

Bridging the Title VI Gap: How Can the Affordable  
Care Act Address Racial Inequity in Nursing  
Homes?

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I. INTRODUCTION

Evidence of racial and ethnic health disparities have been documented in the American healthcare system for decades.<sup>1</sup> The Centers for Disease Control and Prevention (CDC) defined health disparities as “preventable differences in the burden of disease, injury, violence, or opportunities to achieve optimal health that are experienced by socially disadvantaged populations”.<sup>2</sup> The CDC leading health indicators have demonstrated little improvements in disparities over the last decade.<sup>3</sup> Furthermore, a study by the Institute of Medicine (IOM) found that racial and ethnic minorities had poorer health and consistently received lower quality care, even when not accounting for factors such as insurance status and income.<sup>4</sup>

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1. See Stephen B. Thomas et al., *Less Talk More Action: Accelerating Innovative Strategies to Eliminate Racial and Ethnic Health Disparities*, 55 HOW. L.J. 705 (2012) (providing historical context for understanding racial and ethnic disparities in the United States).

2. *Health Disparities*, CENTERS FOR DISEASE CONTROL AND PREVENTION <http://www.cdc.gov/healthyouth/disparities/index.htm> (last updated July 24, 2012).

3. This is according to a recent analysis of the *Healthy People 2010* objectives, which is a national health promotion and disease prevention initiative aimed at addressing health disparities. DEPT. OF HEALTH & HUMAN SERVS., HHS ACTION PLAN TO REDUCE RACIAL AND ETHNIC HEALTH DISPARITIES: A NATION FREE OF DISPARITIES IN HEALTH AND HEALTH CARE, 2 (2011), available at [http://minorityhealth.hhs.gov/npa/files/Plans/HHS/HHS\\_Plan\\_complete.pdf](http://minorityhealth.hhs.gov/npa/files/Plans/HHS/HHS_Plan_complete.pdf).

4. Rene Bowser, *The Affordable Care Act and Beyond: Opportunities for Advancing Health Equity and Social Justice*, 10 HASTINGS RACE & POVERTY L.J. 69, 69-70 (2013). In 1999 Congress asked the Institute of Medicine to investigate disparities in health and health status among racial and ethnic minorities. See INSTITUTE OF MEDICINE, UNEQUAL TREATMENT: CONFRONTING RACIAL AND ETHNIC DISPARITIES IN HEALTH CARE (Nat'l

As disparities cross over into many health care industries, the prognosis is the same for the long-term care industry and nursing home facilities.<sup>5</sup> Despite these barriers, the proportion of African Americans in nursing home facilities has steadily increased over the past 4 decades.<sup>6</sup> Even though African Americans have closed the gap in nursing home use rates since the year 2000, there has been little gain in equity as access to quality facilities still remain limited for minorities.<sup>7</sup>

To combat these issues, the successes of early civil rights litigation, specifically Title VI of the 1964 Civil Rights Act<sup>8</sup>, was seen as a significant avenue for addressing racial inequity in nursing home quality of care and admissions.<sup>9</sup> However, despite the requirements of Title VI, many federally funded hospitals, nursing homes, health plans, and even physicians have

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Academy Press 2002), available at <http://www.iom.edu/Reports/2002/Unequal-Treatment-Confronting-Racial-and-Ethnic-Disparities-in-Health-Care.aspx>.

5. See David Barton Smith et al., *Racial Disparities in Access to Long-Term Care: The Illusive Pursuit of Equity*, 33 J. HEALTH POL. POL'Y & L. 5, 861 (2008) (finding that there exists a high degree of segregation and disparity in the quality of nursing homes that are used by African Americans). See also S. C. Reed et al., *Concentrated Poverty and Nursing Home Bed Supply in Chicago*, 12 J. HEALTH CARE POOR & UNDERSERVED 1, 88-102 (2001).

