

# ATTACHMENT H

## Fair Employment & Housing Council Working Draft of Government Code Section 11135 et seq. Regulations

CALIFORNIA CODE OF REGULATIONS

Title 2. Administration

Div. 4.1. Department of Fair Employment & Housing

Chapter 5. Fair Employment & Housing Council

Subchapter 9. Nondiscrimination in State-Supported Programs and Activities

[These regulations are divided into new articles; all previous articles and subarticles will be deleted.]

### TEXT

Text proposed to be added is displayed in underline type.

Text proposed to be deleted is displayed in ~~strikethrough~~ type.

#### Article 1. General Matters

##### ~~§ 11140~~14000. Purpose of This ~~Division~~Subchapter.

(a) ~~The purpose of this Division-subchapter is to implement Article 9.5 of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code, Sections 11135 through 11139.5~~11139.8, inclusive (hereinafter “the Act” or “Article 9.5”). ~~Section 11135 which provides, inter alia, that:~~

~~“No person in the State of California shall, on the basis of ethnic group identification, religion, age, sex, race, color, religion, ancestry, national origin, ethnic group identification, age, or physical or mental disability, physical disability, medical condition, genetic information, marital status, or sexual orientation, be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated or administered by the state or any state agency, is funded directly by the state, or receives any financial assistance from the state. Notwithstanding Section 11000, this Section applies to the California State University.”~~

~~Article 9.5 requires the Secretary of the Health and Welfare Agency with the advice and concurrence of the Fair Employment Practice Commission (hereinafter referred to as the Fair Employment and Housing Commission or “FEHC” in accordance with the terms of the Governor’s Reorganization Plan Number 1 (1980)), to establish standards for determining which persons are protected by Article 9.5 and guidelines for determining what practices are discriminatory. This Division establishes such standards and guidelines.~~

~~(b) Article 9.5 also requires the Secretary of the Health and Welfare Agency, with the cooperation of the Fair Employment and Housing Commission, to assist State agencies in coordinating their programs and activities and consult with such agencies, as necessary, to ensure that consistent policies, practices and procedures are utilized by such agencies with respect to the enforcement of Article 9.5. This Division~~These rules, regulations, and standards are established ~~establishes guidelines regarding such policies, practices and procedures in order to advance the objectives of Article 9.5 and this subchapter; to protect against discrimination; to ensure that consistent policies, practices, and procedures are utilized by state agencies with respect to Article 9.5; to eliminate conflicting interpretations and standards of enforcement insofar as they afford less protection; and to increase efficiency and ensure that the ultimate beneficiaries of Article 9.5 have a clear understanding of their rights and the means by which to enforce~~

them.

(c) The definitions and prohibitions set forth in Division 4 of Title 2 of the California Administrative Code are hereby incorporated by reference. Any act or omission which is contrary to said definitions and prohibitions constitutes a violation of this subchapter and is subject to the sanctions provided for in this subchapter. In the event of any conflict between the definitions and prohibitions of the provisions incorporated by this reference and the definitions and prohibitions set forth in this subchapter, the definitions and prohibitions set forth in this subchapter shall prevail.

(d) Article 9.5, this subchapter and other implementing regulations provide protections independent of those in federal anti-discrimination laws. Although federal laws provide the floor of protection relating to discrimination, Article 9.5, this subchapter and implementing regulations afford additional protections to provide robust protection of protected classes in state and state-supported programs and activities, including by recognizing that Article 9.5 of the Government Code prohibits discrimination independently of guarantees of equal protection and the prohibition against denial of full and equal access. The provisions of Article 9.5, this subchapter and other implementing regulations shall be construed liberally for the accomplishment of the purposes of this part.

(e) Article 9.5's prohibition against discrimination includes intersectional discrimination, discrimination on more than one basis, harassment, and retaliation for exercising a protected right or refusing to engage in an act prohibited by Article 9.5.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11136, and 11139.59.8, and 12993, Government Code.

#### § 111414001. Legal Scope Authority.

Section 12935 of the California Government Code authorizes the Fair Employment and Housing Council (hereinafter referred to as the "FEHC" or the "Council") to adopt, promulgate, amend, and rescind suitable rules regulations, and standards that either: (1) interpret, implement, and apply all provisions of Part 2.8 of the California Government Code, Article 9.5 (commencing with Section 11135) of Chapter 1 of Part 1 of Subchapter 3 of Title 2 of the California Government Code, and Sections 51, 51.5, 51.7, 52.5, 54, 54.1, and 54.2 of the Civil Code; or (2) carry out all other functions and duties of the Council.

~~The rights and remedies under this Division are not exclusive and do not affect rights and remedies provided elsewhere by law or contract.~~

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11136, and 11139, Government Code.

#### § 14002. History of this Subchapter.

These regulations formerly were promulgated at Chapters 1-3 of Title 22 of the California Code of Regulations (22 C.C.R. sections 98000 et seq.) Pursuant to legislative action in 2016, which was effective in 2017, those regulations were transferred to title 2 of C.C.R. secs. 11140 et seq., and have been subsequently renumbered as 2 C.C.R. sections 14000 et seq. These regulations were effective on the date of their original promulgation and continue to apply unless amended. Any subsequent

amendments apply to matters pending as of the effective date of the amendment.

Note: Authority cited: Section 12935(a), Government Code. Reference: Section 11135 and 12935, Government Code.

**§ 11142. Private Right of Action.**

~~Except as provided in Section 98003, nothing in this Division shall be construed to preclude or restrict a person from judicially enforcing rights accruing under this Division pursuant to California Code of Civil Procedure Section 1094.5.~~

~~Note: Authority cited: Section 12935(a), Government Code. Reference: Section 11139, Government Code.~~

**§ 11143. Exhaustion of Administrative Remedies.**

~~Exhaustion of administrative remedies available under this Division or implementing regulations shall not be a prerequisite to the bringing of actions for judicial enforcement of violations of Chapters 2 and 3 or regulations implementing such Chapters if a showing is made that the state agency involved has not adhered to the time limit set forth in Section 98346 of this Division.~~

~~Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11139 and 11139.5, Government Code.~~

**§ 1114414003. Applicability of This Division Subchapter by Operation of Law.**

~~The procedures set forth in this Division~~This subchapter governs all disputes relating to compliance with responsibilities under this Division subchapter by operation of law.

~~Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11136, 11137, and 11139, Government Code.~~

**§ 1114514004. Preemption of Relationship to Local Law Laws.**

~~To the extent that any local law, regulation, ordinance, resolution, policy or practice is in conflict with Article 9.5, this Division subchapter or other implementing regulations, insofar as it affords less protection to persons of a particular ethnic group identification, religion, age, sex, color or physical or mental disability than Article 9.5, this Division subchapter, or other implementing regulations on the basis of any protected class, it shall be superseded by Article 9.5, this Division subchapter and other implementing regulations.~~

~~Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11136 and 11139, Government Code.~~

**§ 14005. Legal Scope**

(a) The protections, prohibitions, rights, duties, sanctions, and remedies imposed by Article 9.5, this

subchapter, and other implementing regulations are not exclusive and are in addition to any other protections, prohibitions, rights, duties, sanctions, and remedies, imposed by other federal or state laws. Compliance with other laws does not in itself constitute compliance with or discharge the protections, prohibitions, rights, duties, sanctions, and remedies imposed by Article 9.5, this subchapter or other implementing regulations, nor does compliance with Article 9.5, this subchapter or other implementing regulations necessarily constitute compliance with other laws where those other laws impose requirements that are more protective of protected classes. Compliance with such other laws does not in itself exempt the state, a state agency, or a recipient from complying with Article 9.5 or other implementing regulations.

(b) Article 9.5 shall not be interpreted in a manner that would frustrate its purposes.

(c) Article 9.5 shall not be interpreted in a manner that would adversely affect lawful programs, activities, or services which benefit members of protected classes in order to overcome the effects of conditions that result or have resulted in limited participation in, or receipt of benefits from, any program, activity, or service provided by a covered entity; or

(d) Nothing in Article 9.5, this subchapter, and other implementing regulations is intended to prohibit or require actions or practices otherwise allowed or not required under Article 9.5.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11139 and 11139.5, Government Code.

#### **§~~11146~~.14006. Recipient - Duration of Obligation: Real Property.**

(a) In the case of sState support extended in the form of real property or to acquire or improve real property, the recipient, or in the case of a subsequent transfer, the subsequent transferee, shall comply with Article 9.5, this ~~Division~~subchapter, and other implementing regulations for the period during which the real property is used for the purpose for which the Sstate support was extended, or for another purpose involving the provision of similar services or benefits.

(b) In the case of Sstate support extended in the form of real property or to acquire or improve real property, the instrument effecting or recording such transfer shall contain a covenant of nondiscrimination running with the land assuring nondiscrimination for the period during which the property is used for the purpose for which the Sstate support was extended, or for another purpose involving the provision of similar services or benefits.

(c) In the case of real property acquired or improved with Sstate support, the instrument effecting any subsequent disposition by the recipient shall contain a covenant running with the land assuring nondiscrimination for the period during which the real property is used for the purpose for which the Sstate support was extended, or for another purpose involving the provision of similar services or benefits.

(d) If a recipient or a transferee of a recipient fails to comply with Ssubsections (b) and (c) of this Section, the covenants required by those Ssubsections shall be deemed to be a part of any instrument effecting or recording disposition of the real property involved. Third parties may enforce regulatory agreements or covenants, conditions and restrictions imposed pursuant to this Section.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11136, and 11139, Government Code.

**§ ~~1147-14007~~. Recipient - Duration of Obligation: Personal Property.**

In the case of ~~§~~state support extended to acquire personal property, or in the form of personal property, the recipient shall be obligated to comply with Article 9.5, this ~~Division~~subchapter, and other implementing regulations for the period during which it retains ownership or possession of the property.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11136 and 11139, Government Code.

**§ ~~1148-14008~~. Recipient - Duration of Obligation: Other Cases.**

In all other cases, the recipient shall be obligated to comply with Article 9.5, this ~~Division~~subchapter, and other implementing regulations for the period during which ~~§~~state support is received and continuing thereafter for the period during which the recipient enjoys the benefit or advantage of the state support it received.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11136, and 11139, Government Code.

**§ ~~1149-14009~~. Severability.**

If any provision of this ~~Division~~subchapter, or any portion thereof, is adjudged to be invalid by a court of competent jurisdiction, or if any provision of this ~~Division~~subchapter, or a portion thereof, loses its force or effect as a result of legislative action, that judgment or action does not affect the remainder of the provisions of this ~~Division~~subchapter.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11136 and 11139, Government Code.

[§§ 14010-14019. Reserved.]

**Article 2. General Definitions**

**§ ~~1150-14020~~. Definitions.**

As used in Article 9.5 and this ~~Division~~subchapter, the following definitions shall govern the meaning of terms defined, unless the terms are otherwise defined or modified in the context in which they are used:

(a) “The Act” or “Article 9.5” refer to Government Code Article 9.5, Section 11135 et seq., and are used interchangeably.

(b) “Age” means how old a person is or is perceived to be, or the number of elapsed years from the date of a person’s birth or perceived to have elapsed from that date. “Age distinction” means any action using

age or an age-related term. “Age-related term” means a word or words which describe or imply a particular age or range of ages (for example: “children,” “adult,” “older persons,” but not “student”).

(c) “Aggrieved person” includes any person who believes they have been injured by a discriminatory practice under Article 9.5, this subchapter, or other implementing regulations, or believes they will be injured by a discriminatory practice under Article 9.5, this subchapter or other implementing regulations. “Aggrieved person” shall include unpaid interns, volunteers, and persons providing services pursuant to a contract.

(d) “Adverse action” includes any action that harms or has a negative effect on an aggrieved person, including harassment, intimidation, threats, coercion, less favorable treatment, or discrimination.

(e) “Ancestry” means an individual’s actual or self-identified family or ethnic origin, descent or lineage, nationality group, tribal affiliation, or geographical place of origin or country in which the individual or the individual’s parents or ancestors originated, or the perception of the individual’s ancestry.

(f) “Assistance animal” means an animal that is necessary as a reasonable accommodation for an individual with a disability. Assistance animals include service animals and support animals. An assistance animal is not a pet. It is an animal that works, provides assistance, or performs tasks for the benefit of an individual with a disability, or provides emotional support that alleviates one or more identified symptoms or effects of an individual’s disability.

(1) “Service animals” are animals that are trained to perform specific tasks to assist individuals with disabilities, including individuals with mental health disabilities. Service animals do not need to be professionally trained or certified, but may be trained by the individual with a disability or another individual. Specific examples include:

(A) “Guide dog,” as defined at Civil Code section 54.1, or other animal trained to guide a blind individual or individual with low vision.

(B) “Signal dog,” as defined at Civil Code section 54.1, or other animal trained to alert a deaf or hard-of-hearing individual to sounds.

(C) “Service dog,” as defined at Civil Code section 54.1, or other animal individually trained to the requirements of an individual with a disability.

