

## TEXAS

**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).

## TEXAS

### A. General and Health Demographics

|   |                    |
|---|--------------------|
| <b>Total Population</b>   | 20,851,820         |
| Percent Black Population  | 11.3               |
| Percent American Indian and Alaskan Native Population               | 0.3                |
| Percent Asian Population  | 2.7                |
| Percent Native Hawaiian and Other Pacific Islander Population       | 0.1                |
| Percent Hispanic Population (of any race)                           | 32.0               |
| Percent White Population  | 52.4               |
| Other (some other race and two or more races)                       | 1.2                |
| <b>Language Use - 2000 census data</b>                              |                    |
| Percent Limited English Proficiency (LEP) Population                | 7.42 (13.87)       |
| <b>Health Care Delivery Profile</b>                                 |                    |
| Percent of Total Non-elderly Population Privately Insured (1997-99) | 63.7               |
| Percent of Total Population Enrolled in HMOs                        | 19.15              |
| Medicaid Enrollment (as of December 31, 2002)                       | 2,412,854 (11.57%) |
| Medicaid Managed Care Enrollment                                    | 945,869 (39.20%)   |
| Percent of Total Non-elderly Population Uninsured (1997-99)         | 26.5               |

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

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

Texas uses the term “insurer” to encompass health insurance companies and health maintenance organizations (HMOs) in most circumstances. This state summary will use the term “insurer” to refer to these entities, unless there is a distinction made within the statutes or regulations regarding the issue being discussed.

The Texas Department of Insurance (DOI) supervises all insurance business transacted in the state, including health maintenance organizations. Texas does not have any statutes, regulations, or policies that mandate or prohibit the collection or reporting of racial and ethnic data, but insurance regulations require HMOs to collect primary language information.

An HMO must include on its enrollment form a space in which the enrollee may indicate his/her primary language.<sup>1</sup> An HMO must “provide the enrollee handbook and materials relating to the complaint and appeal process and the availability of the independent review process in the language of the major populations of the HMO’s enrolled population. . . .”<sup>2</sup>

In addition, Texas requires that all health insurance policies or any application related to those policies be filed with the DOI and receive departmental approval prior to use.<sup>3</sup>

## 2. Discrimination

Texas does not have a statute that prohibits discrimination on the basis of race, color or national origin with regard to access to public accommodations or public services. The only provision that addresses discrimination and access to public accommodations is one that prohibits discrimination because of a disability.<sup>4</sup>

However, by statute an insurer may not “refus[e] to insure; refus[e] to continue to insure; limit the amount, extent or kind of coverage available; or charg[e] an individual a different rate for the same coverage because of race, color, . . . , or national origin.”<sup>5</sup> In addition, an insurer “may not use an underwriting guideline that is based on the ability of an insured or an applicant for insurance coverage or health care benefits to speak English fluently or to be literate in the English language.”<sup>6</sup>

## 3. Confidentiality

An HMO must hold in confidence any data or information pertaining to an enrollee’s diagnosis, treatment, or health.<sup>7</sup> This information may only be disclosed if: (1) the enrollee expressly consents to its disclosure; (2) there is a statute or court order for the production of

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<sup>1</sup> 28 Tex. Admin. Code § 11.1602(a)(1).

<sup>2</sup> Tex. Ins. Code art. 20A.11A(a). A major population is “a group comprising 10 percent or more of the [HMO’s] enrolled population.”

<sup>3</sup> Tex. Ins. Code art. 3.42(a)-(b).

<sup>4</sup> Tex. Hum. Res. Code § 121.003.

<sup>5</sup> Tex. Ins. Code art. 21.21-6, § 3.

<sup>6</sup> Tex. Ins. Code art. 21.21-7, § 3.

