

MASSACHUSETTS

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).

MASSACHUSETTS

A. General and Health Demographics

Total Population	6,349,097
Percent Black Population	5.0
Percent American Indian and Alaskan Native Population	0.2
Percent Asian Population	3.7
Percent Native Hawaiian and Other Pacific Islander Population	0.0
Percent Hispanic Population (of any race)	6.8
Percent White Population	81.9
Other (some other race and two or more races)	2.4
Language Use - 1990 census data	
Percent Limited English Proficiency (LEP) Population	3.58 (7.71)
Health Care Delivery Profile	
Percent of Total Non-elderly Population Privately Insured (1997-99)	73.5
Percent of Total Population Enrolled in HMOs	41.75
Medicaid Enrollment (as of June 30, 2000)	962,342 (15.16%)
Medicaid Managed Care Enrollment	613,972 (63.80%)
Percent of Total Non-elderly Population Uninsured (1997-99)	12.6

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

1. Statutes, Regulations, Policies and Other Written Materials

Massachusetts uses the term “insurer” to encompass insurance companies and hospital and medical service corporations. The term “managed care plans or managed care organizations (MCOs)” refers to health maintenance organizations (HMOs)¹ and preferred provider arrangements

¹ An HMO is a company that “provides or arranges for the provision of health services to . . . enrolled members in exchange primarily for a prepaid per capita or aggregate fixed sum.” Mass. Ann. Laws ch. 176G, § 1.

(PPAs).²

The Division of Insurance and the Department of Public Health have regulatory authority over managed care plans in Massachusetts. Effective January 1, 2001, newly created oversight bureaus within existing state agencies have further jurisdiction over managed care practices within the insurance industry.³ The Bureau of Managed Care and the Office of Patient Protection are entities within the Division of Insurance and the Department of Public Health, respectively.⁴ Both have promulgated regulations which outline the various data collection and reporting requirements for health insurers and managed care organizations.

Massachusetts does not have any statutory or regulatory provisions that prohibit or mandate the collection or reporting of racial or ethnic data by health insurers or managed care organizations.

Massachusetts does require that all health insurance policies or any application related to the policies be filed with the Department of Insurance and receive departmental approval prior to use.⁵ Moreover, as discussed below, several recently implemented laws and regulations imply that the Massachusetts Legislature is concerned with protecting the rights of managed care consumers through various mechanisms, including reporting requirements and quality assurance programs.

A health insurer must provide to the Office of Patient Protection information regarding the number of filed grievances, including those that were approved internally, denied internally, and withdrawn.⁶ In addition, a health insurer must provide a report detailing any external appeals filed after a patient has exhausted the internal appeal process.⁷ These regulations contemplate the possible collection of racial and ethnic data within the demographic information required for each insured listed in the aforementioned reports.⁸

Health insurers, including HMOs, are also required to submit to the Office of Patient Protection a copy of any data sets, including the Health Plan Employer Data and Information Set (HEDIS), that is submitted to the National Committee on Quality Assurance (NCQA).⁹ This same

² A PPA is “a contract between or on behalf of an [insurer or HMO] and a preferred provider” (*i.e.* a provider or group of providers who have contracted to provide specified covered services). Mass. Ann. Laws ch. 176I, § 1.

³ Chapter 141 of the Acts of 2000, *An Act Relative to Managed Care Practice in the Insurance Industry*.

⁴ Mass. Ann. Laws ch. 11, § 217.

⁵ Mass. Ann. Laws ch. 175, § 108.

⁶ 105 CMR 128.600(A)(4)(a).

⁷ 105 CMR 128.600(A)(4)(b).

⁸ *Id.* (stating “report shall identify, for each such category, *to the extent such information is available*, the demographics of such insureds, which shall include, but not be limited to, *race*, gender, and age.”)(Emphasis added).

⁹ NCQA is a non-profit national accrediting body for managed care plans and health maintenance organizations (HMOs). HEDIS includes both plan-reported data and survey

data is also used by the Division of Health Care Finance and Policy to produce a health plan report.¹⁰ The health plan report card will be made available to health care consumers to provide a basis for evaluation and comparison of the state's various health plans. Not later than July 1, 2001, the Division of Health Care Finance and Policy must propose a process for preparing the health plan report card.

2. Discrimination

Under Massachusetts' general civil rights statute, no person may deny or refuse another person access to a place of public accommodation or services offered by a place of public accommodation because of race, color or national origin.¹¹ The statute, however, does not specifically include insurance companies within the definition of public accommodation, and there is no case law which has addressed this matter.¹²

Interestingly, in Massachusetts there are specific provisions addressing discrimination based on race, color or national origin in the issuance of motor vehicle insurance or surety bonds, but none addressing access to health insurance.¹³ The only statutory provision that refers to discrimination in the execution of a health insurance policy forbids the denial of reimbursements or payments under the policy because of race or color.¹⁴ This provision does not include national origin as an unallowable basis for discrimination.

3. Confidentiality

Massachusetts requires as part of its licensing process that the HMO's application contain a statement of the confidentiality procedures used to maintain member confidentiality with regard to medical records, grievances and appeals.

