WASHINGTON STATE

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).

WASHINGTON STATE

A. General and Health Demographics

Total Population	5,894,121	
Percent Black Population	3.1	
Percent American Indian and Alaskan Native Population	1.4	
Percent Asian Population	5.4	
Percent Native Hawaiian and Other Pacific Islander Population	0.4	
Percent Hispanic Population (of any race)	7.5	
Percent White Population	78.9	
Other (some other race and two or more races)	3.2	
Language Use - 2000 census data		
Percent Limited English Proficiency (LEP) Population	3.22	(6.38)
Health Care Delivery Profile		
Percent of Total Non-elderly Population Privately Insured (1997-99)	74.2	
Percent of Total Population Enrolled in HMOs	19.06	
Medicaid Enrollment (as of December 31, 2002)	946,329	(16.06%)
Medicaid Managed Care Enrollment	897,940	(94.89%)
Percent of Total Non-elderly Population Uninsured (1997-99)	14.5	

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

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

In Washington, "health insurer" or "carrier" refers to disability insurers, health care service contractors (HCSCs), health maintenance organizations, or other entities providing health care services.[1] This state summary will use the term "health insurer" to refer to these entities, unless there is a distinction made within the statutes or regulations regarding the issue being discussed.

[1] Wash. Rev. Code §§ 48.01.50 and 48.43.005; Wash. Admin. Code § 284-43-130.

Health insurers are under the jurisdiction of the Insurance Commissioner of Washington (Commissioner),[2] who must approve all forms, filings, and policies.[3] Washington has no statutes or regulations that prohibit or require the collection or reporting of racial, ethnic, or primary language data.[4]

All health insurers who offer managed care plans are required to have an access plan that addresses the needs of covered persons with limited English proficiency, diverse cultural and ethnic backgrounds, and physical and mental disabilities.[5] Moreover, the plan should also include descriptions of the health insurer's process for monitoring and assessing on an on-going basis the sufficiency of the network to provide covered services that meet the health care needs of the populations enrolled in the managed care plans.[6]

A Health Maintenance Organization (HMO), to be certified by the Commissioner, must set forth a "description of the geographic areas and the population groups to be served and the size and composition of the anticipated enrollee population."[7] Also, the HMO governing board must have members who are "substantially representative of the enrolled population" of the HMO.[8]

2. Discrimination

No health insurers can discriminate against a person because of his or her race or ethnicity. [9] Moreover, if an applicant is qualified and he or she resides within the insurer's service area, the health insurer must enroll and provide all covered services regardless of race, ethnicity, or a range of other protected classes.[10] There are similar HMO provisions which prohibit any discrimination based on race or color in enrollment, disenrollment, cancellation, or

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[2] Wash. Rev. Code §§ 48.02.010, 48.02.060 and 48.42.010.

[3] Wash. Rev. Code §§ 48.18.100.

[4] According to a letter from the Office of Insurance Commissioner, "no carrier is recalled to require [racial, ethnic and primary language] information on an application. And while there is no express prohibition against such collection on insurance applications, an insurer would have to have legitimate reasons to collect it or this office would not approve the form." Letter of William J. Hagans, Deputy Commissioner, Policy Division, Office of Insurance Commissioner, dated March 20, 2001 (Hagans Letter).

[5] Wash. Admin. Code § 284-43-210(4).

[6] *Id*. §284-43-210(3).

[7] Wash. Rev. Code § 48.46.030(7)(f). It must also provide any other information which the Commissioner deems necessary to comply with this section. *Id.* at § 48.46.030(7)(p).

[8] Wash. Rev. Code § 48.46.070.

[9] Wash. Admin. Code § 284-43-200. There is a general insurance provision which prohibits discrimination between people having substantially similar insuring, risk, and exposure factors, in the terms or conditions of any insurance contract or the rates charged therefor. However, it does not contain any reference to race or ethnicity. Wash. Rev. Code § 48.18.480.

