

VIRGINIA

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).

VIRGINIA

A. General and Health Demographics

Total Population	7,078,515	
Percent Black Population	19.4	
Percent American Indian and Alaskan Native Population	0.3	
Percent Asian Population	3.7	
Percent Native Hawaiian and Other Pacific Islander Population	0.0	
Percent Hispanic Population (of any race)	4.7	
Percent White Population	70.2	
Other (some other race and two or more races)	1.8	
Language Use - 2000 census data		
Percent Limited English Proficiency (LEP) Population	2.17	(4.59)
Health Care Delivery Profile		
Percent of Total Non-elderly Population Privately Insured (1997-99)	78.4	
Percent of Total Population Enrolled in HMOs	21.26	
Medicaid Enrollment (as of December 31, 2002)	530,423	(7.49%)
Medicaid Managed Care Enrollment	327,390	(61.72%)
Percent of Total Non-elderly Population Uninsured (1997-99)	15.4	

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

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

Virginia uses the term “health carrier” or “insurer” to encompass health insurance companies and health maintenance organizations (HMOs). A managed care organization (MCO) includes an HMO, PPO, or any other entity that offers a managed care health insurance plan.¹

¹ A managed care health insurance plan “means an arrangement for the delivery of health care in which an [entity] undertakes to provide, arrange for, pay for, or reimburse . . . costs of health care services . . . on a prepaid or insured basis which (i) contains one or more incentive arrangements . . . and (ii) requires or creates benefit payment differential incentives for covered

This state summary will use the term “insurer” or MCO to refer to these entities, unless there is a distinction made within the statutes or regulations regarding the issue being discussed.

The State Corporation Commission, Bureau of Insurance (BOI) is the state agency with regulatory oversight of health insurers. Virginia’s Department of Health (DOH) examines the quality of health care services delivered by MCOs.² Virginia has no statutes or regulations that prohibit or require the collection or reporting of racial, ethnic, or primary language data.

Virginia does require that all insurance policies, applications and enrollment forms be filed with the Commissioner of Insurance and obtain approval prior to their use.³ The collection of racial and ethnic data is not grounds for disapproval.⁴

In addition, the DOH requires that an MCO have a “mechanism for providing enrollee information . . . in the languages of the major population groups served,”⁵ and that they “incorporate strategies into their access procedures to facilitate utilization of the MCO’s health care services by enrollees with . . . language or cultural barriers.”⁶

2. Discrimination

Under Virginia’s unfair trade practices provisions, an insurer may not discriminate between “individuals of the same class and of essentially the same hazard” in premiums, rates or fees charged for any health insurance policy.⁷ However, the statute does not provide any particular prohibition against discriminating on the basis of race or national origin.⁸

However, no HMO “shall unfairly discriminate against any enrollee on the basis of . . . race, color, . . . , national origin, [or] ancestry. . . .”⁹

The Virginia Human Rights Act provides that “[i]t is the policy of [Virginia] to safeguard all individuals . . . from unlawful discrimination because of race, color, . . . [or] national origin . . . , in places of public accommodation, . . .”¹⁰ However, the statute does not provide a definition

persons to use contracted or employed providers. . . .” 12 VAC 5-408-10.

² 12 VAC 5-408-20(A).

³ Va. Code Ann. § 38.2-316(A)-(B).

⁴ *Id.* § 38.2-316(D). It is grounds for disapproval if the form “encourages misrepresentation, or is misleading, [or] deceptive. . . .”

⁵ 12 VAC 5-408-190(C).

⁶ 12 VAC 5-408-260(C).

⁷ Va. Code Ann. § 38.2-508(2).

⁸ Interestingly, the Virginia insurance laws prohibit discrimination on the basis of race or national origin with regard to the issuance of a life insurance policy (Va. Code Ann. § 38.2-508.2), a fire insurance policy (Va. Code Ann. § 38.2-2115) and a motor vehicle insurance policy (Va. Code Ann. § 38.2-2213).

