GUIDANCE AND RESOURCES FOR ELECTRONIC INFORMATION TECHNOLOGY:
ENSURING EQUAL ACCESS TO ALL HEALTH SERVICES AND BENEFITS
PROVIDED THROUGH ELECTRONIC MEANS

U.S. Department of Health and Human Services, Office for Civil Rights

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Dear Colleagues:

As medical technology, such as kiosks and websites, is rapidly becoming an integral component of the healthcare system, it is vital to ensure that this technology is accessible to all individuals, including people with disabilities. The Department of Health and Human Services' (HHS) Office for Civil Rights (OCR) ensures that individuals have equal access to benefits and services and are not subject to unlawful discrimination. In this vein, we draw your attention to the fact that many Electronic and Information Technology (EIT) devices and systems are inaccessible to people with disabilities, limiting their ability to benefit from the programs and services related to these technologies.

Providers of healthcare and health coverage[1] are increasingly implementing computerized systems to assist in providing a broad spectrum of health services and are using mobile applications for care management. Technology is being used in a range of settings, from kiosks for self-service check-in and to take patients' vital signs at medical clinics to patient portals that provide access to electronic health records. The implementation of technology also includes electronic communication with providers and self-contained telemedicine clinics capable of conducting full virtual consultations with doctors via videoconference.

While the advances in EIT have many benefits for both patients and providers, these new technologies are often designed without regard for the needs of individuals with disabilities, which may limit or prevent access by these individuals. Without equal access, individuals with disabilities must either forgo the benefits and services the EIT offers, or request the help of a family member, friend or stranger to operate the EIT for them, possibly exposing their sensitive and confidential health information. Covered healthcare entities should be aware that a failure to ensure that the services they provide through EIT are accessible to people with disabilities may constitute discrimination under Federal civil rights laws.[2]

Under Title II of the Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act (Section 504), and Section 1557 of the Affordable Care Act (Section 1557) and their implementing regulations, qualified individuals with disabilities may not be excluded from participation in, denied the benefits of the services, programs, or activities of, or subjected to discrimination by covered entities.[3]

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[1] Settings include, but are not limited to, hospitals, clinics, doctors' offices, other healthcare facilities, pharmacies, retailers, health insurance issuer websites and other places that offer healthcare services or health coverage.
[2] Section 504 of the Rehabilitation Act of 1973 (Section 504) prohibits discrimination on the basis of disability by entities that receive Federal financial assistance. Title II of the Americans with Disabilities Act of 1990 (ADA) prohibits discrimination on the basis of disability by state and local governments. Section 1557 of the Affordable Care Act (Section 1557) prohibits, among other things, discrimination on the basis of disability by entities that operate a health program or activity, any part of which receives Federal financial assistance, and the Health Insurance Marketplaces.
[3] See the implementing regulations at 28 C.F.R. § 35.130(a); 45 C.F.R § 84.4 (a); 45 C.F.R § 92.101(a).

These laws also prohibit covered entities from giving individuals with disabilities an unequal opportunity to participate in or benefit from the entities' aids, benefits, and services as compared to others.[4] Similarly, covered entities may not provide individuals with disabilities with an aid, benefit, or service that is not as effective in affording 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.[5] The Section 1557 regulation specifically provides that health programs or activities provided by covered entities through electronic or information technology must be accessible to individuals with disabilities unless doing so would result in undue financial and administrative burdens or fundamental alteration of the health program.[6]

Pursuant to Section 504, Section 1557, and Title II of the ADA, covered entities must offer people with disabilities full and equal access to the EIT they employ, unless those individuals are provided reasonable accommodations or reasonable modifications that permit them to receive all the benefits provided by the EIT in an equally effective manner.[7] For example, a healthcare entity that deploys inaccessible EIT may meet its legal obligations by providing an alternative accessible way for people with disabilities to use the programs or services, such as a staffed desk or telephone information line. These alternatives, however, must provide an equal degree of access to the benefits of the EIT in terms of hours of operation and the range of options and programs available.

As you implement the use of EIT to provide care management or interact with your patients and their families, we encourage you to keep the following considerations in mind with regard to websites, healthcare kiosks, and electronic health records systems.

