



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

March 30, 2020

As the COVID-19 situation continues to evolve, the Departments of Health Care Services (DHCS), Public Health (CDPH), and Managed Health Care (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 a perceived disability, may be unlawfully denied full

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

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 United States 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 that are based on medical necessity. DHCS reminds providers that no person, on the basis of mental, developmental, intellectual, or physical disability or a 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>2</sup> California Government Code section 11135.

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