(D) “Miniature horses” meeting the requirements of 28 CFR 35.136(i) and 28 CFR 36.302(c)(9).

(E) “Service animals in training,” including guide, signal, and service dogs being trained by individuals with disabilities, persons assisting individuals with disabilities, or authorized trainers under Civil Code sections 54.1(c) and 54.2(b).

(2) “Support animals” are animals that provide emotional, cognitive, or other similar support to an individual with a disability. A support animal does not need to be trained or certified. Support animals are also known as comfort animals or emotional support animals.

(g) “Assistive technology” means technology designed to be utilized in an assistive technology device or assistive technology service.

(1) “Assistive technology device” means any item, piece of equipment, or product system, whether acquired commercially, modified, or customized, that is used to increase, maintain, or improve functional capabilities of individuals with disabilities.

(2) “Assistive technology service” means any service that directly assists an individual with a disability in the selection, acquisition, or use of an assistive technology device.

(h) “Associated with” means linked or related to a person who is or is perceived to be a member of a protected class, or who identifies with or advocates for a member of a protected class, or who expresses support or sympathy for, encourages, or participates in groups composed of or representing members of a protected class or groups organized for the protection or assertion of rights protected under this subchapter. “Associated with” includes an individual’s current or prior social or professional relationship with, marriage to, or domestic partnership with a member of a protected class; an individual’s familial relationship with a person who is a member of the class, including an adoptive, step, or foster care relationship; membership in or association with an organization identified with or seeking to promote the interests of a protected class; attendance or participation in schools, clubs, associations, organizations, churches, temples, or mosques, generally associated with a protected class; being on the premises of a facility or building owned or rented by an entity, group, or person that has, or is identified with people who have, one or more characteristics of a protected class; or actual or perceived association of an person’s name or other characteristics with a protected class.

(i) “Auxiliary aids and services” include:

(1) Qualified interpreters; notetakers; real-time computer-aided transcription services; written materials; exchange of written notes; telephone handset amplifiers; assistive listening devices; assistive listening systems; telephones compatible with hearing aids; closed caption decoders; open and closed captioning, including real-time captioning; voice, text, and video-based telecommunications products and systems, including text telephones (TTYs), videophones, and captioned telephones, video relay services, or equally effective telecommunications devices; videotext displays; accessible electronic and information technology; or other effective methods of making aurally delivered information available to individuals who are deaf or hard of hearing or assisting those individuals to communicate;

(2) Qualified readers; taped texts; audio recordings; Brailled materials and displays; screen reader software; magnification software; optical readers; secondary auditory programs (SAP); large print materials; accessible electronic and information technology; or other effective methods of making visually delivered materials available to individuals who are blind or have low vision or assisting those individuals to communicate;

(3) Qualified interpreters, speech-to-speech relay services, or other effective methods of making aurally delivered information available to individuals who have speech disabilities or assisting those individuals to communicate;

(4) Acquisition or modification of equipment or devices; and

(5) Other similar services and actions, including newly developed forms of electronic information systems and technology as they become available.

(j) “Benefit” means anything offered or provided with the intention of or for the purpose of contributing to an improvement in condition, including, but not limited to, the aid or services offered or provided as a result of State support by a covered entity.

(k) “Color” means the actual or perceived physical characteristics of an individual’s complexion, pigmentation, or skin tone.

(l) “Contract” means any agreement, upon sufficient consideration, to do or not do a particular act.

(m) “Contractor” means, unless otherwise indicated includes; a person or local agency recipient which that receives any State support under contract or subcontract, and includes prime contractors and subcontractors at any tier.

(n) “Covered entity” includes:

(1) the state or a state agency;

(2) any entity or individual carrying out any program or activity or providing any service that is conducted, operated or administered by the state or by any state agency;

(3) any entity or individual, including local agencies, recipients, contractors, and grantees, that is funded directly by the state, or receives any state support;

(4) a local agency, if any part of it receives state support;

(5) a public college, university, or other postsecondary institution, or a public system of higher education; or a local educational agency system of career and technical education, or other public school system;

(6) a corporation, partnership, other private organization, or a sole proprietorship, or a private college, university, or other postsecondary institution, or system of education; or a private career or technical education school, or other private school if:

(A) if state support is extended to such corporation, partnership, private organization, sole proprietorship, or educational entity; or

(B) if the entity is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(C) the entire facility, plant or other comparable, geographically separate facility to which state support is extended, in the case of any corporation, partnership, private organization, or sole proprietorship;



(7) any entity or individual where any part of the program, activity, benefits or services outside of California receive state Support;

(8) Any other entity which is established by two or more of the entities described in paragraph (1), (2), or (3); any part of which receive state support; and

(9) The California State University, notwithstanding Government Code Section 11000.

(o) “DFEH” or “the Department” means the Department of Fair Employment and Housing as defined in section 12901 of the California Government Code~~Section 1413.1 of the California Labor Code.~~

(p) “Direct threat” means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices or procedures, or by the provision of auxiliary aids or services.

(q) “Disability” means a physical or mental impairment that limits one or more major life activities of an individual, a record of such an impairment, or being regarded as having such an impairment. It includes any mental or physical disability as defined in this section, and shall be construed as follows:

(1) This subchapter provides protections that are independent from those in the federal Americans with Disabilities Act of 1990 (P.L. 101-3361) and the American with Disabilities Amendments Act of 2008 (P.L. 110-325) (collectively, “the ADA”), and may afford additional protections, but in no event shall be construed to provide fewer protections than the ADA. Notwithstanding the definitions of physical disability and mental disability in this section, if the definition of “disability” used in the ADA would result in broader protection of the civil rights of individuals with a mental disability or physical disability, or would include any medical condition not included within those definitions, then that broader protection or coverage shall be deemed incorporated by reference into, and shall prevail over conflicting provisions of, the definitions in this section.

(2) All definitions shall be interpreted in accordance with the expansive construction mandates of Section 12926.1 of the California Government Code. To the extent that codified definitions or interpretations are expanded in the future, such new, more expansive definitional mandates shall be incorporated into Article 9.5. To the extent that such codified definitions or interpretations are narrowed or restricted in the future, the more expansive definitions referenced in this sub-paragraph shall nevertheless continue to govern Article 9.5.

(3) “Mental disability” includes:

(A) Having any mental or psychological disorder or condition, such as intellectual disability, organic brain syndrome, emotional or mental illness, or specific learning disabilities, that limits a major life activity.

(B) Any other mental or psychological disorder or condition not described in paragraph (A) that requires special education or related services.

(C) Having a diagnoses, record or history of a mental or psychological disorder or condition described in paragraph (A) or (B).

(D) Being regarded or treated as having, or having had, any mental condition that makes achievement of a major life activity difficult.

(E) Being regarded or treated as having, or having had, a mental or psychological disorder or condition that has no present disabling effect, but that may become a mental disability as described in paragraph (A) or (B).

(4) “Physical Disability” includes:

(A) Having any physiological disease, disorder, or condition, cosmetic disfigurement, or anatomical loss that affects one or more body systems (neurological, including immunological; musculoskeletal, special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic, skin; and endocrine systems), and limits a major life activity.

(B) Any other health impairment not described in subparagraph (A) that requires special education or related services.

(C) Having a diagnosis, record or history of a disease, disorder, condition, cosmetic disfigurement, anatomical loss, or health impairment described in subparagraph (A) or (B) of this paragraph.

(D) Being regarded or treated as having, or having had, any physical condition that makes achievement of a major life activity difficult.

(E) Being regarded or treated as having, or having had, a disease, disorder, condition, cosmetic disfigurement, anatomical loss, or health impairment that has no present disabling effect but may become a physical disability as described in subparagraph (A) or (B).

(5) “Having a record of such impairment” means has a history of, or has been misclassified as having, an impairment that limits one or more major life activities.

(6) “Perceived as having an impairment means:

(A) Has an impairment that does not limit major life activities but that is treated or perceived as constituting a limitation;

(B) Has an impairment that limits major life activities only as a result of the attitudes of others toward such impairment;

(C) Does not have an impairment but is treated or perceived as having such an impairment.

(7) The definition of disability in this subchapter shall be construed in favor of broad coverage of individuals under this subchapter, to the maximum extent permitted by the terms of this subchapter. Disabilities include contagious and noncontagious diseases; orthopedic, visual, speech and hearing impairments; traumatic brain injuries, cerebral palsy, epilepsy, muscular

dystrophy, multiple sclerosis, cancer, heart disease, diabetes, intellectual disabilities, developmental disabilities, autism or autism spectrum, , emotional illness, specific learning disabilities, HIV disease (whether symptomatic or asymptomatic), tuberculosis, drug addiction, and alcoholism.

(8) Individuals are protected from discrimination due to an actual or perceived physical or mental impairment that is disabling, potentially disabling, or perceived or regarded as disabling or potentially disabling (even if it has no present disabling effect), including when an individual is erroneously or mistakenly believed to have any physical or mental condition that limits a major life activity, whether or not the impairment actually limits or is perceived to limit a major life activity.

(9) Physical and mental disabilities include chronic or episodic conditions, such as HIV/AIDS, hepatitis, epilepsy, seizure disorder, diabetes, clinical depression, bipolar disorder, multiple sclerosis, and heart disease. An impairment that is episodic or in remission is a disability if it would limit a major life activity when active.

(10) The definitions of “physical disability” and “mental disability” require a “limitation” upon a major life activity, but do not require, as does the ADA, a “substantial limitation.” This distinction is intended to result in broader coverage under this subchapter than under the ADA.

(11) “Major life activities” shall be broadly construed and include physical, mental, and social activities; caring for one’s self; performing manual tasks, walking, seeing, hearing, speaking, breathing, eating, sleeping, standing, lifting, bending, learning, reading, concentrating, thinking, communicating, and working. Working is a major life activity, regardless of whether the actual or perceived working limitation implicates a particular employment or a class or broad range of employment.

(12) For purposes of subparagraph (6), a major life activity also includes the operation of a major bodily function, including functions of the immune system, normal cell growth, digestive, bowel, bladder, cardiovascular, genitourinary, hemic, neurological, lymphatic, brain, respiratory (including speech organs), circulatory, endocrine, and reproductive functions.

(13) A disability limits a major life activity if it makes the achievement of the major life activity difficult.

(14) An impairment that limits one major life activity need not limit other major life activities in order to be considered a disability.

(15) The determination of whether an impairment limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures, unless the mitigating measure itself limits a major life activity, regardless of federal law under the ADA. Mitigating measures include:

(A) medication, medical supplies, equipment, or appliances, low-vision devices (which do not include ordinary eyeglasses or contact lenses), prosthetics including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, or oxygen

therapy equipment and supplies;

(B) use of assistive technology and devices;

(C) reasonable accommodations or auxiliary aids or services; or

(D) learned behavioral or adaptive neurological modifications.

(16) The ameliorative effects of the mitigating measures of ordinary eyeglasses or contact lenses shall be considered in determining whether an impairment limits a major life activity. As used in this subparagraph:

(A) the term “ordinary eyeglasses or contact lenses” means lenses that are intended to fully correct visual acuity or eliminate refractive error; and

(B) the term “low-vision devices” means devices that magnify, enhance, or otherwise augment a visual image.

(17) “Disability” does not include sexual behavior disorders, compulsive gambling, kleptomania, pyromania, or psychoactive substance use disorders resulting from the current unlawful use of controlled substances or other drugs. “Sexual behavior disorders” means pedophilia, exhibitionism, and voyeurism.

(18) “Current unlawful use of controlled substance or drugs” does not include an individual who:

(A) Has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated and is no longer engaging in such use;

(B) Is participating in a supervised rehabilitation program and is no longer engaging in such use;

(C) Is erroneously regarded as engaging in such use; or

(D) Is using drugs taken under the supervision of a licensed health care professional, or other uses authorized by law.

(19) Notwithstanding other provisions of this subchapter, an individual shall not be denied health services, or services provided in connection with drug rehabilitation, on the basis of current unlawful use of drugs if the individual is otherwise entitled to such services.

(r) “Ethnic group identification” means the actual or self-identified possession of the physical, cultural or linguistic characteristics associated with a cultural, or ethnic group or country, geographical place of origin, or ethnic group from which an individual or the individual’s parents or ancestors originated, or the perception of a person’s ethnic group identification.

(s) “Facility” means all or any portion of buildings, structures, sites, complexes, vehicles, equipment, rolling stock or other conveyances, vessels, roads, walks, passageways, parking lots or other real or

personal property, or interests in such property, such as a life estate, including the site where the building, property, structure or equipment is located, and information systems and electronic technology, including mobile and tablet-based technology and newly developed forms of electronic information systems and technology as they become available.

(t) “FEHC” and “Council” means the Fair Employment and Housing Commission Council, as defined in Section 12903 of the California Government Code Section 1414 of the California Labor Code.

“Funded directly by the State” means any payment, transfer, or allocation of State funds to any recipient.

