

DFEH Healthcare Information on COVID-19



FAQ

A pandemic of respiratory illness caused by a new coronavirus (COVID-19) currently exists in California and beyond. Governor Newsom declared a state of emergency in California on March 4, 2020. During the course of the pandemic, California experienced an unprecedented and exponential surge in COVID-19 cases that strained healthcare staffing and other medical resources.

On October 23, 2020, the California Department of Public Health (CDPH) released an [All Facilities Letter \(AFL 20-38.5\)](#) with guidance about when and under what circumstances healthcare facilities should make exceptions to “no visitor” policies. On December 28, 2020, CDPH issued a second [All Facilities Letter \(AFL 20-91\)](#) requiring certain healthcare facilities to develop and make public crisis care continuum policies, including information about how these facilities will prioritize and allocate medical care and treatment in the event healthcare rationing must take place.

Healthcare settings should adhere to the latest guidance from CDPH and other public health authorities. At the same time, healthcare settings must also adhere to applicable state and federal civil rights laws prohibiting discrimination and harassment. DFEH is providing this guidance to remind healthcare settings of their obligation to uphold civil rights laws while developing and implementing visitation and crisis care policies. This guidance is for informational purposes only and does not create any rights or obligations separate from those imposed by existing law.

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GENERAL INFORMATION

■ Are civil rights laws in effect during a pandemic?

Yes. State and federal civil rights laws are in effect during a pandemic and prohibit healthcare providers from discriminating against or harassing individuals based on protected characteristics.

In California, the Unruh Civil Rights Act (Civil Code section 51) and Government Code section 11135 establish anti-discrimination protections in hospitals and other healthcare settings. The Unruh Civil Rights Act applies to businesses of any kind and incorporates the protections of the federal Americans with Disabilities Act (ADA), and Government Code section 11135 requires state-funded programs or activities to meet, at least, the standards of the ADA. These state civil rights laws make it unlawful for all businesses, programs or activities administered by the state, or recipients of state funding to discriminate against, harass, or provide unequal services to someone because of a protected characteristic.

California issued [guidance](#) on March 30, 2020 to remind healthcare providers 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.

On March 28, 2020, the federal Office for Civil Rights at the U.S. Department of Health and Human Services (HHS) 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. Among other points, HHS emphasized that healthcare providers must “provid[e] meaningful access to programs and information to individuals with limited English proficiency through the use of qualified interpreters and through other means.”

■ What is the role of DFEH in enforcing civil rights laws in healthcare settings?

Among other civil rights laws enforced by DFEH, the department is responsible for enforcing the Unruh Civil Rights Act (Civil Code section 51) and Government Code section 11135, which make it unlawful for all businesses, programs or activities administered by the state, or recipients of state funding to discriminate against, harass, or provide unequal services to someone because of a protected characteristic. This includes hospitals and other healthcare settings. Individuals who believe they have been the victim of discrimination may file a complaint for investigation by DFEH. Similarly, state agencies must file a complaint for investigation by DFEH when they have reasonable cause to believe that one of their contractors, grantees, or a local agency has discriminated against someone or denied full and equal access to the benefits of any program or activity because of a protected characteristic. Learn more about filing a complaint with DFEH at <https://www.dfeh.ca.gov/ComplaintProcess/>.

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REASONABLE ACCOMMODATIONS FOR PEOPLE WITH DISABILITIES

■ **During the COVID-19 pandemic, are healthcare settings obligated to provide reasonable accommodations to individuals with a disability?**

Yes. It is unlawful for a healthcare provider to fail or refuse to provide a reasonable accommodation as needed to afford an individual with a disability a full and equal opportunity to benefit from the provider's services. This includes being able to communicate with healthcare providers and access care. Some accommodations may not be reasonable if they fundamentally alter the nature of a program, pose an undue burden, or pose a direct threat to the health and safety of others. When an individual with a disability requests an accommodation, the healthcare provider must engage in the interactive process with the individual or their representative to assess whether a reasonable accommodation is available.

