

DELAWARE

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).

DELAWARE

A. General and Health Demographics

Total Population	783,600
Percent Black Population	18.9
Percent American Indian and Alaskan Native Population	0.3
Percent Asian Population	2.1
Percent Native Hawaiian and Other Pacific Islander Population	0.0
Percent Hispanic Population (of any race)	4.8
Percent White Population	72.5
Other (some other race and two or more races)	1.4
Language Use - 1990 census data	
Percent Limited English Proficiency (LEP) Population	1.93 (3.88)
Health Care Delivery Profile	
Percent of Total Non-elderly Population Privately Insured (1997-99)	73.2
Percent of Total Population Enrolled in HMOs	49.22
Medicaid Enrollment (as of June 30, 2000)	124,828 (15.93%)
Medicaid Managed Care Enrollment	94,395 (75.62%)
Percent of Total Non-elderly Population Uninsured (1997-99)	15.0

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 Department of Insurance regulates insurers operating within the state of Delaware. Delaware uses the term “insurer” to encompass insurance companies and health maintenance organizations (HMOs).¹ All managed care organizations (MCOs) are regulated by the

¹ 18 Del. Code Ann. § 102(3); *see also* 18 Del. Code Ann. § 6406 (applying applicable chapters of the Insurance Code to HMOs).

Department of Insurance (DOI) and the Department of Health and Social Services (DHSS).² This summary will use the term “insurer” to refer to insurance companies and HMOs and the term “MCO” will be used to encompass entities that fall within the statutory definition, including HMOs.

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

Delaware requires that all health insurance policies and any application related to the policies receive approval from the Department of Insurance prior to its use.³

In addition, an MCO must have a provider network that has a “sufficient number of primary care physicians that reflects a diversity and that is adequate to meet the diversity needs of the [enrollees’] varied characteristics including . . . language, [and] race . . .”⁴

Moreover, the MCO must provide “culturally competent” services to its enrollees “*to the greatest extent possible.*”⁵ (Emphasis added.) Unfortunately, the regulations do not define “culturally competent”, nor do they provide any standards or mechanisms to determine whether the MCO is complying with this requirement.

2. Discrimination

Under Delaware’s general civil rights statute, no person may deny or refuse another person access to a place of public accommodation or services offered by a place of public accommodation because of race, color or national origin.⁶ Delaware has no case law that discusses the applicability of this provision to the business of insurance.

However, under the Insurance Code, it is unlawful for an insurer to discriminate against anyone for any purpose because of the insured’s race, color or national origin.⁷ Moreover, an

² Managed care organization means “a public or private organization,. . . which:

- A. provides or otherwise makes available to enrolled participants health care services . . .;
- B. is primarily compensated (except for co-payment) . . . on a predetermined periodic rate basis; and
- C. provides physician services directly through physicians who are either employees or partners of such organization, or through arrangements with individual physicians or [physician groups]. . .” CDR 40-700-035(69.120).

³ 18 Del. Code Ann. § 2712(a).

⁴ Code of Delaware Regulations (CDR) 40-700-035 (69.503)(B).

⁵ CDR 40-700-035 (69.507).

⁶ 6 Del. Code Ann. § 4504(a).

⁷ 18 Del. Code Ann. § 2304(22)(a).

insurer cannot discriminate between individuals of the same class when determining the premiums, fees, or rates charged for a health insurance policy.⁸

3. Confidentiality

Any information maintained by an MCO that relates to an enrollee's or applicant's diagnosis, treatment, or health status must be held in confidence.⁹ Exceptions to this provision include releases: (1) made with the enrollee's or applicant's consent; (2) made with the enrollee's or applicant's physician's consent; (3) mandated by statute or court order; and, (4) made in connection with a claim or litigation between the enrollee and MCO when the data or information is relevant to the claim.¹⁰

