

## NEW MEXICO

**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).

## NEW MEXICO

### A. General and Health Demographics

<b>Total Population</b>	1,819,046	
Percent Black Population	1.7	
Percent American Indian and Alaskan Native Population	8.9	
Percent Asian Population	1.0	
Percent Native Hawaiian and Other Pacific Islander Population	0.1	
Percent Hispanic Population (of any race)	42.1	
Percent White Population	44.7	
Other (some other race and two or more races)	1.6	
<b>Language Use - 2000 census data</b>		
Percent Limited English Proficiency (LEP) Population	5.03	(11.90)
<b>Health Care Delivery Profile</b>		
Percent of Total Non-elderly Population Privately Insured (1997-99)	59.3	
Percent of Total Population Enrolled in HMOs	58.0	
Medicaid Enrollment (as of December 31, 2002)	389,298	(21.40%)
Medicaid Managed Care Enrollment	249,565	(64.11%)
Percent of Total Non-elderly Population Uninsured (1997-99)	26.2	

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

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

The New Mexico Insurance Department regulates all health insurers. New Mexico uses the term “health insurer” to cover any entity that provides health insurance, including a managed care organization (MCO) or health maintenance organization (HMO).<sup>1</sup> 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.

<sup>1</sup> N.M. Stat. Ann. §§ 59A-1-8, 59A-7-3, 59A-2-9.2(A)(2), and 59A-57-3.

The New Mexico Insurance Department (ID)<sup>2</sup> approves all insurance application forms, policies, and contracts.<sup>3</sup> New Mexico has no statutes or regulations that directly prohibit or require the collection or reporting of racial, ethnic, or primary language data by health insurers.

However, one regulation seems to indirectly mandate the collection of primary language information. It supports a statute that requires each MCO and HMO plan to “reasonably address the cultural and linguistic diversity of its enrollee population.”<sup>4</sup> One of the minimum plan requirements is to show how the MCO will “identify the language needs of enrollees.”<sup>5</sup> As evidenced by additional plan requirements, the MCO must ensure that information and services are available in languages other than English and that services are provided in a manner that takes into account cultural characteristics of the enrollee population, for which race and ethnicity data would also prove useful.<sup>6</sup>

## 2. Discrimination

New Mexico has several statutes that forbid discrimination by insurers based on race, color, or national origin.<sup>7</sup> No managed health care insurer (or health facility or provider) shall, because of race, color, or national origin, and several other protected categories, discriminate against any enrollee by refusing to enter into, canceling or declining to renew, or altering the terms of a health benefits contract or the quality of health care services rendered under such a contract.<sup>8</sup> This statute also prohibits discrimination against providers on the basis of race, color, or national origin.<sup>9</sup>

Health insurers may not discriminate against PPOs on the basis of race, color, or national origin.<sup>10</sup> Moreover, rates will not be deemed to comply with the rate standards if risk classifications are based on race, color, creed, or national origin.<sup>11</sup> Finally, all provider contracts

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<sup>2</sup> N.M. Stat. Ann. §§ 59A-1-12 and 59A-2-8.

<sup>3</sup> N.M. Stat. Ann. § 59A-18-12.

<sup>4</sup> N.M. Stat. Ann. § 59A-57-4(B)(3)(e) (Patient Protection Act). The plan can achieve this through provider selection and education, the provision of additional resources, or other means.

<sup>5</sup> N.M. Admin. Code (NMAC) Tit. 13, §10.13.29.1.1.

<sup>6</sup> *Id.* at §§ 10.13.29.1.2-29.1.8 and 10.13.20. The plan must also address: (1) measures to ensure administrative and health access to LEP enrollees, including adequate interpreter services; (2) whether linguistic and cultural needs are explicitly addressed in the MCO’s quality improvement program (using HEDIS measures); (3) how the MCO conducts its outreach to particular cultural and linguistic enrollee populations; (4) culturally and linguistically appropriate guidelines and training for its staff and providers; and (5) the extent to which the MCO contracts with culturally and linguistically competent community clinics or providers.

<sup>7</sup> *See generally* N.M. Stat. Ann. §§ 59A-16-11(B), 59A-16-12, and 59A-16-17(D).

<sup>8</sup> N.M. Stat. Ann. § 10.13.22(22.1) and NMAC Tit. 13, §10.13.17.

<sup>9</sup> N.M. Stat. Ann. § 10.13.22(22.2).

<sup>10</sup> N.M. Stat. Ann. § 59A-22A-6.

