

DATE: January 30, 2024

Behavioral Health Information Notice No: 24-007

TO: California Alliance of Child and Family Services
California Association for Alcohol/Drug Educators
California Association of Alcohol & Drug Program Executives, Inc.
California Association of DUI Treatment Programs
California Association of Social Rehabilitation Agencies
California Consortium of Addiction Programs and Professionals
California Council of Community Behavioral Health Agencies
California Hospital Association
California Opioid Maintenance Providers
California State Association of Counties
Coalition of Alcohol and Drug Associations
County Behavioral Health Directors
County Behavioral Health Directors Association of California
County Drug & Alcohol Administrators

SUBJECT: Effective Communication, Including Alternative Formats, for Individuals with Disabilities

PURPOSE: Reiterates federal and state requirements regarding communications with individuals with disabilities.

REFERENCE: Section 1557 of the Patient Protection and Affordable Care Act (ACA) (42 U.S.C. 18116); Americans with Disabilities Act (ADA) (42 U.S.C. 12101 *et seq.*); 42 C.F.R. 438.10; 45 C.F.R. Part 92; Welf & Inst. Code 14727.

BACKGROUND:

Section 1557 (42 U.S.C. 18116¹ and 45 C.F.R. Part 92²) is the nondiscrimination provision of the ACA, which prohibits discrimination on the basis of race, color, national origin, sex, age, or disability (“protected classes”) in health programs or activities receiving federal financial assistance. The ADA requires that services, programs, and activities provided by public entities must be accessible to individuals with disabilities, including visual impairment.³ Title II of the ADA requires covered programs to effectively communicate with individuals with disabilities to ensure they benefit equally from

¹ [42 U.S.C. 18116](#)

² [45 CFR Part 92](#)

³ See [42 U.S.C. 12101](#) *et seq.*, [12131](#) *et seq.* United States Code is searchable at: <https://uscode.house.gov/>



government programs.⁴ 45 CFR 92.102 and 28 CFR 35.160 require covered programs to ensure that communication with individuals with disabilities is as effective as communication with other Medicaid members.

Accordingly, DHCS, its Medi-Cal Behavioral Health delivery systems (Mental Health Plans, Drug Medi-Cal-Organized Delivery System counties, and Drug Medi-Cal counties), and their subcontractors must provide a member who is blind or visually impaired, and other individuals with disabilities, with communication materials in the individuals' requested alternative format(s). DHCS and its contractors must accommodate the communication needs of all qualified individuals and be prepared to facilitate alternative format requests for Braille, audio format, large print and accessible electronic format, such as a data CD, as well as requests for other auxiliary aids and services that may be appropriate.⁵

POLICY:

Effective Communication for Individuals with Disabilities

Medi-Cal behavioral health delivery systems must comply with all of the requirements set forth under federal and state law and contracts between counties and the state. This includes making available free auxiliary aids and services for people with disabilities.

Medi-Cal behavioral health delivery systems must comply with all applicable requirements of federal and state disability laws and rules. Medi-Cal behavioral health delivery systems are required to take appropriate steps to ensure effective communication with individuals with disabilities.⁶ Medi-Cal behavioral health delivery systems must provide appropriate auxiliary aids and services to persons with impaired sensory, manual, or speaking skills.⁷ This includes the provision of qualified interpreters, free of charge and in a timely manner, and information in alternative formats, when such aids and services are necessary to ensure that individuals with disabilities have an equal opportunity to participate in, or enjoy the benefits of, the behavioral health delivery system's programs, and activities.⁸ Without limitation, Medi-Cal behavioral health delivery systems must provide interpretive services and make member information available in the following alternative formats: Braille, audio format, large print and accessible electronic format (such as a data CD), as well as other auxiliary aids and

⁴ [45 CFR 92.102](https://www.ada.gov/regs2010/titleII_2010/titleII_2010_regulations.htm). ADA Title II Regulations, including 28 CFR 35.160, are available at: https://www.ada.gov/regs2010/titleII_2010/titleII_2010_regulations.htm

⁵ [45 CFR 92.102\(b\)](#)

⁶ [45 CFR 92.102\(a\)](#); [28 CFR 35.160-35.164](#)

⁷ [45 CFR 92.102\(b\)](#)

