

SUPPORT PERSONS FOR PATIENTS WITH DISABILITIES IN HOSPITALS AND OTHER HEALTH FACILITIES DURING THE COVID-19 PUBLIC HEALTH EMERGENCY

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On May 2, 2020, the California Department of Public Health (CDPH) issued an [All Facilities Letter \(20-38.1\)](#) to the State's health facilities regarding the allowance of support people to accompany patients with disabilities. This document summarizes CDPH's new guidance, and provides important information on how it should be implemented across California to safeguard the rights and well-being of people with disabilities.

Summary of CDPH Guidance

The CDPH All Facilities Letter provides important new guidance regarding visitation for patients with disabilities who wish to be accompanied by a support person. The Letter also addresses visitation for pediatric patients, patients in labor and delivery, and patients at end-of-life.

The Letter states:

Patients with Physical, Intellectual, and/or Developmental Disabilities and Patients with Cognitive Impairments

The presence of a support person is essential to patients with physical, intellectual, and/or developmental disabilities and patients with cognitive impairments. CDPH recommends that one support person be allowed to be present with the patient when medically necessary.

For hospitalized patients, especially with prolonged hospitalization, the patient or family/patient representative may designate two support people, but only one support person may be present at a time.

The Letter also provides direction as to screening and other precautions for support persons who accompany patients:

All support persons must stay in the room and be asymptomatic for COVID-19 and not be a suspected or recently confirmed case. Support persons may be screened prior to entering the clinical areas. Support persons must comply with any health facility instructions on personal protective equipment.

Finally, the Letter “strongly encourages facilities, including but not limited to skilled nursing facilities,” to facilitate “frequent video and phone call visits” for all patients, with appropriate infection control measures with respect to shared electronic devices.

Implementation of CDPH’s Guidance to Safeguard the Rights and Well-Being of People with Disabilities

While public health and safety concerns are paramount during these difficult times, every California health facility should have a policy that ensures that patients with disabilities have in-person support when necessary to the provision of equal access to health care.

A thoughtful policy on this important issue, consistent with our comments below, will enhance the safety and well-being of patients with disabilities and support the work of health care staff.

1. Protection of All People with Disabilities

Federal and State law prohibit discrimination on the basis of any disability, and requires that health facilities provide all people with disabilities with reasonable modifications to ensure equal access. The Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act (Rehab Act), Section 1557 of the Affordable Care Act (ACA), and California disability law remain in full effect during this public health emergency.¹

¹ 42 U.S.C. §12132 (ADA Title II prohibition against discrimination in services, programs, and activities of a public entity); 42 U.S.C. §12182 (ADA Title III prohibition against discrimination in any place of public accommodation); 28 C.F.R. § 35.130 (regulations implementing ADA Title II); 28 C.F.R. § 36.201 (regulations implementing ADA Title III); 29 U.S.C § 794 (Rehab Act prohibition against discrimination in a program or activity receiving Federal funds); 45 C.F.R. § 92 (ACA regulations); Cal. Gov’t

The CDPH All Facilities Letter mentions patients with “physical, intellectual, and/or developmental disabilities and patients with cognitive impairments.” Consistent with federal and state disability law, each health facility’s visitation policy should allow support persons for *all* persons with disabilities (also including hearing, seeing, other sensory, cognitive, speaking, psychiatric disabilities, etc.) who require such an accommodation, rather than limiting visitation to the categories of people with disabilities specifically mentioned in the CDPH Letter.

2. Reasonable accommodations to ensure that people with disabilities have equal access to care.

The CDPH All Facilities Letter states that the “presence of a support person is **essential**” for some patients with disabilities, and recommends that a support person be allowed to accompany the patient “when medically necessary.”

This guidance is consistent with the obligation of health facilities to provide reasonable accommodations to people with disabilities. Hospitals should grant requests for a patient with a disability to be accompanied by a support person where necessary to ensure equal access to the services and care provided at the facility.

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

Where a support person’s assistance helps to facilitate meaningful access to health care and other services to a patient with disabilities, that should be sufficient to establish the medical “necessity” of their presence under CDPH’s guidance.

For example, a patient with disability-related communication barriers may require the in-person support of a trusted person to facilitate effective communication with health care staff. Likewise, a patient with a disability

Code § 11135; Cal. Civ. Code § 51 (Unruh Act); Cal. Civ. Code § 54 (Disabled Persons Act).

that affects their ability to understand or follow medical guidance may need a trusted support person to assist them.

3. PPE and Precautions for Visitors

The CDPH All Facilities letter confirms that all visitors, including support people, may be required to follow facility rules regarding essential precautions such as the use of personal protective equipment (PPE).

Visitors should be encouraged to bring their own mask or other PPE. If they do not have their own, or a facility requires the use of certain kinds of PPE, the facility should provide visitors with PPE at the visitor check-in area, as well as any needed training or assistance with PPE use.

4. Video and Phone Call Communications

As described in the CDPH All Facilities Letter, patients benefit from video and phone calls with loved ones, caregivers, and other support persons who are not physically present.

For patients with disabilities, the health facility should provide reasonable accommodations when necessary to facilitate meaningful access to these technologies. This may include: staff assistance in using a phone, tablet, or other personal device; using larger screens or other technologies that accommodate a patient's disability needs; extra time using a device or wired equipment provided by the facility; or other modifications to procedures to ensure equal access.

5. Transparency of Policy and Rules on Visitation

Each health facility must effectively communicate with patients and the public about its visitation policy. Patients with disabilities and their families need to be informed about how to ask for in-person contact with a support person, as well as the rules for safe visiting.

Signage should be posted at the facility, in parking lots, and at all arrival points. The facility's policies should be posted online and on social media, and in multiple modes that are accessible to people with disabilities and to people with limited English proficiency.

WE ARE HERE TO HELP

Our organizations are committed to ensuring the safety and well-being of people with disabilities during this public health emergency. We regularly provide technical assistance to service providers on issues like

this one. Likewise, if you or someone you know face barriers to securing visitation consistent with the State's recent guidance, please contact us.

Disability Rights California

Phone: 1-800-776-5746

Visit: <https://www.disabilityrightsca.org/>

Disability Rights Education and Defense Fund

Phone: (510) 644-2555

Visit: <https://dredf.org/>