

## ARKANSAS

**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).

## ARKANSAS

### A. General and Health Demographics

<b>Total Population</b>	2,673,400
Percent Black Population	15.6
Percent American Indian and Alaskan Native Population	0.6
Percent Asian Population	0.7
Percent Native Hawaiian and Other Pacific Islander Population	0.1
Percent Hispanic Population (of any race)	3.2
Percent White Population	78.6
Other (some other race and two or more races)	1.1
<b>Language Use - 1990 census data</b>	
Percent Limited English Proficiency (LEP) Population	1.33 (2.32)
<b>Health Care Delivery Profile</b>	
Percent of Total Non-elderly Population Privately Insured (1997-99)	66.4
Percent of Total Population Enrolled in HMOs	12.33
Medicaid Enrollment (as of June 30, 2000)	526,877 (19.71%)
Medicaid Managed Care Enrollment	306,247 (58.12%)
Percent of Total Non-elderly Population Uninsured (1997-99)	22.4

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

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

The Arkansas Department of Insurance regulates insurers and HMOs operating within the state. Arkansas uses the term “insurer” to refer to insurance companies, and hospital and

medical service corporations.<sup>1</sup> A health maintenance organization (HMO) is classified as its own separate entity.<sup>2</sup> This summary will use the term “insurer” to encompass insurance companies and hospital and medical services corporations, unless there is a distinction made within the statutes or regulations regarding the issue being discussed.

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

Arkansas requires that all health insurance policies and any application related to the policies receive approval from the Department of Insurance prior to its use.<sup>3</sup>

## 2. Discrimination

Under the Arkansas Civil Rights Act of 1993 (the “Act”), a person has a right to fully enjoy any place of public accommodation without being discriminated against because of his race or national origin.<sup>4</sup> While the Act does not define the provision of health insurance or health care services as a public accommodation, the Arkansas insurance statute prohibits discrimination on the basis of race, color or national origin when insuring or continuing to insure any individual.<sup>5</sup> In addition, with regard to the regulation of insurance rates, an insurer cannot classify any insurance risks “based in whole or in part on race, color . . . or national origin of the risk.”<sup>6</sup>

## 3. Confidentiality

All HMOs must hold in strict confidence “any data or information pertaining to the diagnosis, treatment or health of any enrollee or applicant. . .”<sup>7</sup> However, this data may be disclosed if there is: (1) express consent by the enrollee or applicant; (2) a statute or court order for the production of evidence; or, (3) a claim or litigation between the HMO and the enrollee or applicant wherein the data is pertinent.<sup>8</sup>

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<sup>1</sup> Hospital and medical service corporations are “corporations organized . . . for the purpose of establishing, maintaining, and operating . . . plans, whereby hospital, medical, and related services may be provided by hospitals, physicians or others with which the corporations have contracted. . .” Ark. Stat. Ann. § 23-75-101(a).

<sup>2</sup> An HMO is any entity “which undertakes to provide or arrange for, pay for, or reimburse any part of the cost of any health care services . . . on a prepaid basis through insurance or otherwise . . .” Ark. Stat. Ann. § 23-76-102.

<sup>3</sup> Ark. Stat. Ann. § 23-79-109(a)(1).

<sup>4</sup> Ark. Stat. Ann. § 16-123-107(a)(2).

<sup>5</sup> Ark. Stat. Ann. § 23-66-206(7)(G).

<sup>6</sup> Ark. Stat. Ann. § 23-67-209(b).

<sup>7</sup> Ark. Stat. Ann. § 23-76-129(a).

<sup>8</sup> *Id.*

Moreover, by July 1, 2001, all insurers and HMOs licensed in Arkansas, must comply with Title V of the Gramm-Leach-Bliley Act,<sup>9</sup> which requires licensees “to develop privacy policies, develop systems for implementing those policies and protecting personal information of consumers and customers . . . .”<sup>10</sup>

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

### **1. Department of Human Services**

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

There are no state statutes or rules that require or prohibit the Department of Human Services from collecting or reporting racial, ethnic or primary language data. However, the application for benefits under the ARKids First Program (SCHIP) requests the applicant’s and his/her household’s racial information. The application neither indicates whether it is voluntary for the applicant to give this information nor does it provide any racial categories from which the applicant may choose when self-reporting this information.

#### **b. Discrimination**

The Arkansas Medicaid Manual explicitly states that “services will be provided to qualified recipients without regard to race, color, [or] national origin . . . within the provisions of Title VI of the Federal Civil Rights Act. . . .”<sup>11</sup> The manual also precludes any primary care provider (PCP) from refusing to accept or discriminating against a Medicaid recipient solely on the basis of race or national origin.<sup>12</sup> Finally, the ARKids First application states that an applicant may not be denied ARKids benefits because of race, color or national origin.