6. Daniel L. Howard et al., *Distribution of African Americans in Residential Care/Assisted Living and Nursing Homes: More Evidence of Racial Disparity?*, 92 AM. J. PUB. HEALTH 1272, 1272 (2002). African American use of formal services have changed over time due to the implementation of anti-discrimination laws and the increase in access to nursing homes and home health services as a result of public funding programs. SHEEL PANDYA, RACIAL AND ETHNIC DIFFERENCES AMONG OLDER ADULTS IN LONG-TERM CARE SERVICE USE, AARP PUBLIC POLICY INSTITUTE (June 2005), available at [http://www.aarp.org/home-garden/livable-communities/info-2005/fs119\\_ltc.html](http://www.aarp.org/home-garden/livable-communities/info-2005/fs119_ltc.html).

7. See Smith et al., *supra* note 5.

8. Pub. L. No. 88-352, 78 Stat. 252 (codified at 42 U.S.C. §§ 2000d-2000d-4 (1982)). "Title VI and its implementing regulations prohibit both intentional discrimination and policies that appear neutral but have a discriminatory effect". *Title VI, Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons*, NATIONAL (2004), <http://www.archives.gov/eo/laws/title-vi.html> ARCHIVES [hereinafter NATIONAL ARCHIVES]. Congress passed Title VI to prohibit segregation and other forms of discrimination in any organization receiving federal funds. Sidney D. Watson, *Reinvigorating Title VI: Defending Health Care Discrimination – It Shouldn't Be So Easy*, 58 FORDHAM L. REV. 939, 941 (1989-1990).

9. Dayna Bowen Matthew, *A New Strategy to Combat Racial Inequality in American Health Care Delivery*, 9 DEPAUL J. HEALTH CARE L. 793, 796 (2005-2006).

continued to provide inferior healthcare to minority Americans.<sup>10</sup> Consequently, Title VI has been repeatedly criticized as ineffective in addressing nursing home inequity and disparities.<sup>11</sup> With this in mind, this article suggests that if properly executed sections 1557, 4302, 6102, and 10303 of the Patient Protection and Affordable Care Act (PPACA) could bridge the Title VI gap and substantially improve access to quality of healthcare for minorities in nursing home facilities.

## II. RACIAL INEQUITY IN NURSING HOMES

In the past, nursing homes facilities traditionally served a predominantly White population and the use of formal long-term care services by Blacks, Hispanics, and Asians, age sixty-five and older, were shown to be substantially lower than that of non-Hispanic Whites.<sup>12</sup> While both Medicare and Medicaid require that nursing home residents receive quality care,<sup>13</sup> for minority elders quality of care is far less when compared to their

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10. See generally Vernellia Randall, *Racial Discrimination in Health Care in the United States as a Violation of the International Convention on the Elimination of All Forms of Racial Discrimination*, 14 U. FLA. J.L. & PUB. POL'Y. 45 (2002-2003).

11. See generally Ruqaiijah Yearby, *Is it Too Late for Title VI Enforcement?: Seeking Redemption of the Unequal United States' Long Term Care System through International Means*, 9 DEPAUL J. HEALTH CARE L. 971, 972 (2005-2006) (examining the United States' disregard for elderly African Americans' right to equality). Professor Yearby has argued that because the root cause of the nursing home disparities stem from institutional racism it then becomes the normal practices of these facilities to limit the number of African American beds that become available. *Id.* at 973. She goes on to argue that because this is an institutional racism issue that we should move beyond Title VI and access the International Convention on the Elimination of All Forms of Racial Discrimination (CRED) as the source for combatting the issue. *Id.* When member states of CRED are in violation for failing "to implement measures to eradicate intentional and unintentional forms of racial discrimination" private parties now have a cause of action. *Id.*

12. Pandya, *supra* note 6.

13. See generally Social Security Act, 42 U.S.C. §§ 1395i-3(b)(2) (2006). As mandated by the Nursing Home Reform Act, the Secretary of Health and Human Services is required to regulate the actual care provided to residents to ensure that nursing homes "provide services and activities to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident." David R. Hoffman, *The Role of the Federal Government in Ensuring Quality of Care in Long-Term Care Facilities*, 6 ANNALS HEALTH

