

## OKLAHOMA

**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).

## OKLAHOMA

### A. General and Health Demographics

<b>Total Population</b>	3,450,654	
Percent Black Population	7.5	
Percent American Indian and Alaskan Native Population	7.7	
Percent Asian Population	1.3	
Percent Native Hawaiian and Other Pacific Islander Population	0.1	
Percent Hispanic Population (of any race)	5.2	
Percent White Population	74.1	
Other (some other race and two or more races)	4.2	
<b>Language Use - 2000 census data</b>		
Percent Limited English Proficiency (LEP) Population	1.55	(3.08)
<b>Health Care Delivery Profile</b>		
Percent of Total Non-elderly Population Privately Insured (1997-99)	71.4	
Percent of Total Population Enrolled in HMOs	14.92	
Medicaid Enrollment (as of December 31, 2002)	462,533	(13.40%)
Medicaid Managed Care Enrollment	333,127	(72.02%)
Percent of Total Non-elderly Population Uninsured (1997-99)	20.8	

### 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 Oklahoma Insurance Department is the licensing and regulatory body for insurance companies in Oklahoma.<sup>1</sup> The Oklahoma Department of Health is the regulatory agency for

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<sup>1</sup> Letter from Frank Stone, Director/Actuary, Life, Accident and Health Division, Oklahoma Insurance Department, dated January 18, 2001.

managed care organizations, including HMOs.<sup>2</sup> Generally, Oklahoma uses the term “insurer” to refer to insurance companies, but some health maintenance organizations (HMOs) may also be licensed as insurers under the insurance code. HMOs and prepaid health plans (PHPs) are regulated in the same manner with regard to the issues discussed here.

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

Oklahoma does require that all health insurance policies or any application related to those policies be filed with the Department of Insurance and receive approval prior to use.<sup>3</sup> The collection of racial and ethnic data is not explicitly listed as a ground for disapproval.<sup>4</sup>

## 2. Discrimination

Oklahoma’s civil rights statute prohibits a person from denying another individual “the full and equal enjoyment” of the services and facilities in any place of public accommodation.<sup>5</sup> While the plain language of the statute would seem to encompass insurers within its coverage, there is no case law which has addressed this matter.<sup>6</sup>

Under Oklahoma’s unfair competition provisions, insurers, including HMOs licensed as insurers, may not discriminate between “individuals of the same class and of essentially the same hazard” in premiums, rates or fees charged for any health insurance policy.<sup>7</sup> However, the statute does not provide a particular prohibition against discriminating on the basis of race or national origin.

## 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: (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.<sup>8</sup>

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<sup>2</sup> *Id.* Plans are underway to transfer HMO regulatory responsibility for claims handling and financial solvency oversight to the Insurance Department.

<sup>3</sup> 36 Okla. Stat. § 3610(A).

<sup>4</sup> 36 Okla. Stat. § 3611(A).

<sup>5</sup> 25 Okla. Stat. § 1402.

<sup>6</sup> 25 Okla. Stat. § 1401(1). A “place of public accommodation” is “any place . . . or other establishment, . . ., which supplies goods or services to the general public or which solicits or accepts the patronage or trade of the general public. . . .”

<sup>7</sup> 36 Okla. Stat. § 1204(7)(b).

<sup>8</sup> Okla. Admin. Code § 310:655-37-2.

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

### **1. Oklahoma Health Care Authority (OHCA)**

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

OHCA is the agency responsible for administration of Oklahoma’s Medicaid and SCHIP programs. There are no state statutes or rules that prohibit or require the collection or reporting of racial, ethnic or primary language data regarding Medicaid applicants or recipients. However, the application for the SoonerCare<sup>9</sup> program requests racial information for all household members. The application does not indicate whether the provision of this information is voluntary. The racial categories provided are: Asian or Pacific Islander, Black (non-Hispanic), American Indian or Alaskan Native, Hispanic and White (non-Hispanic).