(u) “Gender” means sex, and includes a person’s gender identity and gender expression, or a perception of any of the aforementioned.

(v) “Gender identity” means each person’s internal understanding of their gender, or perception of a person’s gender identity, which may include male, female, a combination of male and female, neither male nor female, a gender different from the person’s sex assigned at birth, or transgender.

(w) “Gender expression” means a person’s gender-related appearance or behavior, or the perception of such appearance or behavior, whether or not stereotypically associated with the person’s sex assigned at birth.

(x) “Genetic Information” means information about an individual’s genetic tests, the genetic tests of an individual’s family members, or the manifestation of a disease or disorder in the individual’s family members, or the perception of any of the aforementioned. Genetic information includes any request for, or receipt of, genetic services, or participation in clinical research that includes genetic services, by an individual or any family member of the individual. Genetic information does not include information about the sex or age of any individual.

(y) “Grant” means an agreement to provide, or the bestowal of, State support, other than by contract, including awards, donations, endowments, and gifts.

(z) “Grantee” means a person or local agency recipient that ~~which~~ receives State support under a grant or subgrant, and includes prime grantees and subgrantees at any tier.

(aa) “Includes” or “including” has the same meaning as “includes, but not limited to” or “including, but is not limited to.”

(bb) “Intersectional Discrimination” means discrimination on the basis of a combination of protected classes, i.e., where two or more bases for discrimination are alleged. For example, an entity that is not unlawfully discriminating on the basis of race or gender still may be discriminating against individuals who are, for example, Asian males.

(cc) “Local agency” means a public district, special district, public corporation, authority, joint power authority, agency, board, commission, county, city, city and county, school district or other educational entity, redevelopment agency or successor to a redevelopment agency, regional agency, public or publicly administered health entity, or other public entity.

(dd) “Marital status” means an individual’s actual or perceived pending state of marriage, non-marriage, domestic partnership, divorce or dissolution, separation, widowhood, annulment, or other marital state.

(ee) “May” means permissive.

(ff) “Medical Condition” means any actual or perceived health impairment related to or associated with a diagnosis, record, or history of cancer; or genetic characteristics known to be a cause of a disease or disorder or associated with a statistically increased risk of developing a disease or disorder. Genetic characteristics means either of the following:

(1) Any scientifically or medically identifiable gene or chromosome, or combination or alteration thereof, that is known to be a cause of a disease or disorder in a person or that person's offspring, or that is determined to be associated with a statistically increased risk of development of a disease or disorder, and that is presently not associated with any symptoms of any disease or disorder.

(2) Inherited characteristics that may derive from the individual or family member, that are known to be a cause of a disease or disorder in a person or that person's offspring, or that are determined to be associated with a statistically increased risk of development of a disease or disorder, and that are presently not associated with any symptoms of any disease or disorder.

(gg) “National origin” includes:

(1) the individual’s or ancestors’ actual or perceived:

(A) physical, cultural, or linguistic characteristics or named associated with a national origin group;

(B) marriage to or association with persons of a national origin group;

(C) tribal affiliation;

(D) membership in or association with an organization identified with or seeking to promote the interests of a national origin group;

(E) attendance or participation in schools, churches, temples, mosques, or other religious institutions generally used by persons of a national origin group; and

(F) name that is associated with a national origin group.

(2) “National origin groups” include, but are not limited to, ethnic groups, geographic places of origin, and countries that are not presently in existence.

(3) “National origin” includes possessing a driver’s license or identification card granted under Sections 12801.6, 12801.8, or 12801.9 of the Vehicle Code, or a driver’s license or identification card identified with the term “Federal Limits Apply.”

(hh) “Other implementing regulations” means any additional regulations, guidelines, or procedures other than this subchapter, adopted by any state agency. Other implementing regulations, guidelines, or procedures cannot conflict with or provide less protections than the regulations in this subchapter.

(ii) “Other power-driven mobility device” includes any mobility device powered by batteries, fuel, or other engines—whether or not designed primarily for use by individuals with mobility disabilities—that is used by individuals with mobility disabilities for the purpose of locomotion, including golf cars, electronic personal assistance mobility devices (EPAMDs), such as the Segway® PT, or any mobility device designed to operate in areas without defined pedestrian routes, but that is not a wheelchair within the meaning of this section.

(jj) “Perceived membership in a protected class” means being regarded as, perceived as, or treated as a member of a protected class or as having the characteristics associated with being a member of a protected class, regardless of whether or not the perception is accurate.

(kk) “Person” means an individual, proprietorship, firm, partnership, joint venture, syndicate, corporation, association, committee, legal representative, trustee, trustee in bankruptcy, receiver, and any other organization, entity, or group, or group of persons acting in concert.

(ll) “Practice” or “Practices” includes any action or failure to act, rule, law, ordinance, regulation, decision, standard, project, policy, process, or procedure, whether written or unwritten or singular or multiple.

(mm) “Program, or activity, or service” includes all of the operations of, or benefits or aid provided by, a covered entity, directly or indirectly means any project, action or procedure undertaken directly by recipients of State support or indirectly by recipients through others by grants, contracts, arrangements or agreements, with respect to the public generally or with respect to any private or public entity. Such programs or activities include, but are not limited to, the provisions of employment or goods; the procurement of goods or services; the provision of education, training, health, welfare, rehabilitation, housing, or other services; the provision of cash, financial benefits, or loan assistance; permitting, site and facility selection decisions; or the provision of facilities for furnishing services, financial aid or other benefits. The services, financial aid or other benefits provided under such programs or activities shall be deemed to include:

~~(1) any services, financial aid or other benefits provided with the aid of State support, or with the aid of other funds or resources required to be expended or made available for the program to meet matching requirements or other conditions which must be met in order for the recipients to receive the State support; or~~

~~(2) any service, financial aid or other benefit provided in or through a facility which is or was provided with the aid of State support or other funds or resources.~~

(1) The program, activity or services covered by Article 9.5, this subchapter, or other implementing regulations need not receive direct state support to be covered. Such coverage extends to all the operations of the covered entity. This is true even if only one part of the covered entity receives state support.

(2) The program, activity or services provided by the covered entity include any service, activity,

financial aid or benefit provided in, at or through a facility that is or was provided by the state or any state agency or with the aid or benefit of state support or other funds or resources.

(nn) “Protected class” and “protected basis” are used interchangeably. They refer to the bases on which individuals are entitled to protections against discrimination pursuant to Article 9.5 of the California Government Code, Part 2.8 (commencing with section 12900) of the California Government Code, section 51, 51.5, 51.7, 54 and 54.2 of the California Civil Code, and any regulation adopted by the Council to implement these sections or Article 1 (commencing with section 12960) of the California Government Code, as applicable. Protected bases include sex, race, color, religion, ancestry, national origin, ethnic group identification, age, disability (including mental and physical disability); medical condition, genetic information, marital status, and sexual orientation. To the extent protected bases are defined in Sections 12926 and 12926.1 of the California Government Code, those terms shall have the meanings set forth in this subchapter. Protected bases not defined in Section 12926 of the California Government Code or the Council’s implementing regulations are defined in this subchapter. All protected bases include a perception that a person is a member of a protected class or has any of those characteristics, or that a person is associated with a person who is, or is perceived to be a member of a protected class. Discrimination on the basis of a protected class includes discrimination on the basis of a stereotype about members of the protected class.

(oo) “Qualified individual with a disability” means:

(1) an individual with a disability who, with or without reasonable accommodations to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity or contractor, or recipient of a public entity.

(2) with respect to employment, a qualified individual with a disability is an applicant or employee who, with or without reasonable accommodations, can perform the essential functions of the job in question.

(pp) “Qualified interpreter” means a person qualified and capable of effective, accurate, and impartial rendition of spoken or signed communication from one language to another between people who speak, sign, read, or write in a different language, both receptively and expressively, using any necessary specialized vocabulary and with appropriate cultural relevance, either simultaneously or consecutively. In some circumstances, effective communication may require that an individual be provided more than one interpreter. Qualified interpreters include, for example, sign language interpreters, oral transliterators, and cued-language transliterators. To be qualified an interpreter must have received adequate education and training in interpreter ethics, conduct, practice, and confidentiality.

(qq) “Qualified reader means a person who is able to read effectively, accurately, and impartially using any necessary specialized vocabulary.

(rr) “Race” refers to the identification of a group of people as distinct from other groups based on supposed or presumed physical or genetic characteristics, or the perception of an individual’s race, without regard to whether those characteristics are immutable. “Race” is construed broadly to include classifications that might otherwise appear to be covered only by other protected bases such as national



origin or religion.

(ss) “Real property” means land, whether improved or unimproved; structures on land; fixtures attached to structures; interests in such property; and space on, over or under such property.

(tt) “Recipient” means any covered entity or person, other than the state or a state agency, operating directly or indirectly through another recipient, including any local agency, contractor, subcontractor, agent, or person, who regularly employs five or more persons and who receives State support, as defined in this Section, in an amount in excess of \$10,000 in the aggregate per State fiscal year or in an amount in excess of \$1000 per transaction, by grant, contract or otherwise, directly or through another recipient, including any successor, assignee, or transferee of a recipient. The term “recipient” excludes but excluding the ultimate beneficiary of the State support. “Recipient” does not include State agencies. However, State agencies may look to this Division for guidance in the administration of their programs and activities.

(uu) “Reasonable Accommodations” or “Reasonable Modifications” for individuals with disabilities are used interchangeably under this subchapter to means the full range of adjustments necessary to afford an individual with a disability an equal opportunity to use or enjoy benefits privileges, programs, activities or services. They include, for example, changes, modifications, or adjustments in facilities, fixtures, furniture, equipment, devices, rules, policies, practices, procedures, licensing, ordinances, regulations, or programs, and other such needed accommodations.

(vv) “Religion,” “religious creed,” “religious observance,” “religious belief,” and “creed” are used interchangeably under this subchapter to mean any actual or perceived traditionally recognized religion as well as beliefs, observances, or practices, which an individual sincerely holds and which occupy in their life a place of importance parallel to that of traditionally recognized religions. They includes all aspects of religious belief, observance, and practice, such as duties of the clergy or elders, and religious dress and grooming practices. “Religious dress practices” shall be construed broadly to include the wearing or carrying of religious clothing, head or face coverings, jewelry, artifacts and any other item that is part of an individual’s religious observance. “Religious grooming practice” shall be construed broadly to include of forms of head, facial and body hair, or body markings, that are part of an individual’s religious observance. Religion includes atheism, agnosticism, and an individual’s choice not to adopt a traditional or specific religious belief.

“Secretary” means the Secretary of the Health and Welfare Agency, as defined in Part 2.5 of Division 3 of Title 2 of the Government Code, or the Secretary’s designee.

(ww) “Services to be provided to the public” means the aid or benefits provided directly to the public by a recipient of State support.any covered entity.

(xx) “Sex” includes pregnancy, childbirth, and breastfeeding; medical conditions related to pregnancy, childbirth, or breast feeding; recovery from childbirth or termination of pregnancy, or other conditions related to the capacity to bear children; gender; transgender; transitioning; sex stereotyping; gender identity; and gender expression; or perception by a third party of any of the aforementioned.

(yy) “Sexual Orientation” includes actual or perceived heterosexuality, homosexuality, bisexuality, and asexuality. This refers to a person’s emotional, romantic, or sexual attraction toward other people, and may be described by terms including gay, lesbian, bisexual, straight, asexual, or queer.

(zz) “Shall” means mandatory.

~~“Should” means advisory.~~

(aaa) “State agency” means an administrative subdivision or instrumentality of State government, including, but not limited to, agencies, special purpose district, departments, offices, officers, commissions, councils, authorities, boards, bureaus and divisions, and includes the California State University, which has the statutory or constitutional authority to provide State support to any person.

~~“State financial assistance” means any grant, entitlement, loan, cooperative agreement, contract or any other arrangement by which a State agency provides or otherwise makes available aid to recipients in the form of:~~

- 
- ~~(1) funds;~~
- 
- ~~(2) services of State personnel; or~~
- 
- ~~(3) real or personal property or any interest in or use of such property, including:~~
  - 
  - ~~(A) transfers or leases of property for less than fair market value or for reduced consideration; or~~
  - 
  - ~~(B) proceeds from a subsequent transfer or lease of property if the State share of its fair market value is not returned to the State.~~

(bbb) “State support” includes any funds, financial assistance, grant, entitlement, loan, note, donation, cooperative agreement, subsidy, contract, transfer or allocation of state funds or property, benefit or any other arrangement by which the state or any state agency provides or otherwise makes available aid, services or benefits for the use of or to recipients, including aid, services, or benefits in the form of:

- (1) any payment, transfer, or allocation of funds;
- (2) provision or use of services of state personnel;
- (3) provision or use of state materials or equipment;
- (4) provision or use of real or personal property or any interest in or use of such property, including:
  - (A) transfers or leases of property for less than fair market value or for reduced consideration; or
  - (B) proceeds from a subsequent transfer or lease of property if the state share of its fair market value is not returned to the state; or
- (5) Aids, services or benefits that that the state or any state agency administers or allocates, including any competitive or discretionary tax credits, and any payments, subsidies, or other assistance extended by the state or any state agency to any person, agency or entity providing insurance, including health-related insurance coverage for payments to or on behalf of a person

obtaining health-related insurance coverage from that entity, or extended by the state directly to such individual for payment to any entity providing health-related insurance coverage.  
means the funds or financial assistance provided by the State to a recipient which:

-  
(1) is ~~“Funded directly by the State” as defined in this Section; or~~

-  
(2) receives ~~“State financial assistance” as defined in this Section.~~

(ccc) “State supported program” means any program or activity which that receives State support, in whole or in part.