⁸ [28 CFR 35.160](#); [45 CFR 92.102](#)

services that may be appropriate.⁹ In determining what types of auxiliary aids and services are necessary, Medi-Cal behavioral health delivery systems must give “primary consideration” to the individual’s request of a particular auxiliary aid or service.¹⁰ Medi-Cal behavioral health delivery systems must also provide auxiliary aids and services to a family member, friend, or associate of an individual or someone with whom it is appropriate for the Medi-Cal behavioral health delivery system to communicate (e.g., a disabled spouse of a member).¹¹

Auxiliary aids and services include:

- Qualified interpreters on-site or through Video Remote Interpreting (VRI) services; note takers; real-time computer-aided transcription services; written materials; exchange of written notes; telephone handset amplifiers; assistive listening devices; assistive listening systems; telephones compatible with hearing aids; closed caption decoders; open and closed captioning, including real-time captioning; voice, text, and video-based telecommunication products and systems, text telephones (TTYs), videophones, captioned telephones, or equally effective telecommunications devices; videotext displays; accessible information and communication technology; or other effective methods of making aurally delivered information available to individuals who are deaf or hard of hearing.
- Readers; taped texts; audio recordings; Braille materials and displays; screen reader software; magnification software; optical readers; secondary auditory programs; large print materials; accessible information and communication technology; or other effective methods of making visually delivered materials available to individuals who are blind or have low vision.¹²

When providing interpretive services, Medi-Cal behavioral health delivery systems must use qualified interpreters to interpret for an individual with a disability, whether through a remote interpreting service or an on-site appearance. A qualified interpreter for an individual with a disability is an interpreter who: 1) adheres to generally accepted interpreter ethics principles, including client confidentiality; and 2) is able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary, terminology, and phraseology.¹³ For an individual with a disability, qualified interpreters can include, for example, sign language interpreters, oral transliterators (individuals who represent or spell in the characters of

⁹ [45 CFR 92.102\(b\)](#)

¹⁰ [28 CFR 35.160](#)

¹¹ [28 CFR 35.160](#)

¹² [45 CFR 92.102\(b\)\(1\)](#)

¹³ [45 CFR 92.102\(b\)\(2\)](#)

another alphabet), and cued language transliterators (individuals who represent or spell by using a small number of handshapes).¹⁴

Medi-Cal behavioral health delivery systems that provide a qualified interpreter for an individual with a disability through VRI services must provide real-time, full-motion video and audio over a dedicated high-speed, wide-bandwidth video connection or wireless connection that delivers high-quality video images that do not produce lags, choppy, blurry, or grainy images, or irregular pauses in communication; a sharply delineated image that is large enough to display the interpreter's face, arms, hands, and fingers, and the participating individual's face, arms, hands, and fingers, regardless of body position; a clear, audible transmission of voices; and adequate training to users of the technology and other involved individuals so that they may quickly and efficiently set up and operate the VRI.¹⁵ However, VRI will not be effective in all circumstances and sometimes an on-site interpreter may be required.¹⁶

Medi-Cal behavioral health delivery systems must not require an individual with a disability to provide their own interpreter. Moreover, Medi-Cal behavioral health delivery systems are prohibited from relying on an adult accompanying an individual with a disability to interpret or facilitate communication except when: 1) there is an emergency involving an imminent threat to the safety or welfare of the individual or the public and a qualified interpreter is not available; or, 2) the individual with a disability specifically requests that an accompanying adult interpret or facilitate communication, the accompanying adult agrees to provide that assistance, and reliance on that accompanying adult for that assistance is appropriate under the circumstances.¹⁷ In addition, Medi-Cal behavioral health delivery systems are prohibited from relying on a minor child accompanying an individual with a disability to interpret or facilitate communication except when there is an emergency involving an imminent threat to the safety or welfare of the individual or the public and a qualified interpreter is not available.¹⁸

In addition to requiring effective communication with individuals with disabilities, Health and Human Services' Office of Civil Rights regulations pursuant to Section 1557 incorporate other long-standing requirements of federal law prohibiting discrimination based on disability.¹⁹ Medi-Cal behavioral health delivery systems are reminded that

¹⁴ [45 CFR 92.102\(b\)\(3\)](#)

¹⁵ [28 CFR 35.160\(d\)](#); [28 CFR 36.303\(f\)](#); [45 CFR 92.102](#)

¹⁶ <https://www.ada.gov/resources/effective-communication/>

¹⁷ [28 CFR 35.160\(c\)](#) [28 CFR 36.303\(c\)](#)

¹⁸ [28 CFR 35.160\(c\)](#)

¹⁹ [45 CFR. 92.103-92.105](#)

they must make reasonable modifications to policies, practices, or procedures when such modifications are necessary to avoid discrimination based on disability.²⁰ This could include, for example, assisting a member who cannot write to fill out required forms, even when such assistance is not generally provided to members without a disability.

