaries are not being discriminated against by HMOs in accordance with Title VI. The creation of the Black Health Care Commission allows Tennessee to closely monitor compliance with Title VI with regard to black TennCare enrollees.

Interestingly, the TennCare administrator noted that the TennCare program does not currently collect primary language data. However, the TennCare Program Contract between participating HMOs and the Bureau of TennCare requires that HMOs have written materials in the language of the "major population groups served."

³⁰ Tenn. Comp. R. & Regs. 1200-7-3-.02.

³¹ See *Data Systems Resource Guide, Tennessee Department of Health (March 2001)* available at: <http://www.state.tn.us/health/statistics/PdfFiles/ResourceGuide.pdf>.

³² Tenn. Code Ann. § 68-1-113.

³³ *Id.*

³⁴ Tenn. Code Ann. § 10-7-504.

³⁵ Tenn. Code Ann. § 68-1-113.