Legal Provisions that Reduce Mental Health Stigma and Discrimination and Encourage Community & Non-Traditional Services

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This document identifies antidiscrimination laws, regulations, policies and programs that reduce mental health stigma and discrimination and encourage provision of services in the community and in non-traditional settings. Included are the following:

1. A list of subject areas referenced in the document;
2. A Table of Contents;
3. An Introduction on the background and purpose of the document; and

This document does not cover all relevant provisions. It is meant to provide an initial point of reference for interested persons.

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INTRODUCTION
In 1990, Congress enacted the landmark Americans with Disabilities Act (ADA) to eliminate discrimination against individuals with disabilities. In passing this groundbreaking law, Congress recognized that “historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem.” (42 U.S.C. section 12101(a)(2)).

In 1999, the U.S. Surgeon General issued a landmark mental health report. Among other things, it found that mental health stigma and discrimination deprives people “of their dignity and interferes with their full participation in society.” (p.6) Also, the U.S. Supreme Court held that the ADA prohibits the unjustified segregation of individuals with mental disabilities in institutional settings. (Olmstead v. L.C., 527 U.S. 581 (1999)\(^1\)).

This document identifies and reviews existing non-discrimination laws, regulations, policies and practices and those that support people with mental health challenges in non-traditional settings. Awareness and understanding of these provisions will both protect people from mental health stigma and discrimination and promote access to mental health services and supports in community settings.

California has existing programs to help people with mental health challenges pursue their personal goals. For example, “[p]eer support models can play an essential role as part of a coordinated system by improving quality of life, fostering recovery and resiliency, and preventing a crisis from developing.” (California Strategic Plan on Suicide Prevention, p. 28)\(^2\).

Effective service delivery requires “a more holistic and integrated approach to physical health and mental health wellness by promoting integrative delivery models of mental health, primary care, and social services.” (California Strategic Plan on Reducing Mental Health Stigma and Discrimination, p. 46)\(^3\). There

\(^1\) See: http://scholar.google.com/scholar_case?case=1057318245348059744&hl=en&as_sdt=2&as_vis=1&oi=scholarr

\(^2\) See: http://www.mhsoac.ca.gov/docs/Suicide-Prevention-Policy-Plan.pdf

needs to be “parity between medical and mental health services in terms of coverage and financing” and using, when appropriate, “spirituality and faith-based practice as tools for wellness and recovery.” (Id.)

Some of these approaches already underway in California and are discussed below. This paper provides people with the information they need about anti-discrimination laws and those that provide for services and supports to advocate for what people need to live, work, and receive services in integrated settings.
ACCESS TO COMMUNITY MENTAL HEALTH SERVICES
1. **Bronzan-McCorquodale Act, Cal. Welf. & Inst. Code § 5600 et seq.**

This state law provides that the mission statement of California’s mental health system is: “…to enable persons experiencing severe and disabling mental illnesses and children with serious emotional disturbances to access services and programs that assist them, in a manner tailored to each individual, to better control their illness, to achieve their personal goals, and to develop skills and supports leading to their living the most constructive and satisfying lives possible in the least restrictive available settings.” [§ 5600.1]¹

It also provides state standards including with respect to:

A. Client centered services [§ 5600.2(a)(2)];

B. Living in the least restrictive setting [§ 5600.2(a)(4)];

C. Community support [§5600.2(h)];

D. Target populations [§ 5600.3];

E. Statewide service access [§ 5600.35];

F. Service options [§ 5600.4];

G. Children and youth minimum array of services [§ 5600.5];

H. Adults minimum array of services [§ 5600.6];

I. Older adults minimum array of services [§ 5600.7];

J. Community residential treatment system [§§ 5670-5675.2].

a. **County Performance Contracts.**

The County Board of Supervisors must adopt an annual mental health services performance contract. [§§ 5650-5667, 14700-14726]. This is submitted to the California Department of Health Care Services pursuant to statutory, regulatory

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¹ The provisions summarized here apply to adults and children unless otherwise specified. This document is intended to provide general information. Laws and legal procedures are subject to change. Please consult with an attorney for legal advice, including for updated information. *See also* California Department of Justice, Legal Rights of Persons with Disabilities (Rev. 2006), available at: [http://ag.ca.gov/consumers/pdf/disabled.pdf](http://ag.ca.gov/consumers/pdf/disabled.pdf)
and other requirements. Section 5651 provides a list of items to be included in the county performance contract. This includes assurance of citizen involvement at all stages of the planning process. [§ 5651(a)(4)].

2. Mental Health Services Act (MHSA).

This state law is intended, in part, “to expand the kinds of successful, innovative service programs for children, adults and seniors, including culturally and linguistically competent approaches for underserved populations. These programs have already demonstrated effectiveness in providing outreach and integrated services, including medically necessary psychiatric services, and other services, to individuals most severely affected by or at risk of serious mental illness.” (§ 3, Proposition 63, 2003).

It includes provisions for the following:

i. Services to reduce stigma associated with a mental health diagnosis, or with seeking mental health services. [§ 5840(b)(3)];

ii. Services to reduce discrimination against people with mental illness [§ 5840(b)(4)];

iii. Services shall be consistent with the philosophy, principles and practices of the Recovery Vision for mental health consumers [§ 5813.5(d)];

iv. Assurance of services for children pursuant to the children’s system of care [§ 5878.1];

v. Funding of children’s services sufficient to prevent out of home placement [§ 5878.3(b)];

vi. Assurance of system of care services for adults and older adults pursuant to statewide target population criteria [§ 5813.5(c)].

a. State regulations, 9 C.C.R. § 3100 et seq.

State regulations implementing the MHSA include provisions with respect to the following:

i. Client driven services [§ 3200.050];
ii. Community program planning process [§§ 3200.070, 3300-3360, 3500-3550];

iii. Community services and supports [§§ 3200.080, 3610-3650];

iv. Full Service Partnership (FSP) programs are recovery focused “do whatever it takes approaches to support individuals in the community. This includes assistance with obtaining and maintaining housing. It also includes a team approach including peer specialists. [§§ 3200.130-3200.160, 3615(a)(1), 3620]

v. Housing Program [§§ 3200.225, 3615(a)(4)]

vi. Individual services and supports plan [§ 3200.180]

vii. Integrated services experience [§ 3200.190]

viii. Unserved and underserved definitions [§§ 3200.300, 3200.310]

b. Policy directives on Three-Year Program and Expenditure Plan including Stakeholder Involvement.

The Mental Health Services Oversight and Accountability Commission has posted documents that discuss stakeholder participation in FY 2014-15 through FY 2016-17 MHSA Three-Year Program and Expenditure Plan development at: http://www.mhsoac.ca.gov/default.aspx You may also access these documents by clicking on the titles below:

FY 14 Through FY 16-17 MHSA Three-Year Program and Expenditure Plan Letter

FY 14 Through FY 16-17 MHSA Three-Year Program and Expenditure Plan Instructions

MHSA County Compliance Certification Form

MHSA County Fiscal Accountability Certification Form
3. **Adult and Older Adult Systems of Care Act, Cal. Welf. & Inst. Code §§ 5800 – 5815.**

The intent of this state statute is to specify that mental health care is a basic human right and require community support services to prevent inappropriate removal from home and community to more restrictive and costly placements. [§§ 5801(b)(1)&(9)]. Service requirements include the following:

a. Client directed services that employ psychosocial and recovery principles [§ 5806(a)(6)]

b. Housing that is immediate, transitional, and/or permanent [§ 5806(a)(10)]

c. Individual personal services plan to ensure living in the most independent, least restrictive housing feasible in the local community [§ 5806(c)(1)]

4. **Children’s System of Care Act, CA Welf. & Inst. Code §§ 5850 – 5883.**

The intent of this state statute is to specify and require individualized appropriate treatment in the least restrictive environment, including community-based programs, for children who are seriously emotionally and behaviorally disturbed that will keep them with their families and in their communities. It requires interagency collaboration and a coordinated service delivery system among the primary child-serving agencies in a county as well as family involvement, and culturally relevant and competent service delivery.

5. **Federal/State Medicaid or “Medi-Cal” in California, 42 U.S.C. § 1396 et seq.**

This is a joint federal/state program through which eligible individuals have an entitlement to medically necessary mental health services. It is governed by a labyrinth of federal and state laws, regulations, and policies including some of those identified below.
a. **Federal Provisions.**

These include the following:

* **Nondiscrimination.** See enforcement of nondiscrimination on the basis of disability in programs or activities conducted by the federal Department of Health and Human Services. [45 C.F.R. Part 84];

* **Services available on a statewide basis.** [42 U.S.C. § 1396a(a)(1), 42 C.F.R. § 431.50(b)(1)];

* **Services provided with reasonable promptness, including emergency services 24/7.** [42 U.S.C. § 1396a(a)(8), 42 C.F.R. 435.930];

* **Services comparable to those provided other recipients.** [42 U.S.C. § 1396a(a)(10)(B), 42 C.F.R. § 440.240];

* **Services sufficient in amount, scope, duration reasonably to achieve their purpose.** [42 U.S.C. § 1396a(a)(17&19), 42 C.F.R. § 440.230(b)(d)];

b. **Specialty Mental Health Managed Care Contracts** [Cal. Welf. & Inst. Code §§ 14712-14723; 9 C.C.R. § 1700 et seq. (Medi-Cal Inpatient Hospital Services), § 1810 et seq. (Medi-Cal Specialty Mental Health Services)].

Medi-Cal covered mental health services are called “Specialty Mental Health Services.” Eligible individuals have an entitlement to receive medically necessary Medi-Cal Specialty Mental Health Services through County Mental Health Plans (MHPs). Medical necessity criteria for MHP specialty mental health services are specified at: 9 C.C.R. § 1830.205; see also 9 C.C.R. § 1830.210 (medical necessity criteria for MHP specialty mental health services for eligible beneficiaries under age 21). Please find a County Mental Health Department Contact List at: [http://www.dhcs.ca.gov/individuals/Pages/MHPContactList.aspx](http://www.dhcs.ca.gov/individuals/Pages/MHPContactList.aspx)

c. **State Mental Health Information Notices.**

See California Department of Health Care Services Mental Health Information Notices at: [http://www.dhcs.ca.gov/formsandpubs/Pages/MentalHealth-InfoNotices.aspx](http://www.dhcs.ca.gov/formsandpubs/Pages/MentalHealth-InfoNotices.aspx)

d. Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) is Medicaid’s child health program.

Services for children are shaped to fit the standards of pediatric care and to meet the special physical, emotional, and developmental needs of low-income children. Since 1967, the purpose of the EPSDT program has been "to discover, as early as possible, the ills that handicap our children" and to provide "continuing follow up and treatment so that handicaps do not go neglected." EPSDT covers a very comprehensive set of benefits and services for children, different from adult benefits. Since one in three U.S. children under age six is eligible for Medicaid, EPSDT offers a very important way to ensure that young children receive appropriate health, mental health, and developmental services. [42 U.S.C. § 1396d(r)]

e. Rehabilitation Option Amendment to State Medicaid Plan.

