

# LEGAL RIGHTS OF PERSONS WITH DISABILITIES

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## ACCESS TO HEALTHCARE FOR PEOPLE WITH DISABILITIES



**CALIFORNIA OFFICE OF THE ATTORNEY GENERAL**

**PUBLIC RIGHTS DIVISION**

CIVIL RIGHTS ENFORCEMENT SECTION | *DISABILITY RIGHTS BUREAU*



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# ACCESS TO HEALTHCARE FOR PEOPLE WITH DISABILITIES

This publication describes the state and federal laws that protect the rights of people with disabilities to access healthcare services, including hospitals and other facilities, services, insurance plans, and information offered by doctors' offices and other medical providers. It also describes an individual's options when they have experienced disability-based discrimination in healthcare services.

This publication is for informational purposes only, and is based on the law at the time of publication. Laws regularly change and are subject to differing interpretations. The facts of each and every case may also result in differing applications of the law. Accordingly, the information in this publication must not be considered definitive, exhaustive, or legal advice for any purpose, and does not create an attorney-client relationship with the California Department of Justice. When consulting this publication, check for any updates in the law that may be applicable in any given situation.

## I. HEALTHCARE LAWS THAT PROTECT PEOPLE WITH DISABILITIES

California law protects the rights of people with disabilities when accessing healthcare through the California Unruh Civil Rights Act (Unruh Act) (Civ. Code, § 51), California Government Code section 11135 (Gov. Code, § 11135), and the Disabled Persons Act (DPA) (Civ. Code, § 54 et seq.). The main federal laws that protect these rights are the Americans with Disabilities Act (ADA) (42 U.S.C. § 12101 et seq.), Section 504 of the Rehabilitation Act of 1973 (Section 504) (29 U.S.C. § 794), and the Affordable Care Act (ACA) (42 U.S.C. § 18001 et seq.). While the specific laws that cover healthcare providers depend on whether they are private or public, all healthcare providers must provide individuals with disabilities access in many ways.

## II. RIGHTS IN HEALTHCARE

Titles II and III of the ADA, Section 504, the ACA, and California law require that healthcare providers provide individuals with disabilities the following at no additional cost:

- **Full and equal access** to their healthcare services and facilities; (42 U.S.C. §§ 12132, 12182, 18116; 29 U.S.C. § 794; 28 C.F.R. §§ 35.130, 36.201, 36.202; Civ. Code, §§ 51, subd. (b), 54, subd. (a), 54.1)
- **Reasonable modifications** to policies, practices, and procedures when necessary to make healthcare services accessible; (28 C.F.R. §§ 35.130(b)(7), 36.301, 36.302; 45 C.F.R. § 92.105; Civ. Code, §§ 51, subd. (f), 54, subd. (c); Gov. Code, § 11135, subd. (b)), and
- **Effective communication, including auxiliary aids and services**, such as providing sign language interpreters or written materials in alternative formats. (28 C.F.R. §§ 35.104, 35.160, 36.301, 36.303; 45 C.F.R. § 92.102; Civ. Code, § 51, subd. (f), 54, subd. (c); Gov. Code, § 11135, subd. (b).)

Section 1557 of the Affordable Care Act (Section 1557) prohibits any health program or activity, any part of which is receiving federal funds or is federally administered (e.g., Medicare, Medicaid), from discriminating against or reducing access for an individual seeking healthcare services, based on protected characteristics including disability or limited English proficiency. (42 U.S.C. § 18116.)

Examples of disability discrimination by healthcare providers may include:

- Charging an extra fee to provide sign language interpretation when needed for effective communication, (28 C.F.R. §§ 35.130(f), 36.301(c))

- Requiring a person with a disability to wait longer to be examined because there is only one accessible examination room
- Requiring a person with a disability to bring an attendant or companion to a provider’s office, even if they do not want to, to assist with lifting, understanding, or interpreting
- Refusing to serve a person with a disability because the exam may take longer due to the disability

([Access to Medical Care for Individuals with Mobility Disabilities](#) (June 26, 2020) U.S. Dep’t of Justice [as of Aug. 15, 2023].)

