

## FLORIDA

**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).

## FLORIDA

### A. General and Health Demographics

<b>Total Population</b>	15,982,378
Percent Black Population	14.2
Percent American Indian and Alaskan Native Population	0.3
Percent Asian Population	1.6
Percent Native Hawaiian and Other Pacific Islander Population	0.0
Percent Hispanic Population (of any race)	16.8
Percent White Population	65.4
Other (some other race and two or more races)	1.7
<b>Language Use - 1990 census data</b>	
Percent Limited English Proficiency (LEP) Population	5.60 (10.37)
<b>Health Care Delivery Profile</b>	
Percent of Total Non-elderly Population Privately Insured (1997-99)	68.5
Percent of Total Population Enrolled in HMOs	33.05
Medicaid Enrollment (as of June 30, 2000)	2,109,603 (13.20%)
Medicaid Managed Care Enrollment	1,321,714 (62.65%)
Percent of Total Non-elderly Population Uninsured (1997-99)	22.6

### 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 Department of Insurance (DOI) has regulatory authority over insurers and both the DOI and the Agency for Health Care Administration (AHCA), Bureau of Managed Health Care,

have authority over managed care organizations.<sup>1</sup> Florida uses the term “insurer” to encompass various types of health care delivery systems. An “insurer” is any insurance company that is authorized to issue a health insurance policy, and includes a health maintenance organization (HMO)<sup>2</sup>, a prepaid health clinic (PHC)<sup>3</sup>, or an indemnity insurance company.<sup>4</sup> HMOs and PHCs are regulated similarly with regard to data collection practices, anti-discrimination provisions, and confidentiality standards. This summary will use the term “insurer” to refer to all of these entities, unless there is a distinction made within the statutes or regulations regarding the issue being discussed. However, the term “managed care organization” will be used to denote only an HMO and PHC.<sup>5</sup>

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

The DOI requires all insurers to submit all forms, including applications, to the department for approval prior to their use. The collection of racial and ethnic information is not grounds for disapproval.<sup>6</sup>

## 2. Discrimination

Under Florida’s unfair trade practices statute, an insurer may not refuse to insure, or continue to insure any individual because of race, color or national origin.<sup>7</sup>

Prior to issuing a certificate of authority to a managed care organization to operate within the state, the DOI must be satisfied that “the procedures for offering health care services and offering and terminating contracts to subscribers will not discriminate on the basis of . . . , race, or national origin.”<sup>8</sup> In addition, an HMO cannot “expel or refuse to renew the coverage of, or refuse to enroll, any individual member of a subscriber group on the basis of race, color, . . . or

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<sup>1</sup> The Department of Insurance oversees financial and contractual issues with regard to HMOs and PHCs and the AHCA monitors quality of care and delivery issues. *See* [http://www.fdhc.state.fl.us/MCHQ/Managed\\_Health\\_Care/index.shtml](http://www.fdhc.state.fl.us/MCHQ/Managed_Health_Care/index.shtml).

<sup>2</sup> Fla. Stat. § 641.19(13). An HMO is an organization that provides health care services through arrangements with other persons on a prepaid basis.

<sup>3</sup> Fla. Stat. § 641.402(5). A PHC is similar to an HMO, but it does not provide, either directly or indirectly, inpatient hospital services or hospital inpatient physician services.

<sup>4</sup> Fla. Stat. § 627.6482(7).

<sup>5</sup> Fla. Stat. § 641.47.

<sup>6</sup> Fla. Stat. § 627.411. Grounds for disapproval include “ambiguous or misleading clauses,” benefits that are unreasonably disproportionate to the premium charged, and conditions which “deceptively affect the risk purported to be assumed.”

<sup>7</sup> Fla. Stat. § 626.9541(1)(x).

<sup>8</sup> Fla. Stat. § 641.22(4).

national origin. . .”<sup>9</sup> Also, a PHC cannot refuse to issue an insurance contract because of an individual’s race, color or national origin.<sup>10</sup>

### 3. Confidentiality

Each managed care organization “shall maintain or assure its providers maintain a medical records system . . . which protects the confidentiality of patient records.”<sup>11</sup> Physical and mental diagnosis and treatment reports made by health care providers licensed by the state may not be furnished to any person other than the patient, his or her legal representative or other health care providers involved in the patient’s care and treatment without written authorization.<sup>12</sup>

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

### 1. Agency for Health Care Administration (AHCA)

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

AHCA is the regulatory agency that administers Florida’s Medicaid program. There are no state statutes or rules that prohibit or require the collection or reporting of racial, ethnic or primary language data regarding Medicaid applicants or recipients. However, Florida has several forms that request racial and ethnic information and has developed various standards within its Medicaid managed care program that implicate the need for racial, ethnic and primary language data.

