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GUIDANCE AND RESOURCES FOR HEALTH CARE PROVIDERS REGARDING THE ACCESSIBILITY OF HEALTH CARE TECHNOLOGY FOR BLIND AND LOW VISION PATIENTS (November 2022)

Dear Providers:

As healthcare becomes increasingly intertwined with technology – from kiosks and patient portals to telehealth appointments – it is imperative that these technologies are accessible to blind and low vision users. This open letter from American Council of the Blind (“ACB”) provides information designed to help you understand and meet your obligations to ensure healthcare is accessible to your blind and low vision patients. [[1]](#footnote-1)

As healthcare professionals, we know you strive to provide accessible, quality care to all your patients. You are also subject to several legal requirements to ensure that your services – and the technologies you use to provide them - are accessible. Failure to do so can result in federal or state investigation or private lawsuits. Most importantly, inaccessible healthcare technologies compromise patient care.

Accessible Technology for Blind & Low Vision Users

Like many blind users of computers and mobile devices, the majority of ACB’s members access digital content using a screen reader, that is, software built into computer or mobile devices that reads text aloud and audibly delivers navigation cues.[[2]](#footnote-2) Many other ACB members, especially those with low vision, use screen magnification software or will adapt the user interface to provide high contrast between icons, text, and page backgrounds.

Screen reader and magnification technologies do not work when websites, mobile applications, software, and other digital content are not designed and developed with accessibility in mind. Likewise, blind computer users rely on keystrokes, rather than mouse clicks, to choose menu items or otherwise engage with interactive elements of a website or application. These methods also may not work when technology is not designed with accessibility in mind. Additionally, if a website or portal uses a color scheme that does not provide sufficient contrast between elements of the screen, such as yellow text on a white background, then low vision users also lack meaningful access.

Members of ACB have encountered barriers to health care when using several technology platforms. Examples include:

* Inability to send messages to providers or schedule appointments online because interactive elements of provider websites or software are not keyboard accessible, difficult to see, or cannot be magnified by screen magnification software.
* Inability to log in to or retrieve information from patient portals due to inappropriate coding in the portal that render the portals incompatible with screen reader software (buttons mislabeled or not labelled, for example).
* Being denied the convenience of telehealth appointments because of inaccessibility of the provider’s telehealth platform.
* Inability to independently use check-in kiosks at health care facilities because such kiosks often lack:
	+ speech output;
	+ braille and large print instructions to indicate how to activate accessibility settings;
	+ tactile controls;
	+ the ability to zoom in on screen; and
	+ volume control and the ability to repeat speech.

None of these outcomes is conducive to good patient care. They are also illegal, as described below.

To avoid these pitfalls, ACB recommends that:

* When providers purchase health care technologies from third party vendors they should consider, prior to finalizing their selection, whether the technology will be accessible to all users. Currently, commercially available patient portals, telehealth solutions, and kiosks vary widely in their level of accessibility. Health care providers are responsible for selecting and implementing accessible technology.
* Websites and other mobile applications, including patient portals and telehealth applications, should be designed with accessibility in mind, regardless of whether these components are developed in house or by a third party. This includes:
	+ Consulting with blind and low vision individuals during design, development, and testing of user experiences; and
	+ Adherence to [Web Content Accessibility Guidelines (WCAG) 2.1](https://www.w3.org/TR/WCAG21/)[[3]](#footnote-3), conformance level AA for website and mobile applications.
* Email and other electronic communications sent by providers should be compatible with screen reader software and accessible to low vision users. Many online tools and tutorials are available to help providers achieve this result. For example: [10 Habits to create accessible content - Microsoft Accessibility Blog](https://blogs.microsoft.com/accessibility/10-habits-to-create-accessible-content/).[[4]](#footnote-4)
* Where accessibility issues in provider technology hinder patient care, providers should take prompt action to remediate the issues. Providers should offer an alternative modality to provide equivalent care while the technology is remediated. Methods which violate patient privacy, including HIPAA regulations, such as by requesting patients to share passwords or private information with sighted assistants are *not* acceptable.

Legal Requirements

We expect that as healthcare providers, ensuring quality patient care will be sufficient motivation for you to implement these best practices. You are also subject to several legal regulations that require you to do so.