### **A. Reasonable Modifications**

Healthcare providers must provide reasonable modifications in policies, practices, and procedures for people with all types of disabilities, including physical, cognitive, communication, and mental health disabilities, when necessary to make healthcare services accessible, unless it would result in a fundamental alteration. (28 C.F.R. §§ 35.130(b)(7)(i), 36.302(a).) Examples of reasonable accommodations include:

- Taking extra time to explain a procedure to a patient who has a cognitive disability and might have difficulty understanding
- Scheduling an appointment at a specific time to accommodate a patient with an anxiety disorder who has difficulty waiting in a crowded waiting room

### **B. Physical Access to Buildings and Facilities**

Buildings and facilities that provide healthcare services are also subject to state and federal laws that require physical accessibility. (See, e.g., 29 U.S.C. § 794; Civ. Code, §§ 54, 54.1; 28 C.F.R. §§ 35.149 et seq., 36.304, 36.305, 36.401 et seq.) The accessibility requirements of the California Building Code (CBC) also apply. (Cal. Code Regs., tit. 24, § 11B-101 et seq.) However, the way that these laws impact a particular building or facility varies depending on date of construction and/or alteration. (See, e.g., 29 U.S.C. § 794; 28 C.F.R. §§ 35.150, 35.151, 36.304, 36.305, 36.401 et seq.; 45 C.F.R. §§ 84.22, 84.23.) Recipients of government financial assistance may have additional requirements. (29 U.S.C. § 794; 45 C.F.R. § 84.22; Gov. Code, § 11135.)

Examples of these physical accessibility requirements include ramps, doors that open easily, accessible bathrooms, accessible parking, accessible paths of travel that are clear of barriers, and signage for use by individuals who are blind or have low vision. (See, e.g., 28 C.F.R. §§ 35.150, 35.151, 36.303, 36.304, 36.305.) When a healthcare provider cannot fulfill these requirements, there may be exceptions or safe harbors but alternative methods to accessibility generally must also be considered. (See, e.g., 28 C.F.R. §§ 35.150, 36.304, 36.305.)

### **C. Accessible Medical Equipment and Exam Rooms**

Healthcare providers must offer all patients with disabilities equal access to medical care services, which includes procuring and providing accessible examination rooms and medical equipment. ([Access to Medical Care for Individuals with Mobility Disabilities](#) (June 26, 2020) U.S. Dep’t of Justice [as of Aug. 15, 2023].) Providers must also train staff to engage in lifting or other necessary movement and transport of patients without injuring themselves or the patient. (*Ibid.*)

### **D. Service Animals**

Healthcare providers must allow a service animal to accompany a person with a disability in all areas where members of the public, participants in services, programs, or activities, clients, customers, patrons, or invitees, as relevant, are allowed to go. (28 C.F.R. §§ 35.136, 36.302(c); Civ. Code, § 54.2.) Service animals may

be excluded from “limited-access areas that employ general infection-control measures, such as operating rooms and burn units.” (28 C.F.R. pt. 35, 602, 624, appen. A.) A service animal in a healthcare setting must be under the control of its handler. (28 C.F.R. §§ 35.136, 36.302(c).) For verification purposes, healthcare providers may ask only two specific questions: 1) whether the animal is required because of a disability, and 2) what work or task the animal has been trained to perform. (28 C.F.R. §§ 35.136(f), 36.302(c)(6).) Providers cannot request any documentation for the service animal or ask about the nature or extent of the person’s disability. (28 C.F.R. §§ 35.136(f), 36.302(c)(6).)

The service animal may be a dog or a miniature horse, but other animals are generally not permitted. (28 C.F.R. §§ 35.104, 35.136, 36.104, 36.302.) And the animal must have been individually trained by the person or someone else to do work or perform tasks directly related to the person’s disability. (28 C.F.R. §§ 35.104, 36.104.)

Some examples of work or tasks performed by a service animal include: alerting individuals who are Deaf or hard of hearing to the presence of people or sounds, pulling a wheelchair, helping persons with mental health disabilities and neurological disabilities by preventing or interrupting impulsive or destructive behaviors, assisting a person during a seizure, or assisting individuals who are blind or have low vision with navigation. (28 C.F.R. §§ 35.104, 35.136, 36.104, 36.302.)

An animal that is used for comfort, therapy, or emotional support does not meet the definition of a service animal. However, a healthcare provider may allow such an animal as a reasonable accommodation where necessary to make services accessible. (28 C.F.R. §§ 35.104, 35.130, 36.104.)

