



California's Protection & Advocacy System
Toll-Free (800) 776-5746

Access to Health Care for People with Disabilities under the ADA and other Civil Rights Laws

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1. [What if I use a wheelchair, walker, or crutches and cannot get into my doctor's office?](#)
2. [What about physical access to medical equipment and exam rooms?](#)
3. [Can I bring my service animal with me to my appointment?](#)
4. [I am deaf, how are my health care providers required to communicate with me?](#)
5. [I am blind or visually impaired, how can I get information from my health care providers?](#)
6. [What if I have a mental health or other disability, can I ask for other modifications to help me access my health care?](#)
7. [What are some examples of disability-related discrimination that might violate the ADA or Section 504?](#)
8. [What do I do if I am having difficulties accessing my health care providers or health care plan due to my disability?](#)
9. [Where can I file a complaint if I can't work it out with my provider or health care plan?](#)
10. [Where can I get more information or assistance if I need help accessing health care?](#)

INTRODUCTION

This brochure focuses on the rights of people with disabilities when accessing health care. Access includes: facilities, services, and information offered by doctors' offices, other medical providers and insurance plans. For many Californians, medical services are provided either by a public entity, such as a county, or through Managed Care, which is a network of providers managed by an umbrella corporation or agency. When providing Medi-Cal services, Managed Care Organizations are doing so under a contract with the State and/or county government. All health care providers are prohibited from discriminating against people with disabilities and must provide access in a variety of ways.

The main federal laws that protect your rights are the **Americans with Disabilities Act (ADA)** and **Section 504 of the Rehabilitation Act (Section 504)**. Privately owned and operated hospitals or medical offices are covered under Title III of the ADA because they are "public accommodations." Medical facilities run by government bodies such as county or other public hospitals, clinics and medical offices are covered under Title II of the ADA, because they are public entities. Section 504 covers medical providers that receive federal financial assistance, such as Medicare or Medi-Cal.ⁱ There are similar state law provisions as well.ⁱⁱ

General Provisions

Both Titles II and III of the ADA and Section 504 require that medical care providers provide individuals with disabilities:

- **Full and equal access** to their health care services and facilities;
- **Reasonable modifications** to policies, practices, and procedures when necessary to make health care services accessible; and,
- **Effective communication, including auxiliary aids and services**, such as the provision of sign language interpreters or written materials in alternative formats.ⁱⁱⁱ

However, refusing to provide a person with a disability an accommodation is not a violation under the ADA if the alteration of the building or service would result in an "undue hardship" to the health care provider.^{iv} The

provider may assess whether the modification needed or requested is reasonable by determining if it would be a fundamental alteration in the program that would result in significant difficulty or expense.

What if I use a wheelchair, walker, or crutches and cannot get into my doctor's office?

If the building or facility that you are trying to use is newly constructed or altered, it will need to comply with federal and state laws requiring physical accessibility. Access requirements are detailed in the law and regulations.^v They require accessible paths of travel, elevators, ramps, doors that open easily, reachable light switches, accessible bathrooms, accessible parking and signage that can be used by individuals who are blind or have low vision.^{vi}

Buildings not altered since 1990 are subject to the accessibility requirements for existing buildings. A government health care provider (under Title II) must ensure that its program as a whole is accessible. This might include making buildings physically accessible, removing architectural barriers or relocating services to an accessible location on a temporary or permanent basis. Private health care providers (under Title III) are required to remove architectural barriers where such removal is readily achievable, or can be easily accomplished without much difficulty or expense. In the alternative, they need to make other arrangements, again provided this is readily achievable.^{vii} Examples might be keeping paths of travel clear of barriers or offering a health care appointment at an alternative accessible location.

What about physical access to medical equipment and exam rooms?

U.S. Department of Justice (DOJ) guidelines provide that it is generally **not acceptable** for a health care provider to deny treatment due to an inaccessible examination table, inaccessible medical equipment or because of concern that staff might be injured if they assist in transferring a patient with a mobility disability. The DOJ requires medical providers to provide accessible equipment and to use a lift or trained staff as necessary to ensure equal access to medical examinations and tests.^{viii}

Can I bring my service animal with me to my appointment?

Yes. The ADA requires both public and private health care providers to allow a person with a disability to be accompanied by his/her service

animal. Entities can make limited inquiries regarding the necessity of the service animal but may not ask about an individual's disability. However, there are some restrictions on service animals. The animal must be a dog or a miniature horse and other animals are generally not permitted. The animal must be individually trained to do work or perform tasks directly related to the person's disability.

