

## **ALASKA**

**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).

## ALASKA

### A. General and Health Demographics

<b>Total Population</b>	629,932
Percent Black Population	3.4
Percent American Indian and Alaskan Native Population	15.4
Percent Asian Population	3.9
Percent Native Hawaiian and Other Pacific Islander Population	0.5
Percent Hispanic Population (of any race)	4.1
Percent White Population	67.6
Other (some other race and two or more races)	5.1
<b>Language Use - 1990 census data</b>	
Percent Limited English Proficiency (LEP) Population	1.87 (5.32)
<b>Health Care Delivery Profile</b>	
Percent of Total Non-elderly Population Privately Insured (1997-99)	71.1
Percent of Total Population Enrolled in HMOs	0.0
Medicaid Enrollment (as of June 30, 2000)	91,698 (14.56%)
Medicaid Managed Care Enrollment	0 (0.00%)
Percent of Total Non-elderly Population Uninsured (1997-99)	19.6

### 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 Director of the Division of Insurance in the Department of Community and Economic Development enforces the provisions of the Insurance Code and oversees the operation of all health care insurers in the state.<sup>1</sup> A “health care insurer” is any entity that transacts the business of health

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<sup>1</sup> Alaska Stat. §§ 21.06.020, 21.06.080, 21.09.010, & 21.86.020. The Director must also approve all applications, forms and policies of health insurers. Alaska Stat. § 21.42.129.

care insurance, including an insurance company, a managed care organization (MCO),<sup>2</sup> and health maintenance organization (HMO).<sup>3</sup> This state summary will use the term “health care insurer” to refer to all of these entities and any distinctions among each type of health insurance entity will be noted if relevant to the issue being discussed.

There are no statutes, regulations or other written materials requiring or prohibiting the collection of race, ethnicity or primary language data by health care insurers.<sup>4</sup> However, certain policies pertaining to health care insurers seem to anticipate knowledge of the racial, ethnic and primary language characteristics of the population being served. For example, at least one third of an HMO’s governing body must consist of consumers who are substantially representative of enrollees.<sup>5</sup> To determine whether its governing body truly reflects its enrollee population, it would seem at least helpful to assess the racial, ethnic, and primary language make-up of those enrollees.

## 2. Discrimination

Although there is no statute which explicitly forbids the use of race or ethnicity in determining health insurance coverage, Alaska does have a general anti-discrimination insurance statute prohibiting “unfair” discrimination between individuals of the same class and of essentially the same hazard in the rates charged, health benefits provided, any other terms and conditions of a contract, or in any other manner.<sup>6</sup>

While the Department of Insurance has exclusive jurisdiction to regulate the insurance industry, the Alaska Supreme Court has found that municipalities can investigate complaints against an insurance company alleging unfair discrimination under their local civil rights/public accommodations ordinances.<sup>7</sup>

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<sup>2</sup> MCOs in Alaska are not necessarily prepaid plans, but can require preauthorization for medical services, use a network of participating health care providers, and must comply with utilization review requirements. Alaska Stat. § 21.07.020; telephone conversation with Katie Campbell, Division of Insurance, 3/23/01.

<sup>3</sup> An HMO is an entity that provides basic health care services to enrollees on a prepaid basis. Alaska Stat. § 21.86.900. Currently, there are no HMOs operating in the state. Telephone conversation with Daniel Brow, Consumer Service Specialist, Division of Insurance, on 3/22/01.

<sup>4</sup> See December 11, 2000 letter of Katie Campbell, Life/Health Actuary, Division of Insurance, Department of Community and Economic Development (“Alaska does not have any specific laws, regulations, guidance, policies or forms regarding the collection or use of racial, ethnic or primary language data.”).

<sup>5</sup> Alaska Stat. § 21.86.040.

<sup>6</sup> Alaska Stat. § 21.36.090.