California submitted and obtained approval of an amendment to its State Medicaid Plan to cover and permit federal financial participation for the provision of Rehabilitative Mental Health Services to Medi-Cal recipients, effective July 1, 1993. Such services are medical or remedial services recommended by a physician or other licensed practitioner for the maximum reduction of mental disability and restoration of a recipient to his or her best possible functional level.

Services are provided based on medical necessity and in accordance with a coordinated client plan or service plan. Services are provided in the least restrictive setting appropriate for reduction of psychiatric impairment, restoration of functioning consistent with requirements for learning, and/or independent living and enhanced self-sufficiency.

Services include: individual mental health services, crisis intervention, crisis stabilization, medication management, day treatment, day rehabilitation, crisis residential treatment, transitional residential treatment. [See 9 C.C.R. §§ 1810.227, 1810.209, 1810.210, 1810.225, 1810.212, 1810.213, 1810.208, 1810.203]. For a link to the current Rehabilitation Option amendment to the State’s Medicaid Plan, see: http://www.dmh.ca.gov/Services_and_Programs/Medi_Cal/docs/10_012B_SPA_for_webposting.pdf
a. State policy direction on individual rehabilitation.

Covered services include individual mental health rehabilitation to assistance in improving, maintaining, or restoring a person’s functional skills, daily living skills, social and leisure skills, grooming and personal hygiene skills, meal preparation skills, and support resources; and/or medication education. This may include individual one-to-one services in home, community and other settings. There is no cap or limit on the number of hours per day or the number of days per week that this service activity may be provided, nor is there an annual or lifetime cap or limit. See California Department of Mental Health Information Letter 01-01, One-to-One Mental Health Services available at: http://www.dhcs.ca.gov/formsandpubs/MHArchiveLtrs/MH-Ltr01-01.pdf

f. Targeted Case Management (TCM) Option Amendment to State Medicaid Plan.

California submitted and obtained approval of an amendment to its State Medicaid Plan to cover and permit federal financial participation for the provision of Targeted Case Management Services, effective June 1, 1991.

The target group of persons with psychiatric conditions includes: individuals institutionalized or at risk of such placement and well as persons living in the community who need support services to maintain stability at this level. Services assist eligible individuals in gaining access to needed medical, social, educational and other services. Defined service activities are: Evaluation, Plan Development, Emergency Intervention, Placement Services, Assistance in Daily Living and Linkage and Consultation.

The purpose of Plan Development is to develop a written, comprehensive, individual service plan, which specifies the treatment, service activities, and assistance needed to accomplish the objectives negotiated between the client and case manager. The service plan must describe the nature, frequency, and duration of services to be offered. Contacts may be face-to-face or by telephone with the client, family, or significant others. [See 9 C.C.R. §§ 1810.249 and 1810.206].

For a link to the current TCM Option amendment to the State’s Medicaid Plan, see: http://www.dmh.ca.gov/Services_and_Programs/Medi_Cal/docs/10_012B_SPA_for_webposting.pdf
g. “Client Plan”.

This refers to the written service plan for the provision of specialty mental health services to a Medi-Cal recipient who meets statewide medical necessity criteria. [See 9 C.C.R. §§ 1810.205, 1810.210]. The person who receives services, also referred to as a “client,” participates with service providers in the development of his or her Client plan, which specifies the goals of the person who is receiving the service. It also specifies the type of service and the proposed duration of each type of service the person is to receive. It is signed by the recipient and person who is responsible for providing, coordinating and/or approving the service(s). The plan must be updated at least annually.


Each county Mental Health Plan has a process for a beneficiary to file a grievance or appeal. For more information, see Disability Rights California publication, “Getting Medi-Cal Outpatient Specialty Mental Health Services,” which is available at: http://www.disabilityrightsca.org/pubs/508401.pdf

i. Preadmission Screen and Resident Review (“PASRR”) [42 U.S.C. § 1396r et seq.]

This program under the Medicaid Act is designed to prevent placement in a nursing facility or to move out when there is a change in condition.

   a. Federal regulations [42 C.F.R. § 483.100 et seq.] include evaluation criteria to identify the services the person would need to live in the community. [§§ 483.128(a), 483.130, 483.132, 483.134]

6. Federal Medicare, Health Insurance for Seniors and/or People with Disabilities.

   a. Statutes and Regulations. 42 U.S.C. § 1395 et seq.; 42 C.F.R. Parts 400 to 481

   b. Publications & Other Materials.

“Medicare & Your Mental Health Benefits,” by the federal Department of Health & Human Services (June 2012) at: http://www.medicare.gov/Pubs/pdf/10184.pdf
“Mental Health Services” under Medicare, by the federal Center for Medicaid and Medicare Services (CMS) at:  http://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNProducts/Downloads/Mental_Health_Services_ICN903195.pdf

Bazelon Center page on Medicare at:  http://bazelon.org/Where-We-Stand/Access-to-Services/Medicare.aspx

7. Federal Patient Protection and Affordable Care Act (ACA).

   a. Mandatory Coverage for Mental Health.


   b. Hospital Readmission Reduction Program.


   c. Independent at Home Demonstration Program.


   d. State Option to Provide Health Homes.

   The ACA provides that a state may amend its state Medicaid plan for the provision of comprehensive medical services for beneficiaries with chronic conditions including “serious mental Illness.” [§ 2703 of the ACA]. See California
Department of Health Care Services, “The Affordable Care Act’s Section 2703 Health Home Option,” available at:

e. **Patient Navigator Program**

The ACA provides for health team demonstration projects to promote service access, which could include patient navigator services. [42 U.S.C. § 256a-1].

See also Center for Multicultural Development at the California Institute for Mental Health, “**Promotores** in Mental Health in California and the Prevention and Early Intervention Component of the MHSA” (Policy Paper November 2008), available at:

f. **Removal of Barriers to Preventative Services**

The ACA includes provision for Medicare to cover 100 percent of the costs for certain preventative services. [42 U.S.C. §§ 1395m(n), 1395x]. It improves access to preventative services for eligible adults under Medicaid. [42 U.S.C. § 1396d].
ACCESS TO CULTURALLY COMPETENT & LANGUAGE APPROPRIATE SERVICES

Title VI of the Civil Rights Act of 1964 bans discrimination on the ground of race, color or national origin in any program or activity that receives federal funds, including but not limited to Medi-Cal Specialty Mental Health Services. Discrimination on the basis of national origin includes the failure to provide interpreters/translators for individuals who are Limited English Proficient (LEP) or for documents that require translation into languages other than English.

   a. **How to file a complaint.**

   You can file a complaint with the federal Office of Civil Rights (OCR). Visit the OCR online at [www.hhs.gov/ocr/civilrights/complaints](http://www.hhs.gov/ocr/civilrights/complaints) or call them at (800) 368-1019.

   b. **Federal Language Access Assessment and Planning Tool.**


2. **California Dymally-Alatorre Bilingual Services Act, Government Code sections 7290-7299.8.**

This law requires that all State agencies ensure that information and services are provided to people who are LEP. A local public office or facility of the state agency is required to translate materials into the language spoken by five percent or more of the population they serve. It must also employ a sufficient number of bilingual staff to ensure access to individuals who are LEP.

   a. **How to file a complaint.**

   You may file a complaint with the Department of Fair Employment and Housing (DFEH). Visit the DFEH online at [www.dfeh.ca.gov](http://www.dfeh.ca.gov) or call them at (800) 884-1684 to schedule an appointment to file a complaint.

3. **Medi-Cal Specialty Mental Health Services.**
a. **Cultural Competence Plan Requirements.**

State regulations require each County Mental Health Plan to comply with cultural and linguistic requirements. [9 C.C.R. § 1810.410]. See California requirements for each county’s Cultural Competence Plan at: http://www.dhcs.ca.gov/services/MH/Pages/CulturalCompetencePlanRequirements.aspx

b. **State Policy Directive on Language Access Services for Individuals who are LEP.**

The California Department of Health Care Services has issued an all county letter on Language Access Services for Limited-English Proficient and Non-English Proficient Individuals, which is available at: http://www.dhcs.ca.gov/services/medical/eligibility/Documents/c10-03.pdf

c. **State Managed Health Care Regulations.**

The California Department of Managed Health Care has issued regulations for health care service plans on language assistance program. [28 C.C.R. §§ 1300.67.04, 1300.68(b)(3)].

d. **Comparable Services for All Recipients.**

Federal regulations require that states and counties provide services comparable to those provided other recipients. [42 U.S.C. § 1396a(a)(10)(B); 42 C.F.R. § 440.240]. This requires that people who are LEP receive culturally and linguistically competent services.

e. **Individualized PASRR Notices and Evaluations.**

Federal regulations under the Preadmission Screen and Resident Review (“PASRR”) program require that notices and evaluations must be adapted to the culture, language, ethnic origin and means of communication used by the person being evaluated. [42 C.F.R. § 483.128 (b)].

f. **California Reducing Disparities Project Reports.**


Asian Pacific Islander SPW, report available at:

Latino SPW, report available at:

Lesbian, Gay, Bisexual, Transgender, Questioning SPW, report available at:
http://www.eqcai.org/atf/cf/%7B8cca0e2f-faec-46c1-8727-cb02a7d1b3cc%7D/FIRST_DO_NO_HARM-LGBTQ_REPORT.PDF

Native American SPW, report available at:
http://issuu.com/nativeamericanhealthcenter/docs/native_vision_report
g. Cal MHSA Fact Sheet.


4. Bronzan-McCorquodale Act

This state statute includes standards with respect to client centered services [Cal. Welf. & Inst. Code § 5600.2(a)(2)] and cultural competence [§5600.2(g)].

5. Mental Health Services Act (MHSA)

This state statute requires that services shall be consistent with the philosophy, principles and practices of the Recovery Vision for mental health consumers [§ 5813.5(d)]. This, in part, requires individualized services that are culturally and linguistically competent.

a. State MHSA Regulations, 9 C.C.R. § 3100 et seq.

State regulations include provisions on the following:

a. Client driven services [§ 3200.050];

b. Stakeholder planning process [§§ 3200.070, 3300-3360, 3500-3550];

c. Community services and supports [§§ 3200.080, 3610-3650]

d. Cultural competence [§ 3200.100];
e. Linguistic competence [§ 3200.210];

f. Definitions of unserved and underserved [§§ 3200.300, 3200.310].

b. **Policy directive on Housing Program Services.**

MHSA Housing Program supportive services must be culturally and linguistically competent. See California Department of Health Care Services Rental Housing Development Application, Section D, which is available at: [http://www.dhcs.ca.gov/services/MH/Pages/MHSAHousing.aspx](http://www.dhcs.ca.gov/services/MH/Pages/MHSAHousing.aspx)

6. **Adult and Older Adult Systems of Care Act.**

The act includes provisions on individualized services that are culturally and linguistically competent, including those referenced below.

a. **Culturally competent services.**

The act requires a service planning and delivery process that is target population based and includes plans for “evaluation strategies[] that shall consider cultural, linguistic, gender, age and special needs of minorities in the target population. Provision shall be made for staff with the cultural background and linguistic skills necessary to remove barriers to mental health services due to limited-English-speaking ability and cultural differences.” [Cal. Welf. & Inst. Code § 5806(a)(2)].

b. **Client directed services.**

The act requires client directed services that employ psychosocial and recovery principles. [Cal. Welf. & Inst. Code § 5806(a)(6)].

c. **Individual service plan.**

The act requires an individual personal services plan to ensure living in the most independent, least restrictive housing feasible in the local community. [§ 5806(c)(1)].


