UTAH

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).

UTAH

A. General and Health Demographics

Total Population	2,233,169	
Percent Black Population	0.7	
Percent American Indian and Alaskan Native Population	1.2	
Percent Asian Population	1.6	
Percent Native Hawaiian and Other Pacific Islander Population	0.7	
Percent Hispanic Population (of any race)	9.0	
Percent White Population	85.3	
Other (some other race and two or more races)	1.5	
Language Use - 2000 census data		
Percent Limited English Proficiency (LEP) Population	2.71	(5.22)
Health Care Delivery Profile		
Percent of Total Non-elderly Population Privately Insured (1997-99)	78.7	
Percent of Total Population Enrolled in HMOs	36.7	
Medicaid Enrollment (as of December 31, 2002)	170,775	(7.65%)
Medicaid Managed Care Enrollment	159,773	(93.56%)
Percent of Total Non-elderly Population Uninsured (1997-99)	15.1	

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

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

Utah uses the term "health insurer" to include health insurance companies, nonprofit health insurance corporations, preferred provider organizations (PPOs),[1] and health maintenance organizations (HMOs).[2] This state summary will use the term "health insurer" to refer to these

[1] Utah Code § 31A-22-617.

[2] Utah Code § 31A-4-106. An HMO is an insurer that provides prepaid basic health care services to enrollees, either directly or through arrangements with others. Utah Code § 31A-8-101.

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[3] and must approve all insurance policies, applications and certificates.[4] Although HMOs must obtain a certificate of authority from the Commissioner,[5] the application for the certificate is forwarded to the Department of Health (DOH) for a finding that the HMO meets the prevailing standards for quality assurance.[6]

Utah does not have any statutory or regulatory mandates or prohibitions regarding the collection of racial or ethnic data by health insurers, and the Commissioner does not impose any such requirements on health insurers. However, the Legislature recognized the importance of such information when it established an Office of Consumer Health Assistance (Consumer Office) to advise the Commissioner and to act as a resource for health care consumers.[7] One of its purposes is to provide services and a grievance process for consumers who have had difficulty accessing health insurance policies because of language, disability, age or ethnicity.[8]

Moreover, HMOs must have a procedure "to develop, compile, evaluate, and report statistics relating to . . . the patterns of utilization of its services, the availability and accessibility of its services, and such other matters as may be reasonably required" by the DOH.[9]

2. Discrimination

HMO enrollees and applicants cannot be discriminated against on the basis of race, color, creed, national origin, ancestry, or certain other protected characteristics.[10] The Commissioner can also disapprove a form at any time if s/he finds that it is inequitable, unfairly discriminatory, unfair, or not in the public interest.[11]

There are two provisions in the Insurance Code regarding unfair marketing practices which prohibit "unfair discrimination" in the business of insurance. Insurers may not charge different premiums or offer different terms of coverage, except on the basis of classifications related to the nature and the degree of the risk covered or the expenses involved.[12] Nor may they engage in any other unfair method of competition or unfair or deceptive act that is found to be

[3] Utah Code §§ 31A-2-201 & 31A-4-106.
[4] Utah Code § 31A-21-201.
[5] Utah Code § 31A-8-102(1).
[6] Utah Code § 31A-8-104.
[7] Utah Code § 31A-2-216.
[8] *Id.* at § 31A-2-216(d).
[9] Utah Code § 31A-8-104.
[10] Utah Admin. Rule R590-76-6.
[11] Utah Code § 31A-21-201.
[12] Utah Code § 31A-23-302(3).

unfairly discriminatory.[13] However, these provisions do not expressly prohibit discrimination based on race, ethnicity, or national origin.

