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Utilizing Title VI As A Means to Eradicate Health Discrimination

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ABSTRACT

Health disparities among people of color are persistent and detrimental to the overall wellness of these groups. Discrimination in the provision of health care services is one of the primary causes of health disparities. Title VI of the Civil Rights Act of 1964's availability as a tool to prevent discrimination and, in turn, disparities among these groups is underdocumented. The legislative intent of Title VI and the historical context of the law have been helpful in its use outside of the health care arena to prevent discrimination. This sheds light on the ways that the law can influence the health care sector to decrease the prevalence of discrimination and improve the health of people of color. The government must make civil rights laws, policies, and procedures unambiguous; it must vigorously utilize its enforcement powers; and it must monitor the health care facilities required to adhere to the law. Additionally, beneficiaries must be educated of their rights and the processes for pursuing action when those rights have been violated. Noncompliance with civil rights laws to the detriment of an often-marginalized population is deplorable. However, Title VI provides a powerful avenue for change.

Keywords: Health disparities; health discrimination; civil rights

INTRODUCTION

Title VI of the Civil Rights Act of 1964 is one of the most powerful of all civil rights laws. It guarantees the full benefit of government-funded services regardless of race, color, or national origin. The law ensures that "no person in the United States shall, on the grounds of race, color or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under a program or activity receiving Federal financial assistance." (Civil Rights Act of 1964). In short, federally funded programs cannot deny anyone its services on the basis of his/her race or nationality. Title VI affects an array of services such as transportation, law enforcement, education, and healthcare. Unfortunately, Title VI has minimally implicated the lives of those who face discrimination in their pursuit of health care. The applicability of Title VI to the vast area of federally funded health care services makes it a potentially powerful tool to ensure equity. However, Title VI is only effective when those under its mandate are aware of its existence and when it is regularly enforced. If used in its intended manner, Title VI could be the means through which discrimination in the delivery of health care services is eradicated.

METHODS

Title VI of the Civil Rights Act of 1964, in many ways, marked the culmination of the Civil Rights Movement, a watershed in American history. Its intended purpose was to formally acknowledge and prevent the blatant and furtive discrimination faced by thousands of minorities in America. President John F. Kennedy (1963) proposed the legislation and explained, “simple justice requires that public funds, to which all taxpayers of all races contribute, not be spent in any fashion which encourages, entrenches, subsidizes, or results in racial discrimination. Direct discrimination by Federal, State, or local governments is prohibited by the Constitution. But indirect discrimination, through the use of Federal funds, is just as invidious; and it should not be necessary to resort to the courts to prevent each individual violation.” The time in American history had come to enact a law that would end discrimination against the nation’s most vulnerable populations.

The necessity of Title VI was clear in 1964. Senator Hubert Humphrey, the Senate Manager of the bill, cited several reasons for its enactment. One of the intended reasons for the law was to create a more comprehensive statement regarding the prohibition of discrimination rather than the piecemeal laws enacted only for certain federally funded programs, such as the Armed Forces, construction contractors, and housing. In addition, Title VI was enacted to expressly overturn previous statutes that allowed the award of grant funds to “separate but equal” institutions; the court in *Brown v. Board of Education* (1954) decided that these statutes were unconstitutional, and Title VI explicitly overturned them. Further, Title VI was enacted to put a permanent end to racial discrimination that was all too prevalent in the award of federal funds. In the long congressional debates surrounding the law, Senator Pastore (1964), from Rhode Island, stated, “It will guarantee that the money collected by colorblind tax collectors will be distributed by Federal and State administrators who are equally colorblind.” Senator Pastore often pointed out that North Carolina hospitals received a considerable amount of federal money for construction but discriminated against blacks as patients and medical staff. This is the very behavior that Title VI was intended to end.

The law covers all forms of Federal aid except contracts of insurance, guaranty, and employment, except in instances where the position to employ an individual is federally funded. Recipients of federal financial assistance are specifically precluded from denying an individual a service or benefit, providing a different service or benefit, or providing the same service or benefit differently based on race, color, or national origin. For instance, a health care facility receiving federal assistance may not, as a matter of policy or practice, provide x-ray testing for its Hispanic patients presenting with signs of bone fractures but ultrasounds for its African-American patients presenting similarly with signs of bone fractures.

Every recipient of federal financial assistance falls under the auspices of Title VI, including agencies that provide or receive subcontracts involving federal funds. Examples include private institutions of higher education that receive federal funds from students who pay their tuition with Federal financial aid, airports that accept federal funds for construction, police departments that receive federal grants to create or sustain law enforcement programs, and land that was bought or donated from federal funds. Public hospitals that receive federal assistance and even private health care facilities that benefit from federal funds also fall under the auspices of Title VI. They are required to provide their services and employ personnel in a non-discriminatory manner. However, not all federally funded institutions have comprehensively instituted the legislative intent of Title VI, which has resulted in individuals receiving the

inequitable delivery of health care free from discriminatory practices. As a result, racial and ethnic minorities who face discrimination in the delivery of health care services often experience a lower quality of service and often avoid these services altogether, both working to increase the instances of health disparities.