The act addresses the need for service delivery standards that ensure culturally competent services in the most appropriate, least restrictive setting. [§ 5851(a)(5)]. It specifies the goal of increasing “ethnic minority and gender
access to services proportionate to the percentage of these groups in the county’s school-age population. [§ 5852.5(b)(9)]. Cultural competence is an essential value. [§ 5855(f)]. The act requires a “defined mechanism” to ensure that services are culturally competent. [§ 5865(e)].
ACCESS TO PEER SUPPORT & SELF HELP SERVICES
1. **California Bronzan-McCorquodale Act.**

This statute provides for availability of self help and peer counseling services in all areas of the state. [§§ 5600.2(i), 5694-5694.5, 5770.5].

2. **California MHSA.**

This statute requires that services comply with the philosophy, principles and practices of the Recovery Vision for mental health consumers [§ 5813.5(d)].

   a. **State MHSA regulations.**

   MHSA regulations include requirements that promote access to peer support and self help services. These include the following:

   a. *Client driven services* [9 C.C.R. § 3200.050];

   b. *Community program planning process* [§§ 3200.070, 3300-3360, 3500-3550];

   c. *Community services and supports* [§§ 3200.080, 3610-3650];

   d. *Full Service Partnership (FSP) teams include peer specialists* [§§ 3200.130-3200.160, 3615(a)(1), 3620];

   e. *Peer support* [§§ 3630(a)(1)(A)(ii) & (b)(1)[B]].

   b. **Peer Run Crisis Respite Program.**

   For information about Peer Run Crisis Respite in Sacramento County, see: http://www.sierrahealth.org/assets/RPC_24-7_Respite_Services_RFQ_April_2013.pdf

3. **Adult and Older Adult Systems of Care Act.**

Peer support or self help services are a necessary part of an integrated service delivery system. [Cal. Welf. & Inst. Code § 5806(a)(5)]. Access to such assistance also is required to ensure client driven services that employ psychosocial and recovery principles [§ 5806(a)(6)].

4. **Medi-Cal Specialty Mental Health Services.**
Services can be provided by individuals who are not licensed but work under the direction of a licensed professional and are found qualified by the county. This is specified in the current Targeted Case Management (TCM) Option amendment to the State’s Medicaid Plan, referenced above. In addition, individuals who are not licensed can also provide other covered services under the direction of a licensed professional. See California Department of Mental Health Letter 01-1, Direction of Medi-Cal Mental Health Services, available at: http://www.dhcs.ca.gov/formsandpubs/MHArchiveLtrs/MH-Ltr01-02.pdf

5. Affordable Care Act (ACA)

The ACA reauthorizes demonstration programs that provide patient navigator services within communities to assist people overcome barriers to health services. [42 U.S.C. § 256a]. This includes opportunities for people with lived experiences in the mental health system to serve as navigators.

a. Materials and other publications

See Issue Brief “Opportunities for Peer Support in the Affordable Care Act” (December 2012) available at: http://www.wpha.org/Events/Annual-Conference-2013/Public-Health-Conference-Session-Details/5-4-CHW-opportunities-in-Affordable-Care-Act -ACA
1. Protection and Advocacy Systems

In 1975, after television news exposed horrific abuse and neglect at Willowbrook, a state institution for people with cognitive disabilities on Staten Island, New York Senator Jacob Javits successfully pushed Congress to mandate and fund Protection and Advocacy systems in each state.

The laws which give Protection and Advocacy systems the special responsibility to protect and advocate for people with disabilities also give those organizations a unique tool with which to accomplish that task: access to facilities or programs providing their care, and access to their confidential records. This access permits Protection and Advocacy systems to conduct abuse or neglect investigations, provide information and training about the rights of individuals with disabilities, and monitor a facility or program's compliance with respect to the rights and safety of people who receive their services. Protection and Advocacy systems are also unique because courts have recognized that the broad Congressional authority allows them to bring actions in their own name to vindicate the rights of people with disabilities.

In May, 1978 California's Protection & Advocacy, Inc. (PAI) was founded to provide the services required under the federal Developmental Disabilities Assistance and Bill of Rights Act of 1975. [42 U.S.C. 15041-15045; 45 C.F.R. Part 1386; see also Cal. Welf. & Inst. Code sections 4900-4906]

In 1986, Congress created the Protection and Advocacy for Individuals with Mental Illness Act (PAIMI) in response to Congressional findings of abuse and neglect of individuals with psychiatric disabilities in residential care facilities. [42 U.S.C. § 10801 et seq.; 42 C.F.R. Part 51.


In 1993, PAI became a cross disability advocacy agency when Congress expanded the protection and advocacy role to individuals with disabilities who were not eligible for services under other programs, such as the Protection and Advocacy for Assistance Technology (PAAT) program, the Protection and Advocacy for Beneficiaries of Social Security (PAABS) program, the Protection and Advocacy for Traumatic Brain Injury (PATBI) and Protection and Advocacy for Voting Access (PAVA) program.
In 1993, PAI also opened the California Office of Patients Rights after state legislation provided for an independent contract to provide advocacy services to persons with psychiatric disabilities in state hospitals, and to provide training and technical assistance to county patients’ rights advocates. [Cal. Welf. & Inst. Code §§ 5370.2, 5510-5513]. In 1998 PAI established the Office of Clients’ Rights Advocacy after the passage of state legislation made it possible for us to contract advocacy assistance, training and technical assistance to clients of the 21 regional centers. [§ 4433].

In 2008, the Board changed PAI’s name to Disability Rights California to more accurately describe the work. For more information, see http://www.disabilityrightsca.org/

2. **County Patients’ Rights Advocates**

Each local mental or behavioral health director must appoint or contract for services of one or more county patients’ rights advocates. (Cal. Welf. & Inst. Code §§ 5520-5550). The duties of patients’ rights advocates include:

1. Investigating and resolving complaints received about violation or abuse of patients’ rights;

2. Ensuring that mental health consumers are notified of their legal rights and remedies;

3. Training staff in mental health facilities regarding patients’ rights;

4. Monitoring of the mental health system through review of policies and practices of mental health facilities; and

5. Providing analysis and recommendations for compliance with patients’ rights laws.

Depending on the county arrangement, the advocate may represent individuals who are certified for 14 days of involuntary mental health treatment. [§ 5256]. In addition, the advocate may represent individuals at hearings to determine capacity to refuse or consent to psychiatric medications. [§§ 5332-5336].

The state has developed a handbook on the rights of individuals in mental health facilities. This outlines individual rights and role of the county advocates. It is available at:
3. **Mandatory Abuse, Neglect or Abandonment Reporting**

This state law protects elders and dependent adults who may be subject to abuse, neglect or abandonment. [Cal. Welf. & Inst. Code § 15600 *et seq.*].

The act specifies employees who must report abuse. This requires calling the appropriate authority and filing a report when a mandated employee, within the scope of employment, or, in the employee’s professional capacity:

1. Has “observed” or has “knowledge of” an incident that “reasonably appears to be abuse; or

2. Is told by an elder or dependent adult that he or she has “experienced behavior, including an act or omission” constituting abuse; or

3. “Reasonably suspects” abuse.

[§§ 15630(b)(1), 15610.65].

4. **Federal Civil Rights of Institutionalized Persons Act (CRIPA), 42 U.S.C. § 1997 *et seq.*; 28 C.F.R. § 91.3(b)(8).**

This federal act authorizes the U.S. Attorney General to investigate conditions of confinement at State and local government institutions such as prisons, jails, pretrial detention centers, juvenile correctional facilities, publicly operated nursing homes, and institutions for people with psychiatric or developmental disabilities. Its purpose is to allow the Attorney General to uncover and correct widespread deficiencies that seriously jeopardize the health and safety of residents of institutions. The Attorney General does not have authority under CRIPA to investigate isolated incidents or to represent individual institutionalized persons. The Attorney General may initiate civil law suits where there is reasonable cause to believe that conditions are "egregious or flagrant," that they are subjecting residents to "grievous harm," and that they are part of a "pattern or practice" of resistance to residents’ full enjoyment of constitutional or Federal rights, including title II of the ADA and section 504 of the Rehabilitation Act.
a. **Additional information and resources.**

b. **See U.S. DOJ website at:**  [www.usdoj.gov/crt/split](http://www.usdoj.gov/crt/split)

c. **Link to DOJ Special litigation section cases / matters:**  

d. **Link to DOJ Special litigation section cases / matters:**  

e. **Link to consent judgment on Metropolitan and Napa State Hospitals:**  

f. **Link to agreement on MH Services at the LA Jail:**  

g. **Link to agreement on juvenile probation camps:**  

h. **Link to consent decree with LA Police Department:**  
1. **Federal Title VI-E of the Social Security Act**

Foster family homes and child care institutions are required to recognize children as a vulnerable population and establish safeguards that protect the civil rights for all children, particularly those with mental health issues. Any child who is determined to have special needs will receive health insurance coverage and medical benefits, including mental health benefits. [42 U.S.C. § 671 (a)(10) and (a)(21)].

States are required to adopt adoption assistance agreements with the adoptive parents of children with special needs which include medical conditions or physical, mental, or emotional handicaps, and are to be protected throughout the adoption process. [42 U.S.C. § 673 (a)(1) and (c)].

2. **California Welfare and Institutions Code**

   a. **Non Discrimination Based on Mental Disability**

   All facilities of the Division of Juvenile Facilities shall ensure the safety and dignity of all youth and shall not discriminate on the basis of mental disability. [§ 224.73].

   b. **Rights of Children in Foster Care**

   It is the policy of California that all children in foster care receive medical, dental, vision, and mental health services. The state ensures fair and equal access to available services, placement, care, treatment, and benefits, and the right to not be subjected to discrimination or harassment on the basis of actual or perceived mental disabilities. [§ 16000.1].

   Each community college district with a foster care education program shall make clear the foster child’s right not to be subjected to discrimination and harassment on the basis of actual or perceived mental disabilities. [§ 16003].

   California requires that all persons engaged in providing care and services to foster children, including foster parents, adoptive parents, and relative caregivers, shall have fair and equal access to available programs, and shall not
be subjected to discrimination or harassment on the basis of their clients’ or their own actual or perceived mental disabilities. [§ 16013].

See also, California Blue Ribbon Commission on Children in Foster Care, Administrative Office of the Courts at: http://www.courts.ca.gov/brc.htm

c. **Health Care for Detained Juveniles**

All youth confined in a facility of the Division of Juvenile Facilities have the right to receive adequate and appropriate medical, dental, vision and mental health services. They can also refuse the administration of psychotropic and other medications consistent with applicable law or unless immediately necessary for the preservation of life or the prevention of serious bodily harm. These youth shall have fair and equal access to available services, placement, care, treatment, and benefits, and shall not be subject to discrimination on the basis of actual or perceived mental disabilities. [§ 224.71].
Note: The inclusion of the information here is not an endorsement of involuntary commitment. Rather, the provisions listed below focus on sections that promote voluntary services in the community and/or safeguard individual personal autonomy and liberty interests.

