



Do No Harm

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VIA ELECTRONIC MAIL ONLY: OCRComplaint@hhs.gov

Centralized Case Management Operations
U.S. Department of Health and Human Services
Office for Civil Rights
200 Independence Avenue, S.W.
Room 509F HHH Bldg.
Washington, D.C. 20201

**RE: Civil Rights Complaint Against CommUnityCare
Pursuant to Title VI and the ACA**

To Whom This May Concern:

Pursuant to Title VI of the Civil Rights Act of 1964 and Section 1557 of the Affordable Care Act (“ACA”), we write to file a formal complaint against CommUnityCare for its support and operation of a race-based “Black Men’s Health Clinic” (Austin, Texas) that provides “primary medical care” and “referrals to other services.”¹

I. CommUnityCare’s Black Men’s Health Clinic is designed to discriminate on the basis of race.

As explained on CommUnityCare’s website and linked webpages, the Black Men’s Health Clinic (the “Clinic”) is “a new kind of clinic” “built on ... equity” and designed to provide “[p]rimary [c]are” and “[r]eferral[]” healthcare services to black men.² In particular, the Clinic provides: “[p]hysical [h]ealth” services for “[p]rimary [c]are, [h]eart [h]ealth, [d]iabetes, and [b]lood [p]ressure [m]anagement”; “[m]ental [h]ealth” services; and “[l]ifestyle & [e]ducation” services, such as “[v]eterans programs, exercise classes, nutritional workshops, community roundtables, and health fairs.”³ The Clinic’s name makes clear its

¹ The Black Men’s Health Clinic is located at 6633 E. Hwy. 290, Suite 100, Austin, TX 78723. See CommUnityCare, *Black Men’s Health Clinic (BMHC)*, <https://perma.cc/2YTH-PCHV>; Black Men’s Health Clinic, *Home*, perma.cc/Y2QJ-FCQS; CommUnityCare, *Black Men’s Health Clinic to Address Healthcare Gap for Men of Color*, perma.cc/YY3K-C56P.

² CommUnityCare, *Black Men’s Health Clinic (BMHC)*, <https://perma.cc/2YTH-PCHV>; Black Men’s Health Clinic, *History*, perma.cc/CM78-4U9H; Black Men’s Health Clinic, *Home*, perma.cc/Y2QJ-FCQS.

³ Black Men’s Health Clinic, *Home*, perma.cc/Y2QJ-FCQS.

explicit racial preference for blacks, and it self-describes as a “safety net program for men of color.”⁴

Cementing the Clinic’s status as a race-based initiative, CommUnityCare explains that the Clinic implements a “commitment to increase access to health care and health care information in a setting that best meets the needs of men of color.”⁵ More specifically, the Clinic “exists to eliminate barriers to care for men of color” through a variety of means, including “culturally responsive guidance.”⁶ Listings for clinicians further confirm the Clinic’s commitment to “health equity.”⁷ One example describes the Clinic’s “mission” as “decreasing mortality and morbidity rates among men of color” by “increas[ing] the men of color number within East Travis County eating healthier,” “increas[ing] the health literacy ... for men of color” and “increas[ing] the number of minority and culturally competent community health service providers.”⁸

According to CommUnityCare, the Clinic’s mission is necessary as a result of “barrier[s]” to care that cause “health inequities” and “longstanding health disparities” for “men of color.”⁹ As evidence of such racial inequity, CommUnityCare asserts that black men in Travis County, Texas, “live, on average, 5.1 years less than their white non-Latino counterparts” and are “more likely to die from heart disease, stroke, diabetes and cancer.”¹⁰ To address this alleged imbalance, the Clinic is led by a team that centers on “lived experience”—where the “staff and leadership know what it’s like to deal with the same issues our clients face.”¹¹ This matters, the Clinic says, because “patients more effectively communicate with providers who look like them.”¹²

CommUnityCare’s racial preference thus appears to extend beyond patients. Indeed, CommUnityCare further contends that “diverse team members” are necessary to “shape and strengthen the care” it provides, spotlighting its employees’ racial “heritage.”¹³ Effectuating these notions, the Clinic brags that its “staff” understand “what it’s like to deal with” the alleged “health inequities” faced by “men of color.”¹⁴

⁴ Black Men’s Health Clinic, *Home*, perma.cc/Y2QJ-FCQS.

⁵ CommUnityCare, *Black Men’s Health Clinic to Address Healthcare Gap for Men of Color*, perma.cc/YY3K-C56P.

⁶ Black Men’s Health Clinic, *Mission, Vision, and Model*, perma.cc/SKW2-6MEE.

⁷ CommUnityCare, *Honoring Black History Month at CommUnityCare Health Centers*, perma.cc/66Q2-JWDV.

⁸ Idealist.org, *Black Men’s Health Clinic*, perma.cc/U4KE-H4NA.

⁹ CommUnityCare, *Black Men’s Health Clinic to Address Healthcare Gap for Men of Color*, perma.cc/YY3K-C56P.

¹⁰ *Id.*

¹¹ LinkedIn, *Black Men’s Health Clinic*, perma.cc/297C-CNUL.

