

NEVADA

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).

NEVADA

A. General and Health Demographics

Total Population (2000 Census Data)	1,998,257	
Percent Black Population	6.6	
Percent American Indian and Alaskan Native Population	1.1	
Percent Asian Population	4.4	
Percent Native Hawaiian and Other Pacific Islander Population	0.4	
Percent Hispanic Population (of any race)	19.7	
Percent White Population	65.2	
Other (some other race and two or more races)	2.6	
Language Use - 2000 census data		
Percent Limited English Proficiency (LEP) Population	5.77	(11.20)
Health Care Delivery Profile		
Percent of Total Non-elderly Population Privately Insured (1997-99)	72.4	
Percent of Total Population Enrolled in HMOs (1998)	25.0	
Medicaid Enrollment (as of December 31, 2002)	164,388	(8.23%)
Medicaid Managed Care Enrollment (as of December 31, 2002)	72,398	(44.04%)
Percent of Total Non-elderly Population Uninsured (1997-99)	22.2	

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

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

Nevada uses the term “health insurer” to describe any insurance company, hospital or health service corporation, managed care organization (MCO), including a health maintenance organization (HMO),¹ or other entity providing health insurance.² This state summary will use the term “health insurer” to refer to these entities, unless there is a distinction made within the statutes or regulations regarding the issue being discussed.

¹ See Nev. Rev. Stat. Ann. § 695C.055(1).

² Nev. Rev. Stat. Ann. § 681A.030 and 679B.540, and Nev. Admin. Code § 679A.020.

The Commissioner of Insurance (Commissioner) in Nevada must approve all health insurance application forms, contracts, or policies.³ Nevada has no statutes or regulations that prohibit or require the collection or reporting of racial, ethnic, or primary language data by health insurers.

All MCOs must file a report with the Commissioner and the State Board of Health (BOH) regarding their methods for reviewing the quality of health care services provided to its insureds, which should include criteria, data, benchmarks, or studies to assess the nature, scope, quality and accessibility of health care services.⁴ Similarly, BOH must review an HMO's application for a certificate of authority to determine whether the HMO compiles and reports statistical data on the pattern of utilization, availability, and accessibility of its services.⁵ MCOs must establish a quality assurance program to analyze the outcomes of health care and its system for collection and maintenance of information related to health care services.⁶ On its face, the statute does not require these data collection systems to include race, ethnicity, and primary language data.

2. Discrimination

For most health insurers, when determining whether rates comply with standards, one of the criteria applied is that no risk may be classified which establishes rates and minimum premiums based on race, color, creed, or national origin.⁷ Small employers who organize themselves into voluntary purchasing groups for health insurance cannot differentiate among classes of membership on the basis of race.⁸ For health insurers offering individual health insurance, race, color and national origin are not allowable rating factors for establishing premium rates.⁹

The state's unfair trade practices statute is similar to other states and prohibits any health insurer from making or permitting any "unfair" discrimination between persons of the same class and of essentially the same hazard in the amount of premium, policy fees, or rates charged for any policy of health insurance, or in the benefits, terms or conditions, or in any other manner.¹⁰

³ Nev. Rev. Stat. Ann. §§ 687.120, 695C.200 and 695B.230.

⁴ Nev. Rev. Stat. Ann. § 695G.130.

⁵ Nev. Rev. Stat. Ann. § 695C.080 and Nev. Admin. Code (NAC) § 695C.125.

⁶ Nev. Rev. Stat. Ann. § 695G.180 and NAC §§ 695C.400 and 420. The BOH selects the indicators from the reporting set data domains set forth in Technical Specifications from HEDIS. NAC § 695C.275.

⁷ Nev. Rev. Stat. Ann. § 686B.060. This provision does not apply to group or blanket health insurance or credit health insurance, HMOs, or PLHSOs. Nev. Rev. Stat. Ann. §§ 686B.030, 695C.050 and 695F.080.

⁸ Nev. Rev. Stat. Ann. § 689C.520.

⁹ Nev. Rev. Stat. Ann. § 685A.680(2).