#### **E. Effective Communication and Informed Consent to Care**

Healthcare providers have an obligation to ensure that their communication with people with disabilities is as effective as communication with others. (28 C.F.R. §§ 35.160, 36.303; see generally Centers for Medicare & Medicaid Services, [Improving Communication Access for Individuals Who are Blind or Have Low Vision](#) (Aug. 2022) Centers for Medicare and Medicaid Services [as of Aug. 31, 2023]; and [Improving Communication Access for Individuals Who are Deaf or Hard of Hearing](#) (Aug. 2022) Centers for Medicare and Medicaid Services [as of Aug. 31, 2023].)

For example, effective communication with visitors who are Deaf or hard of hearing may require auxiliary aids and services such as qualified sign-language interpreters, TTY/TDD telephone services, visual alarms, assistance listening devices, note takers, written materials, television decoders, closed caption decoders, and real-time captioning. (28 C.F.R. § 36.303(b).) Auxiliary support for people who are blind or have low vision may include readers, taped texts, Braille materials, specialized or modified equipment, or other effective means of conveying the information. (*Ibid.*) The type of auxiliary aid or service necessary to ensure effective communication will vary in accordance with the method of communication and language used by the individual; the nature, length, and complexity of the communication involved; and the context in which the communication is taking place. (28 C.F.R. §§ 35.160(b), 36.303(c); 45 C.F.R. § 92.101; Gov. Code, § 11135; Welf. & Inst. Code, §§ 14029.91, 14029.92.)

To be effective, auxiliary aids and services must be provided in accessible formats, in a timely manner, and in such a way as to protect the privacy and independence of the individual with a disability. (*Ibid.*) The healthcare provider should give priority to the method of communication the person with a disability requests. (*Ibid.*) In fact, even if a person does not have a disability, a healthcare provider must honor reasonable requests to receive a copy of their healthcare records in an alternative format. (45 C.F.R. § 164.522(b)(1).)

There are some restrictions placed on healthcare providers to protect the rights of people with disabilities and quality of care when a healthcare provider is making use of communication alternatives. Providers may

not charge for auxiliary supports such as a sign language interpreter. (28 C.F.R. §§ 35.130(f), 36.301(c).) A healthcare provider cannot require a person with a disability to bring someone with them to interpret or facilitate communication, and in most instances should not ask a family member or other companion to interpret for a patient, especially when that companion is a minor. (28 C.F.R. §§ 35.160(c), 36.303(c).) This restriction is necessary because the situation might be private, and the family member might not have the specialized vocabulary to convey medical information accurately or may lack impartiality. ([ADA Requirements: Effective Communication](#) (Feb. 28, 2020) U.S. Dep’t of Justice [as of Aug. 15, 2023].)

Effective communication is also necessary for patients to be able to give informed consent for any health-care treatment they receive. (See, e.g., Cal. Code Regs., tit. 9, § 784.29, subd. (h), tit. 22, §§ 70707, subd. (b)(5), 72528, subd. (h).) It is a medical provider’s duty to provide information that a reasonable person would consider important to a decision to accept or refuse a treatment or procedure. (See, e.g., Cal. Code Regs., tit. 9, § 784.29, subd. (a), tit. 22, §§ 72528, subd. (a), 73524, subd. (a); see also *Cobbs v. Grant* (1972) 8 Cal.3d 229.) The scope of the medical provider’s duty to provide this information is measured by the needs of the patient to have whatever information is material to the decision. (*Cobbs v. Grant*, 8 Cal.3d at p. 245.) Healthcare providers must arrange for an interpreter if a patient or their representative is unable to communicate with the provider because of language or communication barriers. (See, e.g., Cal. Code Regs., tit. 9, § 784.29, subd. (h), tit. 22, § 72528, subd. (h).) If a person is receiving treatment as part of a research study, there are additional laws to ensure that the person understands the added risks involved in participating in research, and that they know they do not have to participate in research in order to access healthcare. (Health & Saf. Code, § 24170 et seq.; 21 C.F.R. § 50.1 et seq.)