<sup>7</sup> *Allstate Insurance Company, Inc. v. Municipality of Anchorage*, 599 P. 2d 140 (1979). The court limited the municipality to investigation of the complaint and held that it could only seek to remedy the problem by advising the Director of Insurance of its findings. It could not issue any rulings which would alter the business of insurance. *Id.* at 144.

### 3. Confidentiality

Beginning on July 1, 2001, MCOs must maintain the confidentiality of medical and financial information regarding an applicant or member unless: (1) the individual whose identity is disclosed gives consent; (2) the information is disclosed for research;<sup>8</sup> (3) the information is disclosed for the purposes of obtaining reimbursement; or (4) the disclosure is required by law.<sup>9</sup>

The records of all public agencies, including the Division of Insurance, are open to public inspection as public records,<sup>10</sup> but there is an exception for “medical and other related public health records.”<sup>11</sup> Moreover, any documents or evidence received from any discrimination investigation is confidential and not subject to public inspection for as long as the Director considers such confidentiality to be in the public interest or reasonably necessary to complete an investigation.<sup>12</sup>

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

### 1. Department of Health and Human Services (DHHS)

#### a. Statutes, Regulations, Policies and Other Written Materials

DHSS is the state agency authorized, through its Division of Medical Assistance (DMA), to operate the Alaska’s Medicaid program and its SCHIP, Denali KidCare.<sup>13</sup> Although there is no state statutory or regulatory requirement requiring or prohibiting the collection of race, ethnicity, or primary language data for DHSS’ Medicaid and SCHIP programs, race data is collected. DMA compiles a “Medical Assistance Statistics Report” which includes race data on eligibility.<sup>14</sup> Moreover, both the initial and renewal SCHIP applications request race/ethnicity information.<sup>15</sup> The applicant’s race is requested, on a voluntary basis, on both applications. On the initial

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<sup>8</sup> Alaska Stat. § 21.07.040(a) & (b). Any research must be subject to federal law and regulations protecting the rights and welfare of the participant or use coding or encryption to protect the identity of the participant.

<sup>9</sup> *Id.* HMOs are subject to similar requirements, but may also disclose information to the extent necessary to carry out its responsibilities or if the data is relevant to a claim or litigation between the person and the HMO. Alaska Stat. § 21.86.280.

<sup>10</sup> Alaska Stat. § 40.25.110(a).

<sup>11</sup> Alaska Stat. § 40.25.120(3).

<sup>12</sup> Alaska Stat. §§ 21.36.400 & 21.060.150.

<sup>13</sup> Alaska Stat. §§ 47.05.010, 47.07.010 and 47.07.050; Alaska Admin. Code Tit. 7, §§ 43.005 and 43.1990; Denali KidCare is a medicaid expansion program which means that all the requirements of the Medicaid program apply to it as well.

<sup>14</sup> See state website: DMA, “FY 2000 Annual Report,” p. 10, 17 at: [http://www.hss.state.ak.us/dma/00\\_repor.pdf](http://www.hss.state.ak.us/dma/00_repor.pdf).

<sup>15</sup> See “Denali KidCare Application” & “Denali KidCare Renewal Form,” on state website: <http://www.hss.state.ak.us/dma/applicat.pdf>.

application, the applicant is provided with the following racial categories from which to choose: “White/Caucasian;” “Alaska Native/American Indian;” “Asian/Pacific Islander;” “Black/African American;” and, “Hispanic.”<sup>16</sup>

DHSS does require certain grant programs<sup>17</sup> to “establish and operate internal collection systems to provide necessary racial statistics for staff, clients, beneficiaries or participants annually.”<sup>18</sup> One of the criteria for review of an application for funding of such programs is the “justification of the need for services, including the identification of the target population and geographic areas to be served.”<sup>19</sup> And under Medicaid, for coverage of sterilization for family planning purposes, interpreters must be provided when there are language barriers.<sup>20</sup>

DHSS also collects demographic data through the Division of Public Health’s (DPH) Bureau of Vital Statistics<sup>21</sup> (Bureau) which requires health care providers to report race and ethnicity data for infectious diseases of public health significance,<sup>22</sup> cancer registries,<sup>23</sup> birth defect registries,<sup>24</sup> injuries caused by firearms,<sup>25</sup> and for significant blood lead test results,<sup>26</sup> as well as race data for births and deaths.<sup>27</sup>

#### b. Discrimination

Alaska has recognized in its Medicaid and SCHIP programs that needy persons in the state must receive “uniform and high quality medical care, regardless of race, age, national origin, or

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<sup>16</sup> *Id.* at p. 7.

