

## INDIANA

**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).

## INDIANA

### A. General and Health Demographics

<b>Total Population</b>	6,080,485
Percent Black Population	8.3
Percent American Indian and Alaskan Native Population	0.2
Percent Asian Population	1.0
Percent Native Hawaiian and Other Pacific Islander Population	0.0
Percent Hispanic Population (of any race)	3.5
Percent White Population	85.8
Other (some other race and two or more races)	1.1
<b>Language Use - 1990 census data</b>	
Percent Limited English Proficiency (LEP) Population	1.21 (2.54)
<b>Health Care Delivery Profile</b>	
Percent of Total Non-elderly Population Privately Insured (1997-99)	79.8
Percent of Total Population Enrolled in HMOs	16.92
Medicaid Enrollment (as of June 30, 2000)	686,712 (11.29%)
Medicaid Managed Care Enrollment	465,662 (67.81%)
Percent of Total Non-elderly Population Uninsured (1997-99)	13.7

### 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) regulates insurers and HMOs. Indiana uses the term “insurer” to encompass health insurance companies. A health maintenance organization (HMO) is defined as “a person that undertakes to provide or arrange for the delivery of health care services

to enrollees on a prepaid basis, except for enrollee responsibility for copayments or deductibles.”<sup>1</sup> This summary will use the terms “insurer” and “HMO” as noted here.

Indiana does not have any statutes, regulations, or policies that mandate or prohibit the collection or reporting of racial and ethnic data. Although health insurers and (HMOs) are not required to collect this information, there are other laws whose implementation may implicate racial and ethnic data collection.

First, an HMO must establish procedures to assess and monitor the health care services provided to its enrollees.<sup>2</sup> These procedures must include a mechanism to assess the availability and accessibility of health care services.<sup>3</sup>

Second, each HMO must have a quality management program that sets forth tools for the collection, analysis and interpretation of outcomes data.<sup>4</sup> In addition, an HMO must be able to identify through its quality management program patterns of care rendered to individual patients.<sup>5</sup>

Finally, Indiana 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>6</sup> If any provisions within the documents appear to be unfair, inequitable or deceptive, the Department is to disapprove the form and forbid its use by the insurer.<sup>7</sup>

## 2. Discrimination

Indiana’s civil rights statute prohibits a person from denying another individual “the full and equal use” of the services and facilities in any place of public accommodation.<sup>8</sup> The statute, however, does not specifically include insurance companies within the meaning of public accommodation, and there is no case law which has addressed this matter.<sup>9</sup>

Under Indiana’s unfair competition provisions, an insurer and HMO may not discriminate between “individuals of the same class involving essentially the same hazards” in premiums, rates

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<sup>1</sup> Burns Ind. Code Ann. § 27-13-1-19.

<sup>2</sup> Burns Ind. Code Ann. § 27-13-6-1(a).

<sup>3</sup> *Id.* § 27-13-6-1(b).

<sup>4</sup> *Id.* § 27-13-6-4(4).

<sup>5</sup> *Id.* § 27-13-6-4(3)

<sup>6</sup> Burns. Ind. Code Ann. § 27-8-5-1(c).

<sup>7</sup> *Id.* § 27-8-5-1(d).

<sup>8</sup> Burns Ind. Code Ann. § 35-46-2-1(1).

<sup>9</sup> *Id.* A place of public accommodation is “an establishment that caters or offers its services, facilities or goods to the general public.”

or fees charged for any health insurance policy.<sup>10</sup> However, the statute does not provide any particular prohibition against discriminating on the basis of race or national origin.

### 3. Confidentiality

Information that pertains to an HMO enrollee's diagnosis, treatment or health is confidential and may not be disclosed, except in limited circumstances.<sup>11</sup> These exceptions are: (1) express consent of enrollee; (2) a statute or court order for the production of evidence; or (3) a claim or litigation between the enrollee and the HMO where the data is relevant to the claim or litigation.<sup>12</sup>

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

### 1. Indiana Family and Social Services Administration (FSSA)

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

FSSA administers Indiana's Medicaid and Hoosier Healthwise (SCHIP) program. There are no statutes or rules that prohibit or require the collection or reporting of racial, ethnic or primary language data by FSSA regarding Medicaid applicants or recipients. However, the Hoosier Healthwise application requests from each applicant information regarding the racial background of all household members. The application does not indicate whether it is optional for applicants to provide this information, nor does the application provide racial categories from which the applicant may choose.