[10] Wash. Rev. Code §§ 48.43.018(3) and 48.43.035(1); Wash. Admin. Code § 284-43-720(1).

failure to renew enrollment, or in the provision of health care of enrollees.[11] Moreover, HCSCs cannot deny coverage to any person solely on account of race or national origin.[12]

With regard to laws against discrimination which the Human Rights Commission enforces, there is the civil "right to be free of discrimination because of race, creed, color, national origin," and a number of other protected categories.[13] This provision includes the "right to engage in insurance transactions with health maintenance organizations without discrimination,"[14] and defines as an unfair practice the failure or refusal to issue or renew insurance or an HMO agreement to a person because of race, creed, color, or national origin.[15] The Insurance Commissioner and the Human Rights Commission have concurrent jurisdiction to enforce these provisions.

3. Confidentiality

Although all records and filings of the Commissioner are public records and open to public inspection,[16] access to health care information[17] has strict disclosure requirements.[18] Health insurers cannot release health care information without the patient's written authorization.[19] Disclosure is allowed in certain circumstances,[20] but the Commissioner may delete identifying details if there is a reason to believe that disclosure would be an invasion of privacy.[21]

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[11] Wash. Rev. Code §§ 48.46.110, 48.46.060.

[12] Wash. Rev. Code § 48.44.220.

[13] Wash. Rev. Code § 49.60.010. There is also a criminal public accommodations law which may apply to health insurers. It makes criminal the same conduct prohibited by the civil statute, and specifically applies to those seeking health or medical care. Wash. Rev. Code § 9.91.010.

[14] *Id.*; *see also* Wash. Rev. Code § 49.60.030; Wash. Admin. Code § 162-04-020.

[15] Wash. Rev. Code § 49.60.178.

[16] Wash. Rev. Code § 48.02.120.

[17] "Health care information" is "any information . . . that identifies or can readily be associated with the identity of a patient and directly relates to the patient's health care," and includes any record of disclosures of such information. Wash. Rev. Code § 70.02.010(6).

[18] Uniform Health Care Information Act, Wash. Rev. Code § 70.02.005 *et seq.*

[19] Wash. Rev. Code §§ 70.02.045 and 70.02.020. A health care provider must have reasonable safeguards for the security of all health information it maintains and must have a notice for the patient that states: "We keep a record of the health care services we provide you... We will not disclose your record to others unless you direct us to do so or unless the law authorizes or compels us to do so...." Wash. Rev. Code § 70.02.150(1); *see also* Wash. Rev. Code § 48.43.021 (personally identifiable health information from the standard health questionnaire cannot be disclosed unless authorized in writing by the subject).

[20] Wash. Rev. Code § 70.02.050.

[21] Wash. Admin. Code § 284-03-100.

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

1. Department of Social and Health Services (DSHS)

a. Statutes, Regulations, Policies and Other Written Materials

The Department of Social and Health Services (DSHS) is the state agency in charge of both the Medicaid program and SCHIP.[22] 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.

However, it is the practice of DSHS to collect such data through its Automated Client Eligibility System (ACES), which requests the race and ethnicity of each client.[23] The SCHIP application contains the following statement: "We ask you to voluntarily tell us your race and ethnic background. This information will not be used in considering your eligibility for benefits."[24] The racial and ethnic choices are Caucasian, Hispanic, Black, Native American/Alaskan Native, Vietnamese/Laotian/Cambodian, Other Asian or Pacific Islander, and Other.[25] The application also asks for the following primary language information: (1) "Do you have trouble speaking, reading or writing English?"; (2) "Do you need an interpreter? (If yes, we will communicate through an interpreter"; and (3) "What language do you speak?"[26]

SCHIP also requires its program personnel to be "sensitive to cultural and ethnic differences among children in poverty."[27] Moreover, SCHIP has funded a study of the effectiveness of its maternity care access program[28] which identifies "at-risk eligible persons" to include pregnant minority women and LEP persons.[29]

Washington has a comprehensive language assistance program and was one of the first to seek federal reimbursement for interpreter and translation services for its Medicaid and SCHIP beneficiaries. DSHS must provide bilingual services to non-English speaking applicants and recipients, and must translate informational pamphlets into all primary languages (including

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[22] Wash. Rev. Code §§ 74.04.050, 74.04.015 and 74.09.500.

[23] "ACES User's Manual," at J-17, attached to Letter of David G. Rupel, Program Manager, Office of Information Services, Medical Assistance Administration, DSHS dated March 28, 2001 (Rupel Letter).

[24] DSHS, "Application for Children's Medical Benefits," at: http://wws2.wa.gov.dshs/maa/Eligibility/Kid-app.pdf.

