



State Law Alternatives for Medicaid Enforcement: Issue Brief 4 – State Anti- Discrimination Law Claims Steven Schmidt

I. Introduction

Recent decisions from the U.S. Supreme Court have continued to maintain the high hurdle that plaintiffs must clear to enforce various requirements of the Medicaid Act through 42 U.S.C. § 1983.¹ Some federal courts have also grown increasingly hostile to impact litigation that seeks to hold states accountable for the unlawful administration of their social services programs.² This environment presents an opportunity for advocates to examine whether legal claims in state courts can provide an avenue to enforce and improve access to health care for low-income and underserved individuals.

This issue brief series examines various state law legal claims that advocates may want to pursue to strengthen their state's Medicaid program. The [first issue brief](#) in this series covered writs of mandamus, [the second brief](#) covered state Administrative Procedure Act (APA) claims, and [the third brief](#) discussed state constitutional claims. This issue brief will examine state anti-discrimination law claims.

State anti-discrimination statutes vary greatly by state, so the viability of a state law anti-discrimination claim will be state specific. The goal of this brief is to provide a general overview of the types of state law anti-discrimination claims related to health care rights that advocates may pursue. Advocates should thoroughly research their own state's statutes and caselaw interpreting those statutes before pursuing a state anti-

¹ See, e.g., *Medina v. Planned Parenthood S. Atl.*, 606 U.S. 357, 385 (2025) (holding 42 U.S.C. § 1396a(a)(23) is not privately enforceable through § 1983).

² See, e.g., *Jonathan R. v. Morrissey*, 768 F. Supp. 3d 756 (S.D. W. Va. 2025), *rev'd and remanded sub nom. Jonathan R. by Next Friend Dixon v. Morrissey*, 178 F.4th 139, 149 (4th Cir. 2026), *petition for cert. filed*, No. 26-297 (U.S. Sept. 8, 2026) (dismissing case *sua sponte* because of judge's view that "[c]onstitutional limits prevent the court from crafting public policy and administering state agencies").

discrimination law claim. States refer to these laws in various ways, including as Human Rights Acts, Civil Rights Acts, Human Relations Acts, and Laws Against Discrimination.

II. State Anti-Discrimination Law Claims

A. Background

States have a long history of regulating discriminatory conduct, with many states enacting anti-discrimination laws prior to their federal counterparts.³ State anti-discrimination laws are “remedial statutes” which are “enacted for the protection of life and property, or which introduce[] some new regulation conducive to the public good.”⁴ Given their remedial nature, the language of state anti-discrimination laws should be construed “liberally,”⁵ “broadly,”⁶ and given “the widest constitutional application that could be achieved.”⁷ Some state anti-discrimination laws were specifically passed “to address potential gaps in remedies” that are not available under federal civil rights laws.⁸ Cities and municipalities may also have their own anti-discrimination laws and ordinances which may provide even stronger protections than a state’s anti-discrimination laws.⁹

While all states have some form of anti-discrimination law, the type and level of protection against discriminatory conduct vary significantly by state. A few states have laws that only prohibit discrimination in employment and housing.¹⁰ In other states, anti-discrimination laws include a prohibition on discrimination by “public accommodations.” Under federal law, “public accommodations” are private entities that offer goods and services to the public.¹¹ However, the definition of “public accommodation” in many state laws includes state government agencies and

³ See, e.g., *Woods v. Seattle's Union Gospel Mission*, 481 P.3d 1060, 1064 (Wash. 2021) (noting Washington’s Law Against Discrimination was enacted in 1949 and modeled after New York’s Law Against Discrimination enacted in 1945).

⁴ *Doe ex rel. Subia v. Kansas City, Mo. Sch. Dist.*, 372 S.W.3d 43, 47 (Mo. Ct. App. 2012) (quotation omitted).

⁵ *Elezovic v. Bennett*, 731 N.W.2d 452, 456 (Mich. Ct. App. 2007).