¹⁰ Nev. Rev. Stat. Ann. §§ 686A.100, 695C.300(2)(HMOs) and 695F.090(5)(PLHSOs). The Commissioner is authorized to investigate any act or practice such which may constitute an

This provision does not explicitly prohibit discrimination based on race, ethnicity, or national origin, but, as to individual health insurance, if the policy contains “any unjust, unfair, inequitable or prejudicial provision,” the Commissioner must disapprove the policy.¹¹

The Nevada public accommodations statute states that all persons are entitled to the full and equal enjoyment of the goods and services of any public accommodations without discrimination based on race, color, national origin.¹² However, a provision within the trade practices chapter gives the Commissioner exclusive jurisdiction to regulate the business of insurance, so it is unclear whether the public accommodations statute applies to health insurers.

3. Confidentiality

Medical records and other information specific to an insured of an MCO are not public records.¹³ Information relating to the diagnosis, treatment or health of any enrollee in a PLHSO cannot be disclosed except: to the extent necessary to carry out the purposes of the chapter; upon written consent of the applicant or enrollee, provider or PLHSO, as appropriate; pursuant to law or court order; or in a legal action if the data is relevant.¹⁴

Although all papers and records of the Commissioner are generally open to public inspection,¹⁵ the Insurance Administrative Code contains detailed regulations on the collection, use, and disclosure of information on insurance transactions.¹⁶ These regulations apply to all health insurers,¹⁷ and provide limited circumstances for which personal, privileged, and medical information¹⁸ can be disclosed.¹⁹

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

1. Department of Human Resources (DHR)

unfair or deceptive trade practice. Nev. Rev. Stat. Ann. § 686A.015.

¹¹ Nev. Rev. Stat. Ann. § 687B.130.

¹² Nev. Rev. Stat. Ann. § 651.070; *see also* Nev. Rev. Stat. § 233.010.

¹³ Nev. Rev. Stat. Ann. § 695G.100.

¹⁴ Nev. Rev. Stat. Ann. § 695F.410.

¹⁵ Nev. Rev. Stat. Ann. § 679B.190. All public records are open to inspection except information which is declared by law to be confidential. Nev. Rev. Stat. Ann. §239.010. There are some records, such as those from investigations and examinations, which are confidential. Nev. Rev. Stat. Ann. §§ 679B.034, 679B.190, & 679B.280.

¹⁶ NAC ch.679B *et seq.*

¹⁷ NAC § 679B.675.

¹⁸ *See* NAC §§ 679B.635 (medical record information), 679B.650 (personal information) and 679B.665 (privileged information).

¹⁹ *See e.g.* NAC §§ 679B.680 (use of pretext interviews); 679B.695 (contents of disclosure authorization form); 679B.705 (access to recorded personal information); and 679B.730 (limitations and conditions of disclosure).

a. Statutes, Regulations, Policies and Other Written Materials

DHR is the state agency that administers the state's Medicaid program and SCHIP.²⁰ There are no state statutes or regulations that prohibit or require the collection or reporting of racial, ethnic or primary language data regarding Medicaid or SCHIP applicants or recipients. However, on the joint "Application for Assistance" (Public Assistance Application), there is an "Optional" box that asks for the applicant to indicate his/her ethnicity and racial background.²¹ The Application provides that the information will not be used to consider eligibility for benefits, and that if the applicant does not provide an answer, the eligibility worker will complete it based on his/her observation.²²

Nevada allows its SCHIP applicants to fill out an online version of the application.²³ This version asks "What language do you speak best?" and inquires about the applicant's "Ethnic Group."²⁴ The choices are African American, White, Asian, Hispanic, and Other. The regular paper SCHIP Application also asks for the language spoken best and for the children's ethnic group, with the choices being the same as the Public Assistance Application, with the addition of tribal affiliation.²⁵

The Nevada Medicaid Managed Care Contract ("Nevada Contract") requires that the enrollee handbook be made available in any language which 10% or more of the HMO's Medicaid participants use as a primary language.²⁶ In addition, the HMO must provide interpreter services in person, where practical, or otherwise by telephone.²⁷ Finally, the HMO "must foster cultural competency among its providers."²⁸

DHR is also responsible for collecting Nevada's vital statistics and uses the following data elements in doing so: (1) race or color for foundlings;²⁹ (2) race or ethnicity for abstracted

²⁰ Nev. Rev. Stat. Ann. §§ 422.030 and 422.270. Interestingly, the mission of DHR recognizes the value of cultural diversity. DHR Homepage at: www.hr.state.nv.us.