In addition, the Indiana Medicaid Managed Care Request for Proposal (RFP) requests that each managed care organization (MCO) "describe how its proposed provider network will respond to the cultural, racial and linguistic needs of the Medicaid population."<sup>13</sup> Furthermore, the RFP anticipates that the MCOs "should have a comprehensive system in place to handle recipients' needs pertaining to language, [and] cultural issues. . . ."<sup>14</sup>

#### b. Discrimination

Indiana law recognizes that all providers who deliver health care services under the Medicaid program must comply with the requirements of Title VI of the Civil Rights Act of 1964,<sup>15</sup> so that

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<sup>10</sup> Burns Ind. Code Ann. § 27-4-1-4(7)(B).

<sup>11</sup> Burns Ind. Code Ann. § 27-13-31-1(a)(1).

<sup>12</sup> *Id.* § 27-13-31(b)(2)-(4).

<sup>13</sup> Indiana RFP, § 4.8.3.

<sup>14</sup> *Id.* § 4.4.5.

<sup>15</sup> 405 IAC 5-1-2.

no provider in the Medicaid program may discriminate in the provision of Medicaid services with regard to race, color or national origin.<sup>16</sup>

c. Confidentiality

Because the Medicaid program is administered by a state agency, all records associated with the Medicaid program and maintained by the FSSA are deemed public records.<sup>17</sup> FSSA keeps a file that contains the Medicaid recipient's name, identification number and the amount of assistance received each month under the program.<sup>18</sup> This information is considered a public record and may be viewed at all times during FSSA's regular office hours.<sup>19</sup> However, any application, investigative report, or information not described above is confidential.<sup>20</sup>

In addition, medical records/information and data declared confidential by state statute are not considered public records and are not open to the public for examination or copying.<sup>21</sup>

2. Department of Health/Department of Mental Health

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

The Department of Health (DOH) collects and requires health care providers to report racial and ethnic information for various medical conditions, diseases or programs. These are cancer,<sup>22</sup> communicable diseases,<sup>23</sup> and emergency medical services data.<sup>24</sup> In addition, although not statutorily required, race data is collected and reported for births (race of the mother), deaths, abortions and marriages.<sup>25</sup>

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<sup>16</sup> *Id.* See Attorney General Opinion No. 94-2. (stating that the purpose of Title VI is to prohibit racial discrimination in federally-funded programs and that state agencies are "recipients" subject to Title VI).

<sup>17</sup> Burns Ind. Code Ann. § 5-14-3-3(a).

<sup>18</sup> Burns Ind. Code Ann. § 12-15-27-4(a)

<sup>19</sup> *Id.* § 12-15-27-4(b).

<sup>20</sup> Burns Ind. Code Ann. § 12-15-27-1.

<sup>21</sup> *Id.* § 5-14-3-4(a)(1), (9).

<sup>22</sup> 410 IAC 21-1-3, 21-1-4.

<sup>23</sup> 410 IAC 1-2.3. The patient's race and ethnicity must be included, *if available*.

<sup>24</sup> 836 IAC 1-11-3(o)(5).

<sup>25</sup> See [http://www.state.in.us/isdh/dataandstats/data\\_and\\_statistics.htm](http://www.state.in.us/isdh/dataandstats/data_and_statistics.htm).

In addition, the DOH must establish a state health data center.<sup>26</sup> The center is authorized to “collect and process health data,<sup>27</sup> maintain statistics concerning . . . ethnicity, . . . [and] analyze and disseminate information about the health status of Indiana residents.”<sup>28</sup>

Finally, the Director of the Division of Mental Health must “compile information and statistics concerning the ethnicity . . . of a [Division of Mental Health] program or service recipient.”<sup>29</sup>

b. Discrimination

As a federal financial assistance recipient, DOH is bound by Title VI of the Civil Rights Act of 1964.

c. Confidentiality

The DOH imposes confidentiality standards for the various data collection systems it oversees.<sup>30</sup> In addition, Indiana’s public records law provides that certain state data and information, including medical records and charts, are not available for public inspection.<sup>31</sup>

**D. Observations**

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

Indiana is a state that requires approval of health insurance contracts and applications prior to their use.

Under the Medicaid managed care program, MCOs are required to have a system that addresses cultural and linguistic concerns of its enrolled population.

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<sup>26</sup> Burns Ind. Code Ann. § 16-19-10-3.

<sup>27</sup> “Health data” means information on the a person’s health status, ethnicity; and gender. Burns Ind. Code Ann. § 16-19-10-2.

<sup>28</sup> Burns Ind. Code Ann. § 16-19-10-4.

<sup>29</sup> Burns Ind. Code Ann. § 12-21-2-3(a)(13).

<sup>30</sup> 410 IAC 1-2.3-50 (communicable diseases); 410 IAC 21-1-5 (cancer registry)

<sup>31</sup> Burns. Ind. Code Ann. § 5-14-3-4(a)(9).