

LOUISIANA

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).

LOUISIANA

A. General and Health Demographics

Total Population	4,468,976
Percent Black Population	32.3
Percent American Indian and Alaskan Native Population	0.5
Percent Asian Population	1.2
Percent Native Hawaiian and Other Pacific Islander Population	0.0
Percent Hispanic Population (of any race)	2.4
Percent White Population	62.5
Other (some other race and two or more races)	1.0
Language Use - 1990 census data	
Percent Limited English Proficiency (LEP) Population	1.07 (2.82)
Health Care Delivery Profile	
Percent of Total Non-elderly Population Privately Insured (1997-99)	65.1
Percent of Total Population Enrolled in HMOs	17.04
Medicaid Enrollment (as of June 30, 2000)	833,918 (18.66%)
Medicaid Managed Care Enrollment Population	310,152 (37.19%)
Percent of Total Non-elderly Population Uninsured (1997-99)	23.0

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 Louisiana Department of Insurance regulates health insurers. Louisiana uses the term “insurer” to encompass health insurance companies and, in some cases, health maintenance organizations (HMOs).¹ In other cases, the term “managed care organization” is used to refer to

¹ La. R.S. § 22:2212(C).

HMOs, preferred provider organizations (PPOs), and independent practice associations (IPAs).² This state 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” (MCO) will be used if a provision applies only to an HMO, PPO, and IPA.

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

Louisiana does require that all health insurance policies and any application related to the policies receive approval from the Department of Insurance prior to its use.³

2. Discrimination

Louisiana’s unfair trade practices statute provides that no insurer may “refus[e] to insure, refus[e] to continue to insure or limit the amount of coverage available to an individual solely because of . . . race . . . or national origin. . . .”⁴

In addition, Louisiana’s civil rights statute prohibits discrimination on the basis of race, color or national origin with regard to access to “places of public accommodation” and the “full and equal enjoyment” of the services and facilities of a “place of public accommodation.”⁵ While it appears that access to health care services or health insurance would be encompassed by the definition of a “public accommodation,” there is no case law that addresses this issue.⁶

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.⁷ The exceptions are: (1) express consent of the 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.⁸

² La. R.S. § 22:215.18(3).

³ La. R.S. § 22:211(A).

⁴ La. R.S. § 22:1214(7)(f).

⁵ La. R.S. § 51:2247.

⁶ A place of public accommodation is “any place, . . . , which supplies goods or services to the general public or which solicits or accepts the patronage or trade of the general public. . . .” La. R.S. § 51:2232.

⁷ La. R.S. § 22:2020(A); 37 LAC § 9107(F).

⁸ *Id.*

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

1. Department of Health and Hospitals (DHH)

a. Statutes, Regulations, Policies and Other Written Materials

DHH is the regulatory agency that administers Louisiana's Medicaid and SCHIP programs. There are no statutes or rules that prohibit or require the collection or reporting of racial, ethnic or primary language data regarding Medicaid applicants or recipients.

DHH does collect information regarding race on the HCFA Form 2082 and the Medicaid Administrative Report MRO 035B.⁹ DHH's new Medicaid eligibility forms request racial information from Medicaid applicants, but it is optional for the applicant to provide this information.¹⁰ In addition, the forms request information regarding the applicant's native language.¹¹ These forms are available in English, Spanish, and Vietnamese.¹²

Moreover, the application for LaCHIP, Louisiana's SCHIP program, requests the applicant's and his/her household's racial information. It is optional for the applicant to provide this information to DHH. The application provides the following racial categories: Asian, Black, Hispanic, American Indian and White.

Finally, the Louisiana Medicaid Low Income Medicare Beneficiary (MB) Program's application requests racial information for all members of the applicant's household.¹³

b. Discrimination

DHH has issued an Office of Civil Rights (OCR) Policy Memorandum to all Medicaid providers addressing nondiscrimination based on national origin as it relates to individuals with limited English proficiency.¹⁴ In the Memorandum, DHH provides assurance that there will be no discrimination in the delivery of health care services in the Medicaid program.¹⁵

⁹ Letter from Ben Bearden, Director, Office of Management & Finance, Bureau of Health Services Financing, DHH dated December 12, 2000.