Processes for Collecting and Sharing Alternative Format Selection Data

DHCS utilizes its Alternate Format database²¹ to store members' alternative format selections. The Alternative Format database receives member alternative format preferences from the member or their family. DHCS updates the system weekly with members' alternative format selections.

The standard alternative format options are large print, audio CD, data CD, and Braille. Below are descriptions of each format:

- Large print.
- Audio CD: Provides the ability to hear notices and information. Files in the CD are not encrypted.
- Data CD: This allows for the use of computer software to read notices and other written information. Files in the CD are not encrypted.
- Braille: Uses raised dots that can be read with fingers.

There are also non-standard alternative formats available by request, including but not limited to:

- Encrypted Audio CD: Provides the ability to hear Medi-Cal notices and other written information. Files in the CD are protected with a password.
- Encrypted Data CD: This allows for the use of computer software to read Medi-Cal notices and other written information. Files in the CD are protected with a password.

An individual may request a non-standard alternative format by calling the Alternative Format Helpline at 1-833-284-0040 or by submitting a request to DHCS's Office of Civil Rights. Medi-Cal behavioral health delivery systems must evaluate the request according to the applicable law.

Medi-Cal behavioral health delivery systems may use the Alternate Format database to identify individuals that have indicated their alternate format preference for receiving

²⁰ [45 CFR 92.105](#)

²¹ <https://afs.dhcs.ca.gov/>

information. Medi-Cal behavioral health delivery systems shall provide all communications in the selected standard and non-standard alternative formats. Medi-Cal behavioral health delivery systems shall provide all communications in regular print for the following selections, in addition to the support or other format requested:

- No alternative format needed.
- I need a format not listed here. Once an individual's request for a non-standard alternative format has been processed, communications shall be provided in the requested alternative format as well as in standard format. If an individual requests that communications be provided in a threshold language, all correspondence shall be translated into the requested language.
- Support from Medi-Cal behavioral health delivery systems shall be provided when requested.

Due Process Requirements

Constitutional due process requires that a member's benefits must not be reduced or terminated without timely and adequate notice explaining the reasons for the proposed action and the opportunity for a hearing. (*Goldberg v. Kelly* (1970) 397 U.S. 254, 267–268). In the case of a member with a visual impairment or other disabilities requiring the provision of written materials in alternative formats, DHCS has determined that adequate notice means notice in the member's selected alternative format or notice that is otherwise in compliance with the ADA, Section 504 of the Rehabilitation Act of 1973, and Government Code Section 11135. Medi-Cal behavioral health delivery systems may not deny, reduce, suspend, or terminate services or treatments without providing adequate notice within applicable legal timeframes.²²

State Hearing Request Process

Members may ask for a State hearing to have an Administrative Law Judge review an adverse decision. Members may use any of the following methods to request a hearing, and must complete the request within 90 calendar days from the notice of action being mailed:

- Send a written request for a State hearing to the following address:
California Department of Social Services
State Hearings Division
P.O. Box 944243, Mail Station 9-17-37
Sacramento, CA 94244-2430; or
- Call the California Department of Social Services, State Hearings Division, at 1-800-743-8525 or for hearing or speech impaired use TDD 1-800-952-8349; or

²² [42 CFR 431.211](#)

January 30, 2024

- Request a State hearing online by going to <https://www.cdss.ca.gov/hearing-requests> and following the instructions to request a hearing, either with or without setting up an account. If the member does not provide a copy of the notice of action with their request for a State hearing, they must provide the following information with their request:
 - Member's name
 - Date of Birth
 - Case Number
 - Address
 - Telephone number where the member can be reached

Sincerely,

Original signed by

Ivan Bhardwaj, Chief
Medi-Cal Behavioral Health Policy Division