²¹ Public Assistance Application at: <http://silversource.state.nv.us/forms/welfare/welf15.PDF>. The available choices are: (1) Ethnicity: Hispanic or Latino, and (2) Race: (a) AI-American Indian or Alaska Native; (b) Asian; (c) Native Hawaiian or Pacific Islander; (d) Black or African American; (e) White (Caucasian); and (f) Other.

²² *Id.*

²³ See "Joint On-Line Application," at: <http://167.154.253.207/OnlineAppEnglish.htm>

²⁴ *Id.*

²⁵ "Nevada Check-up (SCHIP)/Medicaid (CHAP) Application," at: www.nevadacheckup.com.

The application is also available in Spanish.

²⁶ Nevada Contract, pp. 33.

²⁷ *Id.*, p. 32.

²⁸ *Id.*, p. 36-37. Culturally competent care is "care given by a provider who can communicate with the participant and provide care with sensitivity, understanding, and respect for the participant's culture, background and beliefs. Communication with the participant may involve using a language other than English. . ."

²⁹ Nev. Rev. Stat. Ann. § 440.330(1)(d).

birth certificates;³⁰ (3) race or ethnic group of women having abortions;³¹ (4) race or ethnicity of a cancer patient;³² and (5) race of persons with communicable diseases.³³

b. Discrimination

There is no welfare provision prohibiting discrimination on the basis of race, color, or national origin, however, there is a general obligation to observe federal requirements.³⁴ The welfare division, which accepts applications for Medicaid,³⁵ is forbidden from denying, reducing, discontinuing, or terminating any public assistance in violation of federal law or condition to the receipt of federal money.³⁶

The SCHIP application states that DHR “provides services WITHOUT DISCRIMINATION OF ANY KIND due to race, national origin, color,” and several other protected categories as required by federal regulations.³⁷ Notably, although the Public Assistance Application does not have a nondiscrimination statement, it does explain that the questions about race and ethnicity are authorized by Title VI of the Civil Rights Act of 1964.³⁸

The Nevada Contract requires a contracting HMO to “accept the enrollment of any Medicaid eligible who selects it regardless of the participant’s race, national origin, . . . [or] color. . . .”³⁹ Further, the HMO must ensure that enrollees are provided covered services without regard to race, color or national origin.⁴⁰

c. Confidentiality

No person may publish, disclose or use any confidential information relating to an

³⁰ NAC § 440.155(A)(4). For replacement certificates written in a foreign language, an affidavit executed by the translator must attest to the accuracy of the translation. Nev. Rev. Stat. §440.303.

³¹ Nev. Rev. Stat. Ann. § 442.260 (2)(f).

³² NAC § 457.057.

³³ NAC §§ 441A.230-245, 441A.310 (health authority may report race of carrier), and 441A.815 (race of prostitute with communicable disease). The state also collects race data for deaths, as seen from its online Interactive Health Databases at: http://health2k.state.nv.us/matchiim/measures/mortality/long_form.html.

³⁴ Nev. Rev. Stat. Ann. § 422.29324.

³⁵ Nev. Rev. Stat. Ann. § 422.2936.

³⁶ Nev. Rev. Stat. Ann. § 422.29324. *See also* 81-3 Op. Att’y Gen. 6 (1981)(noting a provision in the Medicaid Manual that requires a provider not to discriminate on the basis of race, color, creed, sex, or national origin in order to contract with the welfare department.)

³⁷ Application at 2.