1. **Lanterman-Petris-Short (LPS) Act, Cal. Welf. & Inst. Code § 5000 et seq.**

This landmark California statute specifies procedures for involuntary civil commitment of people with mental health challenges.

   a. **Intent of the LPS Act**

The act specifies legislative intent as follows:

   a. To end the inappropriate, indefinite, and involuntary commitment of people with mental health conditions, people with developmental disabilities and people with chronic alcoholism;

   b. To eliminate legal disabilities;

   c. To provide prompt evaluation and treatment of persons with serious mental health conditions or impaired by chronic alcoholism;

   d. To guarantee and protect public safety;

   e. To safeguard individual rights through judicial review;

   f. To provide individualized treatment, supervision, and placement services by a conservatorship program for persons who are found to be gravely disabled;

   g. To encourage the full use of all existing agencies, professional personnel and public funds to accomplish these objectives and to prevent duplication of services and unnecessary expenditures;

   h. To protect persons with mental health conditions and persons with developmental disabilities from criminal acts.

[§ 5001].
b. **Mandates for Community Services.**

The act includes provisions for access to services in the community and in nontraditional settings, including the following:

a. **Group homes for six or fewer residents permitted as matter of right** [§§ 5115, 5116];

b. **State policy that care and treatment be provided in the local community** [§ 5120];

c. **Duty to offer available alternatives to person not admitted to 5150 designated facility** [§ 5150.3];

d. **Pre-hospital diversion for community services** [§§ 5008(d), 5151, 5202, 5250(c), 5252, 5260(b), 5262, 5270.15(b), 5352, 5354];

e. **Hearing on certification for 14-day intensive treatment.** [§ 5254; *Doe v. Gallinot* 486 F.Supp. 983 (C.D. Cal 1979)];

f. **Post hospital referral for community services.** [§§ 5008(d), 5152(b), 5206, 5256.5, 5257(a), 5264(a), 5270.35(a); see also Welf. & Inst. Code section 5622, discussed below at Section XV];

g. **People subject to civil commitment have the same rights and responsibilities guaranteed others including right to services that promote the ability of the person to function independently and in ways that are least restrictive of the personal liberty of the individual.** [§§ 5325.1, 5327];

h. **Voluntary informed consent must be sought.** [§§ 5326.2-5326.5; 9 CCR § 850-855];

i. **There is no presumption of incompetence.** [§ 5331];

j. **An individual has a right to a hearing on her or his capacity to refuse or consent to medications.** [§§ 5332-5336];

k. **Person subject to assisted outpatient treatment demonstration project petition must have been offered an**
extensive array of services on a voluntary basis including supportive housing or other housing assistance prior to the filing of a petition. [§ 5346(a)(5)];

l. Persons placed on conservatorship must have an individual treatment plan. [§ 5352.6];

m. There is a statutory preference that persons on conservatorship reside at home. [§§ 5353, 5358(c)(1), 5359];

n. The county must investigate all alternatives to conservatorship. [§ 5354].

c. Behavioral Restraint Reduction or Elimination.

California law includes provisions for the reduction or elimination of the use of behavioral restraint. [Health & Safety Code section 1180 et seq.] For further information, see Cal MHSA fact sheet, “Reducing or Eliminating Behavioral Restraint in Mental Health Settings,” available at: http://www.disabilityrightsca.org/pubs/CM2101.pdf


The intent is to protect through judicial review the due process rights of minors with mental disabilities from inappropriate involuntary detention and to provide treatment and placement services that identifies the least restrictive alternative for the minor. Prior to discharge an aftercare plan shall be developed that identifies education and training needs. [This law applies only to the initial 72 hours of detention.]
1. Information Practices Act of 1977 (IPA), California Civil Code § 1798 et seq.

This state law regulates the collection and use of personal information including mental health information by state government agencies and details the rights of individuals pertaining to his or her information.

2. LPS Act Confidentiality of Mental Health Records, California Welfare & Institutions Code Section 5328.

This state law governs the use and disclosure of mental health records that are generated by licensed mental health professions when they are providing services in the public mental health system or in a psychiatric facility. It provides a broader protection than the CMIA, referenced below, requiring that not just medical, but all information and records be kept confidential. It also sets forth a list of required and allowed disclosures.

3. Confidentiality of Medical Information Act (CMIA), California Civil Code § 56 et seq.

This state law protects the confidentiality of health records including mental health records and requires the written consent of the patient before they are disclosed. One exception to this requirement is if a psychotherapist believes that disclosure will prevent or lessen a serious and imminent threat to a third party. Civil Code § 56.10(c)(19).


This state law establishes a patient’s right to see and copy his or her medical records including mental health records.

5. Confidentiality of Information Disclosed to School Counselor, California Education Code § 49602.

This state law protects any information of a personal nature disclosed by a pupil 12 years of age or older in the process of receiving counseling from a school counselor. It also protects any information of a personal nature disclosed by the parent or guardian of a pupil 12 years of age or older receiving counseling from a school counselor. Such information is confidential and shall not become part of the pupil record without the consent of the person disclosing the information.
Exceptions to this requirement of nondisclosure include reporting suspected child abuse and neglect and preventing harm to a third party or the pupil.

6. **Provider’s Confidentiality Obligation When Minor Consents to Treatment, California Health & Safety Code § 123110(a).**

This state law provides that if a minor consents to care, the provider can only share the minor’s medical information including mental health information with the signed consent of the minor. See California Family Code §§ 6924 and 6929 for those situations when a minor 12 years of age or older may consent to mental health treatment or counseling on an outpatient basis, or to residential shelter services or to substance abuse treatment. If, however, a parent or guardian consents to care, the parent or guardian has a right to access the minor’s medical information and the provider can only share the minor’s information with others with the signed consent of the parent or guardian.

7. **Federal Health Insurance Portability & Accountability Act (HIPAA) Privacy Rule, Public Law 104-91, §§ 261-264; 45 C.F.R. Part 160 (A) and (E).**

This legislation assures that an individual’s health information is properly protected while allowing the exchange of health information needed to provide health care and protect the public’s health and well-being.

8. **Family Education Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g; 34 C.F.R. Part 99.**

This federal legislation ensures that parents have access to their children’s records and protects the privacy rights of parents and children by limiting access to these records without parental consent.


These federal regulations restrict the disclosure and use of “patient Identifying” information about individuals in any drug or alcohol abuse prevention or treatment program conducted, regulated, or directly or indirectly assisted by any federal department or agency and are stricter than most other confidentiality laws.
CONSTITUTIONAL PROTECTIONS
The California and United States Constitutions provide ultimate legal authority protecting the rights of individuals against overreaching or arbitrary action by the government. The federal Constitution provides a basic set of minimum protections upon which the California Constitution provides additional protection.

1. **Equal Protection**

The Fourteenth Amendment of the U.S. Constitution includes the mandate that no State shall “deny to any person within its jurisdiction the equal protection of the laws.” At a minimum this clause prohibits arbitrary state action distinguishing one group from another similarly situated group. For groups with certain traits such as race or gender there is greater judicial scrutiny requiring the disparate treatment to be justified by at least an important if not fundamental state interest. The US Supreme Court has held, however, that individuals with disabilities are not entitled to this higher level of scrutiny, but still found that laws based solely on irrational prejudice violate the Equal Protection Clause. See City of Cleburne v. Cleburne Living Center, 473 U.S. 432 (1985).

2. **Due Process**

The Fourteenth Amendment of the U.S. Constitution also prohibits States from depriving “any person of life, liberty, or property, without due process of law”. Courts have recognized that freedom from stigma is an important liberty interest that triggers Due Process protection. See In re Roger S., 19 Cal. 3d 921 (1977). Stigma combined with the loss of liberty involved in involuntary confinement has prompted the California Supreme Court to rule that conservatorship proceedings leading to involuntary psychiatric hospitalization trigger the same due process rights as criminal proceedings. See Conservatorship of Roulet, 23 Cal. 3d 219 (1979). The United States Supreme Court has also found that it is a violation of Due Process to involuntarily hospitalize without treatment, a non-dangerous person who could live safely in the community. See O’Connor v. Donaldson, 422 U.S. 563 (1975).

3. **Privacy**

The California Constitution recognizes that all people have an inalienable right to privacy. This right to privacy has been interpreted by the California Supreme Court as guaranteeing to the individual “the freedom to choose to reject, or refuse to consent to, intrusions of his bodily integrity”. See Conservatorship of Wendland, 26 Cal. 4th 519,531-532 (2001). This right is not absolute but can be outweighed by compelling state interests such as helping an incompetent person
or protecting society from a dangerous person. See *In re Qawi*, 32 Cal.4th 1 (2002).

4. **Cruel & Unusual Punishment**

The Eighth amendment of the US Constitution prohibits the government from imposing cruel and unusual punishments. What is cruel and unusual is determined by society’s evolving standards of decency and includes deliberate indifference to serious medical and mental health needs of prisoners. See *Coleman v. Schwarzenegger*, consolidated with *Brown v. Plata*, 131 U.S. 1910 (2011) where the court found the failure to provide adequate mental health care to prisoners to be a violation of the Eighth Amendment.
1. **Outpatient Status for Persons found Incompetent to Stand Trial (IST).**

If a defendant has been found incompetent to stand trial, the court may order the person’s commitment to a state hospital, or to other available public or private treatment facilities, or to a placement on an outpatient status. [California Penal Code, § 1370(a)(1)(B)(i)].

2. **Evidence-based Comprehensive Mental Health and Supportive Services for Persons Reintegrating on Parole.**

The California Legislature has provided for evidence-based comprehensive mental health and supportive services, including housing subsidies, to parolees with mental health challenges. [Welf. & Inst. Code §§ 2985-2985.5]. The Department of Corrections and Rehabilitation must provide a supportive housing program with wraparound services to people with mental health challenges who will be or are on parole and at risk of homelessness. [§ 2985.2]. This law also mandates reporting requirements and cost analysis. [§ 2985.5].

3. **Prison Realignment under AB 109.**

Prison realignment under California Assembly Bill (“AB”) 109 allowed non-violent, non-serious, and non sex offenders to serve their sentence in county jails instead of state prisons. Counties also have the authority to develop community-based alternatives to jail. In addition, the bill provided for county supervision of certain individuals upon release from state prison after October 1, 2011. For more information, see California Department of Corrections and Rehabilitation (CDCR), “2011 Public Safety Realignment” fact sheet (7/15/11), available at: http://www.cdcr.ca.gov/About_CDCR/docs/Realignment-Fact-Sheet.pdf.

Section 1230 of the Penal Code set up a public planning process. This is referred to as the “Community Corrections Partnership (CCP). The legislature charged the CCP to develop an AB 109 implementation plan for the county Board of Supervisors (BOS). The CCP Executive Committee includes a representative from either the County Department of Social Services, or Mental Health, or Alcohol and Substance Abuse Programs, as appointed by the county BOS. In addition, each county BOS designated a county agency responsible for post-release supervision.

There were over two thousand offenders with mental health challenges who were released from state prisons to county Post Release Community Supervision.
(PRCS) in June 2012. Over 80% of these individuals were in the General Population level. Less than 2% were in the Enhanced Outpatient Program (EOP) level. See Statewide Mental Health PRCS Program Dashboard (June 2012) available at: http://www.cmhda.org/go/portals/0/cmhda%20files/committees/forensics/1207_forensics/prcs_june_2012_dashboard_(7-23-12).pdf

It appears that policies, procedures and programs to reduce recidivism may vary from county to county.