In addition, if a health plan providing services under the SoonerCare program “has more than 100 members or ten percent of its membership (whichever is greater) who speak a language other than English as a first language,” it must make available written materials and interpreter services in that language.<sup>10</sup>

#### **b. Discrimination**

A Medicaid recipient may not be denied Medicaid benefits or subjected to discrimination on grounds of race, color or national origin.<sup>11</sup> OHCA must “administer its programs and conduct its business, either directly, indirectly or through contractual or other arrangements, in compliance with Title VI of the Civil Rights Act of 1964.”<sup>12</sup> In addition, any health plan that delivers health care services under the SoonerCare Plus program “may not refuse a member’s assignment, seek to disenroll a member, or otherwise discriminate against a member on the basis of . . . race . . . [or] national origin.”<sup>13</sup>

#### **c. Confidentiality**

All applications and records concerning any applicant or recipient under the Medicaid program must be kept confidential.<sup>14</sup> Such information can only be disclosed to an OHCA

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<sup>9</sup> SoonerCare is Oklahoma’s new health care system for Medicaid and SCHIP recipients. There are two different programs under SoonerCare: SoonerCare Plus and SoonerCare Choice. In SoonerCare Plus, OHCA contracts with health plans or HMOs. In SoonerCare Choice, OHCA contracts directly with primary care providers for its primary care case management (PCCM) program.

<sup>10</sup> SoonerCare Plus Contract, § 2.12.

<sup>11</sup> Okla. Admin. Code § 317:35-13-1.

<sup>12</sup> Okla. Admin. Code § 317:1-9-2.

<sup>13</sup> Okla. Admin. Code § 317:25-5-25(e); SoonerCare Plus Contract, § 2.4.7.

<sup>14</sup> 63 Okla. Stat. § 5018.

authorized official for purposes directly related to plan administration.<sup>15</sup> In addition, a health plan rendering services under the SoonerCare Plus program “agrees that all information, records, and data collected in connection with the contract shall be protected from unauthorized disclosures.”<sup>16</sup>

2. Department of Health (DOH)

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

The DOH collects and requires health care providers to report racial and ethnic information for various medical conditions, diseases or registries. These are cancer,<sup>17</sup> tumors,<sup>18</sup> births<sup>19</sup> and deaths.<sup>20</sup>

In addition, the DOH maintains the Public Health Oklahoma Client Information System (PHOCIS).<sup>21</sup> PHOCIS collects and records information regarding the language, race, and ethnicity of clients at DOH-run health clinics. The choices provided for the race data field are: American Indian/Eskimo/Aleutian Islander, Asian, Black, Hispanic, White, Pacific Islander, Mixed, and Other/Not Specified.<sup>22</sup> This information is available for each encounter that a client has with the clinics.

b. Discrimination

The DOH is a “place of public accommodation” as statutorily defined and thus is bound by Oklahoma’s civil rights statute.<sup>23</sup>

c. Confidentiality

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<sup>15</sup> *Id.*

<sup>16</sup> SoonerCare Plus Contract, § 3.9.1.

<sup>17</sup> Okla. Admin. Code § 310:567-3-1(1).

<sup>18</sup> 63 Okla. Stat. § 1-551.1(B)(1).

<sup>19</sup> 63 Okla. Stat. § 1-312(a)(2).

<sup>20</sup> Although not statutorily required, DOH collects and reports racial information with regard to deaths in the *Oklahoma Health Statistics* report. *See* <http://www.health.state.ok.us/program/phs/ohs/ohs98/index.html>.

<sup>21</sup> Letter from Demetrio Gutierrez, Ed.D, Director, Office of Minority Health, DOH, dated January 16, 2001. PHOCIS is DOH’s health clinic automation system, which allows county health departments to collect demographic and financial information, schedule appointments and collect basic clinic statistical data.

<sup>22</sup> *Id.*

<sup>23</sup> 25 Okla. Stat. § 1401. A “place of public accommodation” includes “any place . . . [that] is supported directly or indirectly by government funds. . . .”

Individual forms of data collected by the DOH through its Health Care Information Division must be kept confidential and are not available for public inspection.<sup>24</sup> The confidentiality of identifying information must also be protected and not be disclosed, and may not be used for any purpose except “for the creation and maintenance of anonymous medical case histories for statistical reporting and data analysis.”<sup>25</sup> In addition, any information which would directly or indirectly identify an individual must not be disclosed “either voluntarily or in response to any legal process, unless directed by a court . . . , granted after application showing good cause . . . .”<sup>26</sup>

#### **D. Observations**

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

There appears to be a lack of protection against discrimination on the basis of race or national origin with regard to access to health insurance or health care services. It is unclear whether Oklahoma’s civil rights statute applies to insurance companies. Moreover, the unfair competition provision does not address racial discrimination in the issuance of health insurance policies. Finally, there are no statutes or regulations that prohibit discrimination on the basis of race or national origin with regard to enrollment in an HMO or PHP.

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<sup>24</sup> 63 Okla. Stat. § 1-120(A).

<sup>25</sup> 63 Okla. Stat. § 1-120(C)-(D).

<sup>26</sup> 63 Okla. Stat. § 1-120(F).