

## KANSAS

**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).

## KANSAS

### A. General and Health Demographics

<b>Total Population</b>	2,688,418
Percent Black Population	5.6
Percent American Indian and Alaskan Native Population	0.8
Percent Asian Population	1.7
Percent Native Hawaiian and Other Pacific Islander Population	0.0
Percent Hispanic Population (of any race)	7.0
Percent White Population	83.1
Other (some other race and two or more races)	1.7
<b>Language Use - 1990 census data</b>	
Percent Limited English Proficiency (LEP) Population	2.11 (3.93)
<b>Health Care Delivery Profile</b>	
Percent of Total Non-elderly Population Privately Insured (1997-99)	79.1
Percent of Total Population Enrolled in HMOs	18.82
Medicaid Enrollment (as of June 30, 2000)	235,797 (8.77%)
Medicaid Managed Care Enrollment	138,365 (58.68%)
Percent of Total Non-elderly Population Uninsured (1997-99)	13.3

### 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 Kansas Department of Insurance regulates health insurers. Under Kansas law, the term “insurer” or “health insurer” encompasses all corporations that transact health insurance business, including health maintenance organizations (HMOs).<sup>1</sup> HMO is the broadest term used by Kansas

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<sup>1</sup> K.S.A. § 40-2118(o); K.S.A. § 40-4602(d).

insurance law to describe various managed care structures.<sup>2</sup> The term “managed care organization” is not used within Kansas’ statutes or regulations.

Kansas has no statutes, regulations, policies or other written materials that prohibit or mandate the collection and reporting of racial and ethnic data by health insurers.<sup>3</sup>

Kansas does require that health insurance policies or any applications used in connection with the policies be filed with the Department of Insurance and receive departmental approval prior to its use.<sup>4</sup> In addition, HMOs are required to file with the Commissioner of Insurance all contract forms that the HMO proposes to offer to enrollees.<sup>5</sup>

## 2. Discrimination

Under Kansas’ unfair trade laws, a person<sup>6</sup> may not discriminate “between individuals of the same class and of essentially the same hazard in the amount of premium, policy fees or rates . . . for any policy or contract of accident or health insurance or in the benefits payable thereunder. . . .”<sup>7</sup> The statute does not specifically prohibit discrimination on the basis of race, color or national origin with regard to the issuance or reissuance of a health insurance policy.<sup>8</sup>

Kansas’ civil rights provisions, however, do prohibit discrimination on account of race, color, ancestry or national origin with regard to “the full and equal use and enjoyment of the services, facilities, privileges and advantages of any establishment which offers personal or professional services to members of the public. . . .”<sup>9</sup> In addition, it is unlawful to discriminate against anyone by reason of his race, color, national origin or ancestry in any place of public accommodation or “to refuse, deny or make a distinction, . . . , in offering its goods, services, . . . [or]

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<sup>2</sup> As defined by law, a health maintenance organization provides health care services to enrollees on a prepaid basis and provides services directly by staff physicians or independently contracted physicians. K.S.A. § 40-2,111(n).

<sup>3</sup> Letter of January 30, 2001 from Rebecca Sanders, Staff Attorney, the Kansas Insurance Department.

<sup>4</sup> K.S.A. § 40-2215.

<sup>5</sup> K.S.A. § 40-3203(b)(6). No HMO may offer health care services without obtaining a certificate of authority from the Commissioner of Insurance.

<sup>6</sup> A person includes any entity engaged in the business of insurance, including health maintenance organizations. K.S.A. § 40-2402(a).

<sup>7</sup> K.S.A. § 40-2404(7)(b).

<sup>8</sup> Kansas does have a statute that prohibits discrimination on the basis of race, color or national origin when issuing a mortgage guaranty insurance policy. *See* K.S.A. § 40-3510(a).

<sup>9</sup> K.S.A. § 21-4003(a)(4). This provision is considered a “denial of civil rights” and is not part of Kansas’ public accommodations provisions.

facilities. . .”<sup>10</sup>

### 3. Confidentiality

An HMO is required to maintain the confidentiality of any data that relates to an enrollee’s or applicant’s diagnosis, treatment or health.<sup>11</sup> This information may not be disclosed unless the enrollee or applicant gives express consent or to the extent necessary to effectuate the purposes of the HMO statute.<sup>12</sup> However, under no circumstances can the name of an enrollee or applicant be disclosed in any data pertaining to his or her diagnosis, treatment, or health.<sup>13</sup>

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

### 1. Department of Social and Rehabilitation Services (SRS)

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

The Department of Social and Rehabilitation Services administers both the Medicaid program and the HealthWave program, Kansas’ SCHIP. As part of its Medicaid managed care program, SRS requires that its managed care providers have the ability to meet certain standards prior to delivering Medicaid services. One of these is the ability to offer culturally competent services, “which means a demonstrated ability to provide services which are sensitive to the needs of a diverse population including individuals of any . . . racial or ethnic background [or] language . . .”<sup>14</sup> In addition, providers for the HealthWave program must be able to “provide services to the needs of a diverse population, including individuals of any race [or] ethnicity. . .”<sup>15</sup>

#### b. Discrimination

Because the SRS is a state agency, it is bound by Kansas’ civil rights statute, which provides that it is unlawful to deny someone “the full and equal use and enjoyment of the services, facilities, privileges and advantages of any institution, department or agency of the state of Kansas . . . because

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<sup>10</sup> K.S.A. § 44-1009(c)(1), § 44-1002(i)(A). A person or entity offers “public accommodations” if he or it caters or offers goods, services, facilities or accommodations to the public. K.S.A. § 44-1002(h). According to Brandon Meyers, Chief Legal Counsel, Kansas Human Rights Commission, the Commission considers an insurer to be bound by Kansas’ public accommodations statute. There is no case law that either confirms or contradicts this interpretation of the statute. Phone conversation with Brandon Meyers, April 23, 2001.