There are reported success stories. According to one published report, Alameda County Behavioral Health Care Services (BHCS) provides a wide range of services designed to address the mental health and substance-use treatment needs of persons released from state prison or county jail pursuant to AB 109. BHCS planned to closely coordinate its services with probation, the Health Care Services Agency and the California Department of Corrections and Rehabilitation (CDCR) liaisons in the prisons. It provided for centralized assessment, triage, and follow-up authorization oversight to ensure that clients receive needed services.” See Partnership for Community Excellence, “County AB 109 Plans Analysis & Summary” (May 2012) at: http://www.cmhda.org/go/portals/0/cmhda%20files/breaking%20news/1206_june/cafwd_county_ab_109_plans_analysis_summary_(june%202012)v2.pdf

See also YouTube video, Telecare Staff Profile: Thomas Mayo of the AB 109 Program in L.A. at: http://www.youtube.com/watch?v=03EFnitCwsE

4. **Prisoners who are Deemed “Mentally Disordered Offenders”.**

Prisoners who have a mental disability at the time of, or upon termination of, their parole may be subject to involuntary commitment as an MDO. In 1986, the California Legislature enacted a mandatory mental health evaluation and treatment program for prisoners who have severe mental disorders that are not in remission at the time of their parole. [Penal Code sections 2960-2981]. The MDO program provides for mandatory mental health commitment as a condition of parole for all prisoners “who have a treatable, severe mental disorder that was one of the causes of, or was an aggravating factor in the commission of the crime for which they were incarcerated” who are “not in remission or cannot be kept in remission at the time of their parole or upon termination of parole,” creating a danger to society. Mental health treatment is provided “until the severe mental disorder which was one of the causes of, or was an aggravating
factor in the person’s prior criminal behavior is in remission and can be kept in remission.”

Individuals who are deemed as a Mentally Disordered Offender (MDO) are under state parole supervision. However, there is discussion about where individuals with a MDO history should be served. See California Mental Health Directors Association, draft paper available at: http://www.cmhda.org/go/portals/0/cmhda%20files/committees/forensics/1205_forensics/advocacy_info_for_cmhda_re_mdos_and_ab109_prcs_program_(5-9-12)_r2.pdf

5. Right to Adequate Mental Health Care at Jails.

The Due Process Clause of the 14th Amendment applies to prisoners who have not yet been convicted of a crime. It protects against conditions that amount to “punishment.” The 8th Amendment applies to prisoners who have been convicted of a crime. It protects you against “cruel and unusual punishment.” Jail officials violate a prisoners’ constitutional rights when they are “deliberately indifferent” to their “serious mental health needs.” Estelle v. Gamble, 429 U.S. 97, 103 (1976); Brown v. Plata, 131 U.S. 1910, 1928 (2011).

Regulations governing county jails are found at Title 15 of the California Code of Regulations, Subchapter 4, “Minimum Standards for Local Detention Facilities,” at: http://www.bdcorr.ca.gov/regulations/2005/guidelines/pdf_versions/2005_adult_t15_programs_and_Procedures_guidelines_final.pdf The California Board of Corrections (BOC) oversees compliance with the regulations, and is responsible for inspecting each county jail once every two years in order to ensure compliance with the Title 15 regulations.
DISCRIMINATION PROTECTIONS REGARDING PUBLIC ENTITIES
   a. **Federal regulations.** 28 C.F.R. Part 35, enforced by the Department of Justice (DOJ).
      a. Requirement to provide services in the most integrated setting appropriate to individual need. [28 CFR § 35.130].
      b. Requirement to make reasonable modifications in programs and services. [28 CFR § 35.130(b)(7)].
   b. **Cases.**


   California Community Mental Health reduction case: [http://www.disabilityrightsca.org/advocacy/Napper/index.htm](http://www.disabilityrightsca.org/advocacy/Napper/index.htm)

   California nursing home alternatives case: [http://www.disabilityrightsca.org/advocacy/LHH/Index.htm](http://www.disabilityrightsca.org/advocacy/LHH/Index.htm)

   c. **Policy Directives.**


   *Statement of the Department of Justice on Enforcement of the Integration Mandate of Title II of the Americans with Disabilities Act and Olmstead v.*
**L.C.,** (June 2011), U.S. Department of Justice, Civil Rights Division:  
http://www.ada.gov/olmstead/q&a_olmstead.htm


**U.S. Department of Health & Human Services – Community Living and Olmstead home page**  


**Federal CMS Letters to State Medicaid Programs on Olmstead:**  

Federal HUD Notice PIH-2012-31, Subject: Assisted Housing for persons with disabilities under *Olmstead* implementation efforts to provide community-based options rather than institutional settings. (June 29, 2012)

d. Filing an Olmstead Complaint, U.S. Department of Justice  
http://www.ada.gov/olmstead/olmstead_complaints.htm

2. **Section 504 of the Rehabilitation Act. 29 U.S.C. § 794.**

This is a national law that protects qualified persons from disability discrimination. It applies to employers and organizations that receive federal financial assistance from any Federal department or agency, including the U.S. Department of Health and Human Services (DHHS). This may includes many hospital, nursing homes, mental health centers and human services programs.

a. **Federal Regulations.**

There are a various implementing regulations, including:
a. Federally assisted or conducted programs, 28 CFR Part 42.501 et seq., 28 CFR Part 39
b. Agency complaint coordination, 29 CFR Part 1640.1
c. Department of Health and Human Services, 45 CFR Part 84
b. Policy Directives.

See DHHS Fact Sheet, “Your Rights under Section 504 of the Rehabilitation Act” at: http://www.hhs.gov/ocr/civilrights/resources/factsheets/504.pdf


These provisions provide protection from discrimination from any program or activity that is conducted, funded directly by, or receives any financial assistance from the State. These sections also bring into State law the protection of Title II of the ADA. Complaints should be with the department or agency alleged to be in noncompliance.

1. Policy Directives

California Olmstead Advisory Committee homepage, California Health & Human Services Agency: http://www.chhs.ca.gov/initiatives/Olmstead/Pages/default.aspx

DISCRIMINATION PROTECTIONS REGARDING PRIVATE ENTITIES
1. Federal Discrimination Protections
   
a. ADA – Title III, Private Entities Open to the Public, including private mental health service providers. 42 U.S.C. §§ 12181-12189.
      
      a. Regulations. 28 CFR Part 36, enforced by DOJ. Requirements to provide services in the most integrated setting appropriate to individual need. 28 CFR §§ 36.202, 36.203.
      
      b. Section 504 of the Rehab Act, Private Entities that receive federal funds, see above at Section IX-B.

2. State Discrimination Protections
   
a. Unruh Civil Rights Act, California Civil Code § 51.

   This California statute provides protection from discrimination by all business establishments in California, including housing and public accommodations, on the basis of disability, including any mental disability as defined under the FEHA. [Civil Code section 51(e)(1)].


   For more information, see the California State Attorney General’s Website at: http://ag.ca.gov/consumers/pdf/disabled.pdf

   b. How to File a Complaint.

   For information regarding the application or enforcement of the Unruh Civil Rights Act, see the Department of Fair Employment and Housing Website at: http://dfeh.ca.gov/Complaints_ComplaintProcess.htm
EDUCATION DISCRIMINATION PROTECTIONS
1. **Federal Individuals with Disabilities Education Act (IDEA)**

This statute guarantees for all children with disabilities the right to a free and appropriate education, full participation in the society, independent living, and economic self-sufficiency and sets out the procedures for reaching this goal. It requires that children with disabilities be educated with children who are not disabled and be removed from regular education environment when education in regular classes with supplementary aids and services is unsatisfactory. [20 U.S.C. § 1414(b)(5)].

2. **California Special Education Programs**

State law guarantees that individuals with exceptional needs have a right to special education instruction and services to meet their unique needs and ensure their right to a free appropriate public education. The law requires that the interaction between children with disabilities and children without disabilities be maximized to best meet the needs of both. [California Education Code § 56000(b)].

3. **Prohibition on Discrimination in Education.**

This statute prohibits discrimination on the basis of disability, gender, gender identity, gender expression, nationality, race or ethnicity, religion, sexual orientation, or any other characteristic that is contained in hate crimes in any program or activity conducted by an educational institution that receives or benefits from state financial assistance or enrolls pupils who receive state student financial aid. This prohibition also includes any aspect of the operation of alternative schools or charter schools. [California Education Code § 235].

a. **State regulations also prohibit discrimination**

5 CCR § 4900 – Broadly prohibits discrimination on the basis of the above categories in any California educational program that receives state or federal funding.

5 CCR § 4920 – Prohibits schools from excluding children from participating in interscholastic, intramural, or club athletics on the basis of a mental or physical disability.

5 CCR § 4925 – School districts cannot provide or otherwise carry out any of its extracurricular programs or activities separately, or require or refuse participation by any of its students on the basis of a mental or physical disability.
5 CCR § 4926 – Membership in school clubs must be open to all students regardless of a mental or physical disability.

5 CCR § 4930 – School counselors must provide guidance counseling to students regardless of a mental or physical disability.

5 CCR § 4931 – Psychological or educational testing must not result in the unfair exclusion of pupils with mental or physical disabilities from particular courses, programs, or activities.

4. **Post-Secondary Education.**

Participants of all post-secondary programs that receive federal funding are protected against discrimination on the basis of a mental disability under Section 504 of the Rehabilitation Act, discussed above at Section X.B. [29 U.S.C. § 794; 34 C.F.R. § 104 *et seq.*]. For further information, see Disability Rights California publication, “Rights of Students with Disabilities in Higher Education,” available at: [http://www.disabilityrightsca.org/pubs/530901.pdf](http://www.disabilityrightsca.org/pubs/530901.pdf)
1. Federal Discrimination Protections

**Americans with Disabilities Act (ADA) of 1990, general provisions. 42 U.S.C §§ 12101–12213.** The purpose of the act is to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities, including people with psychiatric disabilities. There are provisions to ensure equal opportunity in employment (Title I), state & local government services (Title II), and private businesses open to the public (Title III), which are discussed below under the respective sections.


      Title I of the ADA applies to private employers with 15 or more employees. State, county, and local governmental employers are covered regardless of the number of employees under Title II of the ADA, discussed above under Section IX, Discrimination by Public Entities.

   b. **Federal Regulations.** 29 C.F.R. Parts 1630, 1602.


   c. **Cases.**

      EEOC Appellate and Amicus Briefs filed in 2000 onwards are on line at: [http://www1.eeoc.gov/eeoc/litigation/briefs](http://www1.eeoc.gov/eeoc/litigation/briefs)

   d. **Policy Directives.**


      EEOC Notice Concerning ADA Amendment Acts (ADAAA) of 2008: [http://www.eeoc.gov/laws/statutes/adaaa_notice.cfm](http://www.eeoc.gov/laws/statutes/adaaa_notice.cfm)


This is a national law that protects qualified persons from disability discrimination. It applies to employers and organizations that receive federal financial assistance from any Federal department or agency, including the U.S. Department of Health and Human Services (DHHS). This may includes many hospital, nursing homes, mental health centers and human services programs.

a. Federal Regulations.

