

KENTUCKY

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).

KENTUCKY

A. General and Health Demographics

Total Population	4,041,769
Percent Black Population	7.3
Percent American Indian and Alaskan Native Population	0.2
Percent Asian Population	0.7
Percent Native Hawaiian and Other Pacific Islander Population	0.0
Percent Hispanic Population (of any race)	1.5
Percent White Population	89.3
Other (some other race and two or more races)	1.0
Language Use - 1990 census data	
Percent Limited English Proficiency (LEP) Population	0.79 (1.56)
Health Care Delivery Profile	
Percent of Total Non-elderly Population Privately Insured (1997-99)	72.2
Percent of Total Population Enrolled in HMOs	38.33
Medicaid Enrollment (as of June 30, 2000)	604,120 (14.95%)
Medicaid Managed Care Enrollment	511,292 (84.63%)
Percent of Total Non-elderly Population Uninsured (1997-99)	16.5

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

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

Kentucky uses the term “insurer” to encompass health insurance companies and health maintenance organizations (HMOs). This summary will use the term “insurer” to refer to these entities, unless there is a distinction made within the statutes or regulations regarding the issue being discussed.

The Kentucky Department of Insurance regulates insurers. Kentucky does not have any statutes, regulations, or policies that prohibit or mandate the collection or reporting of racial and ethnic data.

The Kentucky Insurance Code requires all insurers, including HMOs, to file and receive approval of all insurance forms and applications before their use.¹ Some of the standards for disapproval include: (1) inconsistent, ambiguous, or misleading clauses; (2) exceptions and conditions which misrepresent the risks being assumed in the policy; and (3) non-coverage for HIV infection or AIDS.² The statute does not include an inquiry into the race or ethnicity of the applicant or insured as a ground for disapproval.

2. Discrimination

Under Kentucky law, no insurer may "fail or refuse to insure or renew insurance to any person because of race, color, . . . [or] national origin. . ."³

3. Confidentiality

An HMO must have written policies that assure confidential treatment of an enrollee's medical records and give the enrollee the opportunity to approve or refuse release of the information to any individual not involved in the enrollee's care.⁴

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

4. Cabinet for Health Services, Department for Medicaid Services (DMS)

e. Statutes, Regulations, Policies and Other Written Materials

DMS administers Kentucky's Medicaid and SCHIP programs. According to the DMS, Kentucky captures racial and language data on individuals applying for Medicaid services for statistical purposes only.⁵ Also, the Kentucky Children's Health Insurance Program (KCHIP) application requests racial information for all applicants and their household members. More importantly, KCHIP's regulations require inclusion of the racial background of each child for enrollment purposes.⁶ Moreover, the KCHIP must collect, analyze and disseminate data on various issues, including the "special health needs of minority children."⁷

¹ KRS § 304.14-120(1); KRS § 304.38-050. The term "health maintenance organization", as used in the Kentucky Insurance Code, includes any entity that provides health care services on a prepaid basis.

² KRS § 304.141-130(1)(b), (e).

³ KRS § 304.12-085(1).

⁴ 902 KAR 20:054(5).

⁵ Letter of December 1, 2000 from Duane Dringenburg, Kentucky Department for Medicaid Services.

⁶ 907 KAR 4:030, § 4.

⁷ KRS § 205.6489(4).

The DMS, which is also responsible for the KenPAC Program,⁸ must take steps to strengthen the managed care component of that program. These steps include establishing standards regarding access to and quality of health care services rendered by any HMO to Medicaid recipients.⁹ These standards must address “access to care including . . . language barriers [and] data collection and reporting . . .”, with “subpopulation data for at-risk populations. . .”¹⁰

Kentucky’s Medicaid Managed Care Contract addresses language barriers among HMO enrollees, data collection and reporting, and patient outcomes. It requires all contractors to make available language translation if ten percent (10%) of the enrolled population has a native language other than English.¹¹ In addition, enrollee’s materials must be provided and printed in each language spoken by ten percent (10%) or more of the contractor’s members.¹²

f. Discrimination

Kentucky’s civil rights provisions prohibit a person from “deny[ing] an individual the full and equal enjoyment of the goods, services, facilities, [or] privileges . . . of a place of public accommodation. . .”¹³ The Department for Medicaid Services is a “place of public accommodation” because it is supported by government funds, and therefore any program that the Department administers cannot discriminate on the basis of race, color, or national origin with regard to access to its services.¹⁴

In addition, the Kentucky Medicaid Managed Contract states that contracting HMOs must comply with Title VI of the Civil Rights Act of 1964 and that “no persons . . ., on the grounds of . . . race, color, [or] national origin . . . [may] be excluded from participation in, or denied, any aid, care service or other benefits provided by Federal and/or State funding. . .”¹⁵

⁸ KRS § 205.6320(1). KenPAC, the Kentucky Patient Access and Care (KenPAC) system, is one of Kentucky’s Medicaid managed care delivery systems. It is a primary care case management program providing a “medical home” and a “primary care provider” to all KenPAC enrollees. DMS also administers the Kentucky Partnership Program which is another Medicaid managed care program where DMS contracts with HMOs to deliver health care services to Medicaid recipients.