White counterparts.<sup>14</sup> Additionally, there is documentation of pervasive racial, ethnic, and class disparities in both nursing home use and nursing home quality of care for minority elders.<sup>15</sup> African American nursing home rates have now surpassed Whites' rates, but there has been little gain in equity.<sup>16</sup> When compared to White elders, African American elders continue to reside in lower-quality nursing homes.<sup>17</sup> Additionally, the informal practices of private pay facilities often further contribute to these disparities as they continue to limit the admission of Medicaid patients, of whom a disproportionate amount are elderly African-American and minority patients.<sup>18</sup>

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L. 147, 149 (1997).

14. Mary L. Fennell et al., *Facility Effects on Racial Differences in Nursing Home Quality of Care*, 15 AM. J. MED. QUALITY 174, 174 (2000). "Controlling for differences in severity of conditions, socioeconomic status, and patient preference minority nursing home residents are less likely to receive medically appropriate treatments". *Id.* at 174.

Decades of studies have shown that "elderly African Americans are on average two times more likely to reside in poor quality nursing homes than Whites". Ruqaiijah Yearby, *Striving for Equality, But Settling for the Status Quo in Health Care: Is Title VI More Illusory Than Real?*, 59 RUTGERS L. REV. 429, 435 (2007). Furthermore, other studies have shown that African American's access to necessary rehabilitative treatment provided by quality nursing homes is impeded because of their race. *Id.* Minority nursing home residents are less likely to receive medically appropriate treatments. *Id.* at 435.

15. See generally, Adaeze B. Akamigbo & Fredric D. Wolinsky, *New Evidence of Racial Differences in Access and Their Effects on the Use of Nursing Homes among Older Adults*, 45 MED. CARE 7, 672 (2007). Data compiled from Medicare forms show that African-Americans are more likely to reside in nursing homes with "lower ratings of cleanliness/maintenance and lighting." Yearby, *supra* note 14, at 461. "Moreover, being African-American meant that the patient was twice as likely to be admitted to a primarily Medicaid payer nursing home and increased the probability of the nursing home deficiencies by 24%". *Id.* For instance, prior to implementation of Medicare and Medicaid in 1966, nursing homes in the South were totally segregated by Jim Crow laws while in the North patterns of use and admission practices also perpetuated these same disparities. David Barton Smith et al., *Separate and Unequal: Racial Segregation and Disparities in Quality Across U.S. Nursing Homes*, 26 HEALTH AFF. 1448, 1449 (2007). Section 622(f) of the Hill-Burton Act proscribed federal funding for "separate but equal" health care services. Yearby, *supra* note 14, at 433. Segregated facilities were eligible to receive federal funding as long as they certified that there was a "separate but equal" facility available to treat blacks. Watson, *supra* note 8 at 940.

16. Smith et al., *supra* note 5, at 871.

17. *Id.*

18. Yearby, *supra* note 11, at 972 (arguing that as a result elderly African-American

### III. WHAT HAS TITLE VI DONE FOR ADDRESSING HEALTH INEQUITIES?

The Department of Health and Human Services (HHS) promulgated Title VI regulations on December 4, 1964,<sup>19</sup> and prohibited intentional discrimination policies and practices that appear neutral but have a discriminatory effect.<sup>20</sup> The foundation of Title VI is that “no person shall be subjected to discrimination on the basis of race, color, or national origin under any program or activity that receives federal financial assistance”.<sup>21</sup> Under Title VI, health care entities are prohibited from “utiliz[ing] criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respect individuals of a particular race, color, or national origin”.<sup>22</sup> While Title VI has ended blatant forms of health care discrimination, there are still subtle barriers that prevent minorities from fully accessing these facilities.<sup>23</sup>

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patients are often times placed in nursing homes with a high proportion of Medicaid patients, which traditionally provide substandard care). “The disparate impact of placing elderly African-Americans in substandard quality nursing homes based on their payment status is overshadowed by the institutional racism that is the underlying reason for these practices”.  
*Id.*