(ddd) “Stereotype” means a belief about a person’s appearance or behavior, gender roles, gender expression, or gender identity, or about their ability or inability to perform certain kinds of work or to participate in, benefit from, or receive health or other services under programs or activities, based on a myth, bias or prejudice, assumption, social expectation, convention, statistical probabilities, or generalization about the individual or about other persons in a protected class.

(eee) “Transgender” is a general term that refers to a person whose actual or perceived gender identity differs from the person’s sex assigned at birth. A transgender person may or may not have a gender expression that is different from the social expectations of the sex assigned at birth. A transgender person may or may not identify as “transsexual.”

(fff) “Transitioning” is a process some transgender people go through to begin living as the gender with which they identify, rather than the sex assigned to them at birth. This process may include, changes in name and pronoun usage, facility usage, participation in a recipient’s sponsored activities (e.g., sports teams, team-building projects, or volunteering), or undergoing hormone therapy, surgeries, or other medical procedures.

(ggg) “Ultimate beneficiary” means a person identified in Government Code Section 11135 in a protected class who receives, applies for, participates in, or benefits from, or is unlawfully deterred or excluded from benefiting from, full and equal access to the benefits of, or employment with, or is subjected to discrimination under a program activity or service that is conducted, operated or administered any covered entity. receiving or applying for, the benefits of, or employment under a program of activity which receives State support.

(hhh) Video remote interpreting (VRI) service means an interpreting service that uses video conference technology over dedicated lines or wireless technology offering high-speed, wide-bandwidth video connection that delivers high-quality video.

(iii) Wheelchair means a manually-operated or power-driven device designed primarily for use by an individual with a mobility disability for the main purpose of indoor or of both indoor and outdoor locomotion.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11000, 11135, 11139.5, Government Code, 11136, 11137, 11139, 11139.8, 12901, 12903, 12926, 12926.1, 12940, and 12960, Government Code.

[§§ 14021-14024. Reserved.]

~~§ 11151. Applicability of This Division.~~

~~(a) The provisions of this Division are applicable as of the effective date of this Division and shall not be interpreted to be retroactive.~~

~~(b) Except as set forth in this Subsection, the provisions of this Division do not apply to recipients who do not provide services to the public as defined in Section 98010. Such recipients shall comply with the regulations of the FEHC and shall be deemed to be “employers” for purposes of such regulations. For purposes of such recipients, the regulations of the FEHC with respect to “employees” or “applicants” shall be deemed to refer to “ultimate beneficiaries” as defined in Section 98010.~~

~~Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11139 and 11139.5, Government Code.~~

~~§ 11152. [Reserved]~~

**Article 3. Discriminatory Practices Relating to All Groups Protected by Article 9.5**

**§ 11153.14025. General Prohibitions.**

No person in the State of California shall, on the basis of ~~ethnic group identification, religion, age, sex, race, color, religions, ancestry, national origin, ethnic group identification, age, disability (including mental disability and/or a physical or mental disability, medical condition, genetic information, marital status, or sexual orientation,~~ be unlawfully denied ~~the full and equal access to~~ benefits of, or be unlawfully subjected to discrimination, ~~by action or inaction,~~ under any program, ~~or activity, or service that is conducted, operated or administered by a covered entity funded directly by the State or receiving any financial assistance from the State.~~

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11000, 11135, 11136, 11139.8, 12926, 12926.1, and 12940, Government Code.

**§ 11154. § 14026. Discriminatory Practices Applicable to All Persons.**

~~(a) It is a discriminatory practice for a recipient any covered entity, in carrying out or failing to carry out any program, activity or service, or activity or providing or denying any services or benefits directly, or through contractual, licensing or other arrangements, to treat in purpose or effect any person less favorably without legal justification on the basis of the protected class of the person, that does any of the following: on the basis of ethnic group identification, religion, age, sex, color, or a physical or mental disability:~~

~~(1a) to denydenies a person the opportunity to apply for, receive, participate in, or benefit from an aid, benefit or program, activity, or service;~~

~~(2b) to affordaffords a person the opportunity to apply for, receive, participate in or benefit from an aid, benefit, or service that is not full and equal to that the opportunity afforded others;~~

~~(3e) to provide~~provides a ~~person with an aid, benefit or~~program, activity, or service to a person that is not as effective in affording an equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others. In some situations, identical treatment may be discriminatory;

~~(4d) to provide~~provides different or separate ~~aid, benefits~~programs, activities, or services to a person, or to any class of persons, than is provided to others, or ~~to provide aid, benefits~~ provides programs, activities, or services at a different time, unless such action is clearly necessary to provide such persons with an equal opportunity to receive as truly effective ~~aid, benefits~~program, activity, or services as those provided to others;

~~(e5) to aid~~aids or ~~perpetuate~~perpetuates discrimination against a person by transferring ~~S~~state support to ~~another recipient~~covered entity that discriminates in the provision of providing any aid, benefitprogram, activity, or service;

~~(6f) to exclude~~s a person from participation as a member of a planning or advisory board. Under this requirement, it is a discriminatory practice for a recipient to fail to make reasonable efforts to achieve a representative board. However, such requirement is not deemed to impose adherence to a quota system;

~~(7g) to otherwise limit~~limits a person in the exercise or enjoyment of any right, privilege, advantage or opportunity enjoyed by others participating in or receiving any aid, benefit, or service resulting from theunder a program, service, or activity;

~~(8h) to deny~~denies a person the opportunity to participate in ~~programs, or activities, or services~~ that are not separate or different, despite the existence of permissibly separate or different programs or activities;

~~(9i) to utilize~~utilizes criteria or methods of administration that:

~~(A1) have the purpose or effect of subjecting~~subject a person to discrimination on the basis of ethnic group identification, religion, age, sex, color, or a physical or mental disability a protected class, or perception of membership in, or association with someone, in a protected class;

~~(2B) have the purpose or effect of defeating~~defeat or substantially ~~impairing~~impair the accomplishment of the objectives of the ~~recipient's covered entity's~~ program, activity, or service, with respect to a person ~~of a particular ethnic group identification, religion, age, sex, color, or with a physical or mental disability~~on the basis of a protected class (the "objectives" of a program or activity shall include looking to the overall mission or purpose of a program or activity, including but not limited to those contained in relevant statutes, legislative intent and history, and regulations); ~~or~~

~~(C)(3) perpetuate discrimination by another recipient~~covered entity on the basis of ethnic group identification, religion, age, sex, color, or a physical or mental disabilityinclusion in a protected class; ~~or~~

(D) perpetuate discrimination on the basis of inclusion in a protected class.

~~(10)~~ to make or permit allows selections or closures of sites or locations of facilities, or makes or issues or denies permits for programs, services, activities or facilities that:

~~(1A)~~ that have the purpose or effect of excluding exclude persons from, denies ing them the benefits of, or otherwise subjecting subjects them to discrimination under any program, or activity, or service;

~~(B2)~~ that have the purpose or effect of defeating defeat or substantially impairing impair the accomplishment of the objectives of the program, or activity, or service with respect to a person of a particular ethnic group identification, religion, age, sex, color, or with a physical or mental disability on the basis of inclusion in a protected class.

(b) This subsection applies to any covered entity engaging in permitting activity, or site or facility selection, notwithstanding that other covered entities have issued, allowed or made permits or selections relating to the same program, activity, site or facility.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11000, 11135, 11139, 12926, 12926.1, and 12940 ~~and 11139.5~~, Government Code.

#### § 11155. Interpretation of Section 98101.

The provisions of Section 98101 are not intended:

~~(a) to limit, by the enumeration of specific forms of prohibited discrimination, the general prohibition against discrimination set forth in Section 98100;~~

~~(b) to adversely affect lawful programs which benefit persons of a particular ethnic group identification, religion, age, sex, color, or with a physical or mental disability to overcome the effects of conditions that result or have resulted in limited participation in, or receipt of benefits from, any State supported program or activity; or~~

~~(c) to prohibit or require actions or practices otherwise allowed or not required under Chapter 3 of this Division.~~

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections ~~11135, 11139 and 11139.5~~, Government Code.

#### § 14027. Standards for Determining Discrimination.

(a) In order to determine whether a practice is discriminatory, the Department will use all sources of information, including the sources of information and methods used by state and federal courts and agencies in determining whether a practice is discriminatory. The sources of information and methods used by federal courts and agencies shall be considered a floor and not a ceiling, consistent with the objective of Article 9.5 and this subchapter to provide the broadest protections for civil rights of California's residents.

(b) Discriminatory practices prohibited by Article 9.5 and this subchapter include facial discrimination,

intentional discrimination and disparate impact discrimination.

(1) Facial or express discrimination is unlawful *per se* under Article 9.5, this subchapter, and other implementing regulations. This includes and rules, practices, policies, ordinances, and regulations that classify individuals and provide them aid, benefits or services on the basis of their inclusion or exclusion from a protected class, except to the extent they lawfully benefit members of a protected class or as part of a lawful affirmative action plan.

(2) Practices that intentionally discriminate against individuals on the basis of a protected class are prohibited under Article 9.5, this subchapter, and other implementing regulations. Intentional discrimination is established when a protected basis is a motivating factor in committing an adverse action even though other factors may have also motivated the practice. Intentional discrimination may be proved by direct or circumstantial evidence. “Intentional” discrimination includes “purposeful” discrimination.

(3) Disparate impact discrimination is prohibited under Article 9.5, this subchapter, and other implementing regulations. “Disparate impact,” “discriminatory effect,” and “adverse impact” are used interchangeably. Disparate impact occurs when an act or practice, regardless of intent, a) has an adverse or disproportionate impact, or predictably results in an adverse disproportionate impact, on the basis of a protected class; (b) increases, reinforces, or perpetuates discrimination or segregation on the basis of a protected class; or (c) has the effect of violating any of the other prohibitions in Article 9.5, this subchapter, or other implementing regulations. Disparate impact can be established even if a practice is facially neutral. A practice with a disparate impact may nevertheless still be lawful if supported by a legally sufficient justification, as set out in section 14029.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11000, 11135, 12926, 12926.1, 12940, 12955, and 12955.8, Government Code.

§ 14028. Proof in Intentional Discrimination Cases.

(a) Admissions, expressions of bias, or other direct evidence of discrimination often are probative of purpose or intent, but are not necessary to demonstrate that a practice is intentional discrimination.

(b) Circumstantial evidence may be relied upon to demonstrate intentional discrimination.

(1) Probative sources of information or methods for determining whether discrimination has occurred include: information concerning the disproportionate, adverse effect of a decision affecting a protected class or decisions on comparable matters; the historical background of the challenged practice; specific antecedent events leading to the challenged decision; departures from normal procedures or substantive conclusions; and contemporary statements of decision-makers and other legislative history; and a pattern of harm to the protected classes; information showing that discrimination against members of a protected class is the standard operating procedure based on statistical data that the practice has a disproportionate, adverse effect on members of the protected class and supporting anecdotal evidence; and the use of presumptions, burden shifting and comparisons between a protected class and other individuals.

(2) Information showing a disparate impact on a protected class is circumstantial evidence that a program, activity, or practice is intentional discrimination includes, but is not limited to, the following:

(A) statistical data or anecdotal evidence showing that a group of individuals, other than the protected class, concurrently received better or more effective benefits under the same or a similar program or activity; or

(B) statistical data or anecdotal evidence showing that the benefits of the program or activity were better or more effective when other individuals utilized a program or activity than when members of the protected class utilized the same or similar program or activity to a greater extent.

(c) Burdens of Proof in Intentional Discrimination Cases Based on Circumstantial Evidence

(1) An aggrieved person or the Department first has the burden of establishing a prima facie case of discrimination by showing that the aggrieved individual or individuals: 1) belongs to a protected class; 2) the individual or individuals were subject to adverse action; and 3) a causal connection or link exists between the individual's protected class and the adverse action. A prima facie case establishes a rebuttable presumption of discrimination

(2) If the aggrieved person or the Department satisfies the burden of proof set forth in paragraph (c)(1) of this subsection, the respondent must then establish a legitimate, non-discriminatory reason for the adverse action.

