

**DEPARTMENT OF SOCIAL SERVICES**

744 P Street, Sacramento, California 95814



July 30, 2001

ALL COUNTY LETTER NO. 01-42

TO: ALL COUNTY WELFARE DIRECTORS  
ALL CIVIL RIGHTS COORDINATORS

SUBJECT: Prohibition Against Discrimination  
on the Basis of Disability in the  
Administration of Federally-Assisted  
Programs and Activities

REASON FOR THIS TRANSMITTAL

- State Law Change  
 Federal Law or Regulation  
 Change  
 Court Order  
 Clarification Requested by  
 One or More Counties  
 Initiated by CDSS

REFERENCE: Section 504 of the Rehabilitation Act of 1973, as amended; Title II of the Americans With Disabilities Act (ADA) of 1990; California Fair Employment and Housing Act; and Manual of Policy and Procedures Division 21

On January 19, 2001 the United States Department of Health and Human Services (HHS) Office for Civil Rights (OCR) issued policy guidance on the prohibition of discrimination on the basis of disability as stated in Section 504 and Title II of ADA in the administration of the Temporary Assistance for Needy Families (TANF) program (Manual of Policy and Procedures Division 21-101). OCR issued this guidance to respond to questions raised by state agencies, counties, service providers, and persons with disabilities regarding administrative methods of the TANF programs and to alert providers of federal penalties for failure to comply with ADA and Section 504.

Additionally, the California Fair Employment and Housing Act (FEHA) was significantly changed effective January 1, 2001 to provide greater protection to people with disabilities and to expand what is considered a disability.

The inclusion of these civil rights protections ensures equal opportunity for persons with disabilities to benefit from all aspects of welfare reform, including initial access to programs and to proper supportive services needed to enable such individuals to work and keep their families healthy and intact.

The purpose of this ACL is to address what the OCR's policy guidance means for the counties and to remind the counties that although the OCR policy guidance is program specific (TANF), the ADA, Section 504, and the FEHA apply to all CDSS programs.

**Background**

OCR found in studies on employment of adults with disabilities that as many as 40 percent of the population may have learning disabilities and up to 28 percent of welfare beneficiaries may

have mental health conditions. In addition, OCR found that a significant number of these beneficiaries also have physical disabilities.

To address these concerns, OCR looked at what individual states were doing to address the needs of disabled clients in the TANF program and the extent to which they had planned and implemented policies, practices, and procedures to identify employment barriers for disabled clients. OCR reviewed state practices and identified “promising practices” that it felt would better ensure individuals with disabilities equal access to and participation in TANF programs and activities. OCR selected the most “promising practices,” policies, procedures, and other recommended steps that counties can take to ensure meaningful access. Although these promising practices are not mandatory, OCR recommends that agencies consider them.

Title II of ADA, Section 504, and FEHA<sup>1</sup> require recipient agencies (counties) to adopt non-discriminatory methods of administration and to ensure equal access to individuals with disabilities by providing appropriate services and modifying policies, practices and procedures to provide such access unless these modifications would fundamentally alter the nature of the services, programs, or activities. The county is responsible for identifying disabled beneficiaries and assessing any barriers to employment. Where necessary, the county must remove those barriers to ensure that equal opportunities are provided to individuals with disabilities. This can be achieved by providing (1) individualized treatment when necessary and (2) effective and meaningful opportunities to assist the disabled in becoming self-sufficient.

Individualized treatment means that individuals with disabilities are treated on a case-by-case basis consistent with the facts and objective evidence. Moreover, individuals with and without disabilities must be afforded the opportunity to benefit equally from Welfare-to-Work programs and services. Therefore, counties must provide appropriate reasonable accommodations, auxiliary aids and services to ensure communication and program accessibility. Counties should examine their methods of program administration from application to training, education and employment to ensure that individuals with disabilities have an equal opportunity to benefit from the Welfare-to-Work programs.

## **Applicability**

The ADA and Section 504 apply to state, county, or local entities that receive federal financial assistance from applicable federal agencies, either directly or indirectly, through a grant, contract or subcontract. FEHA applies in almost all cases.

Counties should be aware that contractual and financial relationships do not eliminate the recipient agency responsibility to beneficiaries. Agencies must ensure that Welfare-to-Work contractors and vendors do not subject beneficiaries to discrimination. The same legal requirements that apply to recipient agencies apply to contractors and vendors (Division 21-103.4) through their executed Assurance of Compliance agreements with such contractors.

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<sup>1</sup> FEHA contains exceptions for religious organizations in limited cases.

## **Protected Individuals**

Title II of ADA and Section 504 define a “disability” with respect to an individual to mean “a physical or mental impairment that substantially limits one or more of the major life activities of such individual.” FEHA defines a disability as a physical or mental impairment (without consideration of mitigation) which limits a major life activity. The definition under FEHA is much broader and means that many more people qualify as disabled under the state law.

These definitions are different from that used to determine eligibility in programs that provides cash assistance such as Federal Supplemental Security Income and Social Security Disability Insurance programs.

To provide assistance to recipients in addressing the above requirements, the OCR guidance provides a list of promising practices that may be used to identify barriers for disabled clients. To assist the counties in complying with Section 504 and ADA, the OCR policy guidance can be accessed at the following [web-site link: www.hhs.gov/ocr/prohibition.html](http://www.hhs.gov/ocr/prohibition.html).

To provide direction to counties regarding clients who have learning disabilities, the CalWORKs Employment Bureau is preparing an ACL on that issue. Counties can expect to receive this ACL in the immediate future. If you have any questions regarding this letter, please contact Christine Webb-Curtis, Chief of the Civil Rights Bureau, at (916) 654-2107.

Sincerely,

***Original Document***  
***Signed By***

Jeanne Rodriguez  
Deputy Director  
Office of Human Rights