For example, a deaf individual may use a dog to alert him/her to sounds, many people who are blind use dogs to assist with orientation, and people with mobility impairments might use a dog to retrieve items or pull a wheelchair. A person with epilepsy or a panic related condition might use a dog to warn him/her about an oncoming episode. However, under the ADA, an animal that is used for comfort, therapy, or emotional support does not meet the definition of a service animal and would only be allowed as a reasonable accommodation in limited circumstances.^{ix}

I am deaf, how are my health care providers required to communicate with me?

Under the ADA, health care providers must provide **effective communication** for patients, family members, and visitors who are deaf or hard of hearing using **auxiliary aids and services**. Since people who are deaf or hard of hearing use a variety of ways to communicate, the method that the health care provider must provide will vary depending on the abilities of the individual, his or her preferences for communication, and the complexity and nature of the communications required.^x The method of communication requested by the person with a disability should be given priority by the health care provider. Auxiliary aids and services includes equipment or services such as qualified sign-language interpreters, assistance listening devices, note takers, written materials, television decoders, closed caption decoders, and real-time captioning.^{xi}

For example, effective communication might be:

- Exchanging notes or pointing to items in the hospital gift shop or in response to an inquiry by a visitor about a patient's room number. However, notes may not be effective for a patient when the communication is between a medical provider and a patient;
- Written forms or information sheets in situations where there may not be a need for much interaction, such as billing or insurance information or medical history forms;

- Provision of a qualified sign language interpreter or other interpreter for discussion of symptoms or treatment information between a patient and his/her doctor or a minor patient's parents/guardian and the minor's doctor, or for group therapy^{xii}; and
- Providing information about self-care after a procedure in sign-language on a DVD or streaming video format.

Your health care provider cannot charge you for providing sign language interpreter services.^{xiii} It is inappropriate to ask a family member or other companion to interpret for a deaf or hard of hearing patient because the situation might be private, too emotional, or the family member might not have the appropriate level of communication skills for the situation. In addition, being able to **call your provider on the phone** is also important. Your provider should provide telephone access through TTY or video or other relay service. There may be additional requirements to provide visual alarms and public phone access in certain settings.^{xiv} A simple flashing light in an examination room will courteously notify a patient who is changing that the provider is about to enter the room.

I am blind or visually impaired, how can I get information from my health care providers?

Under the ADA, health care providers must offer auxiliary aids and services to provide **effective communication** for patients, family members, and visitors who are blind or have low vision. These services may include readers, taped texts, Braille materials, buying or modifying equipment, or other effective means of conveying the information.^{xv} All information that generally is made available in print must be effectively communicated, including general health guidance, side effect information, billing invoices, and appointment reminders. Other examples of auxiliary aids and services are:

- Assistance with reading and completing admission and consent forms, or reading discharge information, medication names and dosages;
- Providing text materials in an accessible, electronic format;
- Providing documents in Braille or audio;
- Providing a Braille-output TTY to a patient who is deaf and blind; or,

- Making healthcare plan websites accessible.^{xvi}

Note: a health care provider cannot require a person who is blind to bring someone with him or her to interpret or facilitate communication, and cannot rely on a companion to interpret or facilitate communication.

What if I have a mental health or other disability, can I ask for other modifications to help me access my health care?

Yes. The ADA provides protection from discrimination for people with all types of disabilities, including people with physical, cognitive, communication and mental health disabilities. Health care providers must make “reasonable modifications in policies, practices and procedures” when necessary to avoid discrimination on the basis of disability, unless the provider can demonstrate that making the modification would “fundamentally alter the nature of the service, program or activity.” This means that the entity must make changes to the way it does business to accommodate people with disabilities in many types of situations, for example:

- Taking extra time to explain a procedure to a patient who has a cognitive disability and might have difficulty understanding;
- Scheduling an appointment at a specific time to accommodate a patient with an anxiety disorder who has difficulty waiting in a crowded waiting room; or
- Providing assistance to help a patient who is blind choose food in the cafeteria line at the clinic.

What are some examples of disability-related discrimination that might violate the ADA?

Examples of discrimination might include:

- **Requiring you to wait longer** to be examined because there is only one accessible examination room;
- **Requiring you to bring an attendant** or companion to your provider’s office to assist with lifting, understanding or interpreting (unless you want it);
- **Refusing to serve you** because the exam may take longer due to your disability;

- **Charging an extra fee** to provide sign language interpretation when needed for effective communication;
- **Providing limited appointment dates or times due to an individual's disability;**
- **Refusing to provide effective communication assistance** such as your files in an alternate format or a sign-language interpreter when appealing a health plan's refusal to authorize treatment or when filing a grievance or complaint with a health plan; or
- **Refusing to provide any information or assistance** to plan members who indicate a need for a sign language interpreter in their appointments, or for a network provider who has accessible examination equipment.