There are a various implementing regulations, including:

a. Federally assisted or conducted programs, 28 CFR Part 42.501 et seq., 28 CFR Part 39

b. Department of Education (DOE), 34 CFR Part 104

c. EEOC, 29 CFR Part 1630

d. Agency complaint coordination, 29 CFR Part 1640.1

e. Department of Health and Human Services, 45 CFR Part 84

b. Policy Directives.

See DHHS Fact Sheet “Your Rights under Section 504 of the Rehabilitation Act” at: http://www.hhs.gov/ocr/civilrights/resources/factsheets/504.pdf

c. How to File a Complaint.

For information on how to file a complaint through the federal Office of Civil Rights (OCR) see: http://www.hhs.gov/ocr/office/index.html


4. Section 502 of the Rehabilitation Act creates the Architectural and Transportation Barriers Compliance Board, 29 USC § 792.

5. Section 503 of the Rehabilitation Act requires affirmative action and prohibits disability discrimination by federal contractors or subcontractors with contracts of more than $10,000. 29 USC § 793, 41 CFR Part 60-741.

7. California Discrimination Protections


The Fair Employment and Housing Act (FEHA) provides protection from harassment or discrimination in employment because of: age (40 and over), ancestry, color, creed, denial of family and medical care leave, mental or physical disability or medical condition, marital status, medical condition (cancer and genetic characteristics), national origin, race, religion, sex, and sexual orientation. This protects the right of individuals to seek, obtain and hold employment without discrimination on the basis of mental disability. [Gov. Code section 12926, subdivision (j) (definition of “mental disability”)].

In the case of harassment, the California FEHA applies to all employers. FEHA also prohibits discrimination in employment because of a mental health disability and includes employers (both public and private) with five or more employees. [Gov. Code section 12926(d)]. Title I of the federal Americans with Disabilities Act (ADA) applies to private employers with 15 or more employees, discussed further above.

b. State disability discrimination regulations. [Title 2, Cal. Code of Regs, sections 7293.5 et seq.]

Employers must make reasonable accommodations for applicants and employees with disabilities, unless the accommodation would impose an undue hardship on the employer. [Title 2, Cal. Code of Regs., section 7293.9].

Examples of reasonable accommodation may include a more flexible schedule, more rest breaks, changes in physical aspects of the workplace (such as accessibility or reducing noise or distractions) or changes in the supervisory process. An employee can request an accommodation for any term or condition
of employment that affects the individual’s disability. Specifically, individuals with mental health disabilities may receive reasonable accommodations, for example, of flexible scheduling, frequent or longer work breaks, or time off for counseling. Whether an accommodation is reasonable in a particular case involves an analysis of the facts of the particular situation including its cost and the employer’s ability to pay for it.

The Job Accommodation Network is a good resource for examples of reasonable accommodations in the work place for individuals with mental health disabilities. (See [http://askjan.org](http://askjan.org))

c. **Resources & publications:**

"Disability Under the Fair Employment and Housing Act: What You Should Know About the Law", at the Department of Fair Employment and Housing Website. [http://www.dfeh.ca.gov](http://www.dfeh.ca.gov)


d. **How to File a Complaint.**

For information about filing a complaint with the California Department of Fair Employment and Housing see: [http://dfeh.ca.gov/Complaints_ComplaintProcess.htm](http://dfeh.ca.gov/Complaints_ComplaintProcess.htm)

e. **Cal MHSA Fact Sheet.**


f. **Government Code Section 11135 et seq.**

Any program or activity funded by the state must not discriminate against people with disabilities including any mental disability defined under the FEHA. [Gov. Code section 11135(c)(1)].

g. **Education Code Sections 44337 and 44338.**

No otherwise qualified person may be denied the right to receive a teaching credential, training, or to engage in practice teaching on the grounds that the
person has a disability. Section 44337 defines "disability" as: (1) a physical or mental impairment that substantially limits one or more of the major life activities of the individual, (2) a record of such an impairment, or (3) being regarded as having such an impairment.

h. **Labor Code Section 1735.**

A contractor must not discriminate in the employment of persons upon public works projects on the basis of mental disability.
1. Federal/State Vocational Rehabilitation Services

The 1998 amendments to the federal Rehabilitation Act specify principles that include respect for individual dignity, personal responsibility, self-determination, and pursuit of meaningful careers, based on informed choice, of individuals with disabilities. These principles also include inclusion, integration, and full participation of the individuals. [29 U.S.C. § 701(c)].

The California Department of Rehabilitation assists individuals in exercising informed choice at all stages of the process. [9 C.C.R. § 7029.6(a)]

Required information must include, at a minimum, information relating to the degree to which services are provided in integrated settings. [9 C.C.R. § 7029.6(d), 34 C.F.R. § 361.52(c)].

One method that the state agency can use to assist individuals in getting this information is to give individuals an opportunity to visit or experience various work and service provider settings. [9 C.C.R. § 7029.6(e)(5), 34 C.F.R. § 361.52(d)(5). See also 9 C.C.R. § 7029.6(b)(1), 34 C.F.R. § 361.52(d)(5) (individualized plan for employment (IPE))].

For an overview of the program, see: http://www.disabilityrightsca.org/pubs/540101.pdf

2. County Mental/Behavioral Health Programs


   This state statute includes provision for “Vocational Rehabilitation” services. [Cal. Welf. & Inst. Code § 5600.4(h)].

   b. MHSA.

   State regulations include provision for the following service option: supportive services to assist the individual, and when appropriate his or her family, in obtaining and maintaining employment [9 C.C.R. §§ 3620(a)(1)(A)(iii), 3630(b)(C)].

   c. Adult and Older Adult System of Care.

   This state statute includes provision for “Vocational Rehabilitation” services. [Cal. Welf. & Inst. Code § 5802(d)(4)].
d. Federal/State Medicaid or “Medi-Cal”.

Specialty Mental Health Services include “rehabilitation” services. [9 C.C.R. § 1810.243]. This assistance includes help with improving, maintaining or restoring one’s skills, such as communication with an employer or co-worker(s).

Specialty Mental Health Services also include “targeted case management” services. [9 C.C.R. § 1810.249]. This assists an individual to access needed community support services, including prevocational and vocational assistance. For more information, see: http://www.dmh.ca.gov/Services_and_Programs/Medi_Cal/docs/10_012B_SPA_for_webposting.pdf
1. **Federal Medicare Certified Hospitals, 42 C.F.R. § 482.43.**

As a condition of participation in the Medicare program, hospitals must comply with federal requirements. Federal discharge planning regulations include the following:

1. Identify all patients likely to suffer adverse health without adequate discharge planning. [42 C.F.R. § 482.43(a)];
2. Knowledge of community resources to meet clinical and social needs. [Interpretative Guideline § 482.43(b)(2)];
3. Evaluate likelihood of patient needing post-hospital services and availability of the services [§ 482.43(b)(3)];
4. Hospital must arrange for initial implementation of the patient’s discharge plan [§ 482.43(c)(3)].

2. **State Inpatient Mental Health Facility Aftercare Plan, Cal. Welf. & Inst. Code § 5622.**

This provision requires that an individual and his/her authorized representative receive information, including:

1. The nature of illness and follow up required;
2. Prescribed medications, including side effects and dosage schedule; expected course of recovery;
3. “Referrals” to medical and mental health service providers;
4. Other relevant information.

A person on a voluntary status may refuse or accept any or all of the services in the aftercare plan.

Other state law provisions define “referral” as follows:

a. “The purpose of referral shall be to provide for continuity of care, and may include, but need not be limited to, informing the person of available services, making appointments on the person’s behalf, discussing the person’s problem with the agency or individual to which the person has been referred, appraising the outcome of referrals, and arranging for personal
escort and transportation when necessary.” [Cal. Welf. & Inst. Code section 5008(d)].

b. “Referral shall be considered complete when the agency or individual to whom the person has been referred accepts responsibility for providing the necessary services.” [§ 5008(d)]

c. “All persons shall be advised of available precare services which prevent initial recourse to hospital treatment or aftercare services which support adjustment to community living following hospital treatment. These services may be provided through county welfare departments, State Department of Mental Health, Short-Doyle programs or other local agencies.” [§ 5008(d)]

d. “Each agency of facility providing evaluation services shall maintain a current and comprehensive file of all community services, both public and private. These files shall contain current agreements with agencies or individuals accepting referrals, as well as appraisals of the results of past referrals.” [§ 5008(d)]


This provision requires appropriate arrangements for post-hospital care, including but not limited to home care, are made prior to discharge.

4. Joint Commission on the Accreditation of Health Organizations (JCAHO) 2008 Hospital Accreditation Standards – Discharge or Transfer.

One of the purposes is as follows: “…To facilitate discharge or transfer, the hospital assesses the patient’s needs, plans for discharge or transfer, facilities the discharge or transfer process, and helps to ensure that continuity of care, treatment, and services is maintained.”

1. Elements of Performance for Standard of Care Provision for Palliative Care (PC) 15.20: When the patient is discharged, information provided to him or her including the
reason for discharge and the anticipate need for continued care, treatment and services, including but not limited to, as appropriate, special education, adult day care, case management, home health services, hospice, long term care services, ambulatory care, support groups, rehabilitation services, and community mental health services.

5. **Federal Minimum Data Set (MDS) Section Q, Nursing Home Reform Act.**

The Minimum Data Set (MDS) is part of the federally-mandated process for assessing individuals receiving care in certified skilled nursing facilities regardless of payer source. The process provides a comprehensive assessment of individuals’ current health conditions, treatments, abilities, and plans for discharge. The MDS is administered to all residents upon admission, quarterly, yearly, and whenever there is a significant change in an individual’s condition. Section Q is the part of the MDS designed to explore meaningful opportunities for nursing facility residents to return to community settings. For more information, see fact sheet, “Enhanced Discharge Planning Rights for Nursing Facility Residents under MDS 3.0 Section Q at: [http://www.disabilityrightsca.org/pubs/549601.pdf](http://www.disabilityrightsca.org/pubs/549601.pdf)

6. **Medi-Cal Crisis Residential Treatment Programs.**

“Crisis Residential Treatment Service” means therapeutic or rehabilitative services provided in a non-institutional residential setting which provides a structured program as an alternative to hospitalization for beneficiaries experiencing an acute psychiatric episode or crisis who do not have medical complications requiring nursing care. The service includes a range of activities and services that support beneficiaries in their efforts to restore, maintain, and apply interpersonal and independent living skills, and to access community support systems. The service is available 24 hours a day, seven days a week. Service activities may include but are not limited to assessment, plan development, therapy, rehabilitation, collateral, and crisis intervention. [9 C.C.R. § 1810.208 (emphasis added)].

Additional state regulations on treatment or rehabilitation plan and documents requirements include as follows: "There shall be a written discharge summary prepared by staff and client, which includes an outline of services provided, goals accomplished, reason and plan for discharge, and referral follow-up plans." [9 C.C.R. § 532.2(f); see above state statutory definition of “referral”].
Further, state regulations on social rehabilitation facilities such as crisis residential treatment program require that the licensee “arrange for and/or provide those services in the client's needs and services plan as necessary to meet the client’s needs.” [22 C.C.R. § 81078(a)(1)].

