

## **IDAHO**

**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).

## IDAHO

### A. General and Health Demographics

|   |                  |
|---|------------------|
| <b>Total Population</b>   | 1,293,953        |
| Percent Black Population  | 0.4              |
| Percent American Indian and Alaskan Native Population               | 1.2              |
| Percent Asian Population  | 0.9              |
| Percent Native Hawaiian and Other Pacific Islander Population       | 0.1              |
| Percent Hispanic Population (of any race)                           | 7.9              |
| Percent White Population  | 88.0             |
| Other (some other race and two or more races)                       | 1.5              |
| <b>Language Use - 1990 census data</b>                              |                  |
| Percent Limited English Proficiency (LEP) Population                | 2.14 (3.89)      |
| <b>Health Care Delivery Profile</b>                                 |                  |
| Percent of Total Non-elderly Population Privately Insured (1997-99) | 70.9             |
| Percent of Total Population Enrolled in HMOs                        | 6.97             |
| Medicaid Enrollment (as of June 30, 2000)                           | 151,390 (11.70%) |
| Medicaid Managed Care Enrollment                                    | 77,506 (51.20%)  |
| Percent of Total Non-elderly Population Uninsured (1997-99)         | 20.4             |

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

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

Idaho uses the term “health insurer” to include any insurance company, nonprofit hospital and medical service corporation, managed care organization (MCO), or other entity engaged in the business of providing disability or health insurance.<sup>1</sup> This state summary will use the term “health insurer” to refer to these entities, unless there is a distinction made within the statutes or

<sup>1</sup> Idaho Code §§ 41-103, 41-104, 41-503 (health insurers are included in the definition of “disability insurance”), 41-2212, 41-4202, & 41-4703.

regulations regarding the issue being discussed.

The Director of Insurance (Director) regulates all health insurers in the state<sup>2</sup> and must approve all their filings.<sup>3</sup> Idaho has no statutes or regulations that prohibit or require the collection or reporting of racial, ethnic, or primary language data.

## 2. Discrimination

No MCO may cancel the enrollment of any member or refuse to transfer a member from a group to an individual basis for reasons relating to race, or several other protected characteristics.<sup>4</sup>

The Director is authorized to issue regulations that specify prohibited policy provisions which s/he finds “unjust, unfair, or unfairly discriminatory” to the policy holder or insured of individual health insurance policies, but to date there are no such regulations that directly prohibit discrimination based race, ethnicity or national origin.

Idaho’s unfair trade practices statute prohibits any health insurer from permitting discrimination “between individuals of the same class and of essentially the same hazard in the amount of premium, policy fees, or rates charged for any policy” of health insurance, in the benefits, terms or conditions, or in any other manner.<sup>5</sup> However, this provision does not specifically prohibit discrimination based on race, ethnicity or national origin.

The state also has a Human Right’s Act<sup>6</sup> which prohibits discriminatory practices based on race, color, national origin and certain other classifications which deny a person the full and equal enjoyment of the services of a place of public accommodation.<sup>7</sup> The definition of “public accommodation” includes any business which offers services to the public,<sup>8</sup> but there have been no cases interpreting whether the statute applies to health insurers. However, the Department of Insurance itself is covered, as the statute applies to any governmental entity or agency.<sup>9</sup> There is also an analogous civil rights statute in the penal code which prohibits the denial of the full enjoyment of any public accommodation because of race, creed, color, national origin, or sex.<sup>10</sup>

## 3. Confidentiality

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<sup>2</sup> Idaho Code §§ 41-105 & 41-210.

<sup>3</sup> Idaho Code §§ 41-305, 41-1812, 41-3419 (hospital and professional service corporations), & 41-3904 (MCO).

<sup>4</sup> Idaho Code § 41-3915.

<sup>5</sup> Idaho Code § 41-1313.

<sup>6</sup> Idaho Admin. Code 45.01.01.010.

<sup>7</sup> Idaho Code § 67-5909(5).

<sup>8</sup> Idaho Code § 67-5902(9).

<sup>9</sup> Idaho Code § 67-5902(5). *See Paterson v. State*, 128 Idaho 494, 915 P.2d 724 (1996) (Human Rights Act waives immunity that state would otherwise enjoy).

<sup>10</sup> Idaho Code § 18-7303.