(3) If the respondent satisfies the burden of proof set forth in paragraph (c)(2) of this subsection, the burden shifts back to the aggrieved person or the Department to demonstrate that the non-discriminatory reason(s) asserted by the respondent are pretextual (i.e., not the true reasons) or are false.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11000, 11135, 12926, 12926.1, 12940, 12955, and 12955.8, Government Code; *Mixon v. Fair Employment and Housing Comm.* (1987) 192 Cal.App.3d 1306; *Guz v. Bechtel National Inc.* (2000) 24 Cal.4<sup>th</sup> 317; *McDonnell-Douglas Corp. v. Green* (1973) 411 U.S. 792; *Village of Arlington Heights v. Metropolitan Housing Devel. Corp.* (1977) 429 U.S. 252.

§ 14029. Proof in Disparate Impact Discrimination Cases.

(a) Evidence of disparate impact may include evidence that adverse effects fall disproportionately on a protected class, and/or that the benefits of the program, activity or service were reduced, or were less effective, or more burdensome to obtain, when members of a protected class utilized a program, activity or service than when other individuals utilized the same or similar program, activity or service.

(b) Burdens of Proof in Disparate Impact Discrimination Cases.

(1) The aggrieved person or the Department has the burden of proving that an action, practice or practices caused or predictably will cause a disparate impact.



(2) Once the aggrieved person or the Department satisfies the burden of proof set forth in paragraph (2) of this subsection, the respondent has the burden of proving that the respondent had a legally sufficient justification under subsection (C) in this section.

(3) Legally Sufficient Justification.

(A) A legally sufficient justification exists where the respondent proves that the action or practice is necessary to achieve an substantial, legitimate, and nondiscriminatory purpose sufficiently compelling to override the disparate impact, and that the action or practice effectively carries out the purpose it is alleged to serve.

(B) A legally sufficient justification must be supported by evidence and may not be hypothetical or speculative.

(c) If the respondent satisfies the burden of proof set forth in paragraph (2)(C) of this subsection, the aggrieved person or the Department may still prevail upon proving that the purpose for the challenged action or practice can be equally served by an action or practice that has a less discriminatory effect.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11000, 11135, 12926, 12926.1, 12940, 12955, and 12955.8, Government Code

#### § 14030. Other Proof Provisions.

(a) A legally sufficient justification, as described in subsection 14029(b)(3), is not a defense against a claim of intentional discrimination.

(b) The same information may be probative of more than one form of discrimination.

(c) The evidence and methods of proof described in this Section shall be construed as illustrative and not as limitations on the enforcement of Article 9.5, this subchapter, or other implementing regulations.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11000, 11135, 12926, 12926.1, 12940, 12955, and 12955.8, Government Code.

[§§ 14031-14049. Reserved.]

### **Article 4. Remedial Actions**

#### **§ 14050. Private Right of Action.**

(a) Any person may file a complaint with the Department regarding any alleged violation of Article 9.5, this subchapter or other implement regulations.

(b) Article 9.5, this subchapter, and other implementing regulations may be enforced by a civil action in federal or state court for equitable or declaratory relief, including actions for declaratory relief, injunctive relief, writ of mandamus, mandatory relief, and cessation or suspension of state financial

assistance, which shall be independent of any other rights and remedies, including any action taken by a recipient or the state or any state agency under Sections 11136 and 11137 of the California Government Code.

(c) A prevailing complainant shall be entitled to costs, expenses, and reasonable attorneys' fees, including expert witness fees, in an action or administrative complaint.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11136, 11137 and 11139, Government Code.

#### § 14051. Exhaustion of Administrative Remedies.

(a) Exhaustion of administrative remedies available under Fair Employment and Housing Act, Government Code section 12900 et seq., Civil Code Section 51, 51.5, 51.7, 54, 54.1 or 54.2, Article 9.5, this subchapter, or other implementing regulations shall not be a prerequisite to the bringing of actions for judicial enforcement of Article 9.5, this subchapter or other implementing regulations, nor shall any person first be required to exhaust administrative remedies of any other state or federal agency or the internal grievance procedures of any recipient before filing a pre-complaint inquiry or a complaint with the Department or a civil action for enforcement of Article 9.5.

(b) Where an underlying administrative procedure has occurred, the civil action or Department investigation of violations of Article 9.5, this subchapter, and implementing regulations shall not be limited to a review of the administrative record even if the civil suit includes several causes of action, some of which may be subject to a review of an administrative record requirement. A civil action shall proceed by trial de novo.

(c) In a civil action, to the extent an aggrieved person alleges employment discrimination in violation of the Fair Employment and Housing Act, Government Code sections 12000 et seq. as a separate claim in addition to a violation of Article 9.5, the person must exhaust administrative remedies for those separate claims as required by Government Code section 12960 and implementing regulations.

(d) If an aggrieved person chooses to seek resolution of a claim under Article 9.5, this subchapter, or other implementing regulations through a state agency administrative procedure or internal agency grievance procedure, or if a complaint is referred to an agency for investigation pursuant to section 14052(b), the one-year deadline for filing a complaint with the Department under Government Code 12960 shall be tolled for the pendency of the investigation.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11136, 11137, 11139 and 11139.8.

#### § ~~14052~~11157. Mandatory Remedial Action.

~~(a) If the responsible State agency finds a recipient has violated this Division or other implementing regulations the recipient shall take such remedial action as the responsible State agency deems necessary to overcome the effects of such violation.~~

(a) Whenever a state agency believes that a covered entity or entities have violated the Fair Employment

and Housing Act, Government Code section 12900 et seq., Civil Code Section 51, 51.5, 51.7, 54, 54.1 or 54.2, Article 9.5, this subchapter, or other implementing regulations, the head of the state agency, or his or her designee, shall notify the covered entity or entities of such violation and shall submit a complaint detailing the alleged violations to the Department for investigation and determination according to Government Code 11136.

(b) The Department retains discretion to refer complaints concerning violations to, or back to, the state agency responsible for the program, activity or service for investigation and possible resolution. Nothing in this subsection shall preclude an aggrieved person from proceeding under section 14050 (Private Right of Action).

(c) If a recipient or recipients are found to have violated the Fair Employment and Housing Act, Government Code section 12900 et seq., Civil Code Section 51, 51.5, 51.7, 54, 54.1 or 54.2, the Act, this subchapter or other implementing regulations, the responsible state agency that administers the program or activity involved, in addition to remedies provided by other laws and actions directed by a Court, shall take one or more of the following actions:

(1) termination of all or part of the recipient's state support;

(2) suspension of all or part of the recipient's state support;

(3) debarment from, or otherwise making the recipient ineligible for, future state support for a specified period of time or until specified remedial actions are taken by the recipient;

(4) probationary eligibility for future state support, or making future state support conditional upon compliance with specified conditions; or

(5) placing conditions upon the continuation of present state support.

(bd) Where a recipient is found to have violated ~~this Division~~ the Fair Employment and Housing Act, Government Code section 12900 et seq., Civil Code Section 51, 51.5, 51.7, 54, 54.1 or 54.2, Article 9.5, this subchapter, or other implementing regulations, and where another recipient exercises control over such recipient, either or both recipients shall be required to take such remedial action as deemed appropriate by the responsible state agency or a court.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11136, 11137 and 11139, Government Code.

#### ~~§ 11158.~~ § 14053. Permissive Remedial Action.

(a) A State agency may, where necessary to overcome the effects of discrimination in violation of Fair Employment and Housing Act, Government Code section 12900 et seq., Civil Code Section 51, 51.5, 51.7, 54, 54.1 or 54.2, Article 9.5, this ~~Division~~subchapter or other implementing regulations:

(1) require a recipient to take remedial action with respect to persons who are no longer participants in the recipient's program, ~~or~~ activity, or service, but who were participants in the program when such discrimination occurred; and

(2) require a recipient to take remedial action with respect to persons who would have been participants in the program, ~~or activity, or service,~~ had the discrimination not occurred.

(b) If a recipient or recipients are found to have violated Fair Employment and Housing Act, Government Code section 12900 et seq., Civil Code Section 51, 51.5, 51.7, 54, 54.1 or 54.2, the Act, this subchapter, or other implementing regulations, the responsible state agency may also take such remedial actions as the responsible state agency deems appropriate to address such violation and the effect of such violation, including requiring provision of benefits, prohibiting discriminatory conduct, or referral of the case to the Attorney General's Office or other appropriate law enforcement entities for any judicial relief at law or equity, including specific performance of agreements between the state agency and the recipient or recipients, enforcement of the requirements the Act, this subchapter, and implementing regulations, and enforcement of other applicable nondiscrimination laws.

(c) Nothing in this section precludes the responsible state agency from taking such remedial actions during the pendency of the investigation or complaint as the responsible state agency deems appropriate to address an alleged violation and the effect of any such alleged violation.

(d) Even in the absence of a finding of discrimination, a recipient may be permitted by a State agency to take voluntary steps in addition to any action that is required by Article 9.5, this ~~Division~~subchapter or other implementing regulations to overcome the effects of conditions that resulted in limited participation in the recipient's program, ~~or activity, or services~~ by ~~persons of a particular ethnic group identification, religion, age, sex, color, or with a physical or mental disability~~ individuals in a protected class.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11136, 11137 and 11139, Government Code.

[§§ 14054-14069. Reserved.]

## **Article 5. Harassment and Retaliation**

### **§ 14070. Harassment, Coercion, and Intimidation Prohibited**

(a) Harassment by a covered entity, related to any program, activity or service, on any protected basis is an unlawful discriminatory practice under Article 9.5.

(b) Harassment includes quid pro quo harassment and hostile environment harassment. The same conduct may constitute both quid pro quo and hostile environment harassment.

(1) Quid pro quo harassment. Quid pro quo harassment refers to an unwelcome request or demand to engage in conduct where submission to the request or demand, either explicitly or implicitly, is made a condition related to the attainment of any benefit, as defined in Section 14020 of this subchapter. An unwelcome request or demand may constitute quid pro quo harassment even if an individual acquiesces in the unwelcome request or demand.

(2) Hostile environment harassment. Hostile environment harassment refers to unwelcome conduct that is sufficiently severe or pervasive as to interfere in the attainment of any benefit, as

defined in Section 14020 of this subchapter, or constitutes any kind of adverse action. Hostile environment harassment does not require a change in the terms, conditions, or privileges afforded by Article 9.5.

(A) Whether hostile environment harassment existed or exists depends on the totality of the circumstances.

(i) Factors to be considered in determining whether hostile environment harassment existed or exist include: the nature of the conduct; the context in which the incident(s) occurred; the severity scope, frequency, duration, and location of the conduct; and the relationship of the persons involved.

(ii) Neither psychological nor physical harm must be demonstrated to prove that a hostile environment existed or exists. However, evidence of psychological or physical harm may relevant in determining whether a hostile environment exists or existed, and the amount of damages to which an aggrieved person may be entitled.

(iii) Whether unwelcome conduct is sufficiently pervasive or severe as to create a hostile environment is viewed from the perspective of a reasonable person in the aggrieved person's position.

(3) Types of conduct. Quid pro quo and hostile environment harassment may be written, verbal, or communicated in other ways, and do not require physical contact. Such harassment includes:

(A) Verbal harassment, including epithets, derogatory comments or slurs;

(B) Physical harassment directed at an individual, including assault, impeding or blocking movement, or any physical interference with normal movement;

(C) Visual forms of harassment, including derogatory posters, cartoons, drawings, or other documents.

(D) Unwelcome sexual conduct, or other unwelcome conduct, linked to an individual's sexual orientation or sex, including: pregnancy or medical conditions related to pregnancy, childbirth or medical conditions related to childbirth, breastfeeding or medical conditions related to breastfeed; gender identity; and gender expression;

(E) Any coercion, intimidation, threats, or interference with a person's exercise or enjoyment of any benefit secured by rights protected under the Act, this subchapter, or implementing regulations.

(F) Taking any adverse action against a person in a manner that constitutes quid pro quo or hostile environment harassment, such as, representing to a person that a benefit is not available because of the person's response to a request or demand for a sexual favor;

(G) Revealing private information to a third party about a person, without their consent, in a manner that constitutes quid pro quo or hostile environment harassment, unless such disclosure is

required by federal or state law;

(H) Subjecting a person to a discriminatory practice under Article 9.5 may, itself, constitute quid pro quo or hostile environment harassment.

(c) A single incident of harassment based on an individual's membership in a protected class may constitute a discriminatory practice under Article 9.5, where the incident is sufficiently severe to constitute hostile environment harassment, or evidences quid pro quo harassment.

(d) Persons protected. The prohibition on harassment extends to conduct that is based on an individual's membership in a protected class, being perceived as a member of a protected class, being associated with a member of a protected class or someone who is perceived to be a member of a protected class, or on account of having aided or encouraged any person in the exercise of the rights protected by Article 9.5.

Note: Authority cited: .Section 12935(a), Government Code. Reference: Sections 11000, 11135, 12926, 12926.1, 12940, 12955, Government Code.

#### § 14071. Retaliation Generally.

(a) It shall be unlawful for any covered entity or recipient to take adverse action against an aggrieved person because the person has engaged in protected activity.