<sup>11</sup> K.S.A. § 40-3226(a).

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

<sup>13</sup> *Id.*

<sup>14</sup> K.A.R. § 30-5-174(b)(2)(D).

<sup>15</sup> K.A.R. § 30-14-3(b)(2)(D).

of race, color or national origin.”<sup>16</sup>

In addition, any services provided by SRS must be provided without discrimination on grounds of race, color, national origin or ancestry.<sup>17</sup>

c. Confidentiality

Any “information concerning applicants for or recipients of [medical] assistance shall be confidential and privileged.”<sup>18</sup> However, information may be disclosed if: (1) the applicant or recipient consents in writing; (2) it is directly connected to the administration of the program; or (3) it is directly connected to an investigation, prosecution, or criminal or civil proceeding.<sup>19</sup>

1. Department of Health & Environment, Division of Health

a. Statutes, Regulations, Policies and Other Written Materials

The Department of Health & Environment (DHE) collects racial and ethnic information with regard to patients diagnosed with HIV infection or AIDS, and for vital statistics purposes.<sup>20</sup>

In addition, the DHE maintains a health care database, which contains various data collected from hospitals, home health agencies, third party payers (including health maintenance organizations and licensed insurers), and other health care providers.<sup>21</sup> Some of the core data elements that are reported include, but are not limited to: (1) mortality; (2) morbidity; (3) disability; (4) demographics;<sup>22</sup> and, (5) familial social and economic conditions affecting health status.<sup>23</sup> The data is used to make health policy decisions and provide consumer information.<sup>24</sup>

b. Discrimination

Because the DHE is a state agency, it is bound by the Kansas’ civil rights provisions. Therefore, all programs and services offered by the DHE must be administered in a manner that does

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<sup>16</sup> K.S.A. § 21-4003(a)(1); K.S.A. § 44-1002(i)(B).

<sup>17</sup> K.A.R. § 30-2-1.

<sup>18</sup> K.S.A. § 39-709b.

<sup>19</sup> *Id.*

<sup>20</sup> K.S.A. § 65-6002(a); K.S.A. § 65-2411 (birth records of children of unknown parentage). Although not statutorily required, Kansas collects and reports the race of women who have given birth. See <http://www.kdhe.state.ks.us/hci/vital99/table17.html>.

<sup>21</sup> K.S.A. §§ 65-6804-05.

<sup>22</sup> It is not clear from the statute or regulations whether race and ethnicity are included within the demographic data.

<sup>23</sup> K.A.R. § 28-67-2(a), (b), (d), (i), (j).

<sup>24</sup> K.A.R. § 28-67-4(a)(1), (3).

not discriminate on the basis of race, color, national origin or ancestry.<sup>25</sup>

Moreover, a patient has a right to obtain hospital services without discrimination based upon his race, color or national origin.<sup>26</sup>

c. Confidentiality

Any data or information maintained in the DHE database that in any manner identifies an individual patient must not be released.<sup>27</sup> In addition, any data collected pertaining to the state's cancer registry<sup>28</sup>, noninfectious diseases<sup>29</sup>, diabetes<sup>30</sup>, and HIV/AIDS diagnoses<sup>31</sup> must be kept in strict confidence.

**D. Observations**

Kansas has no statutes, regulations, policies or other written materials that prohibit or mandate the collection and reporting of racial and ethnic data by health insurers.

Currently, Kansas only protects the confidentiality of health data for HMO enrollees. Of course, not all Kansans receive their health coverage through HMOs. For those consumers who receive health insurance coverage through a traditional insurance company, the Kansas legislature has recently proposed a bill that would provide protection for personal, private health information. House Bill 2480 recently passed the House of the Kansas legislature and is being considered by the Senate. The privacy standards included in HB 2480 protect health information held by insurance companies. In general, the bill would require insurers to obtain affirmative consent from consumers prior to sharing protected health information with any other parties.

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<sup>25</sup> K.S.A. § 44-1009(c)(1)

<sup>26</sup> K.A.R. § 28-34-3b(a)(7).

<sup>27</sup> K.A.R. § 28-67-6(a).

<sup>28</sup> K.S.A. § 65-1,171.

<sup>29</sup> K.S.A. § 65-102b. Information concerning noninfectious diseases may be disclosed upon the consent of the patient or “upon the request of an organization for legitimate research or data collection purposes so long such information does not reveal the identity of the persons who are the subject of the information.”

<sup>30</sup> K.S.A. § 65-1,116.

<sup>31</sup> K.S.A. § 65-6002(d).