All MCOs must adopt procedures to protect the confidentiality of patient health records.<sup>11</sup> If the procedures allow for telephone conversations to be recorded in the course of requesting patient medical information, the requesting party must be notified by voice message that the call is being recorded.<sup>12</sup>

Although records and public filings of the Insurance Director are generally open to public inspection,<sup>13</sup> there is an exception for medical records and “personal records” which include information such as race or medical condition, submitted to public agencies for certification, licensing, permitting or bonding.<sup>14</sup> Moreover, records of the Human Rights Commission are confidential and will not be disclosed to nonparties except as may be necessary to conduct a fair investigation, to cooperate with other governmental law enforcement agencies, or if used in a judicial proceeding, unless the public interest outweighs the private interest in maintaining confidentiality.<sup>15</sup>

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

#### **1. Department of Health and Welfare (DHW)**

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

DHW is the agency that administers the state’s Medicaid program and SCHIP.<sup>16</sup> 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 applicants or recipients. However, race is requested on the joint application for public assistance, although reporting is optional.<sup>17</sup> The race and ethnicity codes include: AE-Alaskan Eskimo/Native, HI-Hispanic/Latino, AI-American Indian, NH-Native Hawaiian/Other Pacific Islander, AS-Asian, WH-White, and BL-Black/African American. An applicant is allowed to list as many codes as apply.<sup>18</sup>

DHW uses the Behavioral Risk Factor Surveillance System (BRFSS), an ongoing program developed by the Centers for Disease Control and Prevention, to estimate the prevalence of risk factors for the major causes of death and disability in the state. Two of the

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<sup>11</sup> Idaho Code § 41-3930(d); *see also* “A healthier Idaho, one child at a time: Children’s Health Insurance Program,” p. 2 at: <http://www2.state.id.us/dhw/chip/chipar.pdf>.

<sup>12</sup> *Id.*

<sup>13</sup> Idaho Code § 41-214.

<sup>14</sup> Idaho Code §§ 9-340C(8) and 9-340C(13).

<sup>15</sup> Idaho Code § 9-340B(7) and Idaho Admin. Code 45.01.01.300.

<sup>16</sup> Idaho Code §§ 56-201(b) and (o), and 56-202; Idaho Admin. Code 16.03.09.005.

<sup>17</sup> “Application for Assistance (Application),” at:

[http://www2.state.id.us/dhw/hwgd\\_www/welfare/application\\_for\\_assistance.htm](http://www2.state.id.us/dhw/hwgd_www/welfare/application_for_assistance.htm).

<sup>18</sup> *Id.* at 2.

questions on the survey ask for participant's race and Hispanic origin.<sup>19</sup>

For family planing services, an interpreter must be provided if the recipient does not understand the language used on the consent form or the language used by the person obtaining the consent form.<sup>20</sup> Moreover, one of the reimbursable services under the medical assistance program is interpreter services for students in the School Districts/Infant Toddler Programs who are limited English proficient and need an interpreter for a health related service.<sup>21</sup> Although these provisions do not mandate the collection of primary language information, for planning purposes that information would seem helpful to arrange for appropriate interpreters beforehand.

DHW also administers the collection of vital statistics,<sup>22</sup> which includes gathering race and/or ethnicity data for various purposes: 1) the race of foundlings,<sup>23</sup> 2) the race of adoptive children born in the state,<sup>24</sup> and 3) the race and ethnicity of reportable diseases.<sup>25</sup> Although not legally required, vital statistics published on the state website reveal that race and ethnicity data are collected for certain statistics such as live births, infant and adult deaths, abortions, marriages,<sup>26</sup> and in its cancer registry.<sup>27</sup>

#### b. Discrimination

All applicants for Medicaid must be informed of their rights under Title VI of the Civil Rights Act of 1964 during the application process and at eligibility reviews.<sup>28</sup> Applications are to be considered without regard to race, color, national origin, and several other characteristics.<sup>29</sup> Providers must also agree to provide all materials and services without discriminating on the basis of race, creed, color, national origin, or other protected classifications.<sup>30</sup>

In addition to these provisions, DHW, like the Department of Insurance, is subject to the state public accommodations statute.<sup>31</sup>

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<sup>19</sup> "Idaho Behavioral Risk Factors - 1999," p. 80 at:

[http://www2.state.id.us/dhw/hwgd\\_www/health/vs/BRFSS99.pdf](http://www2.state.id.us/dhw/hwgd_www/health/vs/BRFSS99.pdf).