7. **15 C.C.R., California Board of State and Community Corrections.**

   a. **§ 1070. Individual/Family Service Programs.**

   The facility administrator of a Type II, III, or IV facility shall develop written policies and procedures which facilitate cooperation with appropriate public or private agencies for individual and/or family social service programs for inmates. Such a program shall utilize the services and resources available in the community and may be in the form of a resource guide and/or actual service delivery. The range and source of such services shall be at the discretion of the facility administrator and may include:
   
   a. individual, group and/or family counseling;
   
   b. drug and alcohol abuse counseling;
   
   c. community volunteers;
   
   d. vocational testing and counseling;
   
   e. employment counseling;
   
   f. referral to community resources and programs;
   
   g. prerelease and release assistance;
   
   h. legal assistance; and,
   
   i. regional center services for the developmentally disabled.

The implementation of prisoner realignment under Assembly Bill 109, referenced above at Section IX-C. This needs monitoring to determine extent of “prerelease and release assistance” provided to low level offenders going to county jails instead of to state prison. Also, monitoring is needed of persons jailed who do not fall under the provisions of AB 109.

   b. **§ 1210. Individualized Treatment Plans.**

   i. For each inmate treated by a mental health service in a jail, the treatment staff shall develop a written treatment plan. The custody
staff shall be informed of the treatment plan when necessary, to ensure coordination and cooperation in the ongoing care of the inmate. This treatment plan shall include referral to treatment after release from the facility when recommended by treatment staff.

ii. For each inmate treated for a major medical problem in a jail, the treatment staff shall develop a written treatment plan. The custody staff shall be informed of the treatment plan when necessary, to ensure coordination and cooperation in the ongoing care of the inmate. This treatment plan shall include referral to treatment after release from the facility when recommended by treatment staff.

c. **Juvenile facility regulations.**

For links to California Board of State and Community Corrections regulations on facilities for juveniles, see the following website: [http://www.bscbc.ca.gov/resources](http://www.bscbc.ca.gov/resources)
1. **Carl Washington School Safety & Violence Prevention Act**

The purpose of this statute is to provide public schools with supplemental resources to combat bias on the basis of race, color, religion, ancestry, national origin, disability, gender, gender identity, gender expression or sexual orientation. [Cal. Education Code § 32228].

2. **Training for Identification of Hate Violence**

This provision establishes regional training programs that help school districts, school administrators, and teachers to identify bias and reduce incidents of bias-related violence in California public schools.

3. **Safe Place to Learn Act**

This statute states the policy of the California to ensure that all local educational agencies work to reduce discrimination, harassment, violence, intimidation, and bullying and to improve pupil safety at schools and the connections between pupils and supportive adults, schools and communities. It also sets out the requirements for accomplishing these goals. [Cal. Education Code §§ 234-234.5].

4. **California Ralph Civil Rights Act, Civil Code Section 51.7.**

This act prohibits violence or threats of violence based on an individual’s race, color, religion, ancestry, age, disability, sex, sexual orientation, political affiliation, or position in a labor dispute. Persons who believe they have been subjected to hate violence may file a complaint with the Department of Fair Employment and Housing. See California Department of Justice website at: [https://oag.ca.gov/civil/htm/laws](https://oag.ca.gov/civil/htm/laws)
1. Federal Housing Discrimination Protections

a. Fair Housing Amendments Act of 1988 (FHAA)

The FHAA extends prohibitions on housing discrimination under the Civil Rights Act of 1968 to people with disabilities. [42 U.S.C. § 3601 et seq.; 24 C.F.R. Parts 100 et seq.] These include prohibitions on various types of discriminatory conduct in the sale and rental of housing, as well as the right to reasonable accommodations in a housing provider’s policies and practices, and reasonable modifications to the physical premises, as necessary to allow a person with a disability to use and enjoy the housing.

a. Complaint process.

For information on how to file a housing complaint with the U.S. Department of Housing and Urban Development (HUD), see: http://portal.hud.gov/hudportal/HUD?src=/topics/housing_discrimination

b. Policy Directives.

HUD and the Department of Justice (DOJ) have issued a Joint Statement on providing reasonable accommodations under the FHAA: http://www.justice.gov/crt/about/hce/jointstatement_ra.php

HUD and DOJ have also issued a Joint Statement on the right to reasonable modifications under the FHAA: http://www.justice.gov/crt/about/hce/documents/reasonable_modifications_mar08.pdf

b. Americans with Disabilities Act Titles II & III.

Public and private housing providers may also be prohibited from discriminating against people with mental health challenges under Title II and Title III of the ADA, respectively, discussed above.

For information about The Americans with Disabilities Act’s mandate to provide housing in the most integrated setting appropriate to an individual’s needs, see: HUD Notice PIH-2012-31, Assisted Housing for Persons with Disabilities under Olmstead (June 29, 2012), http://portal.hud.gov/hudportal/documents/huddoc?id=pih2012-31.pdf; Statement of the Department of Housing and Urban Development on the Role of Housing in Accomplishing the Goals of Olmstead,
Statement of the Department of Justice on Enforcement of the Integration Mandate of Title II of the Americans with Disabilities Act and Olmstead v. L.C.
http://www.ada.gov/olmstead/q&a_olmstead.htm

2. California Fair Employment & Housing Act

The Fair Employment and Housing Act prohibits disability-based discrimination in all aspects of housing (rental, lease, terms and conditions, etc.). Cal. Gov’t Code §§12900-12951 & 12927-12928 & 12955 - 12956.1 & 12960-12976. The definition of disability used in California exceeds the federal definition, and can be found at Cal. Gov’t Code Section 12926: http://finduslaw.com/california-fair-employment-housing-act-feha-government-code-12900-12996

a. How to File a Complaint.

For information about filing a complaint with the California Department of Fair Employment and Housing, see: http://dfeh.ca.gov/Complaints_ComplaintProcess.htm

b. California DFEH and DOJ Resources.


c. Fact Sheet on Right to Service/Emotional Support Animals.

The federal and state governments provide a variety of programs to assist individuals, including people with disabilities, in obtaining housing. For an overview of these programs, see California Budget Project, *Budget Backgrounder: A Primer on California’s Housing Programs* (2005): http://www.cbp.org/pdfs/2005/0505bb_housing.pdf

1. Federal Housing Assistance Programs

   a. Low Income Housing Tax Credit (LIHTC) Program

   The federal government provides tax incentives to private developers to acquire, build, or rehabilitate low-income rental housing. For information, see: http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/affordablehousing/training/web/lihtc/basics

   b. PATH Program

   The Projects for Assistance in Transition from Homelessness (PATH) program is administered by the U.S. Substance Abuse and Mental Health Services Administration (SAMHSA). The program provides grants to California counties to provide services, including a limited range of housing services, to people with serious mental illness who are experiencing homelessness or at risk of becoming homeless. For more information, see: http://pathprogram.samhsa.gov/super/path/about.aspx

   c. HUD Programs

   The U.S. Department of Housing and Urban Development administers a variety of housing assistance programs. Examples include:

   a. Community Development Block Grant (CDBG Program)

   The CDBG program is a flexible program that provides communities with resources to address a wide range of unique community development needs. For information, see: http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/communitydevelopment/programs

   b. Federal Housing Administration (FHA) Multifamily and Single-Family Programs,

   The FHA, which is part of HUD, provides mortgage insurance to enhance the credit of homebuyers and help them qualify for mortgages, as well as to
assist privately developed multifamily properties. For information, see: http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/fhahistory

   c. HOME Investment Partnerships Program

The HOME program provides block grants to local entities to expand the supply of affordable housing. For information, see: http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/affordablehousing/programs/home/

   d. Homeless Assistance Programs

HUD has several programs that provide housing grants to people who are homeless or at risk of becoming homeless. For more information, see: http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/homeless/programs

2. State Housing Assistance Programs

   a. Mental Health Services Administration (MHSA) Housing Program

In August 2007, the California Department of Mental Health (DMH) and the California Housing Finance Agency (CalHFA) announced the release of an initial $400 million for the MHSA Housing Program. The goal of the program is 10,000 new supported housing units. To receive funding, each county must have a fully executed MHSA Performance Contract amendment authorizing the state to administer this program on its behalf. The planning process must comply with the regulations found 9 C.C.R. § 3100 et seq.

   a. Target Population.

DMH defined the target population as follows: Adults/older adults with serious mental health illness as defined under Cal. Welf. & Inst. Code § 5600.3(b); Children/adolescents with serious emotional disturbance as defined under Cal. Welf. & Inst. Code § 5600.3(a); and Persons who are homeless or at risk of homelessness. The latter includes people discharged from psychiatric facilities, the juvenile justice system or city or county jails. See CalHFA and DMH, “Mental Health Services Act Housing Program Application” (2007), available at: http://www.calhfa.ca.gov/multifamily/mhsa/application/index.htm.

See also CalHFA, “Mental Health Services Act Housing Program Term Sheet” (2009), available at:
b. **Types of MHSA Housing**

The types of permanent supportive housing that may receive funding under the MHSA include: Apartment buildings; Duplexes, triplexes and four-plexes; and Single-family homes and condominiums. There is no limit on length of stay for occupancy by an eligible resident. MHSA supportive housing is linked to on-site or off-site services. These services help the tenant to retain housing, support recovery and resiliency, and maximize his or her ability to live and work in the community.

c. **Conditions of Participation**

A tenant’s participation in supportive services may not be a condition of occupancy in MHSA units. (See Rental Housing Development Application, Section D, Item D.7, page 8 (2/20/13), which is available at: http://www.dhcs.ca.gov/services/MH/Pages/MHSAHousing.aspx)

b. **Housing Element Law.**

Through its Housing Element Law, California has recognized that decent housing is a priority of the highest order for every Californian. [Cal. Govt. Code §§65580-65589.8]. California’s Housing Element law promotes the development of affordable housing by authorizing:

a. Assessment of housing needs and an inventory of resources and constraints relevant to meeting the needs [§ 65583(a)];

b. Analysis of any special housing needs for people with disabilities [§ 65583(a)(7)];

c. Analysis of potential and actual government constraints upon the maintenance, improvement, or development of housing for people with disabilities [§ 65583(a)(5)];

d. Removal of constraints to, and provision of reasonable accommodation for housing designed for, intended for occupancy by, or with supportive services for, people with disabilities [§ 65583(c)(3)]; and

e. Promotion of housing opportunities for all people regardless of disability [§ 65583(c)(5)].
c. **Land Use & Planning Provisions**

California provides protection from zoning restrictions in order to allow persons with disabilities to live in residential housing. [Cal. Welf. & Inst. Code §§ 5115-5120]. This includes:

a. Defining property that is used for the care of six or fewer disabled individuals, or dependent or neglected children, as residential property for the purpose of zoning laws [§ 5116]; and

b. Establishing the policy that no city or county can discriminate in the enactment of zoning laws, ordinances, or rules and regulations regarding the use of property for hospitals, nursing homes, or psychiatric care [§ 5120].

d. **“Least Cost” Housing and Subdivision Laws**

California’s “least cost housing” law requires communities to exercise their zoning authority in a way that makes affordable housing feasible. The law also provides that in regulating subdivisions, a local government may not impose design criteria for the purpose of making an affordable housing development infeasible, and must consider the effect of its ordinances and actions on local housing needs. [Cal. Gov’t Code §§ 65913.1, 65913.2].
Both federal and state governments fund a number of income benefit programs to assist people with disabilities, including people with mental health disabilities. Several of these are briefly referenced here.