(1) "Because of" means that the retaliation was a motivating factor in causing harm. Retaliation need not be the sole motivating factor.

(2) The adverse action need not be related directly to the nature of the protected activity.

(3) Retaliation may be established by direct evidence or circumstantial evidence, including the temporal proximity between the protected activity and the adverse action.

(b) Proof in Retaliation Cases

(1) To establish a prima facie case of retaliation, an aggrieved person or the Department must show that: (1) the aggrieved person engaged in a protected activity; (2) the respondent subjected the aggrieved person to an adverse action; and (3) a causal connection or link exists between the protected activity and the adverse action.

(2) If an aggrieved person or the Department establishes a prima facie case, the respondent must then establish a legitimate non-retaliatory reason for the adverse action, whereupon the burden shifts back to the aggrieved person or the Department to demonstrate that the proffered reason is pretextual or false.

(3) There shall be a rebuttable presumption of unlawful retaliation if a covered entity or recipient takes adverse action within 90 days of the protected activity.

(c) Persons Protected. For purposes of a retaliation claim, an aggrieved person includes any person who

has alleged that they have been subjected to adverse action due to engagement in a protected activity.

(1) A person does not have to be a member of a protected class in order to assert a claim for retaliation.

(2) A person does not need to allege or prove discrimination or prevail on a separate claim under any provision of the Act or these regulations in order to assert a claim for retaliation.

(3) An aggrieved person may prevail on a retaliation claim even if:

(A) the aggrieved person was engaged in a protected activity challenging practices which the aggrieved person reasonably believed to be unlawful, whether or not those practices are determined to be unlawful, or

(B) the aggrieved person was participating in an activity which was perceived by the respondent as protected activity, whether or not it was so intended by the aggrieved person.

(d) "Protected activity" includes:

(1) Making a complaint, testifying, assisting or participating in any manner in a proceeding, including any proceeding under Article 9.5, the California Fair Employment and Housing Act, California Civil Code section 51, 51.5, 51.7, 54 54.1, or 54.2, the federal Fair Housing Act, the Americans with Disabilities Act, the federal Civil Rights Act, Section 504 of the Rehabilitation Act, or any other state or federal civil right statutes;

(2) Opposing practices prohibited by the Act, this subchapter, other implementing regulations, the California Fair Employment and Housing Act, California Civil Code section 51, 51.5, 51.7, 54 54.1, or 54.2, the federal Fair Housing Act, the Americans with Disabilities Act, the federal Civil Rights Act, or Section 504 of the Rehabilitation Act, including seeking the advice of the state, any state or local agency, the Department or Council, or a person employed or retained by a recipient who has authority to receive, transmit, investigate, or discover a complaint, or correct an alleged violation, whether or not a complaint is filed, and if a complaint is filed, whether or not the complaint is ultimately sustained;

(3) Assisting or advising any person in seeking the advice of the state, any state or local agency, the Department or Council, or a person employed or retained by a recipient who has authority to receive, transmit, investigate, or discover a complaint, or correct an alleged violation, whether or not a complaint is filed, and if a complaint is filed, whether or not the complaint is ultimately sustained;

(4) Participating in an activity that is perceived by the state, any state or local agency, or a recipient as opposition to discrimination, whether or not so intended by the individual participating in the activity;

(5) Contacting, communicating with or participating in a proceeding of a human rights or civil rights agency regarding discrimination on a basis enumerated in Article 9.5, this Division or other implementing regulations;

(6) Assisting with or participating in the proceedings of the state, any state agency, or a recipient including involvement as a potential witness, which the state, any state or local agency, or a recipient perceives as participation in a proceeding alleging a violation of Article 9.5, this Division or implementing regulations;

(7) Seeking information, formally under a Public Records Act request, or informally, regarding programs or activities of a state, any state agency, or a recipient; or

(8) Requesting a reasonable accommodation or reasonable modification for an individual with a disability, or requesting an interactive process meeting, whether or not the request was granted.

(e) Violations of this section are considered a discriminatory practice as set forth in Article 9.5, this subchapter, and other implementing regulations, and subject to remedial actions described in Article 4, supra.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11000, 11135, 11136, 11137, 11139, 12926, 12926.1, and 12940, Government Code.

#### § 14072. Coercion, Intimidation, Threats or Interference with Rights Prohibited

It shall be unlawful to coerce, intimidate, threaten, or discriminate against any person for the purpose of interfering with any right or privilege secured by the Act.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11000, 11135, 12926, 12926.1, 12940, Government Code.

[§§ 14073-14079. Reserved.]

### **Article 6. Specific Practices - Age Discrimination Prohibited**

#### **§ 11159. Specific Discriminatory Practices.**

~~The purpose of this Chapter is to identify discriminatory practices applicable to particular groups of persons protected by Article 9.5.~~

~~Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11139 and 11139.5, Government Code.~~

~~§ 11160. [Reserved]~~

~~§ 11161. Definitions.~~

~~(a) “Alternative communication services” means the method used or available for purposes of communicating with a person unable to read or speak or write in the English language. “Alternative communication services” include, but are not limited to, the provision of the services of a multilingual employee or an interpreter for the benefit of an ultimate beneficiary and the provision of written materials in a language other than English.~~



~~(b) “Color or ethnic group identification” means the possession of the racial, cultural or linguistic characteristics common to a racial, cultural or ethnic group or the country or ethnic group from which a person or his or her forebears originated.~~

~~(c) “Interpreter” means a qualified person capable of translating a language, orally or in writing, between people who speak, read or write a different language.~~

~~(d) “Multilingual employee” means an employee of a recipient who, in addition to his or her other duties, is also proficient in the oral communication skills and such minimal reading and writing skills, where applicable, as are necessary to accurately and readily interpret in a second language. A multilingual employee need not be proficient in reading or writing skills in a second language except where such skills are a job-related necessity.~~

~~(e) “Non-English speaking persons” means persons who either do not speak English or are unable to effectively communicate in English because English is not their native language.~~

~~(f) “Primary language” means the language used most frequently by a person to communicate, including sign language.~~

~~Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11139 and 11139.5, Government Code.~~

#### ~~§ 11162. Discrimination Prohibited.~~

~~It is a discriminatory practice for a recipient:~~

~~(a) to discriminate against a person because of such person’s association with persons of a particular color or ethnic group identification;~~

~~(b) to discriminate against a person because of such person’s membership in an organization identified with, or seeking to promote the interests of persons of a specific color or ethnic group identification or because a person’s name, or that of his or her spouse, is believed to reflect a given color or ethnic group identification;~~

~~(c) to fail to take appropriate steps to ensure that alternative communication services are available to ultimate beneficiaries, except where the State agency determines that such a requirement would place an undue hardship on the recipient.~~

~~Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11139 and 11139.5, Government Code.~~

~~§ 11163. [Reserved]~~

~~§ 11164. [Reserved]~~

~~§ 11165. Religion Defined.~~

~~The term “religion” includes all aspects of religious observance, practice and belief, including duties of the clergy or elders. A belief is religious if sincerely held and, in the scheme of the believer, holds a place analogous to that filled by the deity of those people whose religion may be more orthodox or more widely accepted.~~

~~Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11139 and 11139.5, Government Code.~~

~~§ 11166. Reasonable Accommodation.~~

~~It is a discriminatory practice where a recipient of State support fails to make reasonable accommodation to the religious belief of an ultimate beneficiary where such accommodation can be made without undue hardship on the recipient or other ultimate beneficiaries.~~

~~Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11139 and 11139.5, Government Code.~~

~~§ 11167. Exemption of Religious Organizations.~~

~~Neither this Division nor implementing regulations apply to the religious activities of a religious corporation or association not organized for profit.~~

~~Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11139 and 11139.5, Government Code.~~

~~§ 11168. Discrimination Prohibited.~~

~~It is a discriminatory practice for a recipient of State support to discriminate against an ultimate beneficiary based on the nature of the ultimate beneficiary’s religious beliefs.~~

~~Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11139 and 11139.5, Government Code.~~

~~§ 11169. [Reserved]~~

~~§ 11170. Definitions.~~

~~(a) “Action” means any activity, policy, rule, standard, or method of administration undertaken by a recipient; or the use of any policy, rule, standard, or method of administration by a recipient.~~

~~(b) “Age” means how old a person is, or the number of elapsed years from the date of a person’s birth.~~

~~(c) “Age distinction” means any action using age or an age-related term.~~

~~(d) “Age-related term” means a word or words which necessarily imply a particular age or range of ages (for example: “children,” “adult,” “older persons,” but not “student”).~~

~~Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11139 and 11139.5, Government Code.~~

§ 14080. Definitions

The terms “age,” “age distinction,” and “age-related term” shall have the meanings set out in section 14020.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11136, and 11139, Government Code.

§ 14081. Discrimination on the Basis of Age Prohibited.

It is an unlawful practice to discriminate on the basis of an individual’s age.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11136, and 11139, Government Code.

~~§ 11171.~~ § 14082. Statutory Exceptions to the Rules Against Age Discrimination.

It is not a discriminatory practice for a ~~recipient-covered entity~~ to take any action otherwise prohibited by Sections 98100-98101 ~~the Act, this subchapter, or other implementing regulations~~ if such action is based on a Federal statute or regulation, State statute or regulation, or local ordinance consistent with this ~~Division Subchapter~~ adopted by an elected, general purpose legislative body and which:

- (a) provides any benefits or assistance to persons based on age;
- (b) establishes criteria for participation in age-related terms; or
- (c) describes intended beneficiaries or target groups in age-related terms.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11136, and ~~11139 and 11139.5~~, Government Code.

~~§ 11172.~~ § 14083. Definition of “Normal Operation” and “Statutory Objective.”

For purposes of ~~Sections 98233 and 98234~~ Article 6, the terms “normal operation” and “statutory objective” have the following meanings:

- (a) “Normal operation” means the operation of a program, ~~or activity, or service~~ without significant changes that would impair the ~~recipient’s covered entity’s~~ ability to meet the objectives of such program, ~~or activity, or service~~.
- (b) “Statutory objective” means any purpose of a program, ~~or activity, or service~~ expressly stated in any Federal statute, State statute, or local statute or ordinance consistent with this ~~Division Subchapter~~ adopted by an elected general purpose legislative body.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11136, and 11139 ~~and 11139.5~~, Government Code.

~~§ 14173.~~ § 14084. Exceptions to the Rules Against Age Discrimination: Normal Operation or Statutory Objective of Any Program, ~~or~~ Activity, or Service.

It is not a discriminatory practice for a ~~recipient~~ covered entity to take an action, otherwise prohibited by ~~Sections 98100-98104~~ Article 6, if the action reasonably takes into account age as a factor necessary to the normal operation or the achievement of any statutory objective of a program, ~~or~~ activity or service. An action reasonably takes into account age as a factor necessary to the normal operation or the achievement of any statutory objective of a program, ~~or~~ activity, or service, if:

- (a) age is used as a measure or approximation of one or more other characteristics;
- (b) the other characteristic(s) must be measured or approximated in order for the normal operation of the program or activity to continue, or to achieve any statutory objective of the program or activity;
- (c) the other characteristic(s) can be reasonably measured or approximated by the use of age; and
- (d) the other characteristic(s) are impractical to measure directly on an individual basis.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11136, and 11139 ~~and 11139.5~~, Government Code.

~~§ 14174.~~ 14085. Exceptions to the Rules Against Discrimination: Reasonable Factors Other Than Age.

It is not a discriminatory practice for a ~~recipient~~ covered entity to take an action otherwise prohibited by ~~Sections 98100-98104~~ Article 6 which is based on a factor other than age, even though that action may have a disproportionate effect on persons of different ages, provided that such other factor bears a direct and substantial relationship to the normal operation of the program, ~~or~~ activity, or service, or to the achievement of a statutory objective.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11136, and 11139 ~~and 11139.5~~, Government Code.

~~§ 14175.~~ § 14086. Burden of Proof.

The burden of proving that an age distinction falls within the exceptions of ~~Sections 98231, 98233 or 98234~~ 14081, 14082, 14083, 14084, or 14085 is on the ~~recipient of State support~~ covered entity.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11136, and 11139 ~~and 11139.5~~, Government Code.

§ ~~14087~~ 14176. State Agency Review of Policies and Procedures.

- (a) Each ~~S~~ state agency shall conduct a review of the age distinctions it imposes on its recipients by

regulation, policy, or administrative practice. The purpose of this review is to identify how age distinctions are used by each Sstate agency and whether such age distinctions are permissible under this ~~Division~~Subchapter.

(b) No later than 12 months from the date a Sstate agency adopts implementing regulations, such agency shall submit a report to the ~~Secretary~~Department containing:

- (1) the results of the review conducted under subsection (a) of this section;
- (2) a list of the age distinctions which re to be continued; and
- (3) the justification under Section 14081, 14082, 14083, 14084, or 14085 ~~98231, 98233 or 98234~~ for each age distinction to be continued.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11136~~11139~~ and 11139~~11139.5~~, Government Code.