¹² Black Men’s Health Clinic, *Get to Know Us*, perma.cc/Q7UL-M67Q.

¹³ CommUnityCare, *Honoring Black History Month at CommUnityCare Health Centers*, perma.cc/66Q2-JWDV.

¹⁴ LinkedIn, *Black Men’s Health Clinic*, perma.cc/297C-CNUL; CommUnityCare, *Black Men’s Health Clinic to Address Healthcare Gap for Men of Color*, perma.cc/YY3K-C56P.

II. CommUnityCare’s operation of the Black Men’s Health Clinic violates Title VI and Section 1557 of the ACA.

CommUnityCare is one of the largest Federally Qualified Health Center systems in Texas¹⁵ and is a recipient of federal funding through grants and a host of other federally allotted benefits.¹⁶ CommUnityCare is thus subject to multiple federal anti-discrimination laws, including Title VI of the Civil Rights Act and Section 1557 of the Affordable Care Act, which forbid discrimination on the basis of race, color, ethnicity, and national origin.

Section 1557 of the ACA proscribes discrimination against individuals based on race in “any health program or activity, any part of which is receiving Federal financial assistance.”¹⁷ Title VI contains a similar provision broadly prohibiting racial discrimination.¹⁸ Under Title VI, a recipient of federal funding, like CommUnityCare, may not on the basis of race:

- “[p]rovide a different service or other benefit, or provide services or benefits in a different manner from those provided to others”;
- “[s]egregate or separately treat individuals in any matter related to the receipt of any service or other benefit”;
- “[u]tilize criteria or methods of administration which subject individuals to discrimination”; or
- otherwise implement racial preferences, or rest its actions upon any racially discriminatory purpose or intention—whether in whole or in part.¹⁹

But CommUnityCare’s Black Men’s Health Clinic ignores these rules.

First, the Clinic has “methods” to single out black men for “services and benefits in a different manner from those provided to others.”²⁰ Indeed, the Clinic is prominently designated for black men as the “Black Men’s Health Clinic” and “exists to eliminate barriers to care for men of color.”²¹ But a business may not advertise that it “exists” to serve a particular racial group—not to mention branding itself to cater to that group—and plausibly maintain that it does not discriminate. Just as a sign outside a store advertising it is for

¹⁵ CommUnityCare, *About Us*, perma.cc/4U2L-27VD.

¹⁶ See Health Resources and Services Administration, *About the Health Center Program*, perma.cc/Z868-ERNM.

¹⁷ 42 U.S.C. §18116.

¹⁸ See 42 U.S.C. §2000d.

¹⁹ U.S. Dep’t of Health & Hum. Servs., *Civil Rights for Individuals and Advocates - Discrimination on the Basis of Race, Color, or National Origin*, perma.cc/E3A3-U4GW; see also 42 U.S.C. §2000d; 45 C.F.R. §80.3(b)(1)–(3); *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265-68 (1977).

²⁰ U.S. Dep’t of Health & Hum. Servs., *Civil Rights for Individuals and Advocates - Discrimination on the Basis of Race, Color, or National Origin*, perma.cc/E3A3-U4GW.

²¹ Black Men’s Health Clinic, *Mission, Vision, and Model*, perma.cc/SKW2-6MEE.

“whites” would suggest, at bare minimum, a discriminatory preference for whites, advertising that a clinic “exists” to serve black men makes the exclusionary message clear: other races look elsewhere. And that discrimination alone is a legal injury.²² Whether an individual of the disfavored race “ignore[s] the sign and subject[s] themselves to personal rebuffs” is not material or required.²³

And if an individual were to inquire whether the business stood by its exclusionary signage, it would only further highlight the illegality, since only individuals of the disfavored race need take an additional step to confirm whether they are welcome. A Title VI equal protection injury is complete when a recipient of federal funds “erects a barrier that makes it more difficult for members of one [racial] group to obtain a benefit than it is for members of another [racial] group.”²⁴ That is exactly what CommUnityCare has done here. By explicitly affirming—and reaffirming—that Black Men’s Health Clinic “exists” to serve black men, CommUnityCare tells members of all other races that they are unwelcome.

Second, the Clinic’s objective—to be a “safety net program for men of color”—rests on an impermissible interest “in race for race’s sake.”²⁵ Indeed, CommUnityCare has established the Clinic to remedy what it claims are unacceptable health disparities between blacks and whites. But CommUnityCare is not permitted to sort individuals into racial buckets and allocate benefits according to whatever “equity” rationale it believes is appropriate. Federal anti-discrimination laws require treating patients as individuals. It is well-established that federal funding recipients, like CommUnityCare, may not rely on general disparities in society to justify racially motivated action, nor may they allocate benefits using race “as a convenient or rough proxy for another trait” “believe[d] to be ‘characteristic’ of a racial or ethnic group.”²⁶

And in any event, CommUnityCare’s purported interest in alleviating alleged racial disparities is belied by the facts. Any racial group might show a disparity in relation to other groups with respect to certain health outcomes. For example, among those conditions more prominent in whites are type 1 diabetes and multiple sclerosis.²⁷ CommUnityCare’s selective

²² See, e.g., *Heckler v. Mathews*, 465 U.S. 728, 739-40 (1984); *Moore v. U.S. Dep’t of Agric. on Behalf of Farmers Home Admin.*, 993 F.2d 1222, 1224 (5th Cir. 1993).