⁹ 14 VAC 5-210-80 (C)(1).

¹⁰ Va. Code Ann. § 2.1-715.

of “public accommodation” and there is no case law that discusses whether an insurer is such a place.

3. Confidentiality

An MCO must keep medical records confidential,¹¹ and must have “written procedures [that] govern the use and removal of medical records and the conditions for release of information.”¹² Finally, the enrollee’s written consent is required for release of this information.¹³

An insurer must not disclose any personal or privileged information¹⁴ about an individual unless: (1) with the written consent of the individual; (2) to another insurer and the disclosure is necessary to perform a business, professional or insurance function; (3) to an insurer to detect fraud; (4) to a medical care facility or professional in order to verify coverage or to inform an individual about a medical problem; (5) to a insurance regulatory authority; (6) to a law enforcement authority; or (7) in response to an administrative or judicial order.¹⁵

Moreover, by July 1, 2001, all insurers licensed in Virginia must comply with Title V of the Gramm-Leach-Bliley Act,¹⁶ which requires licensees to establish privacy policies, develop systems for implementing those policies, and to protect personal information of consumers and customers.¹⁷

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

1. Department of Medical Assistance Services (DMAS)

a. Statutes, Regulations, Policies and Other Written Materials

The DMAS is the state agency that oversees Virginia’s Medicaid program and the Family Access to Medical Insurance Security Plan (FAMIS) (the SCHIP program).¹⁸ There are no state

¹¹ 12 VAC 5-408-210(B).

¹² *Id.*

¹³ *Id.*

¹⁴ 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.” Privileged information is “any individually identifiable 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 . . . anticipation of a claim for insurance benefits or civil or criminal proceeding. . . .” Va. Code Ann. § 38.2-602.

¹⁵ Va. Code Ann. § 38.2-613(A).

¹⁶ 15 U.S.C. 6801 *et seq.*

¹⁷ Bureau of Insurance Administrative Letter 2000-13, dated September 29, 2000.

¹⁸ *See* Va. Code Ann. § 32.1-351. Eligibility determinations and enrollment of eligible children for the FAMIS are handled by local Departments of Social Services. Handbook available at:

statutes or rules that prohibit or require the collection or reporting of racial, ethnic or primary language data regarding Medicaid applicants or recipients. However, the joint application for FAMIS and Medicaid collects racial data for all members of the applicant's household. The application does not indicate whether providing this information is voluntary for the applicant. In addition, the application does not provide any racial categories for the applicant to use.

Virginia's state plan for FAMIS includes the type of information that Virginia *might* include in its annual report submitted to HCFA. This information includes the race and ethnicity of enrollees. The racial categories provided are: American Indian or Alaskan Native, Asian or Pacific Islander, Black (not of Hispanic origin), Hispanic, and White (not of Hispanic origin).¹⁹

Virginia's Medicaid managed care program (Medallion II) contract ("Virginia Contract") requires that contracting health plans "make available enrollee handbooks in languages other than English when five percent (5%) of the [health plan's] Medicaid enrolled population is non-English speaking and speak a common language."²⁰ In addition, interpreter services must be made available to enrollees.²¹ Finally, "if five hundred (500) or more of its enrollees are non-English speaking and speak a common language, the [plan] must include, if feasible, in its network at least two (2) medically trained professionals who speak that language."²²

b. Discrimination

In accordance with Title VI of the Civil Rights Act of 1964, "the Medicaid agency assures that no individual will be subjected to discrimination on the grounds of race, color, [or] national origin. . ."²³ In addition, the DMAS has implemented "methods of administration to assure that each program or activity for which it receives Federal financial assistance will be operated in accordance with Title VI regulations."²⁴

The Virginia Contract provides that "enrollee enrollment . . . [is] without regard to national origin, [or] race. . ."²⁵ In addition, the health plan must comply with Title VI.²⁶ Finally, a primary care physician offering services under Virginia's Medicaid managed care program must not "refuse an assignment or disenroll a patient or otherwise discriminate against a patient

http://www.cns.state.va.us/dmas/child_health/cmsip_handbook.htm.