§ ~~14088~~14177. Recipient Review of Age Distinctions.

No later than 18 months following the effective date of implementing regulations, each recipient should be required by the responsible Sstate agency to submit a report to such Sstate agency analyzing the results of a review equivalent to that referred to in subsection ~~98236~~14086(a). Such report should list by program, ~~or~~ activity, or service the age distinctions to be continued, together with an explanation of why such distinctions satisfy the terms of Section ~~98231, 98233, or 98234~~, and the age distinctions to be eliminated.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11136, and ~~11139~~, ~~and 11139.5~~, Government Code.

§ ~~14178~~14089. State Agency Review of Recipient Age Distinctions.

No later than 24 months following the effective date of implementing regulations, each Sstate agency will be requested to submit a report to the ~~Secretary~~Department analyzing the results of the review referred to in Section ~~98237~~14087.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11136, and ~~11139~~, ~~and 11139.5~~, Government Code.

§ ~~11179~~. [Reserved]

[§§ 14090-14099. Reserved.]

**Article 7. Specific Practices - Ancestry, Ethnic Group Identification, and National Origin Discrimination Prohibited**

§ 14100. Definitions.

(a) The terms “ancestry,” “ethnic group identification,” and “national origin” shall have the meanings set out in subsections 14020(e), (r), and (gg), respectively.

(b) “Alternative communication services” means the method used or available for purposes of communicating with a person unable to read or speak or write in the English language. “Alternative communication services” include, but are not limited to, the provision of the services of a multilingual employee or an interpreter for the benefit of an ultimate beneficiary and the provision of written materials in a language other than English.

(c) “Interpreter” means a person qualified and capable of the simultaneous or consecutive rendition of spoken or signed communication from one language to another, between people who speak, sign, read, or write in a different language. A qualified interpreter has received education and training in interpreter ethics, conduct, practice, and confidentiality. “Interpretation” is the act of listening to spoken word, visual or tactile transmission of manual language, or reading something written in one language (source language) and orally expressing it accurately and with appropriate cultural relevance into another language (target language), either simultaneously or consecutively. Determining an interpreter’s competency requires more than self-identification as multi-lingual.

(d) “Multilingual employee” means a qualified employee of a covered entity who, in addition to their duties, is also proficient in oral communication skills in English and the target languages, as are necessary to accurately and readily interpret in a second language, and has received education and training in interpreter ethics, conduct, practice, and confidentiality. A multilingual employee need not be proficient in reading or writing skills in a second language except where such skills are a job-related necessity or necessary for orally interpreting a written document.

(e) “Limited English proficient persons” includes persons who are non-English speaking, do not speak English as their primary language; persons with cognitive impairments, mental health impairments, manual dexterity impairments, or sensory disabilities (such as hearing and vision impairments), who have limited ability to understand English; and persons with limited ability to read, write, or speak English presented in standard visual or oral formats.

(f) “Primary language” means the language used most frequently by a person to communicate, including sign language.

(g) “Translator” means a person qualified and capable of translating a language in writing or sign. A qualified translator has received education and training in interpreter ethics, conduct, practice, and confidentiality. “Translation” is the replacement of a written text or sign, or recorded image, from one language (source language) into an equivalent written text or sign, or recorded image in another language (target language), accurately and with appropriate cultural relevance, and at the appropriate grade level.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11136, and 11139, Government Code.

### **§ 14101. Discriminatory Practices Prohibited.**

It is a discriminatory practice for a covered entity:

(a) to discriminate against a person because of the person's actual or perceived ancestry, ethnic group identification, or national origin;

(b) to discriminate against a person because of such person's association with persons of a particular ancestry, ethnic group identification, or national origin.

(c) to discriminate against a person because of such person's association with persons of a particular ancestry, ethnic group identification, or national origin.

(d) to discriminate against a person because of such person's membership in an organization identified with, or seeking to promote the interests of persons of a particular ancestry, ethnic group identification, or national origin, or because a person's name, or that of their spouse, is believed to reflect a particular ancestry, ethnic group identification or national origin;

(c) to fail to take appropriate steps to ensure that alternative communication services are available to ultimate beneficiaries., recipient.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11136, and 11139, Government Code.

[§§ 14102-14119. Reserved.]

## **Article 8. Specific Practices - Color and Race Discrimination Prohibited**

### § 14120. Definitions.

The terms "color," and "race" shall have the meanings set out in subsections 14020(k), and (rr), respectively.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11136, and 11139, Government Code.

### § 14121. Discrimination Prohibited.

It is a discriminatory practice for a covered entity:

(a) to discriminate against a person because of the person's actual or perceived color or race;

(b) to discriminate against a person because of such person's association with persons of a particular color or race;

(c) to discriminate against a person because of such person's membership in an organization identified with, or seeking to promote the interests of persons of a specific color or race, or because a person's name, or that of ~~his or her~~their spouse, is believed to reflect a given color or race.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11136, and

11139, Government Code.

[§§ 14122-14139. Reserved.]

**[Article and section numbers are out of order starting here and will be corrected in subsequent versions.]**

**Article 10. Specific Practices - Marital Status Discrimination Prohibited**

**§ 14200. Discrimination Against People on the Basis of Marital Status Prohibited.**

It is a discriminatory practice for a covered entity:

(a) to discriminate against a person because of a person's actual or perceived marital status;

(b) to discriminate against a person because of such person's association with persons of a particular marital status; or

(c) to discriminate against a person because of such person's membership in an organization identified with, or seeking to promote the interests of persons with a particular marital status.

**§ 11180. Parental, Family or Marital Status.**

~~Any rule, policy or practice of a recipient concerning the actual or potential parental, family or marital status of an ultimate beneficiary which has the purpose or effect of differentiating on the basis of sex is a discriminatory practice.~~

~~Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11139 and 11139.5, Government Code.~~

[§§ 14200-14209. Reserved.]

**Article 11. Specific Practices - Religious Discrimination Prohibited**

**§ 14210. Definitions.**

The term "Religion" shall have the meaning set out in subsection 14020(vv).

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11136, and 11139, Government Code.

**§ 14211. Discrimination Against People on the Basis of Religion Prohibited.**

It is a discriminatory practice for a covered entity:

(a) to discriminate against a person because of the person's actual or perceived religion.



(b) to discriminate against a person because of such person's association with persons of a particular religion;

(c) to discriminate against a person because of such person's membership in an organization identified with, or seeking to promote the interests of persons with a particular religion.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11136, and 11139, Government Code.

#### **§ 14212. Reasonable Accommodation of Religious Practices.**

It is a discriminatory practice where a covered entity fails to make reasonable accommodation to the religious belief of an ultimate beneficiary where such accommodation can be made without undue hardship on the recipient or other ultimate beneficiaries.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11136, and 11139, Government Code.

#### **§ 14213. Exemption of Religious Organizations.**

Neither Article 9.5, this subchapter nor other implementing regulations apply to the religious activities of a religious corporation or association not organized for profit.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11136, and 11139, Government Code.

#### **§ 14214. Discrimination Prohibited.**

It is a discriminatory practice for a recipient of state support to discriminate against an ultimate beneficiary based on the nature of the ultimate beneficiary's religious beliefs.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11136, and 11139, Government Code.

[§§ 14215-14229. Reserved.]

### **Article 12. Specific Practices - Sex and Sexual Orientation Discrimination Prohibited**

#### **§ 14230. Discrimination Against People on the Basis of Sex or Sexual Orientation Prohibited.**

**It is a discriminatory practice for a covered entity:**

**(a) to discriminate against a person because of the person's sex or sexual orientation, as defined in Section 14020;**

**(b) to discriminate against a person because of such person's association with persons of a particular sex or sexual orientation, as defined in Section 14020;**

(c) to discriminate against a person because of such person's membership in an organization identified with, or seeking to promote the interests of persons with a particular sex or sexual orientation, as defined in Section 14020.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11136, and 11139, Government Code.

~~§ 11181.~~ § 14231. Personal Information.

In determining whether a person satisfies any criteria for receipt of an aid or benefit or participation in a program, ~~or activity, or service,~~ it is a discriminatory practice for a ~~recipient covered entity~~ to differentiate on the basis of sex in inquiring about the family or marital status of such person. However, such person may be required to provide information relevant and necessary for determining whether such person satisfies validly imposed criteria for the aid or benefit, or participation in the program, ~~or activity, or service~~ in question, ~~including any other former names by which such person has been known.~~

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11136, and 11139 ~~and 11139.5,~~ Government Code.

~~§ 11182.~~ § 14232. Pregnancy, Childbirth or Termination of Pregnancy.

Any rule, policy or practice of a ~~recipient covered entity~~ concerning disability due to pregnancy, childbirth, recovery from childbirth or termination of pregnancy, or other physiological conditions related to the capacity to bear children not applied under the same terms and conditions, and in the same manner, as any other rule, policy or practice relating to any other temporary disability is a discriminatory practice; except as otherwise provided by the Fair Employment Practice Act.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11136, and 11139 ~~and 11139.5,~~ Government Code.

§ 14233. Parental, Family or Marital Status.

Any rule, policy or practice of a covered entity concerning the actual or potential parental, family or marital status of an ultimate beneficiary which has the purpose or effect of differentiating on the basis of sex is a discriminatory practice.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11136, and 11139, Government Code.

~~§ 11183.~~ § 14234. Statistical Stereotypes.

~~Any rule, policy or practice which treats men and women differently for purposes of any program or activity on the basis of~~ It is an unlawful practice for any covered entity to use aggregate statistical information, based on sex, characteristics of men or women, whether founded in fact, belief or statistical probability is a discriminatory practice.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11136, and 11139 ~~and 11139.5~~, Government Code.

~~§ 11184. Sex Pressure Prohibited.~~

~~Any rule, policy, practice or incident by a recipient is a discriminatory practice where a supervisor, superior, or other person subject to the control of a recipient of State support, conditions the receipt of benefits of a program or activity upon entering into, or maintaining, a sexual relationship or participation in sexual activity or subjects an ultimate beneficiary to sexual harassment or intimidation such as unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature.~~

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11139 and 11139.5, Government Code.

§ 14235. Recording of Gender and Name.

(a) Inquiries by a covered entity that directly or indirectly identify a person on the basis of sex, including gender, gender identity, or gender expression, or sexual orientation, are unlawful unless the covered entity establishes a permissible defense. For recordkeeping purposes, a covered entity may request a person to provide this information solely on a voluntary basis.

(b) If an ultimate beneficiary requests to be identified with a preferred gender, name, and/or pronoun, including gender-neutral pronouns, a covered entity who fails to abide by the person's stated preference may be liable under Article 9.5, except as noted in subsection (c) below.

(c) A covered entity is permitted to use a person's gender or legal name as indicated in a government-issued identification document only if it is necessary to meet a legally-mandated obligation, but otherwise must identify the person in accordance with their gender identity and preferred name.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11136, and 11139, Government Code.

§ 14236. Additional Rights

(a) It is unlawful for a covered entity to inquire about or require documentation or proof of a person's sex, gender, gender identity, or gender expression as a condition of application or eligibility for, or receipt of, any benefit, program, activity, or service provided by the covered entity.

(b) It is unlawful for a covered entity to deny any benefit, program, activity, or service to an individual based wholly or in part on the individual's sex, gender, gender identity, or gender expression.

(c) It is unlawful for a covered entity to discriminate against an individual who is transitioning, has transitioned, or is perceived to be transitioning.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11136, 11139, 12920, 12921, 12926, and 12940, Government Code.

~~§ 11185. [Reserved]~~

~~§ 11186. [Reserved]~~

**Article 9. Specific Practices - Disability, Medical Condition, and Genetic Information  
Discrimination Prohibited.**

**§ 11187.-§ 14140. Definitions.**

The terms “disability,” “genetic information,” and “medical condition” shall have the meanings set out in section 14020.

~~(a) “Disabled person” means any person who has a physical or mental impairment which substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.~~

~~(b) As used in subsection (a) of this section, the phrase “physical or mental impairment” means:~~

~~(1) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or~~

~~(2) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term “physical or mental impairment” includes, but is not limited to such diseases and conditions as orthopedic, visual, speech and hearing impairment, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.~~

~~(3) “Major life activities” means functions such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.~~

~~(4) “Has a record of such an impairment” means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.~~

~~(5) “Is regarded as having an impairment” means:~~

~~(A) has a physical or mental impairment that does not substantially limit major life activities but is treated by a recipient as constituting such a limitation;~~

~~(B) has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or~~

~~(C) has none of the impairments defined in subsection (b) (1) of this section but is treated by a recipient as having such an impairment.~~

~~(c) “Disability” means any condition or characteristic that renders a person a disabled person as defined~~

~~in subsection (a) of this section.~~

~~(d) “Qualified disabled person” means:~~

~~(1) with respect to employment, a disabled person who, with reasonable accommodation, can perform the essential functions of the job in question, but the term does not include any individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents such person from performing the duties of the job in question or whose employment, by reason of such current alcohol or drug abuse, would constitute a direct threat to property or the safety of others; and~~

~~(2) with respect to other programs or activities, a disabled person who meets the essential eligibility requirements of such programs or activities.~~

~~Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11139 and 11139.5, Government Code.~~

#### § 14141. Discrimination Against People With Disabilities Prohibited.

It is a discriminatory practice for a covered entity:

(a) to discriminate against a person because of the person’s actual or perceived disability;

(b) to discriminate against a person because of such person's association with persons with disabilities;  
or

(c) to discriminate against a person because of such person's membership in an organization identified with, or seeking to promote the interests of persons with disabilities.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11136, and 11139, Government Code.