⁶ *State ex rel. Wash. Univ. v. Richardson*, 396 S.W.3d 387, 396 (Mo. Ct. App. 2013).

⁷ *Fair Emp. Pracs. Comm’n v. Rush-Presbyterian-St. Luke’s Med. Ctr.*, 354 N.E.2d 596, 600 (Ill. App. Ct. 1976).

⁸ See *Perez v. Zagami, LLC*, 94 A.3d 869, 875 (N.J. 2014).

⁹ See, e.g., *Farrugia v. N. Shore Univ. Hosp.*, 820 N.Y.S.2d 718, 724 (N.Y. Sup. Ct. 2006) (“The New York City Human Rights Law was intended to be more protective than the state and federal counterpart.”).

¹⁰ See, e.g., Ga. Code Ann. § 45-19-21; Ga. Code Ann. § 8-3-200.

¹¹ See 42 U.S.C. § 12181(7).

organizations that are “supported by public funds.”¹² In these states, courts have recognized that public entities are prohibited from discriminating under the “public accommodation” provision of state law.¹³ Still other states have specific statutes that prohibit discrimination by state and local governments, which are more akin to the prohibitions on discrimination found in Title II of the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act.¹⁴

B. Potential Medicaid-related State Anti-Discrimination Law Claims

1. Disparate Treatment

Advocates may want to pursue state law claims of intentional discrimination, also referred to as disparate treatment claims. “Disparate treatment is the most easily understood type of discrimination; the [defendant] simply treats some people less favorably than others because of their race, color, or other protected characteristics.”¹⁵ State courts are an attractive place for these actions because disparate treatment claims may be available for protected classes of people not covered by federal law. In their state anti-discrimination laws, some states have included sexual orientation, gender identity, familial status, marital status, public assistance status, military status, domestic violence victim status, and other physical characteristics as protected classes.

Advocates have relied on these distinctive provisions to advance claims in state court that may otherwise have not been successful. For example, patients who have been denied medical care due to their marital status or sexual orientation have pursued claims under state anti-discrimination laws.¹⁶ Moreover, advocates have successfully

¹² See, e.g., Tenn. Code Ann. § 4-21-102; Neb. Rev. Stat. § 20-133; N.M. Stat. § 28-1-2.

¹³ See, e.g., *Johnson v. Bd. of Educ. for Albuquerque Pub. Schs.*, 572 P.3d 904, 906 (N.M. 2025) (holding public school is a “public accommodation” under New Mexico Human Rights Act); *Doe ex rel. Subia*, 372 S.W.3d at 49 (holding public school is a “public accommodation” under Missouri Human Rights Act); *Bd. of Educ. of Cnty. of Lewis v. W. Va. Hum. Rts. Comm’n*, 385 S.E.2d 637, 640 (W. Va. 1989) (holding county board of education is “place of public accommodation” under West Virginia Human Rights Act). But see *Ovens v. Danberg*, 149 A.3d 1021, 1022 (Del. 2016) (holding public prison is not a “public accommodation” because it does not offer goods to the public).

¹⁴ See, e.g., S.D. Codified Laws § 20-13-24; Minn. Stat. § 363A.12; Cal. Gov’t Code § 11135.

¹⁵ *Albaugh v. Columbus Div. of Police*, 725 N.E.2d 719, 723 (Ohio Ct. App. 1999) (citing *Hazen Paper Co. v. Biggins*, 507 U.S. 604, 609 (1993)).

¹⁶ See *Moon v. Mich. Reproductive & IVF Ctr., P.C.*, 810 N.W.2d 919, 925 (Mich. Ct. App. 2011) (reversing order dismissing plaintiff’s claim against clinic that refused to

argued that bans on gender-affirming care likely violate provisions that prohibit gender-identity discrimination.¹⁷ Advocates should investigate their state's anti-discrimination laws to determine if any claims for unique protected classes may be available.