1. **Social Security Disability Insurance (SSDI).**

There are two types of SSDI Benefits. The first is for disabled workers who are insured under Social Security. The second is for children of disabled workers who are insured under Social Security and who are either retired, disabled or deceased. [42 U.S.C. § 401; 20 C.F.R. § 404.300 et seq.].

2. **Supplemental Security Income (SSI).**

These benefits are for children and adults with limited income and resources. Persons aged 65 or older are also eligible (with certain limitations for non-citizens). [42 U.S.C. § 1381 et seq.; 20 C.F.R. § 416 et seq.]. The 2012 SSI benefit level in California is $854.40 for an aged or disabled person and $1,444.20 for a couple. If you receive other income (such as SSDI/Title II benefits) which is less than the SSI standard, you can also get an SSI check to supplement your other income. If you receive even one dollar of SSI, you are automatically entitled to Medi-Cal at no cost.

3. **Veterans Administration (VA).**

See National Veterans Legal Services Program, Veterans Benefits Manual.
OTHER COMMUNITY SUPPORT PROGRAMS
1. **In-Home Support Services (IHSS).**

IHSS is a state sponsored program whose purpose is to allow persons with disabilities, including people with mental disabilities, to live safely in their homes. [Cal. Welf. & Inst. Code § 12300 *et seq.*] Applications can be made through the county Department of Social Services. For more information, see Disability Rights California publication, “In-Home Support Services – Nuts and Bolts Manual,” available at: http://www.disabilityrightsca.org/pubs/PublicationsIHSSNutsandBolts.htm

2. **Lanterman Act Services.**

The California Legislature places a high priority on ensuring that clients of regional centers and their families can avail themselves of mental health services that are appropriate to their needs. To improve coordination, each regional center and county mental health department must develop a memorandum of understanding (MOU) concerning service access. (Cal. Welf. & Inst. Code §§ 4696-4697).

3. **Substance Use Services**

   a. **Affordable Care Act.**

One of the essential benefits under the federal ACA is “mental health and substance use disorder services, including behavioral health services,” discussed further above at Section I-G.

   b. **Medi-Cal.**

Assembly Bill 106 transferred California’s Drug Medi-Cal (DMC) program from the Department of Alcohol and Drug Programs to the Department of Health Care Services (DHCS). DMC information and resources have been moved to the DHCS website at: http://dhcs.ca.gov/services/adp/Pages/default.aspx

   c. **California MHSA.**

Full Service Partnership programs cover the cost of non-mental health services and supports including the treatment of co-occurring conditions, such as substance abuse. [9 C.C.R. § 3620(a)(1)(B)(v)].
d. **California Mental Health Adult and Older Adult Systems of Care.**

Systems of care service plans include access to services enabling recipients to have freedom from dangerous addictive substances. [Cal. Welf. & Inst. Code §5806(c)(10)].

This act requires group health plans and health insurance issuers to ensure that financial requirements (such as co-pays, deductibles) and treatment limitations (such as visit limits) applicable to mental health or substance use disorder (MH/SUD) benefits are no more restrictive than the predominant requirements or limitations applied to substantially all medical/surgical benefits. MHPAEA supplements prior provisions under the Mental Health Parity Act of 1996 (MHPA), which required parity with respect to aggregate lifetime and annual dollar limits for mental health

   a. Link to Final MHPAEA Federal Regulations (11-13-13):


   b. Links to MHPAEA information and fact sheets at:

   http://www.dol.gov/ebsa/mentalhealthparity/index.html
   http://www.dol.gov/ebsa/newsroom/fsmhpaea.html

   c. Affordable Care Act (ACA).

   See U.S. Department of Labor Frequently Asked Questions about MHPAEA and mental health parity provisions under the ACA available at:
   http://www.dol.gov/ebsa/faqs/faq-aca5.html

2. California Mental Health Parity Act, Health & Safety Code § 1374.72; Insurance Code § 10144.5; 28 C.C.R. § 1300.74.72].

The act combats the disparity in health insurance coverage for mental illness and physical illness. Health care service plans that are state regulated need to provide coverage for the diagnosis and treatment of specified mental health conditions under the same terms and conditions applied to other medical conditions. There must be equal application of all terms and conditions under a health plan including but not limited to the following: (1) maximum lifetime benefits, (2) copayments, and (3) individual and family deductibles. The act requires health care plans to include the following benefits: (1) outpatient services, (2) inpatient hospital services, (3) partial hospital services, and (4) prescription drugs, if the plan contract includes coverage for prescription drugs.
a. **Cases.**


There are a variety of state statutory and regulatory requirements that provide for data collection and reporting to promote access to services to prevent unnecessary institutional placement and support community living.

1. **Bronzan-McCorquodale Act, Cal. Welf. & Inst. Code § 5600 et seq.**

With realignment in 1991, the legislature mandated the development of systemic county performance outcomes measures by July 1, 1992. [§ 5610(b)]. It provided for consideration of outcome measures in the following areas:

1. Number of persons in identified target populations served.
2. Estimated number of persons in the identified target populations in need of services.
3. Treatment plans development for members of the target population served.
4. Treatment plan goals met.
5. Stabilization of living arrangements.
6. Reduction of law enforcement involvement and jail bookings.
7. Increase in employment or education activities.
8. Percentage of resources used to serve children and older adults.
9. Number of patients’ rights advocates and their duties.
10. Quality assurance activities for services, including peer review and medication management.
11. Identification of special projects, incentives, and prevention programs.

[§ 5612].

In 2010, the California Mental Health Planning Council proposed performance indicators for evaluating the public mental health system including many of the outcome measures listed above for adults such as: Living Situation; Justice Placement; Number of moves, Hospitalization; Employment; Number of arrests;

2. Mental Health Services Act (MHSA).

The MHSA mandates prevention and early intervention strategies to reduce specified negative outcomes that may result from untreated mental health conditions, namely:

1. Suicide;
2. Incarcerations;
3. School failure or dropout;
4. Unemployment;
5. Prolonged suffering;
6. Homelessness; and
7. Removal of children from their homes.

[Cal. Welf. & Inst. Code § 5840(d)]. The act also requires that each county program plan “shall include reports on the achievement of performance outcomes for services under the Adult, Older Adults, and Children’s Systems of Care requirements, referenced below. [§ 5848(c)].

a. State MHSA regulations, 9 C.C.R. § 3100 et seq.

State regulations implementing the MHSA include provisions with respect to the following: Full Service Partnership Performance Outcome Data. [§§ 3530.30, 3620.10].


The legislature intended to promote system of care accountability for performance outcomes. This focused on an individual’s symptom reduction that impaired her or his ability to live independently, work, maintain community
supports, care for their children, stay in good health, not abuse drugs or alcohol, and not commit crimes. [§ 5802(d)(2); see also § 5809 (client and cost outcomes)].


The legislature found that the system lacked “[c]lear and objective client outcome goals for children” and lacked “accountability and methods to measure progress towards client outcome goals and cost-effectiveness.” [§ 5851(a)(2)&(6)]. It found that the Ventura County model met the performance outcomes required by the legislature and ordered the expansion to all counties within the state. [§ 5851(c)]. Measurable performance goals for client outcome and cost avoidance were a required component of county proposals, as well as specified baseline data. [§§ 5863(b), 5864]. Monitoring and outcome measures were a condition of state funding. [§ 5865; see also § 5868 (establishment of standards), and §§ 5879-5883 (systemic performance measures)].

5. **Federal/State Medicaid or “Medi-Cal” in California.**

The legislature adopted Cal. Welf. & Inst. Code § 14707.5 to develop a performance outcome system for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) mental health services. For a power point presentation on developing these performance outcome measures, see: [http://www.dhcs.ca.gov/individuals/Documents/PerformanceandOutcomesSystemforMedi-CalSpecialtyMentalHealthFINAL.pdf](http://www.dhcs.ca.gov/individuals/Documents/PerformanceandOutcomesSystemforMedi-CalSpecialtyMentalHealthFINAL.pdf)

6. **LPS Act Reporting Requirements.**

Counties and designated facilities must report to the state data on involuntary detentions under Cal. Welf. & Inst. Code §Section 5402. The responsible state department has a duty to “collect and publish annually quantitative information” on the number of persons served under specified provisions or programs, including § 5150 and § 5250 detentions, § 5350 conservatorships, and jail mental health services. Further, “[t]he department shall make the reports available to medical, legal, and other professional groups involved in the implementation of” community mental health programs. [§ 5402(d)]. The data is available on the Department of Health Care Services website at: [http://www.dhcs.ca.gov/services/MH/Pages/InvoluntaryDetention-MH.aspx](http://www.dhcs.ca.gov/services/MH/Pages/InvoluntaryDetention-MH.aspx)
1. Federal Transportation Discrimination Protections
      a. Title II & Title III Federal regulations. 49 CFR Parts 27, 37, 38, enforced by Department of Transportation (DOT)
      b. How to file a federal transportation complaint:
         http://www.fta.dot.gov/12874_3889.html

2. State Transportation Discrimination Protections
   a. Accessibility of Equipment & Structures.

   This law requires that state and local government entities require that all fixed route transit equipment and public transit structures are accessible to people with disabilities. [Gov. Code section 4500].

   b. Encourage Maximum Use by “Handicapped Persons”

   The legislature has found that since public transportation systems provide an essential public service, they should be designed and operated to encourage maximum use by “handicapped persons.” [Public Utilities Code § 99220].
TELECOMMUNICATIONS DISCRIMINATION PROTECTIONS

Federal

Discrimination Protections

Code
1. Federal Discrimination Protections – Title IV of the ADA, telecommunications services for people with hearing and/or speech impairments. 47 U.S.C. § 225.
   


This federal act, also known as the "Motor Voter Act," makes it easier for all Americans to exercise their fundamental right to vote. One of the basic purposes of the Act is to increase the historically low registration rates of minorities and persons with disabilities that have resulted from discrimination. The Motor Voter Act requires all offices of State-funded programs that are primarily engaged in providing services to persons with disabilities to provide all program applicants with voter registration forms, to assist them in completing the forms, and to transmit completed forms to the appropriate State official.

   a. For a link to frequently asked questions:
      http://www.justice.gov/crt/about/vot/nvra/nvra_faq.php
   b. For more information, see:
      www.usdoj.gov/crt/voting


We want to hear from you! After reading this report please take this short survey and give us your feedback.


Disability Rights California is funded by a variety of sources, for a complete list of funders, go to http://www.disabilityrightsca.org/Documents/ListofGrantsAndContracts.html.

The California Mental Health Services Authority (CalMHSA) is an organization of county governments working to improve mental health outcomes for individuals, families and communities. Prevention and Early Intervention programs implemented by CalMHSA are funded by counties through the voter-approved Mental Health Services Act (Prop 63). Prop. 63 provides the funding and framework needed to expand mental health services to previously underserved populations and all of California’s diverse communities.