

## SOUTH CAROLINA

**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).

## SOUTH CAROLINA

### A. General and Health Demographics

<b>Total Population</b>	4,012,012	
Percent Black Population	29.4	
Percent American Indian and Alaskan Native Population	0.3	
Percent Asian Population	0.9	
Percent Native Hawaiian and Other Pacific Islander Population	0.0	
Percent Hispanic Population (of any race)	2.4	
Percent White Population	66.1	
Other (some other race and two or more races)	0.9	
<b>Language Use - 2000 census data</b>		
Percent Limited English Proficiency (LEP) Population	1.18	(2.20)
<b>Health Care Delivery Profile</b>		
Percent of Total Non-elderly Population Privately Insured (1997-99)	72.3	
Percent of Total Population Enrolled in HMOs	11.62	
Medicaid Enrollment (as of December 31, 2002)	771,490	(19.23%)
Medicaid Managed Care Enrollment	74,386	(9.64%)
Percent of Total Non-elderly Population Uninsured (1997-99)	18.8	

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

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

South Carolina uses the term "insurer" to refer to health insurance companies and health maintenance organizations (HMOs).<sup>1</sup> The broader term, "managed care organization (MCO)," covers a "licensed insurance company, HMO, or any other entity which operates a managed care

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<sup>1</sup> An HMO is an entity that "undertakes to provide or arrange for basic health care services to enrollees for a fixed prepaid premium." S.C. Code Ann. § 38-33-20(8).

plan."<sup>2</sup> This state summary will use the term insurer to refer to all entities, except with regard to provisions that distinguish by the type of entity involved. Insurance companies are regulated only by the Department of Insurance (DOI), but MCOs are regulated both by the DOI and the Department of Health and Environmental Control.

South Carolina is the only state in the country that has a regulation requiring the collection of racial data by HMOs.<sup>3</sup> It requires HMOs to "establish procedures to develop, compile, evaluate, and report annually statistics which shall include the collection and maintenance of at least the following data: . . . (c) [d]emographic characteristics, including the race . . . of enrollees. . ."

Like many states, South Carolina requires that all health insurance policies and any applications related to the policies be filed with the DOI and receive departmental approval prior to their use.<sup>4</sup>

## 2. Discrimination

South Carolina's civil rights statute prohibits a person from denying another individual "the full and equal use" of the services and facilities in any place of public accommodation.<sup>5</sup> The statute, however, does not specifically include insurers within its meaning of public accommodation and there is no case law which has addressed this matter.

Under South Carolina's insurance discrimination provisions, an insurer may not discriminate between "individuals of the same class and risk involving the same hazards" in premiums, rates or fees charged for any insurance policy.<sup>6</sup> However, the statute does not mention discrimination on the basis of race or national origin.

Finally, no HMO may "unfairly discriminate against any enrollee or applicant for enrollment on the basis of . . . race, color, . . . , national origin, [or] ancestry. . ."<sup>7</sup>

## 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.<sup>8</sup> The exceptions are: (1) express consent

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<sup>2</sup> A managed care plan is a "plan . . . which provides for the financing and delivery of health care and treatment services . . . through its own employed health care providers or contracting with selected specific providers that conform to explicit selection standards, or both." S.C. Code Ann. § 38-71-1520(5).

<sup>3</sup> S.C. Code Regs. 61-10(11)(c).

<sup>4</sup> S.C. Code Ann. § 38-61-20 (general insurance contracts); § 38-71-310 (individual accident and health insurance contracts); § 38-71-720 (group accident and health insurance contracts).

<sup>5</sup> S.C. Code Ann. § 45-9-10(A).

<sup>6</sup> S.C. Code Ann. § 38-55-50; S.C. Code Ann. § 38-71-200 (accident and health insurance).

<sup>7</sup> S.C. Code Regs. 69-22.

<sup>8</sup> S.C. Code Ann. § 38-33-260.