An insurer, including an HMO, may not disclose any personal or privileged information about individuals collected in connection with an insurance transaction.¹⁵ However, they may disclose personal information¹⁶ under certain circumstances including, but not limited to: (1) express

information from enrollees. The plan-reported information includes not only race and ethnicity but also information on language translation services requested and preferred language. The consumer survey also collects racial information.

¹⁰ Mass. Ann. Laws ch. 118G, § 24.

¹¹ Mass. Ann. Laws ch. 272, § 98.

¹² Mass. Ann. Laws ch. 272, § 92A. A "place of public accommodation" is "any place . . . which is open to and accepts or solicits the patronage of the general public . . ."

¹³ Mass. Ann. Laws ch. 175, § 1130; Mass. Ann. Laws ch. 151B, § 4(3A).

¹⁴ Mass. Ann. Laws ch. 175, § 193K.

¹⁵ Mass. Ann. Laws ch. 175I, § 13.

¹⁶ Personal information means "any information that identifies an individual . . . from which judgments can be made about an individual's character, habits, . . . , health or any other personal characteristics." Mass. Ann. Laws ch. 175I, § 2.

consent of the consumer; (2) disclosure to an insurer to detect criminal activity or perform administrative functions; (3) disclosure to a health care provider to verify coverage or to inform the consumer of a medical problem; and (4) in response to an administrative or judicial order, including a search warrant or subpoena.¹⁷

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

1. Division of Medical Assistance (DMA)

a. Statutes, Regulations, Policies and Other Written Materials

The Division of Medical Assistance, which oversees the state's Medicaid program, collects racial and ethnic data on several levels in the Medicaid delivery system. The DMA has taken an active role in ensuring access to healthcare to MassHealth¹⁸ members of all ethnic, racial, cultural, or linguistic backgrounds.

Massachusetts collects racial, ethnic, and primary language information on the joint application for MassHealth and the Children's Medical Security Plan (CMSP).¹⁹ In addition, the same information is collected for the MassHealth Eligibility Review ongoing eligibility determination form. On both forms, applicants have the option to provide their racial information. Massachusetts does not provide racial categories on the forms, but allows the applicant to write in his/her racial or ethnic designation.

Under the MassHealth program, the DMA contracts with various managed care organizations to provide health care services. The contract outlines several data collection and reporting requirements. Among these is the requirement that MCOs provide to the DMA data on ethnicity for prenatal care and pediatric immunization measures.²⁰ However, it also indicates that the ethnicity information is based on information provided by the DMA.²¹ So, technically, the DMA does not require an MCO to collect any ethnicity information above and beyond what the DMA provides to the MCO.

The DMA collects racial, ethnic and primary language data in other facets of the MassHealth program as well. It conducts an annual member survey of MassHealth beneficiaries to assess their access to and satisfaction with the MassHealth program and health care services. The survey

¹⁷ Mass. Ann. Laws ch. 175I, § 13.

¹⁸ In Massachusetts, Medicaid and SCHIP are combined into one program called MassHealth.

¹⁹ The Children's Medical Security Plan (CMSP) is a program regulated in Massachusetts by the Department of Public Health that provides health insurance coverage for children age 18 or younger who are not eligible for coverage under MassHealth.

²⁰ MassHealth MCO Contract, § 2.2.F.5(a)-(b).

²¹ *Id.*

requests the race, ethnicity and language of the person completing the survey.²²

The DMA administers a Hospital Quality Initiative as part of the MassHealth Program. One of the quality measures used in the Initiative is cultural competence reporting, which seeks to ensure that MassHealth members have access to quality care that is compatible with their health beliefs, practices and primary language. Toward this end, the DMA works with hospitals to collect and use outcome measures and patient satisfaction information stratified by race, ethnicity and language.²³

Finally, as part of its Cultural Competency Initiative, the DMA introduced the Primary Language Identification Form (PLIF).²⁴ The purpose of the form is to determine the language that the MassHealth applicant or member comprehends best, so that the person can be provided materials in that language. This information subsequently is entered into the MassHealth data system, thus giving DMA a more accurate picture of the population being served.

b. Discrimination

By statute, discrimination is prohibited against any individual who is a recipient of federal, state, or local public assistance, including MassHealth.²⁵ Therefore, the DMA may not discriminate against an applicant for or recipient of MassHealth benefits based on race, color, or national origin.²⁶ Likewise, a health care "provider may not deny any medical service to a [MassHealth] member" because of his race, color or national origin.²⁷

c. Confidentiality

MassHealth regulations require that any information obtained by the DMA during the eligibility process is protected. The use and disclosure of information concerning applicants or members is restricted to purposes directly connected with the administration of MassHealth.²⁸

2. Department of Public Health (DPH)

a. Statutes, Regulations, Policies and Other Written Materials

²² See MassHealth Member Survey 1999-2000, Questions #55-57. The race categories provided are White, Black or African-American, Asian, Native Hawaiian or other Pacific Islander, American Indian or Alaska Native, and Other (fill in the blank). The language choices are English, Cambodian, Chinese, Haitian/Creole, Laotian, Portuguese, Russian, Spanish, Vietnamese, and Other (fill in the blank).