What do I do if I am having difficulties accessing my health care provider or health care plan due to my disability?

If you have problems with access, the provision of accommodations or securing auxiliary aids and services (or any other form of discrimination) you should start by talking directly to your provider and/or health care plan. In addition, public health care providers and large private facilities and plans should have an ADA or Section 504 coordinator who is responsible for ensuring compliance with the law and dealing with complaints by consumers. If you can't work it out with the provider or health care plan, you can call or file a complaint with the ADA coordinator for the entity. Who to contact and how to file a complaint should be posted on the plan's website, provided in materials provided to you, or secured by calling member services.

Where can I file a complaint if I can't work it out with my provider or health care plan?

If you are unable to resolve your problem with the public or private provider or the Section 504 or ADA compliance officer for the provider, you can file a complaint with any number of state and federal agencies that are responsible for enforcing the ADA and section 504. These are:

U.S. Department of Health and Human Services
Office of Civil Rights (OCR)
90 - 7th Street, Suite 4-100
San Francisco, CA 94103

Telephone: (415) 437-8310

TDD: (415) 437-8311

Fax: (415) 437-8329

www.hhs.gov/ocr/civilrights/complaints

United States Department of Justice (DOJ)

950 Pennsylvania Avenue, NW

Washington, DC 20530

Disability Rights Section: (202)514-4713

E-mail: www.askDOJ@usdoj.gov

California Department of Social Services (CDSS)

Civil Rights Bureau (CRB)

744 P Street, M.S. 15-70

Sacramento, CA. 95814

Or call collect at (916)654-2107

E-mail: crb@dss.ca.gov

www.dss.cahwnet.gov/cdssweb/PG49.htm

In addition, the **California Department of Managed Care** is responsible for regulating managed care plans. If you have a complaint about services or care, you can file a complaint, ask for an Independent Medical Review (IMR) or file for a fair hearing, (if about Medi-Cal). For more information about your rights and filing complaints, visit:

California Department of Managed Care

<http://www.dmhca.ca.gov/>.

You may only have **180 days from the date of discrimination to file a complaint** with the appropriate state or federal agency. You may also be able to file a lawsuit against the provider; however, you should consult an attorney for more information.

Where can I get more information or assistance if I need help accessing health care?

Disability Rights California

www.disabilityrightsca.org

1-800-776-5746

Disability Rights Education & Defense Fund

www.dredf.org

510-644-2555

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>.

ENDNOTES

- i Cal. Gov't. Code § 11135; ADA Access to Medical Care for Individual with Mobility Disabilities (July 2010), DOJ, http://www.ada.gov/medcare_mobility_ta/medcare_ta.htm
- ii Cal.Civ.Code § 51 (West).
- iii 28 C.F.R. §§ 35.160(2) & 35.104.
- iv See question number one above for legal standard for a Title III entity only; however, most health care providers are covered under Title II and/or Section 504 as well.
- v 28 C.F.R. § 35.151 (Title II); 28 C.F.R. Part 36, Subpart D (Title III). Regulations available at: <http://www.ada.gov/reg2.html> and <http://www.ada.gov/reg3a.html>; Cal.Gov't.Code §§ 4450 *et seq.*
- vi 2010 ADA Standards for Accessible Design, ADA, http://www.ada.gov/2010ADASTandards_index.htm.
- vii *Supra*, Endnote 1.
- viii *Id.*
- ix ADA Access to Medical Care for Individual with Mobility Disabilities, Overview and General Requirements: Services and Facilities. See *Supra*, Endnote 5.
- x ADA Business Brief: Communicating with People Who are Deaf or Hard of Hearing in Hospital Settings (October 2003), DOJ, <http://www.ada.gov/hospcombr.htm>.
- xi *Supra*, Endnote 4.
- xii *Supra*, Endnote 10.
- xiii 28 C.F.R. 36.301(c). A provider is not required to provide an auxiliary aid or services if it would constitute an undue burden considering the entire business. Even if the cost may be more for a patient than reimbursement for a particular patient, the health care provider is expected to treat these costs as part of the annual overhead of operating a business. Questions and Answers for Health Care Providers, National Association of the Deaf, <http://www.nad.org/issues/health-care/providers/questions-and-answers>.
- xiv *Supra*, Endnote 10.

^{xv} ADA Checklist: Health Care Facilities and Service Providers: Ensuring Access to Services and Facilities by Patients who are Blind, Deaf-Blind, or Visually Impaired, American Foundation for the Blind, <http://www.afb.org/section.aspx?FolderID=3&SectionID=3&TopicID=32&DocumentID=529> .

^{xvi} *Supra*, Endnote 3.