First, the Florida Medicaid Management Information System (FMMIS), which adjudicates all Medicaid claims, has a recipient subsystem that contains a field for ethnicity data.<sup>13</sup> FMMIS receives this ethnicity information from the Department of Children and Families’ (DCF)<sup>14</sup> Medicaid eligibility computer system.<sup>15</sup> This information enables AHCA to match the health care services that Medicaid recipients receive to their ethnicity.<sup>16</sup> In the near future, AHCA plans to input primary language data into FMMIS, and it will then have the

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<sup>9</sup> Fla. Stat. § 641.3102(2).

<sup>10</sup> Fla. Stat. § 641.441(7).

<sup>11</sup> 59A F.A.C. 12.005(2).

<sup>12</sup> Fla. Stat. § 456.057.

<sup>13</sup> Letter from Bob Sharpe, Acting Deputy Secretary for Medicaid, AHCA dated December 8, 2000.

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

<sup>15</sup> The Department of Children and Families determines Medicaid eligibility, while AHCA develops and implements policies related to Medicaid.

<sup>16</sup> Letter from Bob Sharpe.

capability to make a similar comparison with regard to a Medicaid recipient's primary language.<sup>17</sup>

Second, Florida's Healthy Start Prenatal Risk Screening Instrument requests racial information.<sup>18</sup> The form only uses three categories: white, black, and other. In addition, the Florida Medicaid Sterilization Consent Form has fields for race and ethnicity, but it uses more than three racial categories. The categories provided are: American Indian or Alaska Native, Asian or Pacific Islander, Black (not of Hispanic origin), Hispanic, and White (not of Hispanic origin). The form indicates that providing the information is voluntary. Also, the Florida Project AIDS Care (PAC) enrollment application requests racial information.<sup>19</sup> This information is requested through a fill-in-the-blank question, and the application does not provide any racial categories, nor does it indicate whether providing the information is optional.

Finally, the Florida Medicaid Managed Care Contract establishes several standards that may require the collection of racial, ethnic and primary language data. Contracting health plans must provide appropriate foreign language versions of all marketing, pre-enrollment, disenrollment, grievance and application materials for its members and potential members.<sup>20</sup> Foreign language versions of any materials are required if "the population speaking a particular foreign (non-English) language in a county is greater than five percent."<sup>21</sup> In addition, contracting plans must provide interpreter services for applicants or members whose primary language is not English.<sup>22</sup>

#### b. Discrimination

For any health plan that contracts with AHCA to deliver Medicaid services on a prepaid basis, the contractor must not discriminate in enrollment, disenrollment, or in the provision of health care on the basis of race or national origin.<sup>23</sup> In addition, the Medicaid contract includes a provision which requires providers to assure that they will comply with Title VI of the Civil Rights Act of 1964.<sup>24</sup>

#### c. Confidentiality

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<sup>17</sup> *Id.* It is not clear from the research whether Florida's FMMIS system is its response to the MSIS reports required of all state Medicaid agencies by the Balanced Budget Act of 1997. However, the proposed field for primary language is not required for MSIS.

<sup>18</sup> The Healthy Start Program is administered by the Department of Health; however, all Medicaid providers are required to complete the form when appropriate. *See* Letter from Bob Sharpe.

<sup>19</sup> Florida Project AIDS Care is a disease management program within the Medicaid program.

<sup>20</sup> Florida Contract, pp. 24, 34, 37-38.

<sup>21</sup> *Id.*, p. 24.

<sup>22</sup> *Id.*

<sup>23</sup> 59G F.A.C. 8.100(23).

<sup>24</sup> Florida Contract, p. 2.

A contracting health plan may not “use or disclose, except to authorized officials of federal or state agencies, any information concerning an eligible recipient or enrollee, except upon the written consent of the recipient or enrollee or upon subpoena from a court of appropriate jurisdiction.”<sup>25</sup> In addition, the Medicaid contract requires that the health plan have a “policy to ensure the confidentiality of patient records in accordance with 42 CFR, Part 431, Subpart F.”<sup>26</sup>

2. Agency for Health Care Administration, State Center for Health Statistics
  - a. Statutes, Regulations, Policies, and Other Written Materials

The State Center for Health Statistics (SCHS) is the primary health care data collection agency for the state of Florida.<sup>27</sup> The SCHS collects data from various health care providers, including hospitals, ambulatory centers, and health insurers.