<sup>11</sup> N.M. Stat. Ann. § 59A-17-7(A)(2). This provision does not apply to HMOs or non-profit health plans. N.M. Stat. Ann. §§ 59A-46-30 and 59-47-33; *but see* N.M. Stat. Ann. §§ 59A-46-

must require that health care services be offered free of discrimination based on ethnicity.<sup>12</sup>

### 3. Confidentiality

Any information pertaining to diagnosis, treatment, or health obtained by MCOs or HMOs from an applicant, enrollee or provider is confidential and cannot be disclosed except: (1) to the extent necessary to carry out the purposes of the MCO laws; (2) upon the express consent of the applicant or enrollee; (3) pursuant to statute or court order; and (4) in the event of litigation between the applicant or enrollee and the MCO, if the data is relevant.<sup>13</sup> Moreover, information considered by a health care review committee, and their records, are confidential and not subject to release except in proceedings before a state licensing agency or in an appeal.<sup>14</sup>

Although records of the ID are generally considered public records and open to inspection,<sup>15</sup> health records that relate to or identify specific individuals as patients are not public records and are strictly confidential.<sup>16</sup>

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

### 1. Human Services Department (HSD)

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

HSD is the state agency that administers New Mexico's Medicaid program and SCHIP.<sup>17</sup> There are no state statutes or regulations that prohibit or require, *per se*, the collection or reporting of racial, ethnic or primary language data regarding Medicaid or SCHIP applicants or recipients. However, the same requirements which apply to private sector MCOs also apply to Medicaid MCOs, including the need for a plan to reasonably address the cultural and linguistic diversity of the enrollee population.<sup>18</sup> In addition, extensive regulations, as well as specific language in New Mexico's Medicaid managed care contract (MCC), require the provision of culturally and linguistically appropriate services to Medicaid beneficiaries.<sup>19</sup>

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16 (HMOs) and 59A-47-26 (nonprofit health plans)(the ID can disapprove any rate it finds "unfairly discriminatory").

<sup>12</sup> N.M. Admin. Code Tit. 13, §10.13.25.9.

<sup>13</sup> N.M. Sta. Ann. § 59A-46-27(A); NMAC Tit.. 13, § 10.13.21.

<sup>14</sup> *Id.* at § 59A-46-27(D).

<sup>15</sup> N.M. Stat. Ann. §§ 59A-2-12 & 59A-46-26.

<sup>16</sup> N.M. Stat. Ann. § 14-6-1; NMAC Tit. 1, §3.2.10.2.11.

<sup>17</sup> N.M. Stat. Ann. §§ 9-8-12, 27-2-12 and 27-12-4 (2000); *see also* "New Mexico Medicaid General Information" at: <http://www.state.nm.us/hsd/mad/GenInfo.htm>. The Medical Assistance Division (MAD) utilizes a statewide managed care system to provide most of the health care for Medicaid recipients. N.M. Stat. Ann. § 27-2-12.6.

<sup>18</sup> N.M. Stat. Ann. § 59A-57-10; *see* N.M. Stat. Ann. § 59A-57-4(B)(3)(e).

<sup>19</sup> The Medicaid managed care requirements stress implementation of a broad "cultural competence plan." "SALUD! State of New Mexico HSD, RFP Medicaid Managed Care" (RFP),

Several provisions in the MCC strongly anticipate the collection of race, ethnicity, and primary language data. One requirement involves maintaining “accurate member eligibility and demographic data.”<sup>20</sup> Another requires the MCO to submit encounter data on a regular basis.<sup>21</sup> One of the articulated purposes for the collection of encounter data is the “evaluation of MCO performance,” which HSD explains includes such areas as “treatments by specified diagnoses, age, [and] ethnicity...”<sup>22</sup> Beyond incorporating “cultural competence” into treatment planning, utilization management, and quality improvement, the MCO must identify “resources and interventions for high risk health conditions found in certain cultural groups.”<sup>23</sup>

The MCO must employ a method of data collection and analysis that identifies the affected populations and, if sampling is done, draws appropriate samples from the affected populations.<sup>24</sup> It must collect “clinical data using a sample size to support stratification of the population by a range of demographic and clinical factors”, including ethnic minorities.<sup>25</sup>

Furthermore, to meet standards for Internal Quality Management and Improvement, the MCO must ensure that all “major population groups,” which means any group of at least 10% of the MCO’s enrollment, are included in the scope of the review.<sup>26</sup> It seems likely that this definition would encompass at least any distinct language population that met the 10% threshold, and would probably include racial and ethnic groups as well.<sup>27</sup>

There is a stated expectation that all MCOs will provide services in a manner that includes cross-cultural communication and respect for the linguistic and ethnic differences that

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Attachment to February 21, 2001 letter from Robert A. Stranahan, Office of General Counsel, New Mexico HSD (Stranahan Letter). These requirements include: cultural competence training for staff and providers; oral and written language assistance for LEP members; the use of “qualified” medical interpreters; and, identifying community advocates to help deliver culturally competent services. RFP at 75-78; *see also* MCC at 56-57, Stranahan Letter, Appendix B.