19. Yearby, *supra* note 14, at 448.

20. U.S. GOVERNMENT PRINTING OFFICE ELECTRONIC CODE OF FEDERAL REGULATIONS. PART 80 – DISCRIMINATION UNDER PROGRAMS RECEIVING FEDERAL ASSISTANCE THROUGH DEPARTMENT OF HEALTH AND HUMAN SERVICES EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 *available at* <http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&sid=4f19a78b9f025ef7dede0f0838b07a60&rgn=div5&view=text&node=45:1.0.1.1.39&idno=45>.

21. *Id.* This specifically applies to any public or private entity that receives this federal financial assistance, either directly from the federal government or through another recipient, but does not include the ultimate beneficiaries of the programs that receive federal financial assistance. *Id.*

22. *Id.* With the enactment of Title VI of the Civil Rights Act, Congress made compliance mandatory before a nursing home could become eligible to receive Medicare or Medicaid Funding. Yearby, *supra* note 14, at 433.

23. Watson, *supra* note 8, at 941.

*A. How Has Title VI Been Ineffective in Addressing Race-Related Disparities in Nursing Homes?*

Title VI of the 1964 Civil Rights Act prohibits the use of federal funds for any activities for which there is evidence of discrimination<sup>24</sup> however, the federal government has failed to effectively use this legislation as a means to addressing this discrimination.<sup>25</sup> Furthermore, under Title VI, there has been a long history of non-enforcement.<sup>26</sup> The Office of Civil Rights (“OCR”), a division of HHS is responsible for enforcing Title VI in health care.<sup>27</sup> In its history, the agency has never terminated a nursing home that has violated Title VI.<sup>28</sup> Moreover, since the Supreme Court held in 2001 that “disparate impact” liability claims could not be filed by private parties under Title VI the regulation has been essentially sidelined.<sup>29</sup>

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24. See David Barton Smith, *Addressing Racial Inequities in Health Care: Civil Rights Monitoring and Report Cards*, 23 J. HEALTH POL. POL'Y & L. 1, 78 (1998).

25. See Yearby, *supra* note 14, at 433-39 (noting that the government has failed to implement suggestions of how to effectively use Title VI). She mentions Professor Dayna Bowen Matthews who has suggested using the False Claims Act to sue government entities for falsely certifying compliance with Title VI as a method to put an end to racial discrimination and collect money for aggrieved parties. *Id.* Professor Yearby has also proposed the use of the Medicaid Act, Fair Housing Act, and the International Convention on the Elimination of All Forms of Discrimination. *Id.*

26. HHS is the federal agency in charge of enforcing Title VI compliance for health care entities. Ruqaiyah Yearby, *Litigation, Integration, and Transformation: Using Medicaid to Address Racial Inequities in Health Care*, 13 J. HEALTH CARE L. & POL'Y 325, 332 (2010). Duties have been delegated to its Office of Civil Rights (OCR), however, this agency has been inadequately staffed and funded to investigate private complaints and in conducting mandatory system-wide compliance reviews. *Id.* States have also been changed with enforcement of Title VI compliance, however, the efforts have also been minimal on the state level as well. *Id.* at 329. “The federal government has never issued extensive health-related civil rights guidance. . .” Sara Rosenbaum et al, *U.S. Civil Rights Policy and Access to Health Care by Minority Americans: Implications for a Changing Health Care System*, 57 MEDICAL CARE RESEARCH AND REVIEW 236, 238 (2000).

27. Sara Rosenbaum & Joel Teitelbaum *Addressing Racial Inequality in Health Care*, in POLICY CHANGES IN MODERN HEALTH CARE 137 (David Mechanic, et al., eds. 2005), available at [http://www.investigatorawards.org/publications/policy\\_challenges/pdf/Chapter%209.pdf](http://www.investigatorawards.org/publications/policy_challenges/pdf/Chapter%209.pdf).

