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Is it Too Late for Title Vi Enforcement?: Seeking Redemption of the Unequal Long Term Care System in the United States Through International Means

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Abstract

Legal and medical experts have noted continued racism in the health care system that prevents the equal distribution of quality care. Initially most racism was intentional and expressed through de jure segregation, as evidenced by federal funding of the construction of racial segregated health care facilities. Now most racism, expressed through de facto segregation, is subtly incorporated into the daily practices of institutions causing an adverse disparate impact on African-Americans. This institutional racism establishes separate and independent barriers through the neutral denial of opportunities and equal rights to individuals and groups that results from the normal operations of the institutions in a society. For example, elderly African-Americans are disproportionately placed in substandard nursing homes. The reason for this placement is because most high-quality nursing homes accept a high proportion of private pay patients. These facilities limit the admissions of Medicaid patients, which are customarily elderly African-American patients. The limiting of Medicaid patients is a 'separate and independent barrier' that prevents African-Americans from equal access to quality nursing homes. This 'neutral' denial of admissions of elderly African-Americans to quality nursing homes based on the normal operations is institutional racism. Consequently, elderly African-Americans only option is placement in substandard nursing homes.

Unfortunately, the United States government has done little to put an end to these restrictive admission policies even though Title VI prohibits these practices. International law offers one mechanism to induce the United States government to prevent institutional racism. One avenue is for the aggrieved parties to file a claim under the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), which prohibits institutional racism funded by the United States.

Keywords: race, international, health, nursing home

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