2. Disparate Impact

Advocates should also examine whether their state anti-discrimination laws allow for a disparate impact claim. Disparate impact claims are those where a plaintiff "challenges practices that have a 'disproportionately adverse effect on minorities' and are otherwise unjustified by a legitimate rationale."¹⁸ "Disparate impact requires a showing that an otherwise facially neutral policy has a discriminatory effect."¹⁹ "Proof of discriminatory motive is not required" to succeed on a disparate impact claim.²⁰ Numerous state courts have held that disparate impact claims are available under their state's anti-

offer IVF treatment because plaintiff was not married); *N. Coast Women's Care Med. Grp., Inc. v. Superior Ct.*, 189 P.3d 959, 971 (Cal. 2008) (reversing order granting summary judgment on plaintiff's claim against clinic that refused to offer artificial insemination because plaintiff was lesbian).

¹⁷ *See Boe v. Children's Hosp. Colo.*, 589 P.3d 478, 491 (Colo. 2026) (concluding that hospital's decision to suspend offering gender-affirming care to transgender patients likely violated the Colorado Anti-Discrimination Act prohibition on gender identity discrimination); *see also Good v. Iowa Dep't of Hum. Servs.*, 924 N.W.2d 853, 856 (Iowa 2019) (holding that an "express bar on Medicaid coverage for gender-affirming surgical procedures discriminates against transgender Medicaid recipients in Iowa" under Iowa's then-existing law prohibiting gender identity discrimination).

¹⁸ *Tex. Dep't of Hous. & Cmty. Affs. v. Inclusive Communities Project, Inc.*, 576 U.S. 519, 524-25 (2015) (quoting *Ricci v. DeStefano*, 557 U.S. 557, 577 (2009)).

¹⁹ *Donajkowski v. Alpena Power Co.*, 556 N.W.2d 876, 880 (Mich. Ct. App. 1996), *aff'd*, 596 N.W.2d 574 (Mich. 1999).

²⁰ *Warden v. Ohio Dep't of Nat. Res.*, 7 N.E.3d 533, 541 (Ohio Ct. App. 2014) (quotation omitted).

discrimination laws.²¹ In some states, disparate impact liability is limited to employment discrimination claims.²²

Disparate impact claims under state anti-discrimination laws are particularly important at this moment given the Trump Administration's hostility toward disparate impact liability. In April 2025, the Administration issued an Executive Order that stated that "[i]t is the policy of the United States to eliminate the use of disparate-impact liability in all contexts to the maximum degree possible. . . ."²³ Since that Executive Order, multiple federal agencies have taken steps to try to limit disparate impact liability under federal law.²⁴ In response, some states have taken action to affirm that disparate impact liability is still viable under state law, by either codifying it directly into state statute or in state regulations.²⁵ Consequently, state courts may become the primary avenue for advocates to pursue disparate impact claims.

3. Failure to Make Reasonable Modifications

Under Title II of the ADA, public entities must make "reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid

²¹ See, e.g., *W. Va. Univ./W. Va. Bd. of Regents v. Decker*, 447 S.E.2d 259, 265 (W. Va. 1994) ("[T]here is a cause of action for 'disparate impact' that applies equally to all claims arising under [the West Virginia Human Rights Act] including age-based discrimination."); *Burbank Apartments Tenant Ass'n v. Kargman*, 48 N.E.3d 394, 407 (Mass. 2016) (concluding "disparate impact claims are cognizable" under Massachusetts Fair Housing Act); *People v. R.L.*, 634 N.E.2d 733, 737 (Ill. 1994) ("[R]acially disparate impact of a law or policy is alone sufficient to state a claim under . . . the Illinois Human Rights Act"); *McGlawn v. Pennsylvania Hum. Rels. Comm'n*, 891 A.2d 757, 763 (Pa. Commw. Ct. 2006) (recognizing disparate impact liability under Pennsylvania's Human Relations Act).