<sup>20</sup> MCC at 83. According to the SALUD! System Manual, (SALUD!) The MCO receives enrollment data which includes the race of Medicaid eligibles, new enrollees and newborns. SALUD! at 1, 10, 22-23, Stranahan Letter, Appendix D.

<sup>21</sup> SALUD! at 33-34; *see also* NMAC Tit. 8, § 606.9; MCC 77-79.

<sup>22</sup> SALUD! at 33-34. It is unclear how “ethnicity” is recorded on the required forms as it is not one of the “Encounter Definitions” listed. *Id.* at 35.

<sup>23</sup> MCC at 57. There are screening requirements for high-risk racial and ethnic populations. MAD-606-103-104; *see also* NMAC Tit. 8, § 4.MAD.606.7.7.8 and 606.7.7.11.

<sup>24</sup> MAD “Description of Program,” at MAD-606-73, 77, Appendix C (Stranahan Letter); *see also* NMAC Tit. 8, §4.MAD.606.7.3.5 and 606.7.3.8.

<sup>25</sup> *Id.* at § 4.MAD.606.7.2.4.

<sup>26</sup> *Id.* at § 4.MAD.606.7.3.2(8); MCC at 16.

<sup>27</sup> Support for this conclusion is found in the fact that the MCC requires an extensive list of materials to be provided in Spanish as well as English. MCC at 5, 7-10, 13, & 68. In fact, HSD undertakes to provide bilingual outreach materials and staff to assist any LEP recipient, NMAC Tit. 8, §§ 3.ISD.052.4 and 3.ISD.131.13, and reviews marketing materials for “content, comprehension level, and languages”. MCC at 116; MAD-606-101.

contribute to cultural identity among the plan's members.<sup>28</sup> One step in meeting this goal is to establish a Community Advisory Board, which must reflect a "fair representation" of the MCO's members in terms of race.<sup>29</sup>

Finally, by practice, race information is collected by HSD on its Medicaid applications.<sup>30</sup> On one, the applicant is told that providing information on her race is optional.<sup>31</sup>

b. Discrimination

HSD must be administered in a manner which ensures that no person is denied any aid, care, services, or any other benefits on the grounds of race, color, creed, or national origin, or is otherwise subjected to unlawful discrimination,<sup>32</sup> and the Medicaid application informs the applicant of that fact.<sup>33</sup> The MCC contains language that providers may not discriminate on the basis of race, color, or national origin.<sup>34</sup>

c. Confidentiality

HSD, other state agencies, their contractors, and all providers must safeguard the following confidential applicant and recipient information: (1) name, address, and social security number; (2) medical services furnished to the recipient; (3) social and economic conditions; 4) agency evaluation of personal information; (5) all medical data; (6) information used to verify eligibility; and (7) information received in connection with the identification of other liable third parties.<sup>35</sup> All Medicaid MCOs must also comply with these provisions pursuant to the MCC.<sup>36</sup>

2. Department of Health (DOH)

a. Statutes, Regulations, Policies and Other Written Materials

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<sup>28</sup> RFP at 77. NMAC Tit. 8, § 4.MAD.606.1.1.11 ("cultural competence requires individuals and systems to develop and expand their ability to provide services effectively to all cultures, races, ethnic backgrounds and religions in a manner that respects the worth of the individual and protects and preserves their dignity.")

<sup>29</sup> MCC at 11.

<sup>30</sup> "Medicaid Application for QMB, SLIMB, QI1, & WDI," (Medicaid Application), sent by HSD and "Medicaid Application for Children or Pregnant Women or Women Who Want Family Planning," (Pregnant Women Application) at: [http://state.nm.us/hsd/mad/pdf\\_files/eligibility](http://state.nm.us/hsd/mad/pdf_files/eligibility).

<sup>31</sup> Pregnant Women Application at 1.

<sup>32</sup> NMAC Tit.. 8, § 3.ISD.050.

<sup>33</sup> Medicaid Application at 2. The Income Support Division determines eligibility for Medicaid. N.M. Admin. Code tit. 8, § 4.MAD.701.31(B)(1).

<sup>34</sup> MCC at 115; NMAC Tit. 8, § 4MAD.701.5.

<sup>35</sup> NMAC Tit.8, § 4.MAD.030. Such confidential information may be used only for the administration of the Medicaid program. NMAC Tit. 8, § 4.MAD.031.

<sup>36</sup> MCC at 119-120; *see also* NMAC Tit. 8, § 606.7.6.6.

