



Non-Discrimination of Clients (Affordable Care Act) Policy

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Policy It is the policy of the Department of Behavioral Health (DBH) to ensure non-discrimination of clients based on sex, race, color, religion, ancestry, national origin, ethnic group identification, age, mental disability, physical disability, medical condition, genetic information, marital status, gender, gender identity, sexual orientation, or limited English proficiency (LEP), as well as ability to pay for treatment services in the provision of health care services.

Purpose To provide operational guidance to DBH and its contracted providers (also referenced as “Covered Entities”) to ensure compliance with the requirements of Section 1557 of the Patient Protection and Affordable Care Act (ACA); Senate Bill (SB) 223 (Chapter 771, Statutes of 2017); SB 1423 (Chapter 568, Statutes of 2018), and Title 42 of the Code of Federal Regulations (CFR) Part 438.

Definition(s) **Covered Entity:** Any entity that operates a health program or activity for which the Federal government provides, or otherwise makes available, financial assistance (including Medi-Cal) and/or Federal Financial participation funding.

Disability: A physical or mental impairment that substantially limits one or more major life activities.

Gender Identity: An individual's internal sense of gender, which may be male, female, neither, or a combination of male and female, and which may be different from an individual's sex assigned at birth. The way an individual expresses gender identity is frequently called “gender expression,” and may or may not conform to social stereotypes associated with a particular gender.

Limited English Proficiency: An individual whose primary language for communication is not English and who has a limited ability to read, write, speak, or understand English.

Compliance Coordinator Designation Covered Entities employing 15 or more persons are required to:
1. Designate an employee to serve as the ACA 1557 Coordinator responsible for coordinating compliance with ACA 1557 and investigating complaints.
2. Adopt a grievance procedure that the ACA 1557 Coordinator oversees, which affords due process and prompt and equitable resolution of grievances.

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Written Notice Contents Requirements

For all large publications, clinic postings, and online notifications, Covered Entities are required to notify program participants of their rights by providing a written non-discrimination notice containing the following:

- The agency does not discriminate 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, sexual orientation or LEP;
- The agency provides appropriate auxiliary aids and services, free of charge and in a timely manner, to individuals with disabilities;
- The agency provides language assistance services, free of charge and in a timely manner, to individuals with LEP; as well as information on how to access aids and services;
- Contact information for the agency's ACA 1557 Compliance Coordinator;
- Information on grievance procedures, and how to file a complaint;
- Information on how to file a discrimination complaint with HHS, and
- Inclusion of a short statement (tagline), written in at least the top 18 languages in California that are spoken by individuals with LEP, indicating the availability of free language assistance.

Note: Large publications include communications requiring a response from client or pertaining to rights or benefits, and outreach, education, or marketing materials; clinic postings must be posted in a conspicuous location where the entity interacts with the public; and online notifications must be posted on Covered Entities' website homepage with a prominent link directing clients to the full content.

Written Statement Content Requirements for Small Publications

Small publications require a shorter written non-discrimination statement:

- Name of covered entity] complies with applicable Federal civil rights laws and does not discriminate on the basis of race, color, national origin, sex, gender identity, age, disability, religion, sexual orientation, or LEP.
- Inclusion of a short statement (tagline), written in at least English and Spanish, indicating the availability of free language assistance.

Note: Small publications include post cards, tri-fold brochures, etc.

Language Assistance Service Requirements

Covered Entities shall take reasonable steps to provide meaningful access to each individual with LEP eligible to be served or likely to be encountered in its health programs and activities. Language assistance services must be provided free of charge, be accurate and timely, and protect the privacy and independence of the individual with limited English proficiency.

Note: An individual with LEP is not required to accept language assistance services.

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**Interpreter/
Translator
Requirements**

Covered Entities shall offer a qualified interpreter to an individual with LEP when oral interpretation is a reasonable step to provide meaningful access for that individual and shall use a qualified translator when translating written content in paper or electronic form.

Type	Requirements
Qualified Interpreter	<ul style="list-style-type: none"> • Adheres to generally accepted interpreter ethics principles, including client confidentiality; • Has demonstrated proficiency in speaking and understanding both spoken English and a least one other spoken language; and • Is able to interpret effectively, accurately, and impartially, both receptively and expressly, to and from such language(s) and English, using any necessary specialized vocabulary, terminology, and phraseology.
Qualified Translator	<ul style="list-style-type: none"> • Adheres to generally accepted translator ethics principles, including client confidentiality; • Has demonstrated proficiency in writing and understanding both written English and a least one other written non-English language, and • Is able to translate effectively, accurately, and impartially to and from such language(s) and English, using any necessary specialized vocabulary, terminology, and phraseology.