#### § 14142. Reasonable Accommodations.

It is a discriminatory practice for a covered entity to fail or refuse to provide a reasonable accommodation as needed to afford an individual with a disability an equal opportunity to use or enjoy programs, activities or services. Upon receiving a request for a reasonable accommodation, covered entities shall engage in a good faith interactive process to determine an effective reasonable accommodation.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11136, and 11139, Government Code.

#### § 14143. Medical Conditions

It is a discriminatory practice for a covered entity to discriminate against a person because of the person’s actual or perceived medical condition, as defined in section 14020.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11136, and 11139, Government Code.

§ 14144. Genetic Information.

It is a discriminatory practice for a covered entity to discriminate against a person because of the person's genetic information, as defined in section 14020.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11136, and 11139, Government Code.

§ 14145. Confidentiality

(a) Information concerning a request for a reasonable accommodation for a disability, or other information concerning disability, medical condition, or genetic information, shall be kept confidential by covered entities in accordance with the privacy protections afforded to medical information under state and federal law, including but not limited to the Confidentiality of Medical Information Act, California Civil Code sections 56-56.37, unless confidentiality is waived by the individual with a disability or disclosure is required by law.

(b) To the extent necessary to review a request for an accommodation, or to implement an accommodation, confidential information may be disclosed only to agency staff who are directly involved in the accommodation process or who are necessary to implement the accommodation. In the context of an adjudication program or activity, parties to the proceeding other than the individual requesting an accommodation are not "directly involved" in the accommodation process.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11136, and 11139, Government Code.

**§ 11188. Self-Evaluation.**

~~(a) With regard to disabled persons, a recipient with 15 or more employees should be required by the responsible State agency, within one year of the effective date of implementing regulations to:~~

~~(1) evaluate, with the assistance of interested persons, including disabled persons or organizations representing disabled persons, its current policies and practices and the effects thereof that do not or may not meet the provisions of such regulations and this Division;~~

~~(2) modify, after consultation with interested persons, including disabled persons or organizations representing disabled persons, any policies and practices that do not meet the provisions of such regulations and this Division;~~

~~(3) take, after consultation with interested persons, including disabled persons or organizations representing disabled persons, appropriate remedial steps to eliminate the effects of any discrimination that resulted from adherence to such policies and practices; and~~

~~(4) for at least three years following completion of the evaluation referred to in subsection (a) (1) of this section, maintain on file, make available for public inspection, and provide to the responsible~~

~~State agency upon request:~~

~~(A) a list of the interested persons consulted;~~

~~(B) a description of the areas examined and any problems identified; and~~

~~(C) a description of any modifications made and of any remedial steps taken.~~

~~(b) A self-evaluation performed by a recipient as required by a federal agency under the provisions of Section 504 of the Rehabilitation Act of 1973 should be permitted to satisfy the provisions of subsection (a) (1) of this section.~~

~~Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11139 and 11139.5, Government Code.~~

#### ~~§ 11189.~~ § 14146. Integrated Setting.

It is a discriminatory practice for a ~~recipient of State support~~covered entity to fail to administer programs, ~~and activities, and services~~ in the most integrated setting appropriate to the needs of qualified disabled persons.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11136, and 11139 ~~and 11139.5~~, Government Code.

#### ~~§ 11190.~~ § 14147. Communications.

(a) It is a discriminatory practice where a recipient of State support covered entity fails to take appropriate steps to ensure that communications with individuals with disabilities and their companions, including their applicants, participants in programs, services and activities, members of the public, and ultimate beneficiaries are available to persons with impaired vision or hearing, are as effective as communications with others.

(b) For purposes of this article, “companion” means a family member, friend, aide, or associate of an individual with a disability who, along with the individual with a disability, is an appropriate person with whom the covered entity should communicate.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11136, and 11139 ~~and 11139.5~~, Government Code.

#### § 14148. Self-Evaluation.

(a) With regard to persons with disabilities, a recipient with 15 or more employees should be required by the responsible state agency, within one year of the effective date of implementing regulations to:

(1) evaluate, with the assistance of interested persons, including persons with disabilities or organizations representing persons with disabilities, its current policies and practices and the effects thereof that do not or may not meet the provisions of such regulations, Article 9.5, this

subchapter, and other implementing regulations;

(2) modify, after consultation with interested persons, including persons with disabilities or organizations representing persons with disabilities, any policies and practices that do not meet the provisions of such regulations, Article 9.5, this subchapter, and other implementing regulations;

(3) take, after consultation with interested persons, including persons with disabilities or organizations representing persons with disabilities, appropriate remedial steps to eliminate the effects of any discrimination that resulted from adherence to such policies and practices; and

(4) for at least three years following completion of the evaluation referred to in subsection (a) (1) of this section, maintain on file, make available for public inspection, and provide to the responsible state agency upon request:

(A) a list of the interested persons consulted;

(B) a description of the areas examined and any problems identified; and

(C) a description of any modifications made and of any remedial steps taken.

(b) A self-evaluation performed by a recipient as required by a federal agency under the provisions of Section 504 of the Rehabilitation Act of 1973 should be permitted to satisfy the provisions of subsection (a) (1) of this section.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11136, and 11139, Government Code.

#### **§ 11191. § 14149. Program Accessibility.**

(a) Except as set forth in subsection (b) below, it is a discriminatory practice where a ~~qualified disabled person, because a recipient's~~ covered entity's facilities, as defined in subsection 14020(s), are inaccessible to or unusable by ~~such persons~~ a qualified person with a disability, and because of such inaccessibility or inability to use, a qualified person with a disability, is denied the benefits of, ~~or is~~ excluded from participation in, or is otherwise subjected to discrimination under any in a covered entity's program, ~~or activity, or services, to which this Division applies.~~

(b) It is a discriminatory practice for a ~~recipient covered entity~~ to fail to operate each program, ~~or activity or service to which this Division applies~~ in such a manner that the program, ~~or activity, or service~~, when viewed in its entirety, is readily accessible to ~~disabled persons with disabilities~~. This section does not require a ~~recipient covered entity~~ to make each of its existing facilities or every part of a facility accessible to and usable by disabled persons with disabilities.

(c) It is a discriminatory practice for ~~recipients covered entities~~ operating fixed route bus systems or paratransit systems to fail to adhere to the program accessibility requirements set forth in Title 49, Part 27 of the Code of Federal Regulations.



Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11136, and 11139 ~~and 11139.5~~, Government Code.

### ~~§ 11192.~~ § 14150. Methods of Ensuring Program Accessibility.

A ~~recipient-covered entity~~ may comply with the provisions of Section ~~98254~~14149 through such means as redesign of equipment, reassignment of classes or other services to accessible buildings, assignments of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities, or other methods that result in making its program, ~~or activities, and services~~ accessible to ~~disabled persons~~people with disabilities. A ~~recipient-covered entity~~ is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with Section ~~98254~~14149. In choosing among available methods for meeting the provisions of Section ~~98254~~14149, it is a discriminatory practice for a ~~recipient-covered entity~~ to fail to give priority to those methods that offer programs, ~~and activities, and services~~ to ~~disabled persons~~people with disabilities in the most integrated setting appropriate.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11136, and 11139 ~~and 11139.5~~, Government Code.

### ~~§ 11193. Methods for Small Recipients.~~

~~If a recipient with fewer than fifteen employees finds, after consultation with a disabled person seeking its services, that there is no method of complying with Section 98254 other than by making a significant alteration to its existing facilities, the recipient may, as an alternative, be permitted by the responsible State agency to refer the disabled person to other providers whose services are accessible.~~

~~Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11139 and 11139.5, Government Code.~~

### ~~§ 11194.~~ § 14151. Time Period for Compliance.

It is discriminatory practice for a ~~recipient-covered entity~~ to fail to comply with the requirement of Section ~~98254~~14149 within sixty days of the effective date of implementing regulations, except that where structural changes in facilities are necessary, such changes may be made within three years of such effective date, but in any event, as expeditiously as possible.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11136, and 11139 ~~and 11139.5~~, Government Code.

### ~~§ 11195.~~ § 14152. Transition Plan.

In the event that structural changes to facilities are necessary to meet the provisions of Section ~~98254~~14149, a recipient should be required by the responsible State agency to develop, within six months of the effective date of implementing regulations, a transition plan setting forth the steps necessary to complete such changes. The plan should be developed with the assistance of interested persons, including ~~disabled persons~~people with disabilities or organizations representing ~~disabled persons~~people with disabilities. A copy of the transition plan should be made available for public inspection. The plan should, at a minimum:

- (a) identify physical obstacles in the ~~recipient's covered entity's~~ facilities that limit the accessibility of its program, ~~or activity, or services to disabled persons~~ people with disabilities;
- (b) describe in detail the methods that will be used to make the facilities accessible;
- (c) specify the schedule for taking the steps necessary to achieve full program accessibility and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and
- (d) indicate the person responsible for implementation of the plan.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11136, and 11139 ~~and 11139.5~~, Government Code.

~~§ 11196.~~ § 14153. Notice of the Availability of Accessible Facilities.

Each ~~recipient covered entity~~ which is unable to comply with the provisions of Section ~~98254-14149~~ within the sixty day period set forth in Section ~~98257-14151~~ should be required by the responsible ~~S~~state agency to adopt and implement procedures to ensure that interested persons, including ~~persons with impaired vision or hearing~~ people with disabilities, can obtain information as to the existence and location of programs, services, activities, and facilities that are accessible to and usable by disabled persons people with disabilities.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11136, and 11139 ~~and 11139.5~~, Government Code.

~~§ 11197.~~ § 14154. New Construction.

(a) Except as set forth in subsection (b) below, it is a discriminatory practice where a facility or part of a facility constructed by, on behalf of, or for the use of a ~~recipient covered entity~~ is designed or constructed in such manner that the facility or part of the facility is not readily accessible to and usable by ~~disabled persons~~ people with disabilities if the construction was commenced after the effective date of implementing regulations.

(b) It is a discriminatory practice for ~~recipients covered entities~~ operating fixed route bus systems or paratransit systems to fail to adhere to the accessibility requirements for new vehicles set forth in Title 49, Part 27 of the Code of Federal Regulations.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11136, and 11139 ~~and 11139.5~~, Government Code.

~~§ 11198.~~ § 14155. Alteration.

(a) Except as set forth in subsection (b) below, it is a discriminatory practice where each facility or part of a facility which is altered by, on behalf of, or for the use of a ~~recipient covered entity~~ after the effective date of implementing regulations in a manner that affects or could affect the usability of the

facility or part of the facility is not to the maximum extent feasible, altered in such manner that the altered portion of the facility is readily accessible to and usable by ~~disabled persons~~people with disabilities.

(b) It is a discriminatory practice for ~~recipients covered entities~~ operating fixed route bus systems or paratransit systems to fail to adhere to the accessibility requirements for alterations of vehicles set forth in Title 49, Part 27 of the Code of Federal Regulations.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11136, and 11139 ~~and 11139.5~~, Government Code.

#### ~~§ 11199.~~ § 14156. Accessibility Standards.

Design, construction, or alteration of facilities in conformity with the current ~~“American National Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped,” published by the American National Standards Institute, Inc., “Americans with Disabilities Act (ADA) Standards for Accessible Design” adopted by the U.S. Department of Justice in 2010 (ADA 2010 Standards), any other federal standard applicable to the facility, or~~ and the regulations promulgated by the ~~Office~~ Division of the State Architect pursuant to Chapter 7 (commencing with Section 4450), Division 5 of Title I of the Government Code (“California Building Code Chapters 11A and 11B,”), constitutes compliance with Sections 14154 ~~98260~~ and ~~98261~~14155. ~~Departures from particular requirements of these two standards by the use of other methods by a recipient are permitted when it is clearly evident that equivalent access to the facility or part of the facility is thereby provided.~~

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11136, and 11139, Government Code.

#### ~~§ 11200.~~ § 14157. Consideration of Accessible Public Transportation.

It is a discriminatory practice for a ~~recipient covered entity~~, in carrying out any program, ~~or~~ activity or service, directly, or through contractual, licensing or other arrangements, to make or permit selections of sites or locations of facilities that fail to consider and allow for the availability, or lack thereof, of accessible public transportation for persons with a ~~physical or mental~~ disability.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11139 and 11139.5, Government Code.