²² See, e.g., *Dussault v. RRE Coach Lantern Holdings, LLC*, 86 A.3d 52, 61 (Me. 2014) (recognizing disparate impact claims are available under Maine's employment discrimination provision, but not available under the housing discrimination provision); *Monson v. Rochester Athletic Club*, 759 N.W.2d 60, 65 (Minn. Ct. App. 2009) (recognizing disparate impact claims are available under Minnesota's employment discrimination provision, but not under the public accommodation discrimination provision).

²³ Exec. Order 14281, 90 Fed. Reg. 17537 (Apr. 23, 2025).

²⁴ See, e.g., Rescinding Portions of Department of Justice Title VI Regulations To Conform More Closely With the Statutory Text and To Implement Executive Order 14281, 90 Fed. Reg. 57141-01 (Dec. 10, 2025); Rescinding Portions of the Department of Education Title VI Regulations To Align With the Statutory Text and Conform to Executive Order 14281, 91 Fed. Reg. 46733-01 (June 24, 2026).

²⁵ 2026 Ill. Legis. Serv. P.A. 104-744 (S.B. 3777); N.J. Admin. Code § 13:16–1.1 to 13:16–6.2.

discrimination on the basis of disability, unless . . . modifications would fundamentally alter the nature of the service, program, or activity.”²⁶ Rather than pursue a reasonable modification claim under the ADA, advocates may want to consider bringing a failure to make reasonable modifications claim under state anti-discrimination law. Some state courts have applied the elements of a Title II reasonable modification claim to analyze claims under state law, while others have adopted their own specific test.²⁷ State court claims may be particularly warranted given skepticism by some federal judges regarding whether the text of Title II requires public entities to provide reasonable modifications.²⁸

4. *Olmstead*-style Claims

In *Olmstead v. L.C.*, the United States Supreme Court held that “unjustified institutional isolation” is discrimination under the ADA, and that services should be provided to people with disabilities in the most integrated setting appropriate to their needs.²⁹ Since *Olmstead*, multiple states have codified into state law the requirement to provide services to people with disabilities in the most integrated setting appropriate to their needs.³⁰ While some of these provisions are not privately enforceable,³¹ advocates have pursued *Olmstead*-style claims in state court, with some cases resulting in successful settlements that have brought about important systemic change.³²

²⁶ 28 C.F.R. § 35.130(b)(7)(i).

²⁷ See, e.g., *Lasky v. Moorestown Twp.*, 42 A.3d 212, 217 (N.J. Super. Ct. App. Div. 2012) (applying elements of Title II of ADA to plaintiff’s claim under New Jersey Law Against Discrimination); *Fell v. Spokane Transit Auth.*, 911 P.2d 1319, 1328 (Wash. 1996) (adopting four-part test that examines whether person received “treatment that was not comparable to the level of designated services provided to individuals without disabilities” to determine a violation of the public accommodation provision of the Washington Law Against Discrimination).

²⁸ See, e.g., *Reinhart v. City of Birmingham, Michigan*, No. 24-1954, 2025 WL 2426820, at *6 (6th Cir. Aug. 22, 2025) (Readler, J., concurring) (finding Title II of ADA “protects against intentional discrimination, and nothing more”).

²⁹ See 527 U.S. 581, 600 (1999).

³⁰ See Colo. Rev. Stat. § 25.5-1-1101; Conn. Gen. Stat. § P.A. 26-150, § 1; N.C. Gen. Stat. Ann. § 168A-7(b); see also Cal. Welf. & Inst. Code § 4502(b)(1) (recognizing people with developmental disabilities have “right to treatment and habilitation services and supports in the least restrictive environment”); Or. Admin. R. 407-005-0010 (codifying integration mandate of 28 C.F.R. § 35.130(d) into state regulation).

³¹ See Colo. Rev. Stat. § 25.5-1-1106(1)(a).

