Stopping Discrimination Before It Starts: The Impact of Civil Rights Laws on Health Care Disparities - A Medical School Curriculum

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Module Overview

After this module, participants will be able to:

• Discuss the relevance of civil rights law to health care practice

• Analyze discrimination and bias in an example of disparate treatment/disparate impact in a health care setting

• Recognize the types of assistance HHS/OCR can provide to practitioners
OCR’s Enforcement Responsibilities

• The HHS Office for Civil Rights ("OCR") enforces:
  – laws that prohibit discrimination on the basis of race, color, national origin, disability, age, sex, and religion by recipients of Federal financial assistance from HHS; and
  – the Privacy and Security Rules under the Health Insurance Portability and Accountability Act ("HIPAA") that protects health information from improper use and disclosure.
OCR’s responsibilities include:
- investigating complaints from the public;
- conducting compliance reviews of health care facilities;
- securing voluntary corrective action; and
- initiating enforcement proceedings.

OCR provides technical assistance to health care providers and entities to promote compliance with the law.

OCR conducts public outreach to educate consumers about their rights.

For more information and to contact OCR visit:
http://www.hhs.gov/ocr/office/about/rge-hqaddresses.html
Excerpt from the “Worlds Apart” video: “Robert Phillips’ story”

http://somed.ucdenver.edu/smallgrp/worldsapart/

Film: “Worlds Apart: A Four-Part Series on Cross-Cultural Health Care”
Produced by Maren Grainger-Monsen, M.D. and Julia Haslett
Available from Fanlight Productions at 1-800-937-4113, www.fanlight.com or by email at orders@fanlight.com
Reflection

What experiences have you had that relate to the treatment Robert Phillips received?
Kidney Disease Mortality in Georgia (2006)

- Black Males: 42.5 per 100,000
- Black Females: 38.4 per 100,000
- White Males: 20.6 per 100,000
- White Females: 13.4 per 100,000

Georgia Department of Human Resources 2008.
End Stage Renal Disease (ESRD) and Disparities

- Four times as many African Americans as whites suffer from ESRD
- African Americans are less than half as likely as whites to appear on kidney transplant waiting lists
- Once wait-listed, African Americans waiting time is almost twice as long as that for whites
Why do health disparities exist?

- Actual clinical differences
- Access to health care
  - Lack of insurance
  - Institutional barriers to health care
- Patient-physician interaction
  - Differences in patient-physician communication
  - Linguistic barriers
- Racial bias and discrimination

*Adapted from Oddone, 2002*
Bias and Discrimination

**Bias** Beliefs or attitudes alone are not discriminatory.

**Discrimination** If beliefs or attitudes affect the quantity or quality of the health care provided, then treatment may be discriminatory.
Legal Implications of Bias

• Impaired trust can result in:
  – Suboptimal patient-physician relationship
  – Poor communication
  – Perception that the physician is not working in the best interest of the patient
  – Patient/group perception of systematic bias
  – Malpractice litigation

• Inequitable treatment leading to disparities may be actionable under the law.

Crossley, 2003
Title VI of the Civil Rights Act of 1964 (Title VI)

“No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”
What entities are covered by Title VI?

Recipients of Federal financial assistance can include:

- Hospitals, nursing homes, home health agencies, managed care organizations;
- Health research programs;
- Physicians, dentists, hospital social workers; and
- Other providers who receive funding from HHS.
Who does Title VI protect?

Everybody

Title VI protects people of every race, color or national origin from unlawful discrimination.
Unlawful Discrimination under Title VI

Recipients of Federal financial assistance may not on the basis of race, color, or national origin:

• Deny or restrict an individual’s enjoyment of a service, aid or benefit under the program;
• Provide a benefit which is different or provided in a different manner; or
• Subject an individual to segregation or separate treatment.

45 C.F.R. § 80.3(b)
Unlawful Discrimination under Title VI (continued)

Recipients of Federal financial assistance may not on the basis of race, color, or national origin:

• Treat an individual differently in determining eligibility;
• Deny an individual an opportunity to participate in the program (including as an employee); or
• Deny an individual an opportunity to participate on a planning or advisory board.

45 C.F.R. § 80.3(b)
Title VI and Limited English Proficient (LEP) Persons

• An LEP individual is a person whose primary language is not English and who has a limited ability to read, write, speak or understand English.

• Title VI and the implementing regulations prohibit conduct that has a disproportionate adverse impact on the basis of national origin. Failure to provide LEP individuals meaningful access may constitute discrimination.

• Health care providers may be required to provide language access services at no cost if necessary to ensure that persons are not discriminated against on the basis of national origin.

For more information visit OCR’s webpage at:
http://www.hhs.gov/ocr/civilrights/resources/specialtopics/lep/index.html
Two Legal Frameworks for Reviewing Title VI Claims

• Disparate Treatment Discrimination
  – Similarly situated persons treated differently based on their race, color, or national origin
  – Action was, at least in part, based on race, color, or national origin

• Disparate Impact Discrimination
  – Policy or practice that is neutral on its face, but has a disproportionate adverse impact on persons of a particular protected class
Questions for Analysis of Title VI cases

Disparate Treatment

- Did the patient apply for or seek services from a federally assisted health care provider?
- Was the patient eligible to receive the services?
- Was the patient denied services or provided services of a lower quality or quantity?
- Did the federally assisted health care provider grant services of a higher quality or quantity to patients of a different race, color or national origin?

Disparate Impact

- Is the policy or practice neutral on its face?
- Does the policy have a disproportionate adverse impact on the basis of race, color or national origin?
- Is there a legitimate, nondiscriminatory objective for the challenged action?
- Are there any “equally effective alternatives” that would further that objective with less disproportionate adverse impact?
Case Study
Case Study Exercise

- Read case study

- Read *Witness Interviews*:
  - Doctor’s perspective
  - Nurse’s perspective
  - Patient’s perspective
  - Administrator’s perspective
Group Discussion

- Doctor’s perspective
- Nurse’s perspective
- Patient’s perspective
- Administrator’s perspective
End Stage Renal Disease Case Study: Analysis

• Applying Title VI of the Civil Rights Act of 1964, do any of the facts point to disparate TREATMENT?

• Applying Title VI of the Civil Rights Act of 1964, do any of the facts point to disparate IMPACT?

• Consider actions the providers or health system could take that would diminish the discriminatory element.
ESRD Case Study: Increasing Access

• Title VI aside, what actions could the Dialysis Center chain take to increase access for minorities to the Centers’ services, aids, or benefits?

• What other actions could help address health disparities among people with ESRD?
Questions to Consider

Does your organization provide services of a higher quality or quantity to majority patients in comparison to minority patients?

For example:

- Do your facilities in minority areas have comparable specialty clinics, services, and hours of operation, when compared to your facilities in majority areas?
- Does your organization provide comparable services to Medicaid recipients and non-Medicaid recipients?
- Does your organization provide effective language access services to LEP individuals?
- Has your organization developed and implemented initiatives to address health disparities?
- Has your organization developed nondiscrimination policies and complaint procedures and distributed them to the public?
- Does your organization advise patients that they may file a complaint with the HHS Office for Civil Rights?
Resources

• National Consortium for Multicultural Education for Health Professionals:  http://culturalmeded.stanford.edu/

• HHS Office for Civil Rights:  http://www.hhs.gov/ocr/


• Federal Interagency Working Group on LEP:  http://www.lep.gov/
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