[25] *Id*.

[26] *Id*. DSHS, "Application for Children's Medical Benefits," question #5, p. 1.

[27] Wash. Rev. Code § 74.09.405.

[28] Wash. Rev. Code § 74.09.415.

[29] Wash. Rev. Code § 74.09.790(1). The legislature established several principles for its maternity care access system, including removal of unnecessary barriers and sensitivity to cultural differences among eligible persons. Wash. Rev. Code § 74.09.770(1), (2)(c) and (g).

Spanish, Vietnamese, Cambodian, Laotian, and Chinese).[30] Because of its extensive linguistic access program, the state does keep track of the primary language of its managed care enrollees.

Washington's Healthy Options[31] Contract requires that "interpreter services [be] provided for enrollees with a primary language other than English for all interactions between the enrollee and the [health plan] or any of its providers. . .."[32] The health plan is responsible for payment for interpreter services for "plan administrative matters including, but not limited to handling enrollee complaints and appeals."[33]

In addition, the health plan must take one of the following actions so that all plan materials are understood by individual enrollees: "(1) translat[e] the material into the enrollee's primary language; (2) provid[e] the material on tape in the enrollee's primary language; [or] (3) hav[e] an interpreter read the material to the enrollee in [his] primary language."[34]

The Washington State Mental Health Contract ("MH Contract") requires that "all written materials . . . available to recipients shall be translated to the most commonly used languages in the service area."[35] In the absence of bilingual staff, the provider must make certified interpreter services available for recipients with a primary language other than English for all encounters.[36]

Finally, a contracting health plan or provider must provide mental health services by staff who are "culturally competent."[37]

b. Discrimination

The Secretary has promulgated rules to comply with federal requirements such as Title VI of the Civil Rights of 1964. The regulations require that all persons be treated fairly without regard to race, color, creed, political affiliation, national origin, religion, age, gender, disability or birthplace.[38] Interpreters must not discriminate on the basis of race, color, gender, national

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[30] Wash. Rev. Code § 74.04.025; Wash. Admin. Code § 388-472-0005 (a public assistance applicant has the right to have an interpreter or translator services at no cost or undue delay.)

[31] Healthy Options is Washington's Medicaid managed care program.

[32] Healthy Options Contract, § 8.8.

[33] *Id.* DSHS pays for interpreter services at DSHS fair hearings, and hospitals must pay for interpreter services during inpatient stays.

[34] Healthy Options Contract, § 8.8.

[35] MH Contract, pp. 28-29. The Contract does not state what is meant as to "most commonly used languages".

[36] MH Contract, p. 20.

[37] *Id.* The MH Contract defines cultural competency as "the ability to serve individuals with mental illness . . . of all ethnic groups in a manner which is responsive to their . . . unique cultural background." MH Contract, p. 4.

[38] Wash. Rev. Code §§ 74.04.055 and 74.04.057; Wash. Admin. Code §§ 388-200-1050 and 388-472-0005.

origin, or several other categories.[39] Furthermore, in the administration of medical services, providers must certify that all goods and services furnished have been provided without discrimination on the grounds of, among others, race, color, creed, or national origin.

c. Confidentiality

Applicant or recipient records and communications with DSHS cannot be disclosed except for purposes directly connected with the administration of a DSHS program.[40] Moreover, the same protections for medical records and health care information discussed in the private insurer section apply to DSHS.[41] In a judicial proceeding, such information is deemed privileged communication, although DSHS may disclose whether the person is a recipient of public assistance.[42] Additionally, any health-related data obtained by DSHS in which the patient or provider of health care is identified cannot be disclosed, subject to judicial or administrative proceedings.[43]

2. Health Care Authority (HCA)

a. Statutes, Regulations, Policies and Other Written Materials

The Health Care Authority (HCA) operates Washington's Basic Health Plan, a state-funded program to provide basic health care coverage to low-income residents who do not qualify for Medicaid, largely through enrollment in private managed care plans.[44] One of the duties of the HCA administrator is to provide assistance for rural residents, underserved populations, and persons of color.[45] Ethnic background is requested on the application, which states that providing the information is voluntary and will not affect enrollment.[46] The form also explains the option to use "other or mixed race background" when appropriate.[47]

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[39] Wash. Admin. Code § 388-03-050(7)(b). Interpreters may not divulge any information obtained through their assignments, including written materials. § 388-03-050(3).