³² See Disability Rights North Carolina, *Samantha R Litigation*, <https://disabilityrightsnrc.org/news-events/public-reports/samantha-r-litigation/> (last visited Sept. 21, 2026); Disability Rights California, *Capitol People First*

In addition, multiple states have adopted the requirement of Title III of the ADA that requires public accommodations to afford “goods, services, facilities, privileges, advantages, and accommodations to an individual with a disability in the most integrated setting that is appropriate for the needs of the individual.”³³ Advocates may consider an *Olmstead*-style claim in these jurisdictions if the state anti-discrimination statute contains a broad definition of “public accommodation” that includes government entities.³⁴ A claim in state court may be particularly appealing at this moment given the current hostility towards *Olmstead* at the federal level.³⁵

C. Considerations for Anti-Discrimination Law Claims

1. Exhaustion of Administrative Remedies

When considering whether to proceed with a state anti-discrimination law claim, advocates must first ask whether they are required to pursue an administrative process before proceeding with state court litigation. Most states have state agencies or human rights commissions that are designated to receive and investigate complaints of discrimination.³⁶ In many states, plaintiffs must file a complaint with these agencies and exhaust the administrative process before proceeding with litigation in state court.³⁷

v. DDS, <https://www.disabilityrightsca.org/cases/capitol-people-first-v-dds> (last visited Sept. 21, 2026).

³³ See, e.g., Vt. Stat. Ann. tit. 9, § 4502; Ariz. Rev. Stat. Ann. § 41-1492.02; Me. Rev. Stat. Ann. tit. 5, § 4592(5).

³⁴ See, e.g., Vt. Stat. Ann. tit. 9, § 4501(8) (including “governmental” entity in its definition of “public accommodation”); Me. Rev. Stat. Ann. tit. 5, § 4553 (same).

³⁵ See, e.g., Dep’t of Justice, Office of Legal Counsel, Application of the Rehabilitation Act and Americans with Disabilities Act to State Institutionalization of Patients with Severe Mental Illness or Disabilities (June 18, 2026), <https://www.justice.gov/olc/media/1446701/dl> (disputing that *Olmstead* sets forth an “integration mandate”).

³⁶ See Int’l Ass’n of Official Human Rights Agencies, “Partners and Resources” (last visited Sept. 2, 2026), <https://www.iaohra.org/state-agencies> (listing state human right agencies with links to agency websites).

³⁷ See, e.g., *Griffin v. Dodge City Co-op. Exch.*, 927 P.2d 958, 965 (Kan. Ct. App. 1996) (“Exhaustion of administrative remedies under the KAAD [Kansas Act Against Discrimination] is mandatory prior to bringing a civil action for claims of unlawful employment discrimination”); *Matta v. Dakota Provisions*, 15 N.W.3d 448, 456 (S.D. 2024) (“We have consistently required an employee claiming discriminatory treatment under [the South Dakota Human Relations Act] to file a claim with the Division of Human Rights before proceeding to circuit court.”) (internal quotation omitted); *Pierson v. Univ. Orthopedics, S.C.*, 668 N.E.2d 180, 183 (Ill. App. Ct. 1996) (“The IDHR [Illinois Department of Human Rights] has original jurisdiction of claims brought under Illinois

Courts in these states have dismissed discrimination claims for failure to exhaust administrative remedies.³⁸ In other states, plaintiffs' ability to collect damages and attorneys' fees are limited if they do not first pursue an administrative complaint process.³⁹ By contrast, other states will allow plaintiffs to file a direct cause of action in state court without pursuing an administrative complaint.⁴⁰ Advocates will need to investigate their own state statute's procedural and exhaustion requirements before pursuing a state law anti-discrimination claim.

