

WEST VIRGINIA

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).

WEST VIRGINIA

A. General and Health Demographics

Total Population	1,808,344
Percent Black Population	3.1
Percent American Indian and Alaskan Native Population	0.2
Percent Asian Population	0.5
Percent Native Hawaiian and Other Pacific Islander Population	0.0
Percent Hispanic Population (of any race)	0.7
Percent White Population	94.6
Other (some other race and two or more races)	0.9
Language Use - 2000 census data	
Percent Limited English Proficiency (LEP) Population	0.34 (0.79)
Health Care Delivery Profile	
Percent of Total Non-elderly Population Privately Insured (1997-99)	64.1
Percent of Total Population Enrolled in HMOs	10.73
Medicaid Enrollment (as of December 31, 2002)	288,072 (15.93%)
Medicaid Managed Care Enrollment	142,186 (49.36%)
Percent of Total Non-elderly Population Uninsured (1997-99)	20.7

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 West Virginia Insurance Commission is the licensing and regulatory body for the state's insurers and managed care organizations (MCOs). West Virginia uses the term "insurer" to refer to insurance companies and hospital, medical, dental, and health service corporations. An MCO is

either a health maintenance organization (HMO)¹ or a prepaid limited health service organization.² This summary will use the term “insurer” and “MCO” as appropriate to the context.

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

West Virginia requires that all insurance policies or any applications related to those policies be filed with the Department of Insurance and receive departmental approval prior to their use.³ The collection of racial and ethnic data is not explicitly listed as a ground for disapproval.⁴

2. Discrimination

West Virginia’s civil rights statute prohibits a person from denying another individual access to the services and facilities of any place of public accommodation.⁵ The statute, however, does not specifically include insurers within the definition of public accommodation, and there is no case law which has addressed this matter.⁶

Under West Virginia’s unfair competition provisions, 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.⁷ In addition, both insurers and MCOs serving small employers are “strictly prohibited from marketing their product to a specific . . . race, . . . , or any discriminatory group.”⁸ An MCO may not “discriminate in enrollment policies or quality of services against any person on the basis of race.”⁹

¹ An HMO is an organization that provides health care services to enrollees on a prepaid per capita basis, using physicians who are employees of the HMO or through arrangements with individual physicians or group of physicians. W. Va. Code § 33-25A-2.

² A PLHSO has the same structure as an HMO, but offers no more than four limited health services such as mental or behavioral services and vision services. W. Va. Code § 33-25D-2.

³ W. Va. Code § 33-6-8.

⁴ W. Va. Code § 33-6-9.

⁵ W. Va. Code § 5-11-9(6)(A).

⁶ W. Va. Code § 5-11-3(j). A “place of public accommodation” is “any establishment or person . . . which offers its services, goods, facilities, or accommodations to the general public. . . .”

⁷ W. Va. Code § 33-11-4(7).

⁸ W. Va. Code § 33-16D-4. This provision is only applicable to health benefit plans which provide coverage to one or more eligible employees of a small employer. If an insurer or MCO serves both a large and small employer, this provision only applies to the marketing of the health benefit plan to the small employer. A small employer is defined as “any [entity] . . . who, during the preceding calendar year, employed an average of not more than fifty but not fewer than two eligible employees. . . .” W. Va. Code § 33-16D-2.

⁹ W. Va. Code § 33-25A-14(6) (HMOs); W. Va. Code § 33-25D-15(e) (PLHSO).

3. Confidentiality

Information that pertains to an MCO enrollee’s diagnosis, treatment or health is confidential and may not be disclosed, except in limited circumstances.¹⁰ The exceptions are: (1) express consent of the enrollee; (2) a statute or court order for the production of evidence; (3) a claim or litigation between the enrollee and the MCO where the data is relevant to the claim; or (4) to the extent it may be necessary to facilitate an assessment of the quality of care delivered.¹¹

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

1. Department of Health and Human Resources, Bureau of Medical Services (BMS)

a. Statutes, Regulations, Policies and Other Written Materials

The BMS administers the Medicaid and SCHIP programs in West Virginia. 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 SCHIP application requests racial information for the applicant and his household, but indicates that it is optional for the applicant to provide this information. The choices available on the application are: Asian or Pacific Islander; American Indian/Alaskan Native; Black (non-Hispanic); Hispanic; White (non-Hispanic); and Other.¹²

In addition, the SCHIP state plan includes a chart listing the types of information that the West Virginia’s annual report to HCFA may include. The information includes the race of the children enrolled in the SCHIP program.¹³ The racial categories are the same as those on the application.

b. Discrimination

Pursuant to Title VI of the Civil Rights Act of 1964, BMS must assure that no individual is subject to discrimination under Medicaid on the grounds of race, color or national origin.¹⁴

c. Confidentiality

BMS must “restrict the use or disclosure of information concerning [Medicaid and SCHIP] applicants and recipients to purposes directly connected with the administration of [those programs].”¹⁵

¹⁰ W. Va. Code § 33-25A-26 (HMOs); W. Va. Code § 33-25D-28 (PLHSO).

¹¹ *Id.*

¹² The applicant may choose all racial categories that apply.

¹³ W. Va. State Child Health Plan for SCHIP, p. 28.

¹⁴ W. Va. State Plan, § 7.2.

¹⁵ W. Va. State Plan, § 4.3.

2. Department of Health and Human Resources, Bureau for Public Health (BPH)
 - a. Statutes, Regulation, Policies, and Other Written Materials

The BPH collects and requires health care providers to report racial information for various medical conditions, diseases or registries. These are tuberculosis,¹⁶ cancer,¹⁷ foundling registration,¹⁸ sexually transmitted diseases,¹⁹ and HIV.²⁰ In addition, although not statutorily required, race information is collected and reported for births and deaths.²¹

- b. Discrimination

The BPH is a “place of public accommodation” as statutorily defined and thus is bound by West Virginia’s civil rights statute.²²

- c. Confidentiality

West Virginia’s public records law provides that certain state data and information, including medical information, are not available for public inspection.²³

D. Observations

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

West Virginia provides protection from discrimination based on race, color or national origin by insurers with regard to the marketing of health insurance policies to small employers. For those consumers who receive their health insurance coverage through a larger employer, there are no such protections, unless it is ultimately established that insurers and MCOs are governed by the state’s civil rights statute.

¹⁶ W. Va. Code State R. § 64-76-6. The report must also contain the patient’s ethnic origin.

¹⁷ W. Va. Code State R. § 64-68-4. The terms “race” and “ethnicity” are used interchangeably in this provision.

¹⁸ W. Va. Code § 16-5-13(a)(2). This provision requires the reporting of the color or race for an infant of unknown parentage taken into custody.

¹⁹ W. Va. Code § 16-4-6(b).

²⁰ W. Va. Code State R. § 64-64-13.

²¹ See *1998 Vital Statistics Report* at: <http://www.wvdhhr.org/bph/oehp/vital98/>.

²² W. Va. Code § 5-11-3(j). A “place of public accommodation” means “any establishment or person, . . ., including the state or any political or civil subdivision thereof, which offers its services, goods, [or] facilities . . . to the general public. . . .”

²³ W. Va. Code § 29B-1-4.