

Compliance Today – January 2021 HHS guidelines address racial disparities in COVID-19 testing and treatment

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The year 2020 will certainly be remembered for at least two events: the COVID-19 pandemic and the far-reaching and sustained movement against racial inequality in America. These two events metaphorically intersect in guidance from the U.S. Department of Health & Human Services (HHS) Office for Civil Rights (OCR) designed to help providers ensure that their COVID-19 testing and treatment services do not discriminate on the basis of race, color, or national origin.

Racial disparities in healthcare in the US

It has been strongly argued that healthcare is one of several US systems whose origins include elements of institutional racism.^[1] As a consequence, this institutional racism begets racial disparities in healthcare delivery and outcomes.^[2] Although these inequities have been observed, studied, and the subject of discussion, research, policies, and even laws,^[3] the COVID-19 pandemic is a crisis that provides a devastating, firsthand, real-time case study of how this institutional racism—not race itself—results in disparities in healthcare access, treatment, and outcomes for racial and ethnic minorities in our country.

Providers, members of Congress called upon HHS for action

Healthcare providers and members of Congress encouraged HHS to address the racial disparities in America's COVID-19 response since data^[4] emerged demonstrating those differences early in the pandemic. Five members of Congress wrote a letter to HHS Secretary Alex Azar on March 27, 2020, urging him to order the Centers for Disease Control and Prevention (CDC) to begin collecting and reporting racial and ethnic demographic data from patients receiving COVID-19 tests.^[5] The letter requested these data so that policymakers and researchers could identify and address racial disparities in America's response to the pandemic, which the CDC reportedly began doing at least by April 8, 2020.^[6] The letter also outlined several risk factors for COVID-19 that disproportionately affect communities of color, including comorbidities such as obesity, diabetes, and asthma; lack of insurance coverage; shortages of quality providers in the local communities; and socioeconomic factors such as unemployment, food insecurity, and housing issues. Further, the congressional letter stated that “a history of discrimination and marginalization has left some people of color distrustful of the medical system, making them less likely to seek out timely care.”

The American Hospital Association, the American Medical Association, and the American Nurses Association also wrote a joint letter to Secretary Azar on April 16, 2020, citing “alarming” reports that communities of color had disproportionately higher levels of COVID-19 infections and deaths than the general population.^[7] These associations urged, on behalf of their members, that the secretary, among other things, (1) have the CDC collect additional information about COVID-19 patients of color, such as comorbidities and ventilator usage, so that the

causes of the racial disparities can be better understood, and (2) establish a toll-free, nurse-staffed hotline so that patients without insurance can discuss their symptoms and receive direct referrals for COVID-19 testing when appropriate without going through a primary care physician, given the documented disparities in insurance coverage and access to care for patients of color.

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