28. U.S. Commission on Civil Rights, *Federal Title VI Enforcement to Ensure Nondiscrimination in Federally Assisted Programs*, No. 005-910-00024-2, 220-221 (1996). Yearby, *supra* note 11, at 975.

29. In *Alexander v. Sandoval*, the United States held that the Title VI statute only

*B. Can We Still Use Title VI as a Viable Tool for Addressing  
Nursing Home Disparities?*

Despite these set-backs there are a number of recommendations for ways that both the state and federal government can use Title VI specifically to address racial disparities in nursing homes and other long term care facilities.<sup>30</sup> One professor has suggested that HHS and the states aggressively monitor and sanction perpetrators in order to end discriminatory practices.<sup>31</sup> She also suggests that Medicaid patients seeking admission to or residing in nursing homes file 42 U.S.C. § 1983 class action suits against the Secretary of HHS and the states alleging civil rights violations.<sup>32</sup> Another suggestion has been to file racial impact claims against those recipients of federal government funding.<sup>33</sup> Moreover, OCR could be mandated to collect racial data or admission flow data, as well as regulate nursing home's admission practices, or survey the racial makeup of nursing homes as required by Title VI.<sup>34</sup> While Title VI litigation has proved to be of little assistance,<sup>35</sup> with the creation of PPACA there stands

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prohibits intentional discrimination. *Alexander v. Sandoval*, 532 U.S. 275, 280 (2001). Rosenbaum & Teitelbaum, *supra* note 27. Philip Tegeler, *Title VI Enforcement in the Post-Sandoval Era*, 19 *POVERTY & RACE* 5, 5 (2010).

30. Yearby, *supra* note 26, at 333.

31. *Id.*

32. *Id.*

33. Tegeler, *supra* note 29, at 5. However, with respect to private Title VI cases filed in court they are now limited to claims of intentional discrimination prohibited by the statute itself. *Id.*

34. Yearby, *supra* note 11, at 975. According to Professor Yearby, OCR has had a long history of failing to fulfill Title VI mandates even after receiving complaints from private individuals. *Id.* at 994. She maintains that OCR does not collect racial data or survey the racial makeup of nursing homes as required by Title VI. *Id.* at 975. Instead of implementing fines on noncompliant nursing homes, OCR has resolved the issues through voluntary cease and desist practices. *Id.* at 994.

35. *Generally* Watson, *supra* note 8, at 942 (arguing that Title VI's implementing regulations proscribe facially neutral policies and practices that, in operation, have the effect of disproportionately excluding minorities, regardless of the defendant's lack of subjective discriminatory intent.). Furthermore, lower courts have allowed health care facilities to defend too easily such policies and federally funded defendants have been allowed to defend

to be new opportunities for enforcement and regulation.<sup>36</sup>

#### IV. THE AFFORDABLE CARE ACT PROVISIONS ADDRESSING RACIAL DISPARITIES

PPACA is the first comprehensive legislation, since the Nursing Home Reform Act (NHRA),<sup>37</sup> to expand quality of care-related requirements for nursing homes that participate in Medicare and Medicaid and improve federal and state oversight and enforcement.<sup>38</sup> PPACA includes various provisions that explicitly intend to reduce health disparities and improve health of racially and ethnically diverse populations.<sup>39</sup>

##### A. *What Sections of the ACA Specifically Address Health Inequalities*

Section 1557 prohibits health insurers and health care providers from discriminating on the basis of race and ethnicity along with gender,

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such policies with a disproportionate adverse racial impact by showing that the policies are rationally related to any legitimate, non-discriminatory purpose. *Id.*; *see also* Matthew, *supra* note 9, at 796.

36. Section 1557 of the ACA creates a new health-specific anti-discrimination prohibition that reaches beyond Title VI. ACA, 42 U.S.C. § 18116 (); Sidney D. Watson, *Section 1157 of the Affordable Care Act: Civil Rights, Health Reform, Race, and Equity*, 55 *How. L.J.* 855, 870 (2012).