³⁸ *Id.*

³⁹ Nevada Contract, p. 27.

⁴⁰ *Id.*, p. 37.

applicant or recipient of medical assistance.⁴¹ Disclosure is restricted to purposes directly connected to the administration of the public assistance programs.⁴² If any information, including names and addresses of applicants and recipients, is shared with other agencies or departments, the latter are bound by the same DPH regulations.⁴³ However, despite these apparent protections, both the Public Assistance and SCHIP Applications, rather than explaining that the information provided is confidential, require the applicant to consent to and authorize the release of any information provided to DHR, including confidential information.⁴⁴

With regard to vital statistics, although all certificates are open to public inspection, there are limitations on disclosure of such records.⁴⁵ For example, certified copies of records can only be issued to those who have a “direct and tangible interest” in the matter recorded.⁴⁶ The registrar may also release vital statistics to other agencies if confidentiality is maintained,⁴⁷ or for statistical or research purposes.⁴⁸ All personal information about someone with a communicable disease is confidential medical information and can only be released under certain circumstances.⁴⁹ Also, all documents in the possession of the cancer registry which contain names of patients are confidential and can only be disclosed to authorized recipients.

D. Observations

Nevada has no statutes or regulations that prohibit or require the collection or reporting of racial, ethnic, or primary language data by health insurers.

⁴¹ Nev. Rev. Stat. Ann. § 428.045.

⁴² Nev. Rev. Stat. Ann. §422.290. Any information obtained from an investigation of a provider, which includes health insurers, is confidential unless it is presented as evidence at a hearing, but the identity of any recipient of assistance must be kept confidential. Nev. Rev. Stat. Ann. §§422.305 & 422.490(2).

⁴³ *Id.*

⁴⁴ Public Assistance Application at 8 and SCHIP Application at 2.

⁴⁵ Nev. Rev. Stat. Ann. §440.170 and NAC §440.021; *see also* 90-8 Op. Att’y Gen. (1990)(death certificates are public records open to inspection unless disclosure would lead to an unwarranted invasion of privacy or would disclose personal information relating to communicable diseases).

⁴⁶ Nev. Rev. Stat. Ann. §440.650. A “direct and tangible interest” is held by a person who has a legal or direct relationship by blood or marriage to the person named on the certificate, or as required by law. NAC §440.070.

⁴⁷ NAC §440.022.

⁴⁸ NAC §440.0215.

⁴⁹ Nev. Rev. Stat. Ann. §441A.220. Disclosure is permitted: (1) for statistical purposes, if no identifying information disclosed; (2) in a proceeding for a violation of the public health laws; (3) to a person who has a medical need to know the information; (4) if subject consents in writing; (5) to DHR if the person is HIV+ and is an applicant or recipient of Medicaid; (6) to a fireman, police officer or emergency authority if related to that occupation; and (7) if otherwise authorized by regulation or statute

While Nevada does not require the collection of race or ethnicity data in its health care delivery system, it does in the context of its juvenile justice system. The Division of Child and Family Services has been instructed “to establish a standardized system for the reporting, collection, analysis, maintenance and retrieval of information concerning juvenile justice categories” that includes the race and ethnic background of the children in the system.⁵⁰

With regard to LEP issues, it is interesting that one of the few circumstances in which an interpreter is mandated is when an LEP woman must give consent to an abortion. Indeed, the interpreter in such a case must be named on the consent form.⁵¹ Nevada also deems any insurance policy written in a language other than English to be in compliance with the readability requirement governing all policies if the insurer certifies that it is translated from a policy written in English which complies with that section.⁵² Finally, it is of interest that, for DHR hearings, interpreters are statutorily required at public expense for those with handicaps, but not for LEP persons.⁵³

⁵⁰ Nev. Rev. Stat. Ann. §§ 62.910(1) and (2)(b)(1).

⁵¹ Nev. Rev. Stat. Ann. § 442.253(3).

⁵² Nev. Rev. Stat. Ann. § 687B.122 (2).

⁵³ Nev. Rev. Stat. Ann. § 422.278.