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## **Guidance Relating to Non-Discrimination in Medical Treatment for Novel Coronavirus 2019 (COVID-19)**

January 14, 2021

The Department of Health Care Services (DHCS) issues the following guidance to remind Medi-Cal providers that, under state and federal law, they are prohibited from illegally discriminating against Medi-Cal members on the basis of sex, race, color, religion, ancestry, national origin, ethnic group identification, age, mental disability, physical disability, medical condition, genetic information, marital status, gender, gender identity, or sexual orientation. (45 CFR Part 92; Gov. Code § 11135; Welf. & Inst. Code §§ 14029.90-14029.91.)

In the context of the Public Health Emergency (PHE), Medi-Cal providers are prohibited from illegally discriminating against a Medi-Cal member, including on the basis of age or disability, in determining how to allocate scarce resources for the treatment of COVID-19. In determining the allocation of treatment resources for COVID-19, Medi-Cal providers must comply with state and federal non-discrimination law and DHCS's non-discrimination policy. In particular, Medi-Cal providers must comply with disability discrimination law, as described further below in this guidance, and with the Age Discrimination Act of 1975, (42 U.S.C. 6101 et seq.; 45 CFR Parts 90 and 91).

DHCS's Office of Civil Rights (OCR) is available to address any questions regarding this guidance:

Office of Civil Rights  
Department of Health Care Services  
PO Box 997413, MS 0009  
Sacramento, CA 95899-7413  
(916) 440-7370, 711 (California State Relay)

Email: [CivilRights@dhcs.ca.gov](mailto:CivilRights@dhcs.ca.gov)

DHCS's OCR also has an established complaint process for Medi-Cal consumers to voice complaints of alleged discrimination against any individual or organization that they believe has engaged in a discriminatory practice. For more information regarding DHCS's non-discrimination policy and discrimination grievance procedures, please refer to the following links:

[www.dhcs.ca.gov/Pages/Language\\_Access.aspx](http://www.dhcs.ca.gov/Pages/Language_Access.aspx)

[www.dhcs.ca.gov/discrimination-grievance-procedures](http://www.dhcs.ca.gov/discrimination-grievance-procedures)

This DHCS guidance for Medi-Cal providers incorporates and builds upon the March 30, 2020, document titled “Guidance Relating to Non-Discrimination in Medical Treatment for Novel Coronavirus 2019 (COVID-19)”, issued jointly by DHCS, the California Department of Public Health (CDPH), and the Department of Managed Health Care (DMHC) (hereafter, March 30 Joint Non-Discrimination Guidance),

The March 30 Joint Non-Discrimination Guidance is set forth below.

### **March 30, 2020 Joint Non-Discrimination Guidance**

As the COVID-19 pandemic evolves, DHCS, CDPH, and DMHC continue to closely monitor and assess appropriate next steps as well as release guidance to ensure the safety of Medi-Cal beneficiaries, health plan enrollees, medical providers, and California communities in general.

The State of California understands that people with disabilities are concerned that medical providers might consider an individual’s disability status when determining which patients to treat if hospitals or other health care facilities experience a surge of patients needing life-saving care. This joint bulletin reminds health care providers and payers that rationing care based on a person’s disability status is impermissible and unlawful under both federal and state law.

### **Recent Federal Guidance**

On March 28, 2020, the federal Office for Civil Rights at the U.S. Department of Health and Human Services issued [guidance](#) reminding covered entities of their federal legal obligations and responsibilities under Section 1557 of the Affordable Care Act and Section 504 of the Rehabilitation Act which “prohibit discrimination on the basis of race, color, national origin, disability, age, sex, and exercise of conscience and religion in HHS-funded programs.” That guidance further emphasized that “persons with disabilities should not be denied medical care on the basis of stereotypes, assessments of quality of life, or judgments about a person’s relative ‘worth’ based on the presence or absence of disabilities. Decisions by covered entities concerning whether an individual is a candidate for treatment should be based on an individualized assessment of the patient based on the best available objective medical evidence.”

### **California Requires Equal Access to Health Care Services**

In addition to these protections under federal law, California law provides that every person is entitled to equal access to services provided in all business establishments and public agencies—including medical clinics and hospitals—without regard for the person’s sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, or immigration status.<sup>1</sup> Furthermore, no person, on the basis of mental, developmental, intellectual, or physical disability or perceived disability, may be unlawfully denied full and equal access to state-funded programs.<sup>2</sup> Additionally, California law specifically provides that individuals with developmental disabilities have the same legal rights and responsibilities guaranteed all other individuals by the U.S. Constitution and laws and the Constitution and laws of the State of California.”<sup>3</sup>

### **Treatment of Medi-Cal Beneficiaries**

As it relates to treatment of covered Medi-Cal beneficiaries who are diagnosed with

COVID-19, especially those who will require hospitalization, DHCS recognizes and appreciates that every Medi-Cal beneficiary's medical needs are unique and that Medi-Cal providers, beneficiaries and their authorized representatives, and their care team make individualized, clinically appropriate decisions based on medical necessity. DHCS reminds providers that no person, on the basis of mental, developmental, intellectual, or physical disability or perceived disability, may be unlawfully denied full and equal access to the benefits of Medi-Cal services, including the receipt of COVID-19 treatment, in the event of limited hospital or other health care facility resources and/or capacity.

**American Medical Association Code of Medical Ethics**

Additionally, the [AMA Code of Medical Ethics](#) offers foundational guidance for health care professionals and institutions responding to the COVID-19 pandemic. The guidance provides direction for appropriate allocation of limited resources.

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<sup>1</sup> California Civil Code section 51 et seq.

<sup>2</sup> California Government Code section 11135.

<sup>3</sup> Welfare and Institutions Code section 4502, subdivision (a) and (b).