37. The purpose of the Nursing Home Reform Act “is to ensure that residents of nursing homes receive quality care that will result in their achieving or maintaining their ‘highest practicable’ physical, mental, and psychosocial well-being.” Martin Klauber & Bernadette Wright, *The 1987 Nursing Home Reform Act*, AARP PUBLIC POLICY INSTITUTE (February 2001), [http://www.aarp.org/home-garden/livable-communities/info-2001/the\\_1987\\_nursing\\_home\\_reform\\_act.html](http://www.aarp.org/home-garden/livable-communities/info-2001/the_1987_nursing_home_reform_act.html).

38. KAISER COMMISSION ON MEDICAID AND THE UNINSURED. IMPLEMENTATION OF AFFORDABLE CARE ACT PROVISION TO IMPROVE NURSING HOME TRANSPARENCY, CARE QUALITY, AND ABUSE PREVENTION (January 2013), *available at* <http://www.kff.org/medicare/upload/8406.pdf>.

39. JOINT CENTER FOR POLITICAL AND ECONOMIC STUDIES. PATIENT PROTECTION AND AFFORDABLE CARE ACT OF 2010 at 1 (2010). *See also*, Watson, *supra* note 36, at 858 (discussing racial segregation in health insurance and health care delivery). *See also* Patient Protection and Affordable Care Act (ACA), Pub. L. No. 111-148 § 4302(a), 124 Stat. 119 (2010) (codified as amended at 42 U.S.C. § 18001 (2006)). In general, the ACA also includes numerous provisions meant to increase transparency in the nursing home sector overall. Edward Alan Miller, *The Affordable Care Act and Long-Term Care: Comprehensive Reform or Just Tinkering Around the Edges?* 24 *J. OF AGING & SOCIAL POL’Y* 101, (2012).

disability, and age.<sup>40</sup> Though Section 1557 does not define prohibited discrimination it does adopt language from Title VI that is mirrored in Title IX, Section 504, and the Age Discrimination Act, providing that an individual shall not, on the grounds prohibited by the statute be “*excluded from participation in, be denied the benefits of, or be subjected to discrimination under*” any health program or activity.<sup>41</sup>

Section 4302 of Title IV of PPACA amends the Public Health Service Act and is relevant to understanding and responding to racial and ethnic health disparities.<sup>42</sup> Section 4302 requires the Secretary of HHS to collect data and to track health disparities under Medicaid and Medicare. This section of PPACA would fill the data collection gap of the OCR and provide for uniformity in collection and reporting procedures.<sup>43</sup> The section requires HHS adopt new criteria for collecting data related to “race, ethnicity, sex, primary language, and disability status”.<sup>44</sup>

Pursuant to section 6102 of the PPACA, each skilled nursing facility (SNF) and nursing facility (NF) is required to develop a compliance and ethics program and participate in a quality assurance and performance improvement program.<sup>45</sup> The section imposes an ethics and compliance program requirement and mandates that these facilities establish these

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40. Watson, *supra* note 36, at 859. See also ACA § 1557(a).

41. Watson, *supra* note 36, at 872. See also 42 U.S.C. § 12132 (2011); accord 42 U.S.C. § 2000h-2 (2011), 29 U.S.C. § 701 (2011?), 42 U.S.C. § 2000d-2 (2011).

42. Howard K. Koh, et al, *Reducing Racial and Ethnic Disparities: The Action Plan from the Department of Health and Human Services*, 30 HEALTH AFF 10, 1825 (2011).

43. U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES OFFICE OF MINORITY HEALTH. REDUCING HEALTH DISPARITIES WITH IMPROVED DATA COLLECTION: NEW REFINED DATA STANDARDS FOR RACE, ETHNICITY, SEX, PRIMARY LANGUAGE, AND DISABILITY STATUS available at <http://minorityhealth.hhs.gov/templates/content.aspx?ID=9232&lvl=2&lvlID=208>.