⁹ *Id.* § 205.6320(2).

¹⁰ *Id.* § 205.6320(2)(a), (c).

¹¹ Kentucky Contract, § 7.8.2.

¹² *Id.* § 7.8.1.

¹³ KRS § 344.120.

¹⁴ KRS § 344.130. A place of public accommodation is “any place . . . which supplies goods or services to the general public or which is supported directly or indirectly by government funds. . .”

¹⁵ Kentucky Contract, § 6.4.1.3.

g. Confidentiality

The Cabinet for Health Services must protect the confidentiality of all records and reports that "directly or indirectly identify a client or patient or former client or patient" of the Cabinet.¹⁶ However, the Cabinet can disclose this information if the person identified gives consent or disclosure is permitted under state or federal law.¹⁷

The Cabinet for Health Services may share any pertinent information concerning a patient with any "authorized representative" of a state agency if the agency has a direct interest in that individual or his family.¹⁸ In addition, a state agency may share a patient's pertinent information with a private or quasi-private agency that has a direct interest in the patient when the agency has an agreement assuring the confidentiality of all such information.

2. Cabinet for Health Services/Department of Public Health

c. Statutes, Regulations, Policies and Other Written Materials

The Department of Public Health (DPH) collects and reports racial and ethnic data for those persons diagnosed with HIV or AIDS,¹⁹ hospital discharge data²⁰ and for vital statistics purposes (*i.e.* births²¹ and deaths²²).

The Cabinet for Health Services, which collects various data from licensed hospitals and ambulatory facilities, must "conduct a statistical survey that addresses the status of women's health, specifically including data on . . . ethnicity."²³ In addition, the Cabinet must report "on the special health needs of the minority population in [Kentucky] as compared to the population at large."²⁴ The report must give an overview of the health status of minority Kentucky residents and identify any racial and ethnic disparities with regard to various diseases and conditions.²⁵ Finally, the report must "make recommendations to meet the identified needs of the minority population."²⁶

¹⁶ KRS § 194A.060(1).

¹⁷ *Id.* § 194A.060(1)(a)-(b).

¹⁸ KRS § 205.177(1).

¹⁹ 902 KAR 2:020 § 7(4)(b).

²⁰ 902 KAR 17:050 § 2.

²¹ KRS § 213.051(1)(b).

²² Although not statutorily required, racial information is collected with regard to deaths. *See* <http://publichealth.state.ky.us/data-warehouse.htm>.

²³ KRS § 216.2925(1).

²⁴ KRS § 216.2929(4).

²⁵ *Id.*

²⁶ *Id.*

d. Discrimination

As with the Department for Medical Services, the Department of Public Health is bound by Kentucky's civil rights statute prohibiting discrimination on the basis of race, color or national origin with regard to access to a place of public accommodation.²⁷

e. Confidentiality

Any data, summary of data or notes, including information from all registries, that identify or could be used to identify a patient, must not be published or released, unless the individual gives written permission for its release.²⁸ In addition, only certain staff members may have access to raw data and information, and they must maintain its confidentiality.²⁹ Moreover, all data and information collected by the Cabinet for Health Services must be kept under lock and key if responsible personnel are not present.³⁰

D. Observations

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

Kentucky has demonstrated its commitment to eliminating racial and ethnic disparities by having the Cabinet for Health Services study and analyze the health care needs of Kentucky's minority population in both the Medicaid program and within the Department of Public Health.

In addition, the Kentucky legislature recently introduced a bill that would establish the Office of Multicultural Health within the Office of the Governor.³¹ The bill imposes several responsibilities on the newly created office, including "assess[ing] barriers to access to health care . . . , designing and implementing strategies to eliminate barriers, . . . and developing strategies to insure that health care is delivered in a culturally sensitive manner, *regardless of the payer source*. . ."³² (Emphasis added.)

²⁷ KRS § 344.130.

²⁸ KRS § 216.2927(1)(a); KRS § 211.670(1); KRS § 214.556.

²⁹ *Id.* § 216.2927(6).

³⁰ *Id.* § 216.2927(5).

³¹ House Bill 34.

³² *Id.*