²³ Division of Medical Assistance, Acute Hospital RFA RY 2001, Appendix G, pp. 7-9.

²⁴ Draft Memo to MassHealth Eligibility Staff from Tom DeVouton, Director, MassHealth Enrollment Center Operations, 2000.

²⁵ Mass. Ann. Laws. Ch. 151B, § 4.

²⁶ 130 CMR 501.009(A).

²⁷ 130 CMR 450.202(A).

²⁸ 130 CMR 501.009(B).

The Department of Public Health regulates Massachusetts' public health delivery system, oversees hospital licensing and addresses overall concerns about the health status and health care of Massachusetts' residents.

The DPH collects race and ethnicity data in limited situations. First, the DPH collects racial and ethnic data for diagnoses of: (1) infectious diseases;²⁹ (2) sexually transmitted diseases;³⁰ and (3) cancer.³¹ Second, DPH collects and reports racial and ethnic data for births³² and deaths.³³

Effective July 1, 2001, “every acute-care hospital . . . shall provide competent interpreter services in connection with all emergency room services provided to every non-English speaker who is a patient or who seeks appropriate emergency care or treatment . . .”³⁴

b. Discrimination

As a condition of licensure, the DPH prohibits discrimination by any hospital in the provision of service to any person because of his race, color, or national origin.³⁵ This prohibition extends to hospitals participating in the MassHealth program.³⁶

In addition, as a recipient of federal financial assistance, DPH is bound by Title VI of the Civil Rights Act of 1964.

c. Confidentiality

Personal data collected by the DPH is protected and must be maintained in accordance with the Fair Information Practices provisions.³⁷ These provide that no person, other than an employee of the agency, may have access to personal data unless such access is authorized by statute or

²⁹ Mass. Ann. Laws ch. 111D, § 6; 105 CMR 180.044.

³⁰ 105 CMR 340.100.

³¹ 105 CMR 301.010 - .015. The Department of Industrial Safety maintains an occupational lead poisoning registry, which also attempts to collect race and ethnicity data, if known.

³² Although not statutorily required, DPH collects and reports the race and Hispanic ethnicity of newly-born infants and their mothers. See <http://www.state.ma.us/dph/bhsre/resep/birth99d.pdf>.

³³ See <http://www.state.ma.us/dph/bhsre/death/99/death99.pdf>.

³⁴ Mass. Ann. Laws ch. 111, § 25J. “Competent interpreter services” are “interpreter services performed by a person who is fluent in English and in the language of a non-English speaker . . . and who is knowledgeable about the specialized terms and concepts that need to be interpreted for purposes of receiving emergency care or treatment.”

³⁵ 105 CMR 130.206(A)

³⁶ 105 CMR 130.206(B)

³⁷ Mass. Ann. Laws ch. 66A, § 10. Personal data is “any information concerning an individual which, because of name, identifying number, mark or description can be readily associated with a particular individual. . .” Mass. Ann. Laws ch. 66A, § 1.

regulations, or is consented to by the individual whose information is being requested.³⁸ This includes reports on communicable diseases, hospital utilization, and mental health conditions.

3. Division of Health Care Finance and Policy (DHCFP)

The Division of Health Care Finance and Policy, in conjunction with the Department of Public Health, is responsible for collecting and analyzing statewide health care data for the purpose of formulating health care policy.³⁹

The Division of Health Care Finance and Policy requires hospitals to submit several types of health care data. Hospitals are required to submit hospital case mix and charge data which include inpatient data and outpatient observation data.⁴⁰ Each of these data sets must include information on the patient's race.⁴¹ The regulations include data codes to be used for the patient's racial designation. The categories are: (1) White; (2) Black; (3) Asian; (4) Hispanic; (5) American Indian; (6) Other; and (7) Unknown.⁴²

D. Observations

Massachusetts does not have any statutory or regulatory provisions that prohibit or mandate the collection or reporting of racial or ethnic data by health insurers or managed care organizations.

The Massachusetts public accommodation statute does not explicitly include insurance companies in its definition of "public accommodation", but the general definition may be read to include insurers.

However, Massachusetts contemplates the collection of racial information with regard to grievances filed with a health insurer. The insurance regulations request that demographic information, including the race of an insured, is listed as part of the insurer's grievance report to the Office of Patient Protection.

Finally, the Division of Medical Assistance collects racial, ethnic and primary language information on several levels, including MassHealth eligibility determinations and member surveys. The DMA has also created a form, as part of its Cultural Competency Initiative, that identifies the primary language of MassHealth applicants and members.

³⁸ Mass. Ann. Laws ch. 66A, § 2.

³⁹ Mass. An.. Laws. Ch. 118G, § 2.

⁴⁰ Observation data includes "patients who receive observation services and who are not admitted." 141.1 CMR 17.08; *see also* 114.1 CMR 17.07.

⁴¹ *Id.*

⁴² 141.1 CMR 17.06.