The state's civil rights statute does provide protection against "the practice of discrimination on the basis of race, color, sex, religion, ancestry, or national origin in . . . enterprises regulated by the state." The statute specifically includes all insurers regulated by the Insurance Code in its definition of "enterprises regulated by the state," and therefore it is clear that this statute applies to health insurers.[14]

3. Confidentiality

The medical records of enrollees and patients in HMOs, as well as the annual audits required to be filed with the Commissioner, are confidential and cannot be disclosed to the public without a court order.[15] Information derived from medical records may not be used in a manner that could directly or indirectly identify an individual, and any information, interviews, reports, statements, memoranda, or other data furnished for the HMO's annual audit are privileged and not subject to discovery, use or receipt in evidence in any legal proceeding except for hearings before the Commissioner or DOH.[16]

Information contained in the medical records of individual patients in the possession of PPOs must remain confidential and is not subject to discovery except in hearings before the Commissioner.[17]

Although all state records are public unless expressly exempted by statute, medical records containing data on individuals describing their medical history, diagnosis, condition, treatment, evaluation or other medical data are exempt and considered "private."[18] They cannot be disclosed by a governmental entity,[19] except in a legal or administrative proceeding,[20] or in certain other limited circumstances.[21]

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

1. Department of Health (DOH)

[13] *Id*. at § 31A-23-30(8).
[14] Utah Code §§ 13-7-1 through 13-7-3. *See also* 1990 Utah Atty. Gen Op. 22, No. 89-48 (April 3, 1990)(the Commissioner has broad discretionary powers to issue rules to prohibit unfair discrimination of any kind in the business of insurance).
[15] Utah Code § 31A-8-405; *see also* Utah Admin. Rule R590-76-10 (certification status and review materials are treated as confidential by DOI).
[16] Utah Code § 31A-8-404.
[17] Utah Code § 31A-22-617(4)(c).
[18] Utah Code § 63-2-302(1)(b).
[19] Utah Code § 63-2-201.
[20] Utah Code § 63-2-302(3)(c).
[21] Utah Code § 63-2-202.

a. Statutes, Regulations, Policies and Other Written Materials

DOH is the single state agency responsible for the administration of the state's Medicaid and State Children's Health Insurance Program (SCHIP.)[22] The Utah Medicaid agency contracts with HMOs to provide medical and mental health services to its Medicaid and SCHIP recipients.[23]

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, there is managed care contract language requiring the collection and reporting of primary and secondary language information.

Utah is one of the minority of states that has set up a mechanism for reimbursement for interpreter services.[24] The Division of Utah Health Care Financing (DUHCF) requires the collection and reporting of primary and secondary language information in two ways.[25] First, limited English proficient (LEP) persons can receive interpretive services, which are provided by contract, through private entities.[26] Information about the client and the language use is provided to DUHCF by the interpretive contractor in a billing format, but without race or ethnicity identified, and the records go back five years from when the first contracts were issued.[27] Second, although the Bureau of Managed Health Care (Bureau) within DUHCF does not obligate the contracting Medicaid managed care organizations to provide race or ethnicity information about Medicaid enrollees, the state contract does require them to submit data annually regarding the use of interpretive services.[28]

If more than 5% of a contracting HMO's enrollees speak a language other than English as their primary language, the HMO must make written materials such as the member handbook

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[22] Utah Code §§ 26-1-18, 26-18-3 & 26-40-103; *see also* Utah Department of Health homepage at: http://hlunix.ex.state.ut.us/.

[23] Utah Medicaid website at: http://health.state.ut.us/medicaid/html/managed_care.html; *see also* Utah Code §§ 26-18-3.7 and 26-40-110; and Utah Medicaid Provider Manual, §1, Chap.2, (1996), Utah Medicaid website at: http://www.health.state.ut.us/medicaid/html/chapter_2.html.

[24] *See* Utah Medicaid Provider Manual, General Attachments Section (January 2001), Utah Medicaid website at: http://www.health.state.ut.us/medicaid/intepreter.pdf.

[25] Letter of Michael Deily, Director, Division of Health Care Financing, Utah State Department of Health (DOH), dated December 22, 2000 (hereinafter Deily Letter); *see also* Letter of Steven Gatzemeier, Health Program Manager, Division of Health Care Financing, DOH, dated February 28, 2001 (hereinafter Gatzemeier Letter).