Americans with Disabilities Act

The Americans with Disabilities Act (“ADA”) has clear mandates requiring healthcare providers to ensure that the technologies they use to interact with patients are accessible to their blind and low vision patients. The number of employees associated with the healthcare provider, its size or status as a non-profit, whether or not it accepts federal funding, and the nature of the care or treatment, are all irrelevant as to whether the provider must follow the ADA.

ADA Title III prohibits discrimination on the basis of disability in the “full and equal enjoyment of goods, services, facilities, privileges, advantages, or accommodations of any public place of accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation.” See 42 U.S.C. § 12182(a). Places of public accommodation include “professional office[s] of a health care provider, hospital[s], or other service establishment[s].” 42 U.S.C. § 12181(7)(f). Thus, ADA Title III applies to private healthcare providers regardlessof whether they receive federal or state funding. Similar rules apply to public healthcare entities under ADA Title II.

In order for people who are blind or low vision to have full and equal enjoyment of health care services, the law requires health care providers to supply auxiliary aids and services that will ensure there is effective communication. 42 U.S.C. § 12182 (b)(2)(A)(iii); 28 C.F.R.§ 36.303(a). The regulations implementing the ADA define “auxiliary aids and services” to include:

* accessible electronic and information technology; or other effective methods of making visually delivered materials available to individuals who are blind or have low vision;
* acquisition or modification of equipment or devices; and
* screen reader software.

28 C.F.R. § 36.303(b)(2) and (3). The ADA further requires healthcare providers to “make reasonable modifications in policies, practices, or procedures, when the modifications are necessary to afford goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities” unless doing so would result in a fundamental alteration of the services. 28 C.F.R. § 36.302(a).

In short, these regulations require that the technologies you use to interact with your patients be accessible, including by ensuring that these technologies are compatible with screen reader software. The Department of Justice has pursued legal action where healthcare technologies fall short of these requirements. For example, [Justice Department Secures Settlement With Rite Aid Corporation To Make Its Online Covid-19 Vaccine Portal Accessible To Individuals With Disabilities | USAO-MDPA | Department of Justice](https://www.justice.gov/usao-mdpa/pr/justice-department-secures-settlement-rite-aid-corporation-make-its-online-covid-19#:~:text=HARRISBURG%20-%20The%20United%20States%20Attorney%E2%80%99s%20Office%20for,about%20COVID-19%20vaccinations%20and%20book%20their%20vaccinations%20online.).[[5]](#footnote-5)

State and Local Laws

State and local law further supplement the protections provided under the ADA. *See, e.g.*, New York State (N.Y. Exec. Law § 292(9)); New York City (N.Y.C. Admin. Code § 8-107(4)(a)); Illinois (775 ILCS 5/5-101); District of Columbia (D.C. Code § 2-1401.02); California (Cal Civ Code § 54.1).

Medicare, Medicaid, & the ACA

Additionally, it is unlawful for organizations that receive federal funding, such as Medicare and Medicaid, to discriminate against people with disabilities under Section 504 of the Rehabilitation Act of 1973 (“Section 504”). 29 U.S.C. §§ 701, et seq.  If your office receives Medicare and Medicaid funding, it must comply with Section 504 by making its programs accessible, and by effectively communicating with persons with disabilities. Medical offices subject to the Affordable Care Act (“ACA”) also have additional obligations. See 45 C.F.R. § 92.202 (2016).

As summarized by the U.S. Department of Health and Human Services, Office for Civil Rights in an [open letter](https://www.hhs.gov/sites/default/files/ocr-guidance-electronic-information-technology.pdf)[[6]](#footnote-6), to comply with these regulations covered health providers should “should review their [Electronic Information Technology] systems to ensure accessibility” of technologies such as:

* websites
* patient web portals
* e-prescriptions
* self check-in or diagnostic kiosks
* physician videoconferencing systems
* health/medication information dispensaries
* electronic health records

Additionally, as noted in [recent guidance issued by the US Department of Justice and Department of Health and Human Services](https://www.hhs.gov/sites/default/files/guidance-on-nondiscrimination-in-telehealth.pdf)[[7]](#footnote-7), health care providers have an obligation to ensure non-discrimination in telehealth, including discrimination on the basis of disability and limited English proficiency.