[40] Wash. Rev. Code § 74.04.060; Wash. Admin. Code § 388-472-0005(g).

[41] Wash. Rev. Code § 42.17.312.

[42] *Id.*

[43] *Id.*; *see also* Wash. Rev. Code § 70.170.090. Relevant, necessary health-related data can be used in proceedings between DSHS and the patient or provider. Wash. Rev. Code § 43.70.050(2).

[44] Wash. Rev. Code § 70.47.010. *See,* Washington State Health Care Authority (HCA), "Basic Health" website at: http://www.wa.gov/hca/basichealth.htm.

[45] Wash. Rev. Code § 70.47.060. The administrator must also take into account the need for geographic, demographic, and economic diversity. Wash. Rev. Code § 70.47.080.

[46] HCA, "Application for Basic Health," Section 5, p. 2 at: http://www.wa.gov/hca/basichealth/application.pdf.

[47] *Id.* In fact, it has one of the most extensive lists of ethnicities on any health care application: Black/African American, White/Caucasian, Eskimo, Aleut, Indian (Native American), and Other or mixed ethnic background; under Asian or Pacific Islander (API) - Asian Indian, Cambodian, Chinese, Filipino, Guamanian, Hawaiian, Japanese, Korean, Laotian, Samoan, Vietnamese, and

HCA also administers funding for community, migrant health and maternity health centers "to ensure that the number of people of color and underserved people receiving access to managed care is expanded in proportion to need, based upon demographic data."[48] Finally, HCA sponsors community-based multi-cultural health care technical assistance programs designed to promote technical assistance to providers who serve underserved populations and people of color.[49]

b. Discrimination

Managed care plans participating in Washington's Basic Health Plan may not discriminate on the basis of race, ethnicity, sex, religion, or health status.[50]

c. Confidentiality

Records on file or obtained by any plan participating in the Basic Health Plan that contain information concerning medical treatment of individuals are exempt from public inspection.[51]

3. Department of Health (DOH)

a. Statutes, Regulations, Policies and Other Written Materials

DOH must, in consultation and collaboration with the federally recognized tribes, urban or other Indian health service organizations, and the federal area Indian health service, design, develop, and maintain an American Indian-specific health data statistics information system.[52]

All state agencies that collect or have access to population-based, health-related data must provide that data to DOH.[53] "[P]rivate entities, such as insurance companies, health

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Other API; and under Hispanic/Latin American - Mexican/Mexican American, Chicano, Puerto Rican, Cuban, and Other Hispanic/Latin American.

[48] Wash. Rev. Code § 41.05.220.

[49] Wash. Rev. Code § 41.05.230. The technical assistance includes: "(a) [c]ollaborative research and data analysis on health outcomes that disproportionately affect people of color; (b) design and development of model health education and promotion strategies aimed at modifying unhealthy health behaviors or enhancing the use of health care delivery system by persons of color; . . . (d) administration, public policy development, and analysis in health care issues affecting people of color; ..."

[50] Wash. Rev. Code § 70.47.100. It is necessary to have to have this anti-discrimination provision since the managed care plans are exempt from the Insurance Code. Wash. Rev. Code § 70.47.130.

[51] Wash. Rev. Code § 70.47.150.

[52] Wash. Rev. Code § 43.70.052(4).

[53] Wash. Rev. Code § 43.70.050(2). The statute describes data contemplated to "identify high-priority health issues evaluation of specific population groups to identify needed changes in

maintenance organizations, and private purchasers are also encouraged to give" DOH access to health-related data.[54] Clearly, this provision authorizes DOH at least to request key demographic data on race, ethnicity and primary language.

