



Modernizing Public Benefits Programs:

What the Law Says State Agencies Must Do to Serve People with Disabilities



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Part 1: Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act

When public benefits agencies modernize, they are required to do so in a manner that complies with certain federal disability rights laws, including the following:

42 U.S.C. § 12131 et seq.

- * **Title II of the Americans with Disabilities Act (ADA)**, which applies to the programs, services, and activities of *all state and local governments*.

28 C.F.R. Part 35 (DOJ Title II regulations)

- * **Section 504 of the Rehabilitation Act of 1973**, which applies to programs *that receive federal financial assistance*.

29 U.S.C. § 794 ▪ 7 C.F.R. Part 15b (USDA Section 504 regulations) ▪ 28 C.F.R. Part 41 (DOJ Section 504 Coordination regulations) ▪ 45 C.F.R. Part 84 (HHS Section 504 regulations)

The ADA and Section 504 apply to many aspects of public benefits program administration, including the application process, appointments, face-to-face and remote communication between the agency and clients, and the way in which information is provided to clients. These are the very things that often change as a result of modernization efforts. Agencies need to ensure that modernization efforts do not create barriers for people with disabilities.

Other laws also impose requirements on the accessibility of telephone communication and agency websites.

Specific Requirements and Scenarios

Required: Programs must provide meaningful access to programs and services.

Alexander v. Choate, 469 U.S. 287 (1985)

Scenario: An agency shifts from an onsite benefits application process to an online process. A person with a cognitive or physical disability may need help in completing an online application.

- *If trained staff is not available to help the person, he or she does not have meaningful access to programs and services.*

Required: Reasonable modifications in policies and practices must be made when necessary to avoid discrimination against individuals with disabilities.

28 C.F.R. § 35.130(b)(7) ▪ 28 C.F.R. § 41.51(b)(1)(vii) ▪ 45 C.F.R. § 84.4(b)(1)(vii) ▪ Alexander v. Choate, 469 U.S. 287 (1985)

Scenario: An agency shifts from an onsite benefits application process to an online process, using community partners (such as libraries and senior centers). Persons with disabilities may

need help in completing the application.

- *If the public agency fails to provide this help or to ensure that community partners provide it, a reasonable modification has not been made.*

Scenario:

A public benefits agency contracts with a private company to operate call centers to provide information and answer questions. The call center has a policy that it will not provide client information to third parties. Persons with disabilities may need to place calls through a third party.

- *If the call center does not modify its policy to avoid discriminating against persons with disabilities who cannot place calls on their own behalf, it is discriminating against these individuals.*

Required:

Programs must provide an equal opportunity to participate in and benefit from programs and services to persons with disabilities.

7 C.F.R. § 15b.4(b)(1)(ii) ■ 28 C.F.R. § 35.130(b)(1)(ii) ■ 28 C.F.R. § 41.51(b)(1)(ii) ■ C.F.R. §§ 84.4(b)(1)(ii) & 84.52(a)(2)

Scenario:

An agency shifts from an onsite benefits application process to an online process, using community partners (such as libraries and senior centers). Persons with disabilities may need face-to-face interaction with the benefits agency to convey accurate information and ask questions.

- *If the agency does not provide an opportunity for face-to-face interaction, it is denying people with disabilities an equal opportunity to participate in the program.*

Required:

Methods of program administration cannot have a discriminatory effect on individuals with disabilities.

7 C.F