[26] *Id.* Utah's Medicaid website states that interpreter services for LEP applicants is one of the services available for Medicaid applicants with special needs. *See* Utah Medicaid website at: http://health.state.ut.us/medicaid/html/language_services.html .

[27] Deily Letter at 1-2.

[28] *Id.* at 1; *see* Attachments A (forms used by two MCOs to track the required language use data) and Attachment B (Interpretive Services Procedure Manual used by one of the MCOs).

available in that language.[29] The HMO must also provide interpretative services "on an as needed basis."[30] Finally, the HMO must "minimize, with a goal to eliminate, Enrollee's access problems due to . . . cultural and language barriers. . .."[31]

While contracting HMOs are not asked to collect race and ethnicity data, DUHCF does so on the Medicaid application form.[32] The form seeks a self-declaration as to the race of the applicant but does not state that the information is voluntary.[33] However, an eligibility policy explains to the eligibility worker that the question is strictly for statistical purposes.[34] DOH also publishes an annual report on the performance of the five HMOs serving clients along an area known as the Wasatch Front, and this includes the race/ethnicity of enrollees.[35]

DOH has recognized the importance of addressing the health needs of ethnic populations in both Medicaid and SCHIP.[36] It offers special grants to public or private entities to provide primary health care services for traditionally medically underserved populations, including LEP persons.[37]

Utah has also undertaken an extensive, albeit voluntary, health statistics collection process through the DOH Health Data Committee (Committee). The Committee is authorized to collect and maintain health data regarding: (1) "the extent, nature, and impact of illness and disability on the population of the state;" (2) "the determinants of health and health hazards;" (3) health resources; (4) utilization of health care; and (5) other health or health-related matters.[38] The purpose of the Committee is to "direct a statewide effort to collect, analyze, and distribute health care data to facilitate the promotion and accessibility of quality and cost-effective health care and also to facilitate interaction among those with concern for health care issues."[39]

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[29] Utah Medicaid Managed Care Contract ("Utah Contract"), Attachment B, p. 7.
[30] *Id.*, p. 8.
[31] *Id.*
[32] *Id.*
[33] *Id.* at Attachment (C).
[34] *Id.* at Attachment (D).
[35] DOH, "Utah Medicaid HMO Performance Report - Compare Your Choices," p. 18 (July 2000), Utah DOH website at: http://hlunix.hl.state.ut.us/hda/Reports/99mc.pdf. (Data collected from CAHPS and HEDIS). *See* Utah Admin. Rule R428-13-4 (HMOs are required to submit annual performance measures using HEDIS data).
[36] The Governor must ensure that ethnicity is one of the considerations for membership on the Health Advisory Council. Utah Code § 26-1-7.5. The SCHIP Advisory Council requires at least one representative from ethnic populations, including American Indians. Utah Code § 26-40-104.
[37] Utah Code §§ 26-18-302 & 26-18-304.
[38] Utah Code § 26-3-2; *see also* Utah Code § 26-1-30.
[39] Utah Code § 26-33a-104. The Committee is empowered to develop a health data plan that identifies the "key health care issues, questions, and problems amenable to resolution or improvement through better data, more extensive or careful analysis, or improved dissemination of health data." Utah Code § 26-33a-104(2)(a) (2000). It can suggest improvements in existing

Finally, DOH collects race and ethnicity data for its vital statistics, including the race and nationality of parents for marriage licenses,[40] and race information for its birth and death certificates.[41]

b. Discrimination

DOH must comply with all the pertinent requirements of the Social Security Act and other applicable federal law, which includes Title VI of the Civil Rights Act of 1964.[42] The Medicaid agency must assure that no person is subjected to discrimination under any plans on the grounds of race, color, gender, national origin, or handicap.[43] The Medicaid Provider Manual also informs providers that they must comply with Title VI. [44]

c. Confidentiality

In the Medicaid program, any use or disclosure of information concerning applicants, clients or recipients is restricted to purposes directly connected to the administration of the plan.[45] Any information received from providers is classified as "private."[46] Medical records or other records containing data on individuals, which if disclosed would constitute a clearly

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data collection, interpretation and reporting activities. *Id.* However, the Committee cannot require a health care provider to supply data identifying a patient by name or describing detail on a patient beyond that needed to achieve the approved purposes included in the plan, and it cannot request data from health care providers until a plan for the use of the data has been adopted. *Id.* at §§ 26-33a-104(5) & (6).