<sup>7</sup> Tex. Ins. Code art. 20A.25.

evidence; or (3) there is a claim or litigation between the enrollee and the HMO where the data is relevant to the claim.<sup>8</sup>

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

1. Texas Health and Human Services Commission (HHSC)
  - a. Statutes, Regulations, Policies and Other Written Materials

HHSC administers Texas' Medicaid program and State Children's Health Insurance Program (SCHIP).<sup>9</sup> 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, racial and ethnic information is collected from Medicaid eligibility files and up until 1998, this information was reported to HCFA on Form 2082.<sup>10</sup> In addition, Texas has recently piloted a new Medicaid application that includes a question regarding the need for an interpreter, and language spoken.<sup>11</sup> This application has not yet been implemented statewide.<sup>12</sup>

The SCHIP application collects racial information for each child applying for benefits. The application indicates that the information is for statistical purposes only and is optional. The racial categories provided are: Anglo, African American, Hispanic, Native American, and Asian/Pacific Islander. In addition, the SCHIP Enrollment Survey requests information about the enrollee's and parent's racial background.<sup>13</sup> The racial categories provided there are: White, Black, African American or Negro, Asian or Pacific Islander, American Indian or Alaskan Native, or Other. There is also a data field for "Don't Know" and "Refused".

The application also asks the applicant whether he/she is Spanish, Hispanic or Latino.<sup>14</sup> If the applicant answers in the affirmative, the survey then asks to which group(s) the applicant belongs. The choices are: (1) Mexican, Mexican-American, Chicano; (2) Puerto Rican; (3) Cuban; (4) Central American; (5) South American; and (6) Other.

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<sup>8</sup> *Id.*

<sup>9</sup> The Department of Human Services (DHS) is the agency responsible for determining Medicaid eligibility.

<sup>10</sup> Letter from Laura Jourdan, Regional Coordinator, Texas Department of Health dated January 10, 2001. (Jourdan Letter) This information continues to be reported on a quarterly basis under a new report format developed by HCFA.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> The survey states that the race and ethnicity questions are for statistical purposes only and indicates that some of the questions "may be sensitive", but HHSC is only trying to "understand differences in health care problems and needs."

<sup>14</sup> This question is phrased as a "Yes" or "No" question.

Under STAR,<sup>15</sup> Texas' Medicaid Managed Care program, an MCO must "develop a written cultural competency<sup>16</sup> plan describing how the MCO will effectively provide . . . services to members from varying cultures, races, [and] ethnic backgrounds."<sup>17</sup> As part of the plan, the MCO must "make available interpreter services" and a member handbook in the languages of the major populations (*i.e.* a group comprising 10% or more of the MCO's Medicaid service population).<sup>18</sup>

Prior to Fiscal Year 2000, Medicaid MCOs reported race and ethnicity data in the utilization management tables for both behavioral health and physical health.<sup>19</sup> However, racial and ethnic data have been dropped from the physical health utilization management report because of issues with data reliability.<sup>20</sup>

The SCHIP Contract also requires that a contracting MCO have a "comprehensive written cultural competency plan" which would entail the MCO ensuring the provision of linguistic services in accordance with Title VI guidelines.<sup>21</sup> In addition, an MCO must provide professional interpreters and 24-hour access to interpreter services.<sup>22</sup>

#### b. Discrimination

HHSC must comply with Title VI of the Civil Rights Act.<sup>23</sup> It cannot make payments to Medicaid providers for services provided to beneficiaries unless the service is provided without discrimination on the basis of race, color or national origin.<sup>24</sup> In addition, the marketing and enrollment practices of an MCO providing services in the Medicaid managed care program must not discriminate against a beneficiary because of race, color, national origin, or ancestry.<sup>25</sup>

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<sup>15</sup> The State of Texas Access Reform Program.

<sup>16</sup> Cultural competency is defined as "the ability of individuals and systems to provide services effectively to people of various cultures, races, [and] ethnic backgrounds . . . in a manner that recognizes, values, affirms, and respects the worth of the individuals and protects and preserves their dignity." 25 Tex. Admin. Code § 30.22(8).

<sup>17</sup> 25 Tex. Admin. Code § 30.27(j); Medicaid Contract, § 8.9.1.

<sup>18</sup> 25 Tex. Admin. Code § 30.27(j); Medicaid Contract, §§ 8.2.2 and 8.9.3.

<sup>19</sup> Jourdan Letter.

<sup>20</sup> *Id.* The racial categories listed on the Behavioral Utilization Management Report are: White (non-Hispanic), African-American/Black, Hispanic, American Indian (non-Hispanic), Oriental/Asian, and Other/Unknown. The report provides the total number of Medicaid enrollees who have accessed behavioral health services.

<sup>21</sup> SCHIP Contract, § 13.07(a).

<sup>22</sup> SCHIP Contract, § 13.07(b).

<sup>23</sup> 25 Tex. Admin. Code § 29.2(a).

