



The Potential Implications of *CALIF v. City of Los Angeles* for Mental and Behavioral Health Preparedness

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Introduction. While national or regional emergencies or disasters are well-known for causing an array of harms to physical health, they can also have a significant impact on individuals' mental and behavioral health. Existing mental health conditions, such as schizophrenia and depression, may be exacerbated by an emergency. New conditions, such as post-traumatic stress disorder, may emerge in some persons as a result of the emergency. Large-scale emergencies may affect the mental and behavioral health of first responders, public health officials, health care workers, and others involved in response efforts. The mental health of certain vulnerable populations, including children, the elderly, individuals in group facilities, and persons from socially or economically disadvantaged groups, may also be impacted. Depending on the particular mental and behavioral health issues that arise, individuals may need to access mental health services during and/or after a declared emergency.

In September 2008, the Centers for Disease Control and Prevention (CDC) established a Preparedness and Emergency Response Research Center (PERRC) at the Johns Hopkins Bloomberg School of Public Health. One of the Center's goals is to identify, research, and analyze the legal and ethical issues that arise during emergencies relative to mental and behavioral health. As part of this effort, scholars and researchers at the Johns Hopkins PERRC, in collaboration with the ASU Sandra Day O'Connor College of Law, have created a series of translational tools on relevant legal and ethical issues.

Purpose. This tool is intended as a resource for health care providers and administrators, public health officials, emergency planners, clergy, and their public and private sector partners who seek to understand the potential implications of the recent *CALIF v. City of Los Angeles* case for mental and behavioral health preparedness. This tool provides general information about the case, and is not intended to offer jurisdiction-specific advice.

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Disclaimer. While this document was prepared with support from CDC (5P01TP000288-02), its contents do not represent the official legal position of CDC or other project partners. *This document does not provide specific legal advice.* Practitioners should consult with their legal counsel for a more detailed understanding of federal laws and to understand the implications of relevant state laws.

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Overview: In the February 2011 decision, *CALIF v. City of Los Angeles* (CV 09-0287 CBM (RZx) U.S. Dist. Ct., Central Dist. CA), a federal district court concluded that the City of Los Angeles had violated federal and state disability laws—including the Americans with Disabilities Act (ADA) and the California Disabled Persons Act (CDPA)—by failing to consider the needs of disabled individuals in its emergency preparedness program. This memo discusses the potential implications of the case for mental and behavioral health preparedness.

Americans with Disabilities Act: Title II of the ADA prohibits public entities from discriminating against disabled individuals through services or programs. Under the ADA, the term “disabled” includes individuals with *physical or mental* impairments. ADA violations can occur in two ways: 1) a law or policy explicitly discriminates against individuals with disabilities and no modification is made; or 2) a law or policy, otherwise neutral in its language, discriminates against individuals through its application and no modification is made. Concerning neutral laws or policies such as Los Angeles’s emergency preparedness program, a court must determine whether, through its application, disabled individuals face discrimination. If so, a court must then determine whether any reasonable modifications have been made to accommodate these individuals. The federal Rehabilitation Act contains similar provisions to the ADA, but applies to programs that receive federal funding.

California Disabled Persons Act: This California law, which applies to individuals with mental and physical disabilities, states that disabled individuals have the same right as the general public to access and use public facilities and other public places. ADA violations also constitute violations of the CDPA. The California Government Code contains similar provisions, but applies to programs that receive state funding.

CALIF v. City of Los Angeles: In 2009, Communities Actively Living Independent and Free (CALIF) sued the City of Los Angeles for allegedly violating several laws—including the ADA, the Rehabilitation Act, the CDPA, and the California Government Code—by failing to account for the needs of over 800,000 disabled city residents in its emergency preparedness program. Among the plan’s alleged shortcomings, for example, CALIF argued that Los Angeles’ preparedness plan does not contain provisions that address notification of individuals with auditory or cognitive impairments about an emergency. In addition, the plan includes no information about evacuation, transportation, or temporary housing for disabled individuals either during or immediately after an emergency.

Los Angeles surveyed a small number of its estimated 200 emergency shelter sites, and “few, if any” were fully compliant with ADA requirements. In 2008, the Los Angeles Department on Disability (DOD) reported concerns that disabled city residents were “at-risk for suffering and death in disproportionate numbers” during an emergency unless the city revised its emergency plan to account for their needs. Besides conducting the emergency site visits, CALIF argued that the City failed to act on the concerns raised by the DOD report.

CALIF argued that, due to omissions in the Los Angeles emergency preparedness plan, disabled individuals are at a higher risk than other city residents to be harmed during an emergency. Several disabled individuals indicated that they felt “fear, apprehension, and unease” due to the City’s failure to account for their needs in its plan. Los Angeles claimed that, because it had not taken any affirmative action to actually exclude disabled individuals from any of its programs or services, no illegal discrimination occurred. The court rejected this argument, because the entire purpose of an emergency preparedness plan is to anticipate the types of needs that will arise during and immediately after an emergency.

The district court found that Los Angeles's emergency preparedness program was designed to apply to all city residents, including disabled individuals. Disabled individuals, however, did not have meaningful access to the program because it did not account for their unique needs and Los Angeles had not made reasonable accommodations to meet these needs. The City argued that it had delegated responsibility for disabled individuals to certain city departments, but there was no evidence that any of these departments had made specific plans for disabled individuals during an emergency.

The court concluded that Los Angeles had violated the ADA by failing to consider the needs of disabled persons in its emergency preparedness program and, thus, disproportionately burdened disabled individuals. The court supported this finding with examples, such as the City's failure to determine whether its emergency shelters were wheelchair accessible or able to accommodate individuals who rely upon service animals. Because an ADA violation constitutes a violation of the CDPA, Los Angeles also violated state law. Los Angeles also was found in violation of the Rehabilitation Act and the California Government Code, since it receives federal and state funds to support its emergency preparedness program.

Potential Implications for Mental and Behavioral Health Preparedness: This decision may be appealed if ongoing efforts to achieve settlement through enhanced planning or other considerations are unsuccessful. Even without a final disposition, this case raises important considerations for mental and behavioral health preparedness. Federal and state disability discrimination laws apply to individuals with physical or *mental* disabilities. The finding against Los Angeles puts other cities and public entities on notice that they may be in violation of the ADA and other applicable state laws if they fail to account for the needs of individuals with mental health conditions in their emergency preparedness programs. If the needs of individuals with mental health conditions are not currently addressed by these programs, reasonable modifications should be made in advance of a legal challenge. For example, individuals with certain mental health conditions may require accommodations to receive notice that an emergency has occurred and how to proceed in an evacuation. They may need assistance in accessing transportation and locating emergency shelters that are able to accommodate their needs, particularly if they face cognitive challenges. Shelters may need to be prepared to respond to specific needs of persons who may have functional and access needs due to mental disabilities.

Because the ADA and applicable state laws offer broad protections for those with physical or mental disabilities, emergency preparedness planners should actively consider and plan for the needs of individuals with mental health conditions to remain in compliance with these laws.