<sup>20</sup> Idaho Admin. Code 16.03.09.090(03).

<sup>21</sup> Idaho Admin. Code 16.03.09.563(16).

<sup>22</sup> Idaho Code §§ 39-241(j) & 39-242.

<sup>23</sup> Idaho Admin. Code 16.02.08.301.

<sup>24</sup> Idaho Admin. Code 16.02.08.401.

<sup>25</sup> Idaho Admin. Code 16.02.10.010.

<sup>26</sup> See e.g. "Idaho Vital Statistics 1998," at: [www2.state.id.us/dhw/VS/Natality/lbsexrace.htm](http://www2.state.id.us/dhw/VS/Natality/lbsexrace.htm);

<http://www2.state.id.us/dhw/VS/index.htm>.

<sup>27</sup> "Cancer in Idaho - 1999," at:

<http://www.idcancer.org/annual%20reports/Cancer%20in%20Idaho%201999.pdf>.

<sup>28</sup> Idaho Admin. Code 16.03.01.100.

<sup>29</sup> Application at:

[http://www2.state.id.us/dhw/hwgd\\_www/welfare/application\\_for\\_assistance.htm](http://www2.state.id.us/dhw/hwgd_www/welfare/application_for_assistance.htm).

<sup>30</sup> Idaho Admin. Code 16.03.09.026.

<sup>31</sup> Idaho Code § 67-5902(5).

c. Confidentiality

Public assistance records are confidential, although there is nothing on the Medicaid application to indicate this with regard to the race and ethnicity information provided by the applicant.<sup>32</sup> It is unlawful for anyone to disclose any information concerning applicants and recipients of medical assistance, including names and addresses, unless it is for purposes directly connected to the administration of the program.<sup>33</sup> There are extensive rules governing the protection and disclosure of department records,<sup>34</sup> which must be complied with before any information about an applicant, recipient or client may be released.<sup>35</sup> There is also an exception in the public records act to protect the confidentiality of hospital and medical records.<sup>36</sup>

With regard to vital statistics, there is an exemption from the public records act for records of a personal nature.<sup>37</sup> There are also exceptions for DHW records that identify a person with reportable diseases<sup>38</sup> and for the state's immunizations registry.<sup>39</sup> DHW has issued rules regulating the disclosure of vital records which provide disclosure: (1) to persons with a direct and tangible interest; (2) for verification of data; (3) for research, public health, or statistical purposes upon written authorization by the applicant or his/her agent; (4) when records become public after a certain period of time; or (5) as required by statute or court order.<sup>40</sup>

**D. Observations**

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

Idaho's population is not as diverse as many states,<sup>41</sup> but DHW does collect racial and ethnic data for its

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<sup>32</sup> There is a statement that immigration information given as part of the application is private and confidential, and will only be used for eligibility determinations and program administration. Application at: [http://www2.state.id.us/dhw/hwgd\\_www/welfare/application\\_for\\_assistance.htm](http://www2.state.id.us/dhw/hwgd_www/welfare/application_for_assistance.htm).

<sup>33</sup> Idaho Code § 56-222 and Idaho Admin. Code 16.05.01.112. Exceptions include: (1) survey reports and compliance activities involving health care providers; (2) performance reviews and validation surveys of providers without patient identifying information; and (3) certain information for Medicaid fraud. 16.05.01.116.

<sup>34</sup> Idaho Admin. Code 16.05.01.000-999. The rules cover issues such as: acquisition of information; privileged communications; authorization for disclosure; protected information; client access to her own record; requests for disclosure of another person's record; intradepartmental disclosure of information; and, interagency disclosures.

<sup>35</sup> Idaho Admin. Code 16.03.09.997.

<sup>36</sup> Idaho Code §9-340C(13).

<sup>37</sup> Idaho Code §9-340C(4)(e).

<sup>38</sup> *Id.* at 9-340C(12).

<sup>39</sup> *Id.* at 9-340C(19).

<sup>40</sup> Idaho Admin. Code 16.05.01.119.

<sup>41</sup> Hispanics are the largest minority group. The Medicaid/SCHIP application is available in Spanish.

vital statistics.