<sup>24</sup> *Id.*

<sup>25</sup> 25 Tex. Admin. Code § 30.24(d)(5).

Both the SCHIP Contract and Medicaid Contract require a contracting MCO to comply with Title VI.<sup>26</sup>

c. Confidentiality

HHSC must “provide safeguards which restrict the use or disclosure of information concerning applicant or recipients of [Medicaid] to purposes directly connected with the administration of the program.”<sup>27</sup>

The SCHIP Contract requires the MCO to “treat all information which is obtained through performance [under the SCHIP program] as confidential information. . . .”<sup>28</sup> In addition, the MCO must have in place a system to protect all records and documents deemed confidential.<sup>29</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 communicable diseases,<sup>30</sup> hospital discharges,<sup>31</sup> cancer,<sup>32</sup> abortions,<sup>33</sup> lead poisoning,<sup>34</sup> and sexually transmitted diseases.<sup>35</sup> The DOH also collects racial and ethnic data with regard to births,<sup>36</sup> deaths,<sup>37</sup> and divorces.<sup>38</sup>

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<sup>26</sup> CHIP Contract, § 6.06; Medicaid Contract, § 5.5.2.

<sup>27</sup> Tex. Hum. Res. Code § 21.012(a).

<sup>28</sup> *Id.*, § 18.01(a).

<sup>29</sup> *Id.*, § 18.01(b).

<sup>30</sup> 25 Tex. Admin. Code § 97.3

<sup>31</sup> 25 Tex. Admin. Code § 1301.19(c). The racial categories are Black, White, American Indian/Eskimo/Aleutian, Asian or Pacific Islander, or Other. In order to obtain this data, the hospital staff retrieves the patient’s response from a written form or asks the patient. If the patient declines to answer, the hospital staff is to use its best judgment to make the correct classification.

<sup>32</sup> 25 Tex. Admin. Code § 91.4(b)(1)(B).

<sup>33</sup> Tex. Health & Safety Code § 245.011(b)(2).

<sup>34</sup> *Id.*, § 88.005(b)(1).

<sup>35</sup> 25 Tex. Admin. Code § 97.133.

<sup>36</sup> Tex. Health & Safety Code § 192.011.

<sup>37</sup> Although not statutorily required, DOH collects and reports race/ethnicity data with regard to deaths. See *1998 Texas Vital Statistics* at <http://www.tdh.state.tx.us/bvs/stats98/contents.htm#death>.

<sup>38</sup> Tex. Health & Safety Code § 194.002(a)(1)(E).

b. Discrimination

The DOH may not discriminate on the basis of race, color or national origin when delivering health care services through its various programs.<sup>39</sup>

c. Confidentiality

Information received by DOH may not be released in a manner that would reveal the identity of a patient.<sup>40</sup> In addition, DOH has several confidentiality provisions for the release of information regarding various medical conditions and diseases including cancer,<sup>41</sup> communicable diseases,<sup>42</sup> and abortions.<sup>43</sup> The data collected must be held in strict confidence unless released: (1) for statistical purposes in a manner that prevents the identification of any person; (2) with the consent of the person identified; (3) to appropriate federal agencies such as CDC; and (4) to medical personnel to the extent necessary in a medical emergency.

**D. Observations**

Texas does not have any statutes, regulations, or policies that mandate or prohibit the collection or reporting of racial and ethnic data, but insurance regulations require HMOs to collect primary language information.

Texas is the only state that requires all HMOs to collect primary language information on their enrollment forms. This is a key provision because of Texas' high percentage of Hispanics and its large LEP population. In addition, Texas is the only state that directly prohibits health insurers from establishing underwriting guidelines or discriminating with regard to policy rates on the basis of the insured's ability to speak English.

Notably, Medicaid MCO's report racial and ethnic data on utilization management tables for behavioral health. However, racial and ethnic information is no longer reported for physical health because of its unreliability.

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<sup>39</sup> See e.g. 25 Tex. Admin. Code § 35.105 (pharmacy services); § 39.21 (primary health care services); § 37.46 (maternal and infant health services); § 98.5 (HIV services).

<sup>40</sup> Tex. Health & Safety Code § 108.013.

<sup>41</sup> 25 Tex. Admin. Code § 91.10.

<sup>42</sup> 25 Tex. Admin. Code § 97.10.

<sup>43</sup> Tex. Health & Safety Code § 245.011