Websites

Websites operated by covered entities constitute EIT, and health programs and activities offered through websites must comply with the nondiscrimination provisions discussed above. These websites may include, but are not limited to, patient web portals, e-prescriptions, and personal health tools. In the preamble to the rule implementing Section 1557, OCR provided an example of the application of Section 1557 to a health program or activity that uses a website: "a Health Insurance Marketplace[SM] creating a Website for application for health insurance coverage must ensure that individuals with disabilities have an equal opportunity to benefit from the Website's tool that allows comparison of health insurance coverage options, quick determination of eligibility, and facilitation of timely access to health insurance coverage by making its new Web site accessible…."[8] Covered entities that use websites should consider following the widely accepted industry standard for web accessibility in the Web Content Accessibility Guidelines (WCAG) 2.0.[9] The WCAG 2.0 AA standards delineate ways in which web content can be

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[4] 28 C.F.R. § 35.130(b)(1)(ii); 45 C.F.R. § 84.4(b)(1)(ii); 45 C.F.R § 92.101(b)(2)(i).

[5] 28 C.F.R. § 35.130(b)(1)(iii); 45 C.F.R. § 84.4(b)(iii); 45 C.F.R § 92.101(b)(2)(i).

[6] 45 C.F.R § 92.204(a). *See* OCR's webpage for the Section 155 rule: http://www.hhs.gov/civil-rights/for-individuals/section-1557/index.html.

[7] *See generally* letter from Thomas E. Perez, Assistant Attorney General for Civil Rights, Department of Justice (DOJ), and Russlynn Ali, Assistant Secretary for Civil Rights, U.S. Department of Education, to College and University Presidents, regarding electronic book readers (June 29, 2010), available at https://www.ada.gov/kindle_ltr_eddoj.htm; Letter from Thomas E. Perez, Assistant Attorney General for Civil Rights, DOJ, Jeanine Arden-Omt, Vice President and General Counsel, Case Western Reserve University (Dec. 22, 2009), available at https://www.ada.gov/case_western_univ.htm; Settlement Agreement Between the National Federation of the Blind, the United States of America, and the Law School Admission Council (Apr. 25, 2011), available at https://www.ada.gov/LSAC.htm.

[8] 81 Fed. Reg. 31424 (May 18, 2016).

[9] *See* "Web Content Accessibility Guidelines" (WCAG) (2008); available at http://www.w3.org/TR/WCAG20/

made more accessible to people with a range of disabilities, including visual, auditory, physical, speech, cognitive, language, learning, and neurological disabilities.

Medical Kiosks

Healthcare kiosks include, but are not limited to, self check-in kiosks, physician videoconferencing systems, diagnostic kiosks, health/medication information dispensaries, donor registry kiosks, kiosks that assist patients in taking their vital signs, insurance enrollment kiosks, and pharmacy dispensary kiosks. Covered entities that offer health programs and activities offered through kiosks must comply with the accessibility requirements discussed above.

Steps that can be taken to ensure appropriate accessibility may include installation of tactile interfaces or screen readers, repositioning of kiosks to be within reach of wheelchair users, and options which allow individuals with motor difficulties to independently operate the kiosks, including voice dictation technology. Ensuring equal access to this emerging EIT will help people with disabilities to take full advantage of the benefits the new technology offers in speed, efficiency and autonomy.

Electronic Health Records

Finally, electronic health records (EHRs) of covered entities must be accessible to people with disabilities so that all patients are able to access their records and communicate effectively with their providers. To promote accessibility, EHRs can be adapted to make records screen-readable and provide descriptions of items such as x-rays or MRI results that would otherwise not be accessible to people with visual disabilities.

Failure to provide people with disabilities access to health programs offered through EIT, as required by Section 504, Section 1557, and Title II of the ADA, denies them the same privileges, benefits, services and advantages that are afforded to people without disabilities.

All entities subject to Section 504, Section 1557, and Title II of the ADA should review their EIT systems to ensure accessibility of their health programs for all persons with disabilities. Below are some resources that may help you determine if your EIT is accessible and what can be done to make it accessible if it is not.

- W3C's Web Content Accessibility Guidelines (WCAG) 2.0: http://www.w3.org/TR/WCAG20/
- Guidance for Exchange and Medicaid Information Technology (IT) Systems: https://www.cms.gov/CCIIO/Resources/Files/Downloads/exchange_medicaid_it_guidance_05312011.pdf
- ADA Best Practices Tool Kit for State and Local Governments: Chapter 5, Website Accessibility under Title II of the ADA: http://www.ada.gov/pcatoolkit/chap5toolkit.htm.

Thank you for all your efforts to promote equal access in your health programs and activities, including those that are offered through EIT.

Sincerely,

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Jocelyn Samuels