RESULTS

Practices and behaviors of providers, such as public hospitals, must be taken into consideration when addressing Title VI's prohibition of discrimination. After more than fifty years since the passage of Title VI, federally funded institutions typically refrain from acts of blatant discrimination that can result in legal ramifications. However, many federally funded institutions, hospitals included, engage in practices and behaviors that are not overtly discriminatory but that have a disparate impact on particular populations of people. Disparate impact is a policy or practice that appears equitable on its face but has an "adverse impact" on significantly more individuals in a protected class (race, color, national origin) than others, whether intentional or not (Title VI Legal Manual).

The Bronx health REACH, an organization formed to help end racial and ethnic disparities in health care in New York, filed a complaint against several hospitals in the state based on the disparate impact theory and citing a violation of Title VI among other statutes (Golub et al, 2011). They claimed that the hospital systems separated patients seeking cardiac and endocrine treatment according to their source of payment and that the quality of care for those using public assistance as a form of payment was not as sufficient as the care given to those patients using private health insurance. Furthermore, patients using public assistance were disproportionately black or Latino, and the policy of separation disparately impacted these minority groups. The publicity surrounding the complaint brought attention to the practice and has resulted in several policy changes in many of the New York hospitals cited in the complaint; surrounding hospitals that feared similar community backlash also made changes to their policies.

Hospitals and nursing homes across the country have enacted policies that seem to be derived and applied without intentionally targeting racial or ethnic minorities but that negatively affect patients of color more often than white patients. Policies that prevent a hospital from treating a patient that has a certain kind or no health insurance, that require patients to speak English, and that refuse treatment to patients who do not prepay for the services are all examples of the practices that allow federally funded institutions to continue to discriminate without doing so in an overt way that would readily attract backlash.

Hospitals and other healthcare service organizations should assess how the outcomes of policy implementation affect its patients. According to Rosenbaum (1997), no matter how significant, not every disparity in health care amounts to a possible violation of Title VI. The challenge is to ensure that entities comply with Title VI and understand the intentional or unintentional outcomes when they are not in compliance. Furthermore, when the federal government refuses to fund hospitals and other health care entities when they are in non-compliance with Title VI, these entities become more committed to adhering to the law.

Perceived discrimination is known to play a part in the health outcomes of minority groups. In turn, perceived discrimination contributes to health disparities in these groups. According to health disparities scholar, David Williams (Williams et al, 2009), "targets of discrimination are aware of some of the discriminatory behavior directed at them and these perceptions of unfair treatment can generate stress." Stress has several implications on overall

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health including advanced aging and premature death. Stress is but one detrimental health consequence having its origin in health care based discrimination. Minority patients are less likely to adhere to treatment recommendations if they regard their provider as having a lower regard for them because of their minority status (Smedley, 2003). Although noncompliance with medical treatment has not proven to be an issue in the case of life saving procedures, health disparities continue to persist, and discrimination or perceived discrimination has played a role in its continuation.

Title VI in Non-Healthcare Arenas

In contrast to the limited publications that focus on health care institutions and Title VI, there has been a wealth of legal opinions resulting from litigation over challenges made to Title VI in other, non-healthcare settings. Several cases have been decided that resolve some of the ambiguous language of the statute and add clarity to the ways in which it can be applied. These cases have largely developed in non-healthcare settings, such as education. The disparate impact theory developed in a non-healthcare related case in which a police department hired officers based on their performance on an entry test, which disproportionately favored white officers (Guardians Association, et. et al v. Civil Service Commission, 1983).

Title VI has successfully been used in the education arenas. For instance, a high school student in *Zeno v. Pine Plains Central School District* (2012) filed suit against the school district that he claimed violated his civil rights. After having been discriminated against and harassed by other students throughout his high school tenure with no effective response from the school board, the student was successful in his claim that the school district violated Title VI. The court depended on the holdings in previous cases explaining, “Title VI prohibits intentional violations of the statute” and that “in the educational setting, a school district is liable for intentional discrimination when it has been ‘deliberately indifferent’ to teacher or peer harassment of a student.” The court finally held that the school district was in violation of Title VI because its disciplinary measures did not effectively end the persistent racial harassment that Zeno experienced. In the same fashion, Title VI has been used to prevent discrimination in the education setting in several different instances: Title VI used to end persistent racial discrimination by students (*Williams v. Port Huron School District*, 2012), Title VI to end school desegregation (*Ayers v. Musgrove*, 2004), and the applicability of Title VI to the National Collegiate Athletic Association at colleges and universities (*Cureton v. NCAA* 1999).

Historical Inefficiencies Of Title VI

Vague and unrealistic goals have been established in attempts to make Title VI a more effective piece of legislation. Ambiguous statutes leave the public unclear about what is legal and what is not. Administrators in federally funded entities are left to interpret the statute and its legislative intent for themselves, which leads to the creation of policies and practices that do not align with the initial meaning behind Title VI. Title VI has undergone several interpretations for this very reason.