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

1. Department of Health and Social Services (DHSS)

a. Statutes, Regulations, Policies and Other Written Materials

The Department of Health and Social Services (DHSS) is the state agency that administers Delaware's Medicaid and SCHIP programs. There are no state statutes or rules that prohibit the DHSS from collecting or reporting racial, ethnic or primary language data. However, the application for benefits under the Delaware Healthy Children Program (SCHIP) requests the applicant's and his/her household's racial information.¹¹ It is optional for the applicant to provide this information to the DHSS. The application provides the following racial categories: White, Black/African American, Hispanic/Latino, American Indian/Alaskan Native, Asian and Native Hawaiian/Pacific Islander.

b. Discrimination

The Delaware Medicaid Managed Care Request For Proposals prohibits discrimination because of race, color, or national origin in the delivery of services under the Medicaid managed care program.¹² Moreover, Title VI of the Federal Civil Rights Act of 1964 applies because the state receives federal financial assistance for its state Medicaid program, and any Medicaid application must be considered without regard to race, color, or national origin.¹³

⁸ 18 Del. Code Ann. § 2304(13)(b).

⁹ 16 Del. Code Ann. § 9113.

¹⁰ *Id.*

¹¹ The Delaware Healthy Children Program is a low cost health insurance program for Delaware's uninsured children.

¹² Delaware RFP, p. 5.

¹³ CDR 40-800-006.

c. Confidentiality

All information, records and data collected and maintained by Medicaid providers must be safeguarded.¹⁴ This includes, but is not limited to: (1) names and addresses of beneficiaries; (2) type of medical services rendered; (3) medical data, including diagnosis and past history of disease and disability; (4) social and economic conditions;¹⁵ (5) information received for verifying income eligibility; and, (6) information about third party liability.¹⁶

2. Division of Public Health, Department of Health and Social Services

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

Unlike most other states, the Delaware Division of Public Health (DPH) has very few racial and ethnic data collection requirements. DPH only requires the collection and reporting of racial data with regard to sexually transmitted diseases.¹⁷

b. Discrimination

The Division of Public Health is bound by the requirements of Delaware's equal accommodations law with regard to discrimination on the basis of race, color or national origin in regulating access to public health services. The DPH is a "public accommodation" as defined by statute.¹⁸

c. Confidentiality

There are several provisions regarding the confidentiality of information in the possession of the Division of Public Health. No identifying information may be disclosed when a provider reports cases of tuberculosis or exposure to tuberculosis,¹⁹ or any information or data relating to reported cases of STDs, including HIV.²⁰ Exceptions to these provisions exist for: (1) release of medical or epidemiological information for statistical purposes, but only if the patient is not identified; (2) release of information with the patient's consent; (3) release made to medical personnel, state agencies or state courts to enforce this regulatory provision; (4) release made to medical personnel in case of emergency; and (5) release made during the course of civil or criminal litigation.²¹ Finally, any report of cancer or a benign tumor cannot disclose the

¹⁴ *Id.*

¹⁵ The regulation does not indicate whether information regarding "social and economic conditions" includes race, ethnicity or primary language data.

¹⁶ *Id.*

¹⁷ 16 Del. Code Ann. § 702(b).

¹⁸ 8 Del. Code Ann. § 4502(a).

¹⁹ 16 Del. Code Ann. § 531.

²⁰ 16 Del. Code Ann. § 711.

²¹ 16 Del. Code Ann. § 531(1)-(5) and § 711(1)-(5).

identity of the patient. However, identifying information may be exchanged among cancer control agencies.²²

D. Observations

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

Delaware law requires that MCO provide culturally competent services. However, as noted above, the state does not define culturally competent. This culturally competent requirement may implicate the need for racial, ethnic and primary language data.

In addition, an MCO's provider network must reflect the cultural diversity of its enrolled population. It would appear that in order to assess the level of diversity of the enrolled population, an MCO would need access to reliable racial, ethnic and primary language data.

²² 16 Del. Code Ann. § 3205(a).