The SCHS collects racial information from ambulatory center patient data,<sup>28</sup> hospital inpatient discharge data,<sup>29</sup> and comprehensive rehabilitation inpatient data.<sup>30</sup> For each of these data sets, the racial categories provided are: American Indian/Eskimo/Aleutian, Asian/Pacific Islander, Black, White, White Hispanic, Black Hispanic, and Other.<sup>31</sup>

Portions of patient records obtained by the SCHS “containing identifying information, which is patient-specific or otherwise identifies the patient, either directly or indirectly, are confidential and not available for public inspection.”<sup>32</sup>

3. 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 diseases, including cancer, tuberculosis, HIV and other sexually transmitted diseases.<sup>33</sup> In addition, Florida collects racial and ethnic data on its Birth Defects

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<sup>25</sup> 59G F.A.C. 8.100(24)(b).

<sup>26</sup> Florida Contract, p. 51.

<sup>27</sup> Fla. Stat. § 408.05.

<sup>28</sup> 59B F.A.C. 9.0202(4).

<sup>29</sup> 59E F.A.C. 7.014

<sup>30</sup> 59E F.A.C. 7.205.

<sup>31</sup> *Id.*

<sup>32</sup> Fla. Stat. § 408.061.

<sup>33</sup> 64D F.A.C. 3.022(3)(f); 64D F.A.C. 3.002(1).

Registry Form.<sup>34</sup> Finally, although not statutorily required, DOH collects and report racial and ethnic information with regard to births, deaths and marriages.<sup>35</sup>

b. Discrimination

The Florida Patient Bill of Rights and Responsibilities provides that “a patient has the right to impartial access to medical treatment or accommodations, regardless of race . . . , [or] national origin. . . .”<sup>36</sup> Each health care facility and provider licensed by the Department of Health must comply with this right.<sup>37</sup>

c. Confidentiality

Patient information submitted to the DOH regarding the diagnosis of a communicable or infectious disease is confidential and is to be made public only when necessary to protect the public health.<sup>38</sup> In addition, patient records in hospitals or ambulatory surgical centers are confidential and may not be disclosed without the consent of the patient.<sup>39</sup>

**D. Observations**

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

Within the past year, the state of Florida and its Department of Health have recognized the problems surrounding racial and ethnic disparities in health care. House Bill 2339, the Patient Protection Act, provided the Department of Health \$5 million for the creation and administration of the “*Reducing Racial and Ethnic Health Disparities: Closing the Gap Grant Program*.” The bill does not address racial and ethnic data collection practices and the relationship those practices have to eliminating health disparities.

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<sup>34</sup> 64D F.A.C. 3.027.

<sup>35</sup> Racial information for births and deaths is reported as either White or Nonwhite. In addition, DOH reports ethnic information for births and deaths as either Hispanic/Non-Hispanic or Haitian/Non-Haitian. The Hispanic category is divided further into subcategories. These subcategories are: Mexican, Puerto Rican, Cuban, Central/South American, and Other. See [http://www9.myflorida.com/planning\\_eval/vital\\_statistics/99vitals/Births.pdf](http://www9.myflorida.com/planning_eval/vital_statistics/99vitals/Births.pdf) and [http://www9.myflorida.com/planning\\_eval/vital\\_statistics/99vitals/deaths.pdf](http://www9.myflorida.com/planning_eval/vital_statistics/99vitals/deaths.pdf). The racial categories reported for marriages are: White, Black, American Indian, Chinese, Japanese, Hawaiian, Filipino, Other Asian/Pacific Islander, and Other.

<sup>36</sup> Fla. Stat. § 381.026.

<sup>37</sup> *Id.*

<sup>38</sup> Fla. Stat. § 381.0031(4).

<sup>39</sup> Fla. Stat. § 395.3025(4), (5), (7), (8).

The Agency for Health Care Administration has taken extensive steps to ensure that its Medicaid providers offer culturally and linguistically appropriate services for Medicaid beneficiaries. And because the Florida Medicaid Management Information System intends to begin collecting primary language data, the Medicaid program may soon be able to obtain richer measurements of the health services received by Medicaid recipients having limited English proficiency.

The Florida Medicaid Managed Care Contract uses an unusual population pool to determine the languages in which a health plan must publish its materials. Instead of using the percentage of total enrollees or potential enrollees as the population base, the Contract requires the health plan to reflect the diversity in the county population when determining what is linguistically appropriate.