## **F. Patient Privacy**

Longstanding California state and federal laws and regulations protect the privacy rights of individuals with disabilities with respect to their medical records. These laws include the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA, 42 U.S.C. § 1320d et seq.), Standards for Privacy of Individually Identifiable Health Information (45 C.F.R. pts. 160 and 164), and California’s Confidentiality of Medical Information Act (Civ. Code, § 56 et seq.), Patient Access to Health Records Act (Health & Saf. Code, § 123110 et seq.), Insurance Information and Privacy Protection Act (Ins. Code, § 791 et seq.), and Information Practices Act of 1977 (Civ. Code, § 1798 et seq.).

These laws contain protections allowing individuals to set some limits on who sees personal information about their health, when they can see it, and what information they can see. (45 C.F.R. §§ 164.502, 164.508, 164.510; Civ. Code, §§ 56.10, 56.11.) Individuals can also review and ask for corrections to their medical records. (45 C.F.R. §§ 164.524, 164.526; Civ. Code, §§ 1798.32-1798.35; Health & Saf. Code, §§ 123110, 123111.) For more detailed information about state and federal laws protecting individuals’ privacy in healthcare settings, please visit the [patient privacy rights resource page](#) on the California Department of Justice website.

## **G. Reproductive Rights**

California has laws that protect reproductive freedom, including the right to safe and legal abortion. (See, e.g., Cal. Const., art. I, §§ 1, 1.1; Health & Saf. Code, §§ 123453, 123462.) These laws apply to all Californians, including people with disabilities, who have rights to make their own reproductive choices. California supports access to low-cost reproductive healthcare services, and protects an individual’s right to keep confidential information about what services they have accessed or plan to access. (Health & Saf. Code, §§ 123452, 123453, 123462, 123466.) For more detailed information about reproductive rights in California, please visit the [reproductive rights resource page](#) on the California Department of Justice website.

California law also protects an individual's right to refuse any medical procedure that will interfere with their ability to have children now or in the future. A medical provider can only perform this kind of procedure if a person voluntarily gives their consent in writing. (See, e.g., Cal. Code Regs., tit. 22, §§ 51305.1, subd. (a)(5), (a)(6), 51305.3, 70707.3, 70707.4, 70707.7.) Before any treatment begins, it is a healthcare provider's responsibility to make sure individuals have provided informed consent after they have received clear, understandable information that was communicated effectively in a form appropriate for their disability and language needs. (See, e.g., Cal. Code Regs., tit. 9, § 784.29, subd. (h), tit 22, §§ 51305.3, subd. (a)(2), 70707.3, subd. (a)(2), (a)(3), 72527, 72528.) Where an individual has a court-appointed conservator, California law has strong protections limiting when the conservator can consent to a sterilization procedure on their behalf, and guarantees the right to a hearing and an attorney. (Prob. Code, § 1950 et seq.; *In re Conservatorship of Angela D.* (1999) 70 Cal.App.4th 1410, 1418-1421.)

## **H. Health Insurance Plans**

Health insurance plans, such as managed care plans, providing coverage for individual or group healthcare services cannot limit the extent or kind of coverage available to a person, refuse to insure them, or charge a different rate for the same coverage solely because of a person's disability. (See, e.g., Gov. Code, § 11135; Health & Saf. Code, § 1367.8; Ins. Code, § 10965.5(a)(3); 42 U.S.C. § 18116; 29 U.S.C. § 1182.) Applicable laws vary depending on source of insurance. A plan can only refuse to insure, limit coverage, or charge different rates in limited circumstances. (See, e.g., Health & Saf. Code, § 1367.8; Ins. Code, § 10144; 42 U.S.C. § 300gg.) With some exceptions, a group health plan cannot be designed to discriminate against individuals with disabilities or groups with members who have disabilities. (See, e.g., Health & Saf. Code, § 1373, subd. (f); Ins. Code, § 10753.05; 45 C.F.R. § 146.121.)

Plans must cover the diagnosis and medically necessary treatment of mental health and substance use disorders, and those benefits must be equal to those offered for physical health conditions or illnesses. (See, e.g., Health & Saf. Code, § 1374.72.) Life and disability income insurers cannot require an HIV antibody test if the results would be used to determine eligibility for hospital, medical, or surgical insurance coverage. (Ins. Code, § 799.09.)