Pursuant to this statute, DOH requires hospitals to report patient race and ethnicity if the information is a part of the hospital's patient record. Utah Admin. Rule R428-10-6 (2001). DOH must use an encryption method to mask the patient's identity.

[40] Utah Code §§ 30-1-8 & 26-2-24.

[41] Although race information is not explicitly required by statute, personal and statistical information from the next of kin or the best qualified source is required which presumably includes race as evidenced by the publication of race data in its Vital Statistics for 1999. Utah Code §§ 26-2-13 & 26-2-16; *see* http://www.health.state.ut.us/bvr/pub_vs/ia99/99bx.pdf

[42] Utah Code §§ 26-18-5(4) &26-18-2.1.

[43] Utah Admin. Rule R414-1-10.

[44] Utah Medicaid Provider Manual, §1, Chap. 6-5 (1998), Utah Medicaid website at: www.health.state.ut.us/medicaid/html/chapter_6.html.

[45] Utah Admin. Rule R414-1-16; *see also* Gatzemeier Letter.

[46] *Id.* at §1, Chap. 8-1 (1997), Utah Medicaid website at: www.health.state.ut.us/medicaid/html/chapter_8.html; *see* Utah Code § 63-2-302(1)(b).

unwarranted invasion of personal privacy, are confidential[47] and cannot be disclosed.[48] Moreover, disclosure of identifiable health data collected by the Committee[49] or DOH[50] is prohibited, and such information is not even subject to subpoena or similar compulsory process.

D. Observations

Utah does not have any statutory or regulatory mandates or prohibitions regarding the collection of racial or ethnic data by health insurers, and the Commissioner does not impose any such requirements on health insurers.

In Utah, close to 90% of Medicaid beneficiaries are enrolled in mandatory managed care plans. The state already has a fairly comprehensive policy and collection system to meet the challenges faced by the LEP population. HMOs must report, at a minimum, language data.

Utah's Bureau of Surveillance and Analysis (BSA) has published a report, entitled *Health Status in Utah by Race and Ethnicity*, which is designed, among other things, to help eliminate racial and ethnic health disparities.[51] Compiling the report led BSA to acknowledge the difficulty of obtaining precise data, and to note that improvements in the state's data systems were needed to describe fully its increasingly diverse population.

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[47] Utah Code § 26-1-17.5. Although information from health care facilities in reports and inspections are public records, information which discloses identities of individuals, other than the owner or operator of a health facility, may not be disclosed. Utah Code § 26-21-9.

[48] Utah Code § 63-2-201. There are limited circumstances upon which private records can be disclosed, but generally they are accessible to the public. Utah Code § 63-2-202.

[49] Utah Code §§ 26-33a-108 & 110. With regard to the Committee, the identifiable health data can only be disclosed if the individual consents to the disclosure or the disclosure is to an organization with an institutional review board for research or statistical purposes and identified by a control number only. Utah Code §26-33a-109.

[50] Utah Code § 26-3-7 (see exceptions to this general rule) & 26-3-9. DOH must take measures to protect the security of health data. Utah Code § 26-3-10.

[51] "Health Status in Utah by Race and Ethnicity," at: http://www.health.state.ut.us/action2000/racerth.html. There are also various offices of Ethnic Affairs, including the Office of Asian Affairs, Office of Hispanic Affairs, Office of Black Affairs, Office of Polynesian Affairs, and Division of Indian Affairs, *see* http://www.utah.org/ethnic/welcome.htm. & http://www.utah.org/annrep97/ethnic.htm