The New Mexico Health Policy Commission (Commission)<sup>37</sup> works with DOH<sup>38</sup> to collect inpatient discharge race/ethnicity data from all licensed, non-federal facilities.<sup>39</sup> The Commission has the authority to collect certain information, such as HEDIS data elements and performance measures, from health care insurers,<sup>40</sup> but does not appear to collect race and ethnicity data from health plans.<sup>41</sup>

DOH also collects race and/or ethnicity data for these vital statistics and public health records: 1) birth and death records,<sup>42</sup> 2) race of children of unknown parentage,<sup>43</sup> and race/ethnicity of notifiable diseases/conditions, such as communicable diseases, health conditions related to environmental exposures and injuries, sexually transmitted diseases, HIV and AIDS, cancer, tuberculosis, and birth defects.<sup>44</sup>

b. Discrimination

The New Mexico Human Rights Act makes it unlawful for the state or any of its political subdivisions to discriminate against any person because of race, color, ancestry, national origin, or several other protected classes.<sup>45</sup> This provision covers both DOH and DHS.<sup>46</sup>

c. Confidentiality

The files and records of DOH containing identifying information about individuals who have received any treatment, diagnostic services or preventive care are confidential and not subject to disclosure, except for investigations or other authorized government functions, or upon

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<sup>37</sup> N.M. Stat. Ann. § 9-7-11.2. The Commission's purpose is to develop the state's health policy and establish a health information system to gather data on demographic factors, social, cultural and economic conditions affecting health, medical outcomes, various health factors, and health system costs. N.M. Stat. Ann. § 24-14A-3.

<sup>38</sup> One of DOH's purposes is to assure that basic health care services are culturally appropriate. N.M. Stat. Ann. § 9-7-11.1.

<sup>39</sup> N.M. Stat. Ann. § 24-14A-1 *et seq.*

<sup>40</sup> NMAC Tit. 7, §§ 1.21.7 to 1.21.9.

<sup>41</sup> *See* Letter from Suzanne Kotkin-Jaszi, Director, New Mexico Health Policy Commission dated February 15, 2001. (Commission collects ethnicity data from inpatient facilities but does not collect any outpatient data.) The inpatient reporting choices are: A-Asian/Pacific Islander; B-Black; H-Hispanic; I-Native American Indian; O-Other; U-Unknown; and W-White. NMAC Tit. 7, §§ 1.1.7.23 and 1.1.10.2.23. Even the self-reported ethnicity data that is requested only has to be submitted if collected in the normal course of business.

<sup>42</sup> N.M. Stat. Ann. §§ 24-14-12 & ("personal data" collected); *see also* "Health Statistics," at: <http://dohewbs2.health.state.nm.us/VitalRec/Health%20Stats.htm>.

<sup>43</sup> N.M. Stat. Ann. § 24-14-14.

<sup>44</sup> NMAC Tit. 7, § 4.3.12.

<sup>45</sup> N.M. Stat. Ann. § 28-1-7.

<sup>46</sup> 1976 Op. Att'y Gen. 72 (1976); *see also* N.M. Stat. Ann. § 28-1-2.

subpoena.<sup>47</sup> It is unlawful to disclose information contained in vital records except as authorized by law, or to the New Mexico Health Policy Commission, or after a certain length of time has elapsed.<sup>48</sup> Finally, medical records, vital records, and health information system data are exempt from the public records laws.<sup>49</sup>

## D. Observations

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

New Mexico, along with D.C., Hawaii and California, is one of four majority minority jurisdictions. There appears to be a general recognition and appreciation in New Mexico of the state's bilingual/bi-cultural status,<sup>50</sup> and that sensitivity is reflected in the managed care requirements for both Medicaid/SCHIP and the private sector.

New Mexico has several explicit prohibitions against discrimination in insurance based on race, color, or national origin which provide one of the stronger nondiscrimination schemes in the country. Coupled with the strict confidentiality provisions for state agencies, these provisions should provide applicants and insureds some assurances that such discrimination is less likely to occur, even when race, ethnicity and primary language data are solicited.

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<sup>47</sup> N. M. Stat. Ann. § 24-1-20.

<sup>48</sup> N.M. Stat. Ann. § 24-14-27.

<sup>49</sup> NMAC Tit. 7, § 1.3.19.

<sup>50</sup> *See e.g.* N.M. Stat. Ann. § 12-3-12 (the words and music of “New Mexico – Mi Lindo Nuevo Mexico,” are declared to be the state bilingual song); N.M. Stat. Ann. § 12-3-7 (official Spanish language salute to the state flag); N.M. Stat. Ann. § 22-23-3 (purpose of the Bilingual Multicultural Education Act is to ensure equal education opportunities for students in New Mexico) and N.M. Stat. Ann. § 1-2-19 (language assistance provision in the Elections Code which requires oral assistance for language minority voters, specifically American Indians and those of Spanish heritage).