UNLAWFUL DISCRIMINATION
Your Rights and Remedies - Civil Rights Handbook

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[Table of Contents](file:///C%3A%5CUsers%5CMichael%20Swenson%5CDocuments%5CMy%20Documents%5CTheFight%5CVirusRemovalTools%5CRemoveWorms%5Cindex.htm) CHAPTER VII

Medical and Healthcare

Recognizing the primary role that medical and health care plays in all of our lives, the Legislature has enacted several laws to ensure that medical and health care is delivered in a nondiscriminatory manner. Any health care and/or medical program receiving any form of funding or financial assistance from the State is prohibited from denying services based on ethnic group identification, religion, age, sex, color, or disability. [(103)](file:///C%3A%5CUsers%5CMichael%20Swenson%5CDocuments%5CMy%20Documents%5CTheFight%5CVirusRemovalTools%5CRemoveWorms%5Cl) Moreover, as previously discussed in Chapter V, providers of medical services under the Medi-Cal program are prohibited from discriminating on the basis of race, national origin, ancestry, religion, sex, marital status, or political affiliation in providing services to their Medi-Cal patients. This prohibition against discrimination applies to many different kinds of providers of health care services, including doctors, dentists, therapists, hospitals, rest homes, and rehabilitation centers. Medi-Cal recipients who choose to enroll in prepaid health plans are also protected. Prepaid health plans cannot discriminate against Medi-Cal enrollees on the basis of race, sex, age, religion, creed, color, national origin or ancestry. [(104)](file:///C%3A%5CUsers%5CMichael%20Swenson%5CDocuments%5CMy%20Documents%5CTheFight%5CVirusRemovalTools%5CRemoveWorms%5Cl) If you believe you have been discriminated against by a Medi-Cal provider, a prepaid health plan funded by Medi-Cal, or by any other health care provider which receives state funds, you should follow the procedures outlined in the Public Assistance/Government Benefits chapter of this publication.

The right to receive medical care and treatment in a nondiscriminatory manner is not limited to medical treatment and services paid for or funded by the government. Private business establishments which provide health care or medical services are also prohibited by the Unruh Civil Rights Act from denying such services based on arbitrary classifications such as sex, color, race, national origin, religion, ancestry, disability or medical condition. [(105)](file:///C%3A%5CUsers%5CMichael%20Swenson%5CDocuments%5CMy%20Documents%5CTheFight%5CVirusRemovalTools%5CRemoveWorms%5Cl) The Americans with Disabilities Act (ADA) makes it unlawful for places of public accommodation, including medical and dental providers, to discriminate on the basis of disability. [(106)](file:///C%3A%5CUsers%5CMichael%20Swenson%5CDocuments%5CMy%20Documents%5CTheFight%5CVirusRemovalTools%5CRemoveWorms%5Cl) Any violation of the ADA is also a violation of the Unruh Civil Rights Act. [(107)](file:///C%3A%5CUsers%5CMichael%20Swenson%5CDocuments%5CMy%20Documents%5CTheFight%5CVirusRemovalTools%5CRemoveWorms%5Cl) Health care providers cannot refuse to provide services on the basis of HIV infection unless to do so would pose a "direct threat to the health or safety of others." "Direct threat" means "a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices or procedures or by the provision of auxiliary aids or services." [(108)](file:///C%3A%5CUsers%5CMichael%20Swenson%5CDocuments%5CMy%20Documents%5CTheFight%5CVirusRemovalTools%5CRemoveWorms%5Cl) Routine medical and dental care is unlikely to pose such a threat. [(109)](file:///C%3A%5CUsers%5CMichael%20Swenson%5CDocuments%5CMy%20Documents%5CTheFight%5CVirusRemovalTools%5CRemoveWorms%5Cl)

Most licensed individuals and private business establishments which provide health care or medical services are prohibited from unlawfully discriminating against patients as a condition of maintaining their licenses to operate. Therefore, licensed individuals and business establishments which discriminate against you should be promptly reported to their respective licensing boards. Furthermore, if the provider of your health services is a licensed health facility such as a hospital, nursing home, or clinic, and you believe that your provider has discriminated against you, you should contact the nearest office of the Licensing and Certification Division of the State Department of Health Services, or the office listed below, to file your complaint or to ask any questions that you may have:

The Legislature has also recognized that certain groups, because of their unique medical and health needs, warrant legislation specially designed to meet their needs. One such group consists of developmentally-disabled children and adults who reside in our communities. In order to meet the needs of this group and to allow them to live more independent and useful lives, the Legislature enacted the Lanterman Developmental Disabilities Services Act, Welfare & Institutions Code section 4500 et seq.

Section 4502 of the Act affirms that people do not give up their constitutional or statutory rights by virtue of having a developmental disability. The same section contains a prohibition against denying an otherwise qualified person with a developmental disability participation in, or the benefits of, any program or activity which receives public funds. It also enumerates rights that persons with developmental disabilities have, including rights "to treatment and habilitation services . . . to dignity, privacy and humane care . . . to participate in an appropriate level of publicly supported education . . . to prompt medical care and treatment . . . [and] to be free from harm . . . [and] hazardous procedures."

Section 4503 of this Act acknowledges that persons who are housed in state hospitals and in other residential settings such as community care facilities are vulnerable to abuse and exploitation. To prohibit the continuation or recurrence of abuses, this section states that persons placed in such facilities shall have certain rights that can only be denied or withdrawn under specified conditions. These rights include the right to the use of money, the right to personal possessions and private storage space, the right to communicate with others outside the facility by telephone, mail, or visits, and the right to refuse certain treatment procedures.

Section 4503 also requires that these rights be posted prominently in English, Spanish and other appropriate languages in all residential facilities. Further, section 4504 states that such facilities may only deny any of these rights for good cause, and that any denial shall be entered into the person's treatment record. [(110)](file:///C%3A%5CUsers%5CMichael%20Swenson%5CDocuments%5CMy%20Documents%5CTheFight%5CVirusRemovalTools%5CRemoveWorms%5Cl)

The Department of Developmental Services, which oversees most programs and health facilities providing health and medical services to the developmentally disabled, maintains an office which can respond to complaints or answer questions regarding discrimination against the developmentally disabled or the rights afforded such individuals.

103. Government Code section 11135.

104. Welfare and Institutions Code section 14200.1.

105. The Unruh Civil Rights Act has also been interpreted to prohibit discrimination on the basis of sexual orientation. (See *Rolon v. Kulwitzky* (1984) 153 Cal.App.3d 289 and *Hubert v. Williams* (1982) 133 Cal.App.3d Supp.1.) For a more complete discussion of the type of classifications prohibited by the Unruh Civil Rights Act and of the remedies available under that Act, see chapter III and chapter IV in this publication.

106. 42 U.S.C. § 12182.

107. Civil Code section 51.

108. 42 U.S.C. § 12182(3).

109. See *Abbott v. Bragdon* (1st Cir.1998) 163 F.3d 87, cert. den. (1999) 526 U.S. 1131.

110. The Lanterman-Petris-Shore Act (Welf. & Inst. Code, § 5000 et seq.) guarantees similar rights to persons institutionalized as a result of mental disability. (See Welf. & Inst. Code, §§ 5325 and 5325.1.) For further information, see *Legal Rights of Persons with Disabilities*, California Department of Justice, March 1997 (with July 1998 revisions).