¹⁰ *Id.* The new eligibility forms became effective in February 2001. The previous eligibility forms also requested information regarding race, but provision of the information was mandatory.

¹¹ *Id.*

¹² *Id.*

¹³ The application is only for those persons who receive Medicaid payments for certain Medicare costs, such as the premiums, coinsurance, and deductibles of that program.

¹⁴ DHH Office of Civil Rights Policy Memorandum from Thomas Collins, Director, Bureau of Health Services Financing, dated August 18, 1998. Attached to the DHH Memorandum was a copy of the federal Health Care Financing Administration's Civil Rights Compliance Policy Statement.

¹⁵ *Id.*

In addition, any person who has a provider agreement with DHH to deliver Medicaid services agrees that “no person shall be subjected to discrimination under the medical assistance programs because of race, . . . , [or] ethnic origin. . . .”¹⁶

The Louisiana Medicaid Low Income Medicare Beneficiary Program’s application contains a statement in its “Rights and Responsibilities” section that Medicaid cannot discriminate because of race, color or nationality.

c. Confidentiality

A Medicaid provider “must safeguard the use and disclosure of information pertaining to current or former Medicaid recipients and comply with federal and state laws and rules pertaining to confidentiality of patient information.”¹⁷ In addition, patient specific medical data is protected and may not be disclosed.¹⁸

2. Department of Health and Hospitals, Division of Public Health (DPH)

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

The Division of Public Health (DPH) collects and requires health care providers to report racial and ethnic information for various medical conditions, diseases or occurrences. These are abortions,¹⁹ births,²⁰ deaths²¹ and congenital anomalies.²²

b. Discrimination

The DPH is bound by Louisiana’s civil rights statute because it is considered a place of public accommodation.²³ Therefore, all services and programs administered by DPH cannot discriminate on the basis of race, color or national origin.

c. Confidentiality

All data maintained by the DPH that “relate to special morbidity or mortality studies and research investigations to determine any cause or condition of health . . . are confidential and shall

¹⁶ La. R.S. § 46:437.11(A).

¹⁷ La. R.S. § 46:437.12(A)(4).

¹⁸ Attorney General Opinion No. 92-367 (June 25, 1992).

¹⁹ La. R.S. § 40:1299.35.10(A)(6).

²⁰ La. R.S. § 40:45(D)(2).

²¹ Although not statutorily required, Louisiana collects and reports racial information with regard to deaths. See <http://www.dhh.state.la.us/OPH/PUB.HTM>.

²² La. R.S. § 40:31.2(2).

²³ A place of public accommodation includes any place that is supported directly or indirectly by government funds. La. R.S. § 51:2232(10).

be used solely for statistical, scientific, and medical research purposes. . . .”²⁴ The DPH may disclose confidential data to other local, state or federal public health agencies “when the confidential information is necessary to carry out the duties of the agency. . . .”²⁵ However, even an authorized disclosure may include only the information necessary, and there must be a written agreement that the information will be kept confidential and will not be further disclosed.²⁶ In addition, “no part of the confidential data . . . shall be available for subpoena nor shall it be disclosed, discoverable, or compelled to be produced in any [adjudicatory] proceedings. . . .”²⁷

D. Observations

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

Interestingly, Louisiana’s Medicaid agency decided to change its Medicaid eligibility form to make the collection of racial information optional in February 2001. However, the Low Income Medicare Beneficiary Application still requests racial information with no indication that the furnishing of that information by the applicant is optional. In addition, the new Medicaid eligibility form does not indicate that the requested primary language information is optional for the applicant to provide.

²⁴ La. R.S. § 40:3.1(A).

²⁵ *Id.* § 40:3.1(C).

²⁶ *Id.* § 40:3.1(D).

²⁷ *Id.* § 40:3.1(F).