Over the last several decades, the U.S. Commission on Civil Rights has conducted federal agency reviews of Title VI compliance. The reviews found that federal agencies had not effectively enforced or monitored Title VI activities. The Commission identified three issues that have affected the implementation of Title VI. The first is that the federal government has “de-emphasized statutory and mandatory civil rights implementation, compliance, and enforcement activities, and reduced the resources available to conduct comprehensive and effective civil rights programs” (U.S. Commission on Civil Rights, 1996).

The second issue is the lack of guidance on the scope of coverage of Title VI. Congress attempted to clarify and expand the scope of coverage of Title VI by passing the Civil Rights Restoration Act of 1987. This act mandated that Title VI cover an entity's entire operation if it receives any federal financial assistance. Thus, if an organization receives one federal dollar, the whole organization is covered by Title VI. The legislation was meant to mirror the original intent of Title VI to have a broad reach and to curb discrimination widely, rather than in the more narrow approach that some courts had been taking.

The third issue is the shift of Title VI compliance responsibility from the federal government to state and local governmental entities. Based on the manner in which federal dollars are allocated, state entities are required to monitor Title VI activities of their subrecipients. According to the U.S. Commission on Civil Rights, federal agencies have failed to establish a proper system to monitor States' subrecipient Title VI activities. The system of block grant and formula-based funding has placed the onus of civil rights enforcement on the primary recipient of federal financial assistance. Moreover, "federal agencies have neglected both their own compliance and enforcement responsibilities over their recipients and subrecipients, and their oversight and monitoring obligations over state primary recipients that administer and operate federally assisted programs." (U.S. Commission on Civil Rights, 1996).

Noncompliance with civil rights laws is more prevalent today than should be. In fact, opponents of civil rights programs have challenged the terms of compliance as well as programs designed to create parity in the health care system. These challenges have resulted in a strained racial environment. Civil rights laws were formulated to create equality in the application of programs and services to beneficiaries. Title VI should ensure that all programs and activities, including access to healthcare, be provided in a non-discriminatory manner.

DISCUSSION

As a means of reducing the contentiousness in the present environment, increased awareness and enforcement action of Title VI is necessary. This responsibility is three fold. First, the federal and state governments must establish clearly defined civil rights laws, policies, and procedures. Failure to set uniform standards can create inequality in the application of these laws, policies, and procedures. Such an ineffective process can result in the creation of a discriminatory health service system. Additionally, federal and state governments must vigorously utilize their enforcement powers. As it stands, the primary channel for enforcement of Title VI is voluntary agreement of federal fund recipients. The remedies for enforcement include (1) voluntary decision of the federally funded organization to comply, (2) forbearance of the federal funds to the organization, and, as a last resort (3) judicial action taken by the Department of Justice. While this process benefits federally funded organizations and allows them time to become compliant with Title VI without financial or legal ramifications, the individual(s) who has been discriminated against does not have the benefit of knowing that his/her discrimination is being addressed. These kinds of signals could work to intensify the perception of discrimination that minorities face in the healthcare setting. If a recipient of federal or state funds is not in compliance with Title VI, enforcement action to correct the infractions must take place. Failure to comply should more readily result in the withholding of funds or termination of contracts.

An additional responsibility for governmental entities must be the monitoring of subrecipients such as hospitals and health clinics. Entities that receive federal and/or state funds should be monitored in a systematic manner. The techniques can vary. Utilization of desk audits is an effective method for those entities that lack resources allocated to oversee Title VI

compliance of sub-recipients. Formulating self-reporting requirements is an additional, low-cost method for entities with limited resources. One of the most effective techniques to ensure compliance is the use of on-site reviews. These reviews entail a comprehensive audit of a sub-recipient's health service system. While on-site reviews can be costly and time intensive, they are most effective at assessing an organization's compliance.

The final responsibility to increase Title VI awareness and enforcement falls with the beneficiaries of services. Title VI affords individuals the right to receive services in a non-discriminatory manner. However, beneficiaries must understand their rights and utilize methods to ensure that entities are in keeping with the laws that protect their rights. These individuals, especially those that belong to traditionally marginalized groups, are often not apprised of the laws in place that inure to their benefit. Oftentimes, this allow organizations to function without any regard to the rights of their constituents. Beneficiaries must be given an avenue to dispute or grieve any action that violates their right to receive health care services free from discriminatory practices. As beneficiaries become more aware of the, they can hold organizations to the appropriate standard.

CONCLUSION

Discrimination, whether perceived or real, is not only demoralizing but can also result in very real detrimental health issues, such as stress. Discrimination in the healthcare setting that produces stress and contributes to health disparities among minorities is incongruous with the mission of healthcare service organizations. Rather, these organizations should foster harmonious environments where wellness permeates. Title VI has been underutilized in the healthcare setting to decrease discrimination; adequate utility of Title VI would aid in the decrease of health disparities among racial and ethnic minorities. With more focus placed on giving federally funded organizations clear guidance about the law, enforcing the law more often and more harshly, and educating the public about their rights under the law, Title VI can be used to eradicate discrimination in the delivery of healthcare services.

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