2. Statutes of Limitations

Advocates should be aware of the statute of limitations that governs a state law anti-discrimination claim. These statutes of limitations may be shorter than their federal counterparts, thus requiring plaintiffs to act faster if they wish to pursue their claims in state court.⁴¹ In many case, advocates can avoid dismissal on statute of limitation grounds by asserting that there is ongoing discriminatory conduct or argue that one of the other "equitable exceptions" to the statute of limitations should apply.⁴²

3. Applications of Federal Law

When pursuing a state law claim, advocates should be particularly mindful of how the state anti-discrimination statute interacts with federal law. In general, state courts will look to federal anti-discrimination statutes and the federal caselaw interpreting those statutes to interpret their similarly-worded state anti-discrimination laws.⁴³ Some state

Human Rights Act whereas Circuit Court normally only has jurisdiction to review its findings after the charging party has exhausted his or her administrative remedies.")

³⁸ See e.g., *Dupuis v. Bd. of Trs.*, 128 P.3d 1010, 1014 (Mont. 2006) ("[P]laintiff's failure to exhaust this administrative remedy precludes our review of her discrimination claim."); *St. John v. Univ. Hosps.*, No. 114220, 2025 WL 635628 at *3 (Ohio Ct. App. Feb. 27, 2025) (holding that a discrimination claim "must be dismissed for lack of subject-matter jurisdiction if a plaintiff fails to exhaust their administrative remedies").

³⁹ See Me. Rev. Stat. Ann. tit. 5, § 4622.

⁴⁰ See Mich. Comp. Laws § 37.2801, § 801(1); N.J. Stat. Ann. § 10:5-13(a)(2).

⁴¹ Compare Minn. Stat. § 363A.28, subdiv. 3(a) (setting forth one year statute of limitation for disability discrimination claims under Minnesota Human Rights Act) with *Gaona v. Town & Country Credit*, 324 F.3d 1050, 1056 (8th Cir. 2003) (noting six-year statute of limitations for ADA Title II claims in Minnesota).

⁴² See *Aryeh v. Canon Bus. Sols., Inc.*, 292 P.3d 871, 875 (Cal. 2013) (describing "equitable exceptions" to statute of limitations: the discovery rule, equitable tolling, fraudulent concealment, continuing violation theory, and theory of continuous accrual).

⁴³ See, e.g., *Fitzpatrick v. Town of Falmouth*, 879 A.2d 21, 29 (Me. 2005) ("Because of the similarity between the MHRA [Maine Human Rights Act] and the federal Americans with Disabilities Act (ADA) . . . we utilize federal cases interpreting the ADA when we interpret comparable provisions in the MHRA."); *Viscik v. Fowler Equip. Co.*, 800 A.2d

laws specifically incorporate the ADA and set forth that a violation of the ADA is a violation of state law.⁴⁴ Nevertheless, state courts have made clear that they are not bound by federal court decisions and are free to engage in their own interpretation of state law provisions.⁴⁵ Some state courts specifically have noted that they will interpret state law more broadly than federal law due to the remedial nature of the statute.⁴⁶

Differences in the statutory text between state and federal anti-discrimination laws will cause courts to deviate from interpretations of federal law. Notably, numerous states define “disability” in their anti-discrimination laws differently than the definition in the ADA.⁴⁷ Courts have recognized the importance of these different statutory definitions

826, 833 (N.J. 2002) (“New Jersey courts have traditionally sought guidance from the substantive and procedural standards established under federal law.”); *Pflanz v. Cincinnati*, 778 N.E.2d 1073, 1080 (Ohio Ct. App. 2002) (“Because Ohio’s handicap-discrimination law was modeled after the federal Americans with Disabilities Act (‘ADA’), Ohio courts may seek guidance when interpreting the Ohio handicap-discrimination statute from regulations and cases that interpret the ADA.”).

⁴⁴ See, e.g., Cal. Civ. Code § 51(f); 775 Ill. Comp. Stat. Ann. § 60/15.