¹⁹ State Child Health Plan Under Title XXI of the Social Security Act, p. 10-2 available at: http://www.cns.state.va.us/dmas/FAMIS/FAMIS_State_Plan.pdf. As noted above, the FAMIS application does collect this information, but it is unclear whether racial and ethnic data are actually reported to HCFA.

²⁰ Virginia Contract, p. 38.

²¹ *Id.*

²² *Id.*

²³ 12 VAC 30-10-970.

²⁴ *Id.*

²⁵ Virginia Contract, p. 23.

²⁶ *Id.*, p. 87.

solely on the basis of . . . race, . . . , [or] national origin.”²⁷

c. Confidentiality

All information and data maintained by DMAS “which could identify or be reasonably used to identify any applicant or subscriber in the program shall be maintained in confidence”²⁸ The information cannot be disclosed without the written consent of the applicant or subscriber.²⁹

Under very limited conditions, DMAS may release a Medicaid recipient’s information. First, the recipient may give written consent.³⁰ However, consent is not needed when: (1) an emergency exists; (2) a court has ordered production of the information; (3) it is necessary to prevent loss of, or risk to, life and health of the client or (4) information is being released to other governmental agencies to the extent necessary to assist in the agency’s administrative needs.³¹

Finally, the local Departments of Social Services may not give information concerning applicants for or recipients of FAMIS to anyone for any purpose other than the administration of the plan, unless authorized to do so by the beneficiary.³²

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, procedures and diseases. These are: (1) congenital anomalies;³³ (2) cancer;³⁴ (3) hospital inpatient data;³⁵ (4) abortions or fetal deaths;³⁶ (5) births;³⁷ and (6) deaths.³⁸ The DOH also collects racial information for marriage³⁹ and divorce records.⁴⁰

²⁷ Medicaid Manual, Supplement A, Appendix A.

²⁸ 12 VAC 30-100-460; *see also* 12 VAC 30-20-90.

²⁹ *Id.*

³⁰ 12 VAC 30-20-90.

³¹ *Id.*

³² FAMIS Handbook.

³³ Va. Code Ann. § 32.1-69.1

³⁴ 12 VAC 5-90-180.

³⁵ 12 VAC 5-217-20. The categories provided for the race data field are: White, Black, Asian, American Indian, White Hispanic, Black Hispanic, and Other.

³⁶ 12 VAC 5-550-120.

³⁷ 12 VAC 5-550-100

³⁸ 12 VAC 5-550-110

³⁹ 12 VAC 5-550-130.

⁴⁰ 12 VAC 5-550-140.

b. Discrimination

The DOH is bound by the Virginia Human Rights Act and thus must protect its patients from discrimination based on race, color, or national origin with regard to access to services.⁴¹

c. Confidentiality

Virginia's public records law provides that certain state data and information, including medical records, are not available for public inspection.⁴² This includes any public record that contains medical or psychological information about an individual.⁴³

D. Observations

Virginia has no statutes or regulations that prohibit or require the collection or reporting of racial, ethnic, or primary language data.

Virginia's managed care quality assurance regulations require that MCOs have a mechanism to provide enrollee information in the languages of the population served. This requirement implies that MCOs do or should have access to primary language information about their enrolled population.

Virginia's unfair trade statute does not provide protection from discrimination on the basis of race or national origin with regard to access to health insurance. In addition, the Virginia Human Rights Act does not provide any insight as to whether insurance companies are included within the meaning of public accommodation, and thus, prohibited from discriminating against individuals on the basis of race or national origin.

⁴¹ Phone Call with Jim Hopper, Office of the Attorney General, on April 19, 2001.

⁴² Va. Code Ann. § 2.1-342.01(A)(5).

⁴³ *Id.*