²³ *Int’l Bhd. of Teamsters v. United States*, 431 U.S. 324, 365 (1977).

²⁴ E.g., *Ne. Fla. Chapter of Associated Gen. Contractors of Am. v. City of Jacksonville, Fla.*, 508 U.S. 656, 666 (1993); *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll. (“SFFA”)*, 600 U.S. 181, n.2 (evaluating a Title VI race discrimination claim “under the standards of the Equal Protection Clause” because “[w]e have explained that discrimination that violates the Equal Protection Clause of the Fourteenth Amendment committed by an institution that accepts federal funds also constitutes a violation of Title VI.”) (citing cases).

²⁵ Black Men’s Health Clinic, *Home*, perma.cc/Y2QJ-FCQS; *SFFA*, 600 U.S. at 220.

²⁶ *SFFA*, 600 U.S. at 226; *Roberts v. McDonald*, 143 S. Ct. 2425 (2023) (Alito, J., statement respecting the denial of cert.).

²⁷ See Centers for Disease Control, Diabetes - Type 1 diabetes (May 15, 2024), perma.cc/Z8DY-RQ9D; Medical Press, *Whites have the highest prevalence of multiple sclerosis in the United States*, tinyurl.com/3tz9e4bx (citing Michael Hittle et al., *Population-Based Estimates for the Prevalence of Multiple Sclerosis in the United States by Race, Ethnicity, Age, Sex, and Geographic Region*, *JAMA Neurol.* 80(7): 693-701 (2023)).

preference for only certain racial disparities is a testament to its racially discriminatory intent in operating the Clinic.

Third, CommUnityCare’s Black Men’s Health Clinic rests on “pernicious stereotype[s]” that suggest “members of the same racial group—regardless of their age, education, economic status, or the community in which they live—[are all] alike,” and the Clinic uses race as a “negative” by shifting resources away from individuals of disfavored racial classes.²⁸ That is illegal.

The Supreme Court has “repeatedly explained” that under Title VI “citizens [must be treated] as individuals, not as simply components of a racial ... or national class.”²⁹ But the Clinic’s program views medical care through a racial lens, assuming that one’s *race* says all a doctor needs to know about who needs treatment most. *It does not*. At a minimum, mere correlations between race and certain outcomes are not indicative of causation, and discounting legitimate variables that lead to disparate health outcomes is an irresponsible and dangerous practice.³⁰ Thankfully, federal law does not allow recipients of federal funds to “intentionally allocate preference to those who may have little in common with one another but the color of their skin.”³¹

Finally, as if this all were not enough, CommUnityCare’s Clinic suggests yet another disturbing implementation of racial segregation: apparently hiring black providers to treat black patients. The notion that black patients do better when their doctors are the same race—and they do worse when the doctors are a different race—encourages patients and doctors to treat each other not as individuals but as components of racial groups. It sows distrust between patients and doctors who are different races, and it prioritizes race over medical skill, judgment, and experience. Such a notion has been thoroughly debunked.³² Do No Harm conducted an exhaustive study of the research supposedly supporting racial concordance and found it wanting: “Medical research does not support racial concordance.”³³ This “return of segregation of medicine” is “a recipe for even worse health outcomes for members of every race.”³⁴

In any event, such practices are illegal. The idea that a racial preference is justified by an interest in providing black patients with a physician who “looks like them” cannot be squared with Supreme Court precedent.³⁵ Indeed, “[c]arried to its logical extreme, the idea that black [patients] are better off with black [doctors] could lead to the very system the Court

²⁸ *SFFA*, 600 U.S. at 218-20.

²⁹ *Id.* at 223.

³⁰ Whether a particular patient needs medical care most does not change “simply because he was not the right color.” *Id.* at 209.

³¹ *Id.* at 220 & n.2.

³² See Kingsbury & Greene, *Racial Concordance in Medicine: The Return of Segregation 3*, Do No Harm (Dec. 19, 2023), perma.cc/339T-Y23Z.

³³ *Id.*

³⁴ *Id.*

³⁵ *Schuetz v. Coal. to Defend Affirmative Action*, 572 U.S. 291, 308 (2014).

rejected in *Brown v. Board of Education*” when it struck down the racist “separate but equal” regime.³⁶

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In short, CommUnityCare’s own descriptions and underlying intentions for its Black Men’s Health Clinic run afoul of federal anti-discrimination laws. For all the foregoing reasons, we ask that you open a formal investigation.

Sincerely,



Cara Tolliver
Vice President of Legal Programs
Do No Harm



Kristina Rasmussen
Executive Director
Do No Harm

³⁶ *Wygant v. Jackson Bd. of Ed.*, 476 U.S. 267, 276 (1986) (plurality op.); *Brown v. Bd. of Educ.*, 347 U.S. 483, 495 (1954); *SFFA*, 600 U.S. at 203-06.