<sup>17</sup> The grant programs cover a range of services, including: (1) emergency medical services (Alaska Stat. §§ 18.08.010); (2) alcoholic and drug abuse treatment, rehabilitation, and prevention programs (Alaska Stat. §§ 47.30.477 & 47.37.030); (3) community mental health programs (Alaska Stat. § 47.30.530); (4) pregnancy services (Alaska Stat. § 47.40.100); and (5) programs for persons with disabilities (Alaska Stat. §47.80.130).

<sup>18</sup> Alaska Admin. Code Tit. 7, § 78.130.

<sup>19</sup> Alaska Admin. Code Tit. 7, § 78.100.

<sup>20</sup> Alaska Admin. Code Tit. 7, § 43.135.

<sup>21</sup> Alaska Stat. §§ 18.50.010 & 18.50.950 & Alaska Admin. Code Tit.7, § 05.010.

<sup>22</sup> Alaska Admin. Code Tit.. 7, § 27.005. Laboratories are also supposed to report the race and ethnicity of persons with certain human infections. Alaska Admin. Code. Tit. 7, § 27.007.

<sup>23</sup> Alaska Admin. Code Tit. 7, § 27.011.

<sup>24</sup> Alaska Admin. Code Tit. 7, § 27.012.

<sup>25</sup> Alaska Admin. Code Tit. 7, § 27.013.

<sup>26</sup> Alaska Admin. Code Tit. 7, § 27.014.

<sup>27</sup> DPH, “Alaska Bureau of Vital Statistics 1998 Annual Report,” state website at: [http://www.hss.state.ak.us/dph/bvs/annrpt/ar1998/1998\\_annual\\_report.pdf](http://www.hss.state.ak.us/dph/bvs/annrpt/ar1998/1998_annual_report.pdf). There is much race specific data in many of the report’s charts, as well as explanations of how the race data is collected using the National Center for Health Statistics guidelines for determining the race of a child and race on death certificates. *Id.* at p. 7, 141.

economic standing”<sup>28</sup> All Medicaid providers must comply with the conditions of Title VI of the Civil Rights Act of 1964,<sup>29</sup> and the SCHIP application declares that “Denali KidCare eligibility will not be affected by race, color, age, religious creed, national origin, sex, disability or political belief.”<sup>30</sup> DHSS grantees must also comply with the procedures for processing complaints alleging race, color, national origin, sex, or physical handicap discrimination.<sup>31</sup>

Alaska’s civil rights statute makes it unlawful for the state or its political subdivisions “to refuse, withhold from, or deny to a person any local, state, or federal funds, services, goods, facilities, advantages, or privileges because of race, color, national origin, religion, or sex.”<sup>32</sup> This applies to DHSS and any of its subdivisions and is an additional protection for applicants and recipients of Medicaid and SCHIP.

c. Confidentiality

DHSS and its grantees must safeguard any information concerning applicants for and recipients of public assistance, including medical assistance,<sup>33</sup> and must not disclose such information except for purposes directly connected with the administration of its programs<sup>34</sup> or pursuant to court order.<sup>35</sup> Safeguarded information includes the names and addresses of applicants and recipients, “information contained in applications, reports of investigations or medical examinations, correspondence, and other records concerning the condition of circumstances of any person from whom, or about whom, the information is obtained,” and records of agency evaluations.<sup>36</sup> Moreover, information of a statistical nature may be released for research purposes as long as such research will not disclose the identity of the applicant or family.<sup>37</sup>

The SCHIP application informs applicants that their records will be kept confidential and will not be used for unauthorized purposes, authorizes the release of information only to DHSS or its agents, and explains that the information will be used solely in the administration of the Denali

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<sup>28</sup> Alaska Stat. § 47.07.010.