#### **c. Confidentiality**

Any information or records which identify persons participating in programs administered by the Department of Human Services must not be disclosed except for purposes directly connected with the administration of the public assistance program.<sup>13</sup> This means that any information concerning persons applying for or receiving assistance that is derived from the records or files of the DHS shall be maintained by departmental personnel and disclosed only in accordance with any confidentiality provisions.<sup>14</sup>

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<sup>9</sup> 15 U.S.C. 6801 *et seq.*

<sup>10</sup> Arkansas Emergency Rule and Regulation No. 73. *See* [http://www.state.ar.us/insurance/pdf/arkansas\\_illinoisprivacyrule.pdf](http://www.state.ar.us/insurance/pdf/arkansas_illinoisprivacyrule.pdf).

<sup>11</sup> Ark. Rules & Regs., § 016-06-051(9).

<sup>12</sup> *Id.*, § 016-06-051(10).

<sup>13</sup> Ark. Stat. Ann. § 20-76-433(b).

<sup>14</sup> *Id.*

## 2. Department of Health

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

The Department of Health (DOH) collects racial and ethnic information for several registries, which include a cancer registry,<sup>15</sup> immunization registry,<sup>16</sup> tuberculosis registry<sup>17</sup> and Reyes syndrome registry.<sup>18</sup> Although not statutorily required, DOH collects and reports racial and ethnic data for its birth (race of the mother) and death records.<sup>19</sup> In addition, the DOH is responsible for establishing a health data clearinghouse and collecting and disseminating data from various state agencies.<sup>20</sup> The data clearinghouse is intended to assist health care providers, consumers, and third-party payors understand patterns and trends in the availability and use of health care services.<sup>21</sup>

### b. Discrimination

The DOH is deemed a “place of public accommodation” by the Arkansas Civil Rights Act and thus is prohibited from denying health care services to a person because of his race, color, or national origin.<sup>22</sup>

### c. Confidentiality

The Department of Health imposes confidentiality standards for the various data collection systems it oversees. Records and reports that are gathered by the DOH for the various registries and databases must be held in confidence, or if disclosed for statistical purposes, the disclosure must not identify individuals.<sup>23</sup> Moreover, under the Freedom of Information Act, medical records maintained by a public agency, such as the DOH, are not open to the public for examination or copying.<sup>24</sup>

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<sup>15</sup> Ark. Rules & Regs. § 007-00-009.

<sup>16</sup> *Id.* § 007-16-001.

<sup>17</sup> Ark. Rules & Regs. § 007-26-002.

<sup>18</sup> Ark. Stat. Ann. § 20-15-401(b).

<sup>19</sup> See <http://www.healthyarkansas.com/stats/98vital/ANN.HTM>.

<sup>20</sup> Ark. Stat. Ann. § 20-7-302.

<sup>21</sup> *Id.*

<sup>22</sup> Ark. Stat. Ann. § 16-123-102(7). A place of public accommodation is “any place . . . , that supplies accommodations, . . . , or services to the general public, . . . or that is supported directly or indirectly by government funds . . . .”

<sup>23</sup> Ark. Stat. Ann. § 20-15-203 (cancer registry); § 20-13-806 (trauma registry); § 20-15-904 (AIDS/HIV registry).

<sup>24</sup> Ark. Stat. Ann. § 25-19-105(b)(2).

In addition, the Health Services Agency,<sup>25</sup> which serves as a statewide health data clearinghouse for the collection and reporting of utilization and cost data from state programs (including Medicaid), must provide appropriate protection for the confidentiality of all data collected.<sup>26</sup> Any data released by the Health Services Agency must not include any information which could be used to identify any individual patient.<sup>27</sup> Moreover, any data collected that identifies any individual patient is not subject to discovery under Arkansas' Rules of Civil Procedure or the Freedom of Information Act.<sup>28</sup>

#### **D. Observations**

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

Interestingly, Arkansas' Civil Rights Act specifically cedes any jurisdiction over discrimination matters, within the context of insurance, to the Department of Insurance. This makes the enforcement of the Insurance Code's anti-discrimination provision a very important matter. However, because there are no provisions for the collection or reporting of racial and ethnic data by health insurers or HMOs, it would appear to be difficult for the Insurance Commissioner to gather evidence of discrimination.

The collection of racial and ethnic data should not raise any confidentiality concerns, as Arkansas provides adequate protection of medical information and records through both its Freedom of Information Act and its HMO regulations.

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<sup>25</sup> The Health Services Agency is an independent agency that is under the authority of the Governor. It is also the state agency that administer funds for the construction of health care facilities and reviews applications for permits *See* Ark. Stat. Ann. § 20-8-104.

<sup>26</sup> Ark. Stat. Ann. §§ 20-8-110(a), 20-7-302.

<sup>27</sup> Ark. Stat. Ann. § 20-8-110(f)(1).

<sup>28</sup> Ark. Stat. Ann. § 20-7-305(b). The Freedom of Information Act (FOIA) is codified at Ark. Stat. Ann. § 25-19-101 *et seq.* Also, under the FOIA, medical records are not open to the public for examination or copying. Ark. Stat. Ann. § 25-19-105(b)(2).