**Interpreter
Restrictions**

Covered Entities must not:

- Require an individual with LEP to provide his or her own interpreter,
- Rely on an adult or minor child accompanying an individual with LEP to interpret or facilitate communication, except in an emergency involving an imminent threat to the safety or welfare of an individual or the public where there is no qualified interpreter immediately available, nor
- Rely on staff other than qualified bilingual/multilingual staff to communicate directly with individuals with LEP.

Note: If the LEP individual specifically requests that an accompanying adult interpret or facilitate communication, and the accompanying adult agrees to provide such assistance, then reliance on that adult for such assistance may be utilized at the desire of the client.

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Video Remote Interpreting Requirements

If video remote interpreting services are offered, the following must be provided:

- 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 and the participating individual's face regardless of the individual's body position; and
- A clear, audible transmission of voices. Adequate training to technology users and those facilitating the video remote set-up, so that this interpreter method is completed quickly and efficiently.

Audial and Visual Disability Requirements

Covered Entities shall take appropriate steps to ensure that communications with individuals with audial and/or visual disabilities are effective by:

- Providing appropriate auxiliary aids and services, including qualified interpreters for individuals with disabilities and information in alternate formats, free of charge and in a timely manner, when such aids and services are necessary; and
- Ensuring that any health programs or activities provided through electronic and/or information technology are accessible to individuals with disabilities, unless doing so would result in undue financial and/or administrative burdens or a fundamental alteration in the nature of the health programs or activities.

Note: If burdens exist for the covered entity, the information may be presented in a non-electronic format, taking into consideration that individuals with disabilities shall receive the same benefits provided through electronic and information technology.

Anti-Sex Discrimination Requirements

Covered entities shall provide individuals equal access to health programs or activities without discrimination on the basis of sex; and shall treat individuals consistent with their personally defined gender identity.

- Covered entities may not utilize criteria or methods of administration that subject individuals to discrimination on the basis of gender identity and/or gender expression.
- Determinations regarding the site or location of a facility must not have the effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination on, the basis of gender identity and/or gender expression. Sex-specific health programs or activities are permissible only if the justification is demonstrated that the sex-specific health program or activity is substantially related to the achievement of an important health-related or scientific objective.

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Disability Policies, Procedures, Practices

Covered Entities shall make reasonable modifications to policies, procedures, and/or practices, when such modifications are necessary to avoid discrimination on the basis of disability, unless the covered entity can demonstrate that making the modifications would fundamentally alter the nature of the health program or activity.

All facilities in which health programs or activities are conducted shall comply with the following regulations and ADA Accessibility Standards as applicable:

- Code of Federal Regulations, Title 45, Section 84.23
- Department of Justice, Americans with Disabilities Act, 1991 ADA Standards for Accessible Design
- Department of Justice, Americans with Disabilities Act, 2010 ADA Standards for Accessible Design.

Non-Discrimination for Inability to Pay

DBH does not discriminate based on an individual's ability/inability to pay, as a large proportion of DBH services may be covered under Medicare, Medicaid, and/or the Children's Health Insurance Program (CHIP).

Related Policy or Procedure

[DBH Standard Practice Manual:](#)

- Affordable Care Act (ACA) 1557 Grievance Procedure (COM0953-1)

Reference(s)

- [Code of Federal Regulations, Title 45, Section 84.23](#)
 - [Department of Justice, Americans with Disabilities Act, 1991 ADA Standards for Accessible Design](#)
 - [Department of Justice, Americans with Disabilities Act, 2010 ADA Standards for Accessible Design](#)
 - [Public Law 111-148, Patient Protection and Affordable Care Act, Section 1557](#)
 - [Senate Bill 223 \(Chapter 771, Statutes of 2017\)](#)
 - [Senate Bill 1423 \(Chapter 568, Statutes of 2018\)](#)
 - [Title 42 of the Code of Federal Regulations \(CFR\) Part 438.](#)
 - [U.S. Code, Title 20, Chapter 38, Subsection 1681 et seq.](#)
 - [U.S. Code, Title 29, Chapter 16, Subchapter V, Subsection 794](#)
 - [U.S. Code, Title 42, Chapter 21, Subchapter V, Subsection 2000d et seq.](#)
 - [U.S. Code, Title 42, Chapter 76, Subsection 6101 et seq.](#)
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