



Health Care Practice Tip - April 2019

What's the Department of Fair Employment & Housing Got to Do with Health Care Discrimination?

If you're perusing HCA's recent publication [*How Consumers Can Address Quality of Care Concerns*](#), you might be surprised to see California's Department of Fair Employment & Housing (DFEH) listed as an option for reporting discrimination at a health facility.

Questions about discrimination at health facilities have been very much in the news lately, whether in response to the Trump administration's proposed rule that would allow discrimination in the treatment of LGBT individuals or deny access to reproductive care under the guise of religious freedom^[1], recent proposed hospital mergers involving Catholic entities adhering to Ethical and Religious Directives^[2], or increased media attention on disparities in black maternal mortality rates^[3].

In 2016, [SB 1442 \(Liu\)](#) reorganized how discrimination complaints would be handled by state agencies. Among other things, it consolidated the regulatory authority under DFEH for [Government Code § 11135](#), the antidiscrimination statute for recipients of state funding, and the Unruh Civil Rights Act ([Civil Code § 51 et seq.](#)), California's broad antidiscrimination statute affecting all businesses, including health facilities.

In addition to moving the authority to promulgate regulations under these two statutes, DFEH, which has now rebranded itself as "California's Civil Rights Agency," has authority to investigate complaints brought under these statutes, similar to how it handles employment discrimination complaints. In other words, when a consumer faces discrimination at a health care facility, the consumer can elect to seek an investigation of their complaint through an administrative process.

DFEH's complaint process is a bit different than an administrative fair hearing conducted by the Department of Social Services. A complaint must be filed within one year of the alleged discrimination. At that point, if DFEH accepts the case for investigation, it prepares a complaint to serve on the respondent. Once the respondent replies, parties are encouraged to use DFEH's free dispute resolution processes. If no resolution can be found, DFEH will investigate to determine if California law has been violated. If DFEH finds that no law was violated, they will end the investigation. If DFEH finds a probable violation of the law, the parties must go to mediation. If the parties cannot reach an agreement at mediation, DFEH may file a lawsuit on behalf of the claimant.

DFEH has a full description of the process, including a handy flowchart, on its website [here](#).

While California consumers still retain their rights to file lawsuits enforcing California law in the face of discrimination at a health care facility, both consumers and their legal services advocates sometimes lack the resources to fully address a violation on their own. The DFEH complaint process is designed to be a simplified process to address these concerns, with an emphasis on early resolution.

For questions or to share your experience in filing a DFEH complaint for discrimination at a health care facility, contact Jen Flory at jflory@wclp.org.

[1] See Proposed Regulation 2018-01226, 83 FR 3880, available at <https://www.federalregister.gov/documents/2018/01/26/2018-01226/protecting-statutory-conscience-rights-in-health-care-delegations-of-authority>.

[2] See the California Attorney General's recent hospital transaction notices at <https://oag.ca.gov/charities/nonprofit/hosp> and National Health Law Program's recent publication *The Ethical & Religious Directives: What the 2018 Update Means for Catholic Hospital Mergers* available at <https://healthlaw.org/resource/the-ethical-religious-directives-what-the-2018-update-means-for-catholic-hospital-mergers/>.

[3] See e.g. *Pregnancy can be life-threatening for black women. SB 464 can change the equation* <https://www.sacbee.com/opinion/california-forum/article227252189.html>.