44. Koh, et al, *supra* note, 42 at 1825.

45. Sec. 6102. Accountability Requirements for Skilled Nursing Facilities and Nursing Facilities. Cms.gov - these programs are consistent with the goals of the ACA to promote accountability for patient care and to redesign care process to ensure high quality and efficient service delivery.

compliance programs in a manner that effectively prevents and detects violations and promotes quality of care.<sup>46</sup>

Looking back at recommendations by previous scholars requesting OCR create quality measures to assess health disparities, Section 10303 does an excellent job of filling this gap as it specifically provides for the creation of quality development measures that allow the assessment of health disparities.<sup>47</sup> Section 10303 further authorizes HHS to enter into a contract with the IOM to “identify existing and newly-created clinical practice guidelines”.<sup>48</sup>

#### *B. Recommendations For Addressing Nursing Home Disparities*

Addressing and eliminating health disparities demand a multifaceted approach including both education and advocacy. While Title VI has had some shorting comings addressing racial disparities in nursing home facilities, the PPACA can be an effective tool in improving minority access.<sup>49</sup> Section 1557 is one of the post promising sections as it goes beyond the realms of Title VI and specifically prohibits “discrimination in three types of health programs and activities: (1) those in which any part is receiving Federal financial assistance, including credits, subsidies, or contracts of insurance, (2) those administered by an Executive Agency, and

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46. Corrine Propas Parver & Allison Chonen, *Affordable Care Act: Strengthening Compliance through Health Care Fraud Provisions*, 5 HEALTH L. & POL’Y BRIEF 5, 16 (2011). The Act also requires NFs and SNFs to collect and disclose to the HHS Secretary information about ownership and control of the facilities. *Id.* In order to carry out these reporting requirements, the Act directs the Secretary to develop a program to report direct care staffing and auditable data. *Id.* at 19.

47. AMERICAN MEDICAL ASSOCIATION, H.R. 3590 PATIENT PROTECTION AND AFFORDABLE CARE ACT [hereinafter AMA] at 15 available at <http://www.ama-assn.org/ama1/pub/upload/mm/399/hr3590-summary-of-provisions.pdf>.

48. *Id.*

49. PPACA contains provisions which allow for documentation of racial disparities, “including racial segregation in health insurance and health care delivery”. Watson, *supra* note 36, at 858.

(3) those established under Title I of the PPACA”.<sup>50</sup> This would suggest that any nursing home facility receiving federal funding or payments via federal funding would be barred from discrimination and potential suits could be brought under the PPACA.<sup>51</sup>

Section 1557 provides that the enforcement mechanisms available under Title VI, Title IX, Section 504 *or* the Age Discrimination Act are available to redress violations of Section 1557.<sup>52</sup> As such, plaintiffs asserting a violation under Section 1557 appear to have their choice of process: they have either direct access to federal court for claims of intentional discrimination as provided by Title VI, Title IX, and Section 504, or an agency hearing with an opportunity for judicial review for claims of both disparate impact and intentional discrimination.<sup>53</sup>

#### V. CONCLUSION

While PPACA generates various opportunities<sup>54</sup> for lasting and comprehensive systems change, Section 1557 specifically allows for far greater actions than was previously allowed under Title VI.<sup>55</sup> Health care providers who do not accept federal financial assistance will be prohibited from discriminating on the basis of race and furthermore, federal government health programs and activities will also be prohibited from discriminating on the basis of race. Furthermore, individuals should attack a precise policy that has a disparate impact on minority patients and provide

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50. See ACA § 1557(a); *see also* Watson, *supra* note 36, at 872-73.

51. Watson, *supra* note 36, at 873.

52. *Id.* at 880.

53. *Id.*

54. Bowser, *supra* note 4, at 69.

55. Section 1557 reaches both intentional discrimination and policies and practices that have a disparate impact on minorities and provides for a private right of action to enforce claims of both intentional and disparate impact discrimination. Watson, *supra* note 36, at 880.

clear statistical evidence that show the disparate impact alleged.