■ **Are healthcare settings obligated to allow the presence of a support person who can ensure that a patient with a disability can communicate their treatment needs and preferences, including treatment related to COVID-19?**

Patients with disabilities may require specific reasonable accommodations in communicating their needs and preferences regarding treatment, including access to interpreters and specialized assistive technology. A patient with a disability may require the presence of a support person knowledgeable about the management of their care to physically or emotionally assist them during their hospitalization or help them communicate their needs, such as a family member, personal care assistant, or similar disability service provider. When a patient with a disability requires the presences of such a support person so that they have full and equal access to the benefits of the provider's services, this accommodation must be allowed with proper precautions taken to contain the spread of infection, absent the healthcare setting showing – after engaging in the interactive process – an undue burden, a direct threat to the health and safety of others, or a fundamental alteration of the program.

■ **Can healthcare settings place restrictions on visitors or support persons?**

Yes. During the COVID-19 pandemic – when preventing the spread of infection to staff and patients is vital and when many healthcare settings are stretched thin – healthcare settings may place restrictions on visitors, including support persons for patients with disabilities. Among other reasonable restrictions could be limiting the number of visitors at any one time; limiting visitors to those who are able to meet the patient's need for support; screening visitors for possible illness and barring them if they display symptoms; and requiring visitors to wear personal protective equipment at all times they are on the healthcare setting's premises. However, as explained elsewhere in this guidance, it is unlawful for a healthcare provider to fail or refuse to provide a reasonable accommodation as needed to afford an individual with a disability a full and equal opportunity to benefit from the provider's services.

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■ **If a healthcare setting restricts visitation by people who are not patients due to COVID-19 safety precautions, must the healthcare setting allow an exception to an individual with a disability?**

Generally, healthcare settings may restrict visitation due to the COVID-19 pandemic. However, while public health and safety concerns are paramount, when a patient with a disability requires the presence of a support person that would violate the healthcare provider's visitation policy, the healthcare provider must accommodate the patient's need (while taking proper precautions including to contain the risk of spreading infection), unless the healthcare setting shows an undue burden, a direct threat to the health and safety of others, or a fundamental alteration of the program. Hospitals must have a visitation policy that is readily obtainable, and frontline staff must be trained in current visitation policies.

■ **Can healthcare settings implement a “no visitation” policy that provides exceptions for some disabilities but not others?**

No. A healthcare setting cannot create blanket exceptions for individuals with certain disabilities such as intellectual disabilities or cognitive impairments, while not allowing exceptions for other types of disabilities such as psychiatric or sensory disabilities.

■ **Who can be designated as a support person and what functions can support persons provide?**

A “support person” includes anyone who can assist a patient with a disability to meaningfully access and benefit from the services and care provided at the health facility. They may assist with communication, mobility, accessibility, emotional support, personal care, and other activities of daily living. They may be a paid personal care attendant, family member, partner, or other less formal caregiver.

For example, a patient with disability-related communication barriers may require the in-person support of a trusted person to facilitate effective communication with healthcare staff. Likewise, a patient with a disability that affects their ability to understand or follow medical guidance may need a trusted support person to assist them.

Additionally, many individuals with disabilities rely on personal care assistants to help them with their activities of daily living, including transferring from bed or a wheelchair, personal care, and eating. They may develop close and trusting relationships with their personal care assistants. Having hospital staff perform such intimate services instead of the patient's personal care assistant (even assuming that hospital staff are available and willing to do so) could hinder treatment and recovery. The presence of a patient's personal care assistant may be a reasonable accommodation requiring modification of a healthcare facility's visitation policy when necessary for the patient's physical or emotional well-being.

If you think you have been a victim of healthcare discrimination, please contact DFEH.

TO FILE A COMPLAINT

Department of Fair Employment and Housing

dfeh.ca.gov / Toll Free: 800.884.1684 / TTY: 800.700.2320

If you have a disability that requires a reasonable accommodation, the DFEH can assist you by scribing your intake by phone or, for individuals who are deaf or hard of hearing or have speech disabilities, through the California Relay Service (711), or you can contact us above.