The Board of Health, a part of DOH, is responsible for addressing the health care needs of persons of color, and for improving their health status by reducing health disparities due to race and ethnicity.[55]

With regard to the collection of race data for vital statistics, Washington uses the classification and coding data of the National Center for Health Statistics.[56] The race and "origin" data collected follow the definition established by the US Census Bureau, using open-ended reporting of race and allowing for multiple entries.[57]

DOH also requires that race and/or ethnicity data be included in the reporting of patient communicable diseases by health care providers and facilities,[58] the reporting of patient blood lead level results from medical labs,[59] patient pesticide poisoning reporting by health care providers,[60] reporting of gunshot wounds of victims and perpetrators,[61] cancer patient reporting by health care providers,[62] and reporting to the trauma victim registry by providers.[63]

b. Discrimination

DOH also has an equal opportunity provision which states that all services and programs must be provided in a fair and impartial manner, and that no person can be excluded from participation in, be denied the benefits of, or be subjected to discrimination on the grounds of race, color, creed, sex, age, national origin, marital status, or handicap.[64]

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health practices and services."

[54] *Id.*; *see also* Wash. Rev. Code §§ 74.09A.005 and 74.09A.020.

[55] Notes, Wash. Rev. Code § 43.20.050(2)(f). BOH has a web page devoted to health disparities, and has published a report identifying health disparities among racial and ethnic minorities entitled, "Summary of Planned Work - State Board of Health Priority: Health Disparities," 1/18/01, *available at*: http://www.doh.wa.gov/sboh/HealthDisparities/Default.htm.

[56] Wash. Admin. Code § 246-491-029 (2000); DOH, "Center for Health Statistics - Washington State Vital Statistics - Data Classification," at: http://www.doh.wa.gov/EHSPHL/CHS/sub4.htm.

[57] *Id.* at p.2-3.

[58] Wash. Admin. Code § 246-100-081.

[59] Wash. Admin. Code § 246-100-041.

[60] Wash. Admin. Code § 246-100-217.

[61] Wash. Admin. Code § 246-100-218.

[62] Wash. Admin. Code § 246-430-030.

[63] Wash. Admin. Code § 246-976-430.

[64] Wash. Admin. Code § 246-08-520; *see also* "Administrative Policy No. 7.14 (Nondiscrimination Compliance Program)," "Administrative Policy No. 7.15 (Civil Rights Complaint Investigations)," & "Administrative Policy No. 8.01 (Client Rights)," attachments to Rupel Letter.

c. Confidentiality

The records of DOH are public records, but DOH may exempt certain of them from public disclosure, or delete identifying details if there is a reason to believe that such disclosure would be an invasion of privacy.[65] Persons with confidential medical information about HIV and other sexually transmitted diseases can only disclose the identity of the person under limited circumstances.[66] Moreover, in administrative procedures, DOH can issue a protective order at its discretion to protect the confidentiality of health care records, to protect the patient from annoyance, embarrassment, oppression or undue burden or expense, or to protect the identity of the person.[67] The collection of data on Native Americans must explain that DOH rules regarding confidentiality shall apply to safeguard the information from inappropriate use or release.[68]

D. Observations

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

Washington has expressly recognized that its "diverse ethnic and linguistic communities have contributed to the social and economic prosperity" of the state.[69] Its policy is "to welcome and encourage the presence of diverse cultures and the use of diverse languages in business, government, and private affairs of [the] state."[70] This philosophy is reflected in Washington's statutes and regulations, which address issues of data collection, discrimination, and confidentiality.

Nonetheless, Washington does not have a general requirement that race, ethnicity and primary language data be collected, and at least its Department of Insurance has expressed reservations about doing so out of a concern for potential discrimination.[71] However, the state has dealt with this inherent tension in an analogous situation. In the public employment context, a statute prohibits asking for race or religion on the state's application forms.[72] However, acknowledging that such information would be useful for affirmative action purposes, the regulations governing preemployment inquiries provide guidance on how to obtain the needed information while protecting the applicant. The rules articulate detailed conditions under which such inquiries to applicants are allowed. In this way, Washington has balanced its concerns about inadvertently fostering discrimination through mechanisms designed to combat it.

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[65] Wash. Admin. Code § 246-08-420(5) & (6).
[66] Wash. Rev. Code § 70.24.105; Wash. Admin. Code § 246-100-016.
[67] Wash. Admin. Code § 246-10-405.
[68] *Id.*
[69] Wash. Rev. Code § 1.20.100(1).
[70] *Id.*
[71] *See* Hagans Letter.
[72] Wash. Rev. Code § 43.01.100; Wash. Admin. Code § 162-12-120 *et seq.*

Notably, Washington is one of three states with a one hundred percent (100%) Medicaid managed care participation rate.