<sup>29</sup> Alaska Admin. Code Tit. 7, § 43.070.

<sup>30</sup> See “Denali KidCare,” on state website at: <http://www.hss.state.ak.us/dma/applicat.pdf>.

<sup>31</sup> Alaska Admin. Code § 78.130.

<sup>32</sup> Alaska Stat. § 18.80.255.

<sup>33</sup> Alaska Admin. Code Tit. 7, §§ 78.100 & 220.

<sup>34</sup> Alaska Admin. Code Tit. 7, § 37.010. The purposes directly related to the programs include establishing eligibility, determining amounts of assistance, and providing services. Alaska Admin. Code Tit. 7, § 37.030. Any information obtained can only be used by agency staff, Alaska Admin. Code Tit. 7, § 37.040.

<sup>35</sup> Alaska Admin. Code Tit. 7, § 37.060.

<sup>36</sup> Alaska Admin. Code Tit. 7, § 37.020.

<sup>37</sup> Alaska Admin. Code Tit. 7, § 37.100.

KidCare program.<sup>38</sup> Consistent with this declaration, DHSS' records are covered by the public records disclosure exception for "medical and other related public health records."<sup>39</sup>

There is also an exception to the public records statute for the records of vital statistics.<sup>40</sup> The Vital Records Act states that it is unlawful for a person to permit inspection of, or to disclose information contained in, vital statistics records unless it is: (1) for research purposes, (2) after a required period of time has elapsed for birth, death, marriage, or divorce, (3) to next of kin of sudden infant syndrome, or (4) to principal municipal health officers or their designees pertinent to their functions.<sup>41</sup> The release of information from records, certificates and other vital records for statistical and research purposes is permissible as long as no patient identifiers are furnished.<sup>42</sup>

#### **D. Observations**

Alaska has no statutes, regulations or other written materials requiring or prohibiting the collection of race, ethnicity or primary language data by health care insurers.

Alaska is unusual in that it currently has no HMOs and few managed care entities in either the private or public health insurance context.<sup>43</sup> However, despite this, Alaska has enacted statutes and regulations governing their operation. It is also noteworthy that most of the provisions which support the collection of race, ethnicity and primary language data, and corresponding confidentiality provisions to protect such data, are related to MCOs and HMOs. Therefore, at the point that those entities enter the state or become a larger segment of the health insurance industry, the ability to collect such key demographic data will be present.

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<sup>38</sup> "Denali KidCare" & state website at: <http://www.hss.state.ak.us/dma/applicat.pdf>.

<sup>39</sup> Alaska Stat. § 40.25.120(3).

<sup>40</sup> Alaska Stat. § 40.25.120(1) & Alaska Admin. Code Tit. 7, § 05.200.

<sup>41</sup> Alaska Stat. § 18.50.310.

<sup>42</sup> Alaska Stat. § 18.05.43 & Alaska Admin. Code Tit. 7, §§ 05.950 & 37.130.

<sup>43</sup> 1995 Atty Gen Op. 97, p. 2 (April 21, 1995). *See also*, telephone conversations of 3/23/01 with Daniel Brow and Katie Campbell, Division of Insurance. According to Mr. Brow, the state's population has been too small to attract any HMO to the state. As the largest state in the country, one of Alaska's challenges is providing adequate medical care and health care assistance to residents who live in remote areas. *See DPH, Alaska Bureau of Vital Statistics 1998 Annual Report*, p. 5, state website at: [http://www.hss.state.ak.us/dph/bvs/annrpt/ar1998/1998\\_annual\\_report.pdf](http://www.hss.state.ak.us/dph/bvs/annrpt/ar1998/1998_annual_report.pdf).