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.<sup>9</sup>

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

#### **1. Department of Health and Human Services (DHHS)**

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

The DHHS is the agency that oversees South Carolina's Medicaid program. There are no statutes or rules that prohibit or require the collection or reporting of racial, ethnic or primary language data by DHHS regarding Medicaid applicants or recipients. However, the Partners for Healthy Children (South Carolina's SCHIP program) application requests from each applicant information regarding the racial background of all household members. The application does not indicate whether it is optional for applicants to provide this information, nor does the application provide racial categories from which the applicant may choose.

In addition, the South Carolina Medicaid Managed Care Contract (the Contract) requests that each contracting health plan make member marketing and educational materials available in a specific language if "at least ten percent (10%) or more of the resident population of the county is non-English speaking and speaks a specific foreign language."<sup>10</sup>

##### **b. Discrimination**

DHHS recognizes that it must administer its programs in accordance with Title VI of the Civil Rights Act of 1964, and accordingly provides that no person can be "excluded from participation in, be denied the benefits of, or be subjected discrimination on the basis of race, color, [or] national origin, . . . either directly or through contractual or other arrangement."<sup>11</sup> In addition, the South Carolina Contract prohibits contracting health plans from discriminating against Medicaid applicants and enrollees such bases with regard to participation in the Medicaid managed care program.<sup>12</sup>

##### **c. Confidentiality**

Because the Medicaid program is administered by a state agency, most records associated with the Medicaid program and maintained by the DHHS are deemed public records.<sup>13</sup> However, under South Carolina's Freedom of Information Act, medical records/information and data declared confidential by state statute are not considered public records and are not open to the public for

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<sup>9</sup> *Id.*

<sup>10</sup> Contract, § 8.3. In Appendix J of the Contract, the DHHS notes that South Carolina "has no counties at this time" that meet the 10% threshold.

<sup>11</sup> S.C. Code Regs. 126-125. *See also* South Carolina Medicaid Program Handbook, page 13.

<sup>12</sup> Contract, §§ 13.1.4, 13.28.

<sup>13</sup> S.C. Code Ann. § 30-4-40.

examination or copying.<sup>14</sup>

2. Department of Health and Environmental Control (DHEC)

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

The DHEC collects and requires health care providers to report racial and ethnic information for various medical conditions, diseases or programs. These are cancer,<sup>15</sup> sexually transmitted diseases, including HIV,<sup>16</sup> and vital statistics (*i.e.* births, deaths, abortions).<sup>17</sup>

b. Discrimination

The DHEC is a “place of public accommodation” as statutorily defined and thus may not deny health care services to a person because of race, color, or national origin.<sup>18</sup>

c. Confidentiality

The DHEC imposes confidentiality standards for the various data collection systems it oversees.<sup>19</sup> Moreover, many of its records are protected from disclosure by the same provisions of the Freedom of Information Act as protect those of the DHHS.

## D. Observations

South Carolina is the only state that requires its HMOs to collect and report racial data generally. However, it is unclear from the regulations at which stage(s) this data must be collected (*e.g.* application for coverage, enrollment, each health care encounter, etc.). It is important to note that this requirement is imposed only on HMOs, not other health insurers.

It is unclear whether the state's civil rights statute applies to insurance companies, and the insurance anti-discrimination provision does not provide explicit protection for those discriminated against because of their race, color or national origin. Therefore, the level of protection provided for HMO enrollees may not be present for those covered by health insurance entities.

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<sup>14</sup> S.C. Code Ann. § 30-4-20.

<sup>15</sup> S.C. Code Regs. 61-45(E)(3)-(4).

<sup>16</sup> S.C. Code Regs. 61-21.

<sup>17</sup> S.C. Code Regs. 61-19.

<sup>18</sup> S.C. Code Ann. § 45-9-10.

<sup>19</sup> S.C. Code Ann. § 44-29-135 (sexually transmitted diseases); S.C. Code Regs. 61-45 (cancer registry); S.C. Code Ann. § 44-38-60 (head and spinal cord injury registry).