⁴⁵ *Miller v. Medcenter One*, 571 N.W.2d 358, 360 (N.D. 1997) (“While there are similarities between our state law and federal anti-discrimination laws, this Court applies a federal interpretation only when it is helpful and sensible.”); *Stone v. St. Joseph’s Hosp. of Parkersburg*, 538 S.E.2d 389, 404 (W. Va. 2000) (“The West Virginia Human Rights Act . . . represents an independent approach to the law of disability discrimination that is not mechanically tied to federal disability discrimination jurisprudence.”); *Goodpaster v. Schwan’s Home Serv., Inc.*, 849 N.W.2d 1, 9 (Iowa 2014) (“Federal law does not necessarily control our interpretation of a state statute.”).

⁴⁶ *Kumar v. Gate Gourmet Inc.*, 325 P.3d 193, 198 (Wash. 2014) (“Where this court has departed from federal antidiscrimination statute precedent, however, it has almost always ruled that the WLAD [Washington Law Against Discrimination] provides greater employee protections than its federal counterparts”); *Wondzell v. Alaska Wood Prods., Inc.*, 601 P.2d 584, 585 (Alaska 1979) (holding Alaska Human Rights Act “is intended to be more broadly interpreted than federal law to further the goal of eradication of discrimination”).

⁴⁷ Compare Cal. Gov’t Code § 12926(m)(1)(B) (defining disability as a condition that “limits” a major life activity); Conn. Gen. Stat. § 46a-51(15) (defining disability to include “any chronic physical handicap, infirmity, or impairment”); Minn. Stat. § 363A.03, subdiv. 12 (defining disability as an impairment that “materially limits” a major life activity); N.Y. Exec. Law § 292(21) (defining disability as a condition that “prevents the exercise of a normal bodily function”) with 42 U.S.C. § 12102(1)(A) (defining disability as “a physical or mental impairment that substantially limits one or more major life activities”).

and have held that the state law provisions are “less stringent” than the ADA.⁴⁸ Likewise, courts have found state anti-discrimination laws provide broader protection against discrimination than their federal counterparts in other instances when the language of the state and federal statutes differ.⁴⁹

Nevertheless, advocates should be aware that statutory differences between state and federal laws can cut against a plaintiff’s discrimination claim. For example, the ADA Amendments Act of 2008 (ADAAA) made numerous changes to the ADA to broaden protections for people with disabilities. These changes include expanding both the definition of “disability” to include episodic impairments and who may qualify as being “regarded as” having a disability.⁵⁰ However, some states have not amended their anti-discrimination laws to conform to the ADAAA. Courts have noted these distinctions and have declined to extend the protections set forth in ADAAA to state anti-discrimination laws which have not been amended.⁵¹ Advocates should be mindful that if they choose to bring an anti-discrimination claim solely under state law, the protections available in federal law will not serve as a “floor” and may not apply to a particular case.

4. Advantages Over Federal law

Advocates should investigate whether state anti-discrimination statutes offer specific advantages over comparable federal laws. For example, to recover damages in a claim under Title II of the ADA, “courts of appeals generally agree that a plaintiff must show intentional discrimination,” which is “satisfied by proof that the defendant acted with

⁴⁸ *Hoover v. Norwest Priv. Mortg. Banking*, 632 N.W.2d 534, 543 n.5 (Minn. 2001); *see also Beason v. United Techs. Corp.*, 337 F.3d 271, 277 (2d Cir. 2003) (holding that Connecticut law does not “possesses the same restrictive threshold” for its definition of “disability” as the ADA); *Shannon v. Verizon New York, Inc.*, 519 F. Supp. 2d 304, 310 (N.D.N.Y. 2007) (“The definition of disability under NYHRL [New York Human Rights Law] is less restrictive than under the ADA.”).

⁴⁹ *See, e.g., Bergen Com. Bank v. Sisler*, 723 A.2d 944, 951 (N.J. 1999) (holding that 40 and older age limitation in the Age Discrimination in Employment Act does not apply and that state law allows for discrimination claims based on youth); *Marquis v. City of Spokane*, 922 P.2d 43, 51 (Wash. 1996) (holding Washington Law Against Discrimination protects rights of independent contractors).

⁵⁰ *See* 42 U.S.C. § 12102 (3)(A), (4)(D).

⁵¹ *See, e.g., Hernandez v. Mayfield Consumer Prods., LLC*, No. 2020-CA-0459-MR, 2021 WL 223530, at *5 (Ky. Ct. App. Jan. 22, 2021) (“Because the KCRA [Kentucky Civil Rights Act] has not been amended to conform with the ADAAA, courts continue to interpret the KCRA consistently with pre-amendment ADA law.”); *Johanning v. Summit Orthopedics, Ltd.*, No. A21-0313, 2021 WL 5872664, at *7 (Minn. Ct. App. Dec. 13, 2021) (refusing to apply ADAAA revised definition of who is “regarded as” having a disability to Minnesota Human Rights Act).

'deliberate indifference.'"⁵² Under Title III of the ADA, damages are not available.⁵³ Some state anti-discrimination laws, however, allow for damages in claims against public accommodations,⁵⁴ and they do not require a showing of intentional discrimination or deliberate indifference to obtain those damages.⁵⁵

Moreover, the carveouts of specific defendants in the ADA may not be applicable to state law. For example, the ADA contains a safe-harbor provision that exempts insurance plans from the law.⁵⁶ Some state anti-discrimination laws, however, specifically prohibit discrimination by insurance plans.⁵⁷ In addition, the ADA has a broad exemption for "religious organizations or entities controlled by religious organizations, including places of worship."⁵⁸ Numerous state anti-discrimination do not have a similarly worded exception and allow for discrimination claims against religious organizations.⁵⁹ In sum, state anti-discrimination laws may have unique applicability that is not available under federal law.

⁵² *A.J.T. by & through A.T. v. Osseo Area Schs., Indep. Sch. Dist. No. 279*, 605 U.S. 335, 344 (2025).

⁵³ See 42 U.S.C. § 12188.

⁵⁴ See, e.g., *Vill. of Bellwood Bd. of Fire & Police Comm'rs v. Hum. Rts. Comm'n*, 541 N.E.2d 1248, 1258 (Ill. 1989) (noting damages are available under the civil rights statutes of Illinois, Massachusetts, Missouri, New Jersey, New York and Oregon).

⁵⁵ See, e.g., *Munson v. Del Taco, Inc.*, 208 P.3d 623, 634 (Cal. 2009) (holding plaintiffs do not need to prove intentional discrimination to recover damages under California's Civil Rights Act).

⁵⁶ See 42 U.S.C. § 12201(c).

⁵⁷ *Simonton v. Washington State Health Care Auth.*, 588 P.3d 426, 437 (Wash. Ct. App. 2026) (recognizing that Washington's Law Against Discrimination "prohibits excluding coverage for services simply because they are to treat" a specific disability); *Futterman v. Kaiser Found. Health Plan, Inc.*, 309 Cal. Rptr. 3d 1, 11 (Cal. Ct. App. 2023), *as modified on denial of reh'g* (June 6, 2023) (allowing discrimination claim that alleged health plan "intentionally underfunds mental health treatment" to move forward).

⁵⁸ See 42 U.S.C. § 12187.

⁵⁹ See *Stevens v. Optimum Health Inst.—San Diego*, 810 F. Supp. 2d 1074, 1098 (S.D. Cal. 2011) (noting "the ADA religious organizations exemption" is not found in California's Disabled Persons Act); Minn. Stat. § 363A.26 (setting forth a religious exemption to Minnesota Human Rights Act, but noting it does not apply to "secular business activities" engaged in by religious organizations).

III. Conclusion

State anti-discrimination law claims can be an important tool for advocates to challenge unlawful actions by state Medicaid agencies. NHeLP is available to provide technical assistance to help advocates frame, plead, and litigate state anti-discrimination law claims. Please reach out to us if you are considering such a claim.