Notably, the Section 504 and ACA regulations are *in addition to* obligations under Title III of the ADA. Each of the listed technologies also must be accessible in compliance with the ADA, regardless of whether a provider accepts federal funding, as detailed above. Individuals who believe that medical providers have violated these requirements may file a complaint with:

* HHS at: https://ocrportal.hhs.gov/ocr/smartscreen/main.jsf; and/or
* the Department of Justice at <https://civilrights.justice.gov/report/>.

About The American Council of the Blind

Founded in 1961, the American Council of the Blind (“ACB”) seeks to increase the independence, security, equality of opportunity, and quality of life for all blind and visually impaired people. ACB exists to ensure that governments, businesses, employers, and other individuals comply with the hard-won laws that protect the rights of people who are blind or visually impaired to participate fully in all aspects of American society.

ACB has been striving for accessible user experiences for the past 45 years. ACB has also worked collaboratively with health care providers, such as the INOVA hospital system in northern Virginia, to ensure that communications with blind patients are accessible and inclusive for blind patients, and with CVS pharmacy to ensure that prescription labels are accessible.

Although ACB prefers to use direct advocacy and structured negotiations to address the access rights of people who are blind or visually impaired, it has also filed lawsuits when other advocacy approaches did not work. For example, ACB leads the currently pending lawsuits against Quest Diagnostics and LabCorp for violating federal civil rights laws by failing to make the services offered by these companies’ Check-in kiosks accessible to blind patients. In December 2021, the presiding judge in federal court in California certified a nationwide class action on behalf of all legally blind individuals who visited Quest in 2018 and 2019 and who were denied full and equal enjoyment of Quest’s services due to Quest’s failure to make its self-service kiosks independently accessible. The judge also denied defendant’s motions for summary judgment, ruling that the case should proceed to trial.[[8]](#footnote-8)

Conclusion

Thank you for your attention to this important matter.

Sincerely,

The American Council of the Blind

1. Although this letter focuses on recent technologies, such as virtual Patient Portals, telehealth platforms, and kiosks, the obligation to provide reasonable accommodations to blind and low vision users extends well beyond these issues to all aspects of patient care. [↑](#footnote-ref-1)
2. Screen readers consist of software with which blind technology users can independently access and interact with properly coded websites and mobile applications. On a computer, they do so with a combination of hardware and software that allow someone who cannot see the screen to find, navigate, and interact with on-screen content using the keyboard instead of a mouse. When a website or mobile application is properly developed, the software provides information about interface elements, such as headings, hyperlinks, buttons, form fields, and images. The most common type of software reads screen content and certain coding cues aloud by means of a speech synthesizer. It allows users to skim pages, screens, documents, and tables by navigating with designated keystrokes. Instead of or in addition to speech output, computer users with visual impairments may use a braille display as the output medium, or rely on software that significantly enhances text size. [↑](#footnote-ref-2)
3. Available at <https://www.w3.org/TR/WCAG21/>. [↑](#footnote-ref-3)
4. Available at <https://blogs.microsoft.com/accessibility/10-habits-to-create-accessible-content/>. [↑](#footnote-ref-4)
5. Available at https://www.justice.gov/usao-mdpa/pr/justice-department-secures-settlement-rite-aid-corporation-make-its-online-covid-19#:~:text=HARRISBURG%20-%20The%20United%20States%20Attorney%E2%80%99s%20Office%20for,about%20COVID-19%20vaccinations%20and%20book%20their%20vaccinations%20online. [↑](#footnote-ref-5)
6. Available at https://www.hhs.gov/sites/default/files/ocr-guidance-electronic-information-technology.pdf. [↑](#footnote-ref-6)
7. Available at https://www.hhs.gov/sites/default/files/guidance-on-nondiscrimination-in-telehealth.pdf. [↑](#footnote-ref-7)
8. See [Court Certifies Nationwide Disability Rights Class Action Against Quest Diagnostics for Use of Inaccessible Touch Screen Kiosks, and Rejects Quest’s Request to Declare That Its Inaccessible Kiosks Comply with the ADA | American Council of the Blind (acb.org)](https://www.acb.org/Quest-inaccessible-kiosks-press-release) available at https://www.acb.org/Quest-inaccessible-kiosks-press-release. [↑](#footnote-ref-8)