An insurer may not delay more than 60 days in the payment or provision of hospital, medical, or surgical benefits for AIDS or AIDS-related complex for the purpose of investigating whether the condition arose prior to commencement of coverage. However, this 60-day period does not include any time during which the insurer awaits medical information from a healthcare provider. (Ins. Code, § 790.03, subd. (h)(16).)

## **III. COMPLAINTS**

An individual who believes they have been discriminated against in healthcare services under any of the laws described in this publication may have options to file complaints with the healthcare provider or plan, a government agency, or in court. Please be aware that these complaints may have strict timeframes for filing and other requirements. It is best for an individual wishing to file a lawsuit to consult with a lawyer as soon as possible.

### **A. Complaints to the Healthcare Provider or Plan**

An individual can make a complaint to the healthcare provider or insurance plan. For example, members of a Medi-Cal managed care plan can file a complaint directly with the plan itself if they believe the plan or its contractors have engaged in prohibited conduct.

If a person cannot resolve the issue with the health care provider or plan, they can call or file a complaint with the entity's ADA or Section 504 coordinator. Public health care providers and large private facilities

and plans, should have an ADA or Section 504 coordinator responsible for ensuring compliance with the law and dealing with patients' complaints regarding discrimination on the basis of disability. A plan's website, plan materials, or a plan's member services department provides information on who to contact and how to file a complaint.

Individuals can file a complaint with state and/or federal agencies that are responsible for enforcing the law or they can file a private lawsuit.

### **B. For Violations of State Law**

If an individual believes they have experienced discrimination under the Unruh Act, the DPA, or Government Code section 11135, they may file a complaint with the California Civil Rights Department (CRD). (Gov. Code, § 12930.) CRD is authorized to take individual complaints and investigate and enforce these laws to vindicate individual victims' rights. (Gov. Code, § 12930(f).) Information about how to file a complaint can be found at the [CRD website](#). The Attorney General, a city attorney, a district attorney, or the Department of Rehabilitation acting through the Attorney General also has authority to enforce these laws. (Civ. Code, §§ 52, 55.1.) The individual may also file a private lawsuit. (Civ. Code, §§ 52, 55; Gov. Code, § 11139.)

In addition, state agencies such as the California Department of Managed Healthcare, the Department of Health Care Services, Covered California, the California Department of Insurance, and the California Medical Board all regulate different types of healthcare plans and providers. If a person has a complaint about the services or care they received, or about their eligibility or enrollment in a plan, they can file a complaint with the relevant department.

### **C. For Violations of Federal Law**

If a person believes they have experienced discrimination under federal law, or by an entity receiving federal financial assistance, in addition to filing with CRD as stated above, they may file a complaint with a federal agency. For information about filing a complaint with the United States Department of Health and Human Services (HHS), which provides funding for programs like Medicare, Medi-Cal, and Covered California, visit the [HHS Complaint Portal Assistant](#). For information about filing a complaint with the United States Department of Justice (USDOJ), visit the [US DOJ website](#). The individual may also file a private lawsuit.

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For questions or comments about this publication, please contact the California Department of Justice's Disability Rights Bureau within the Civil Rights Enforcement Section at [DisabilityRights@doj.ca.gov](mailto:DisabilityRights@doj.ca.gov).

For individual complaints and inquiries, please contact the [California Civil Rights Department \(CRD\)](#), formerly known as the Department of Fair Employment and Housing. Please note that the California Department of Justice, unlike CRD, only pursues systemic violations by local governmental entities or companies directly impacting the general public or large groups of individuals. It does not handle individual complaints or inquiries. It also does not represent individuals, provide legal advice, or provide updates about its investigations and/or litigation, even to individuals who provided information about those matters. It also does not handle cases involving isolated violations of law, matters against state-level public entities, or out-of-state conduct.



To report a complaint to the California Department of Justice, please contact the Public Inquiry Unit (PIU). PIU staff may not respond to every inquiry, cannot answer legal questions or give legal advice, and cannot act as a personal lawyer for individuals who report a complaint. Complaints may be referred to a more appropriate agency.

For more information about reporting a complaint against a business or company to PIU, visit the [Consumer Complaint webpage](#).

For more information about reporting a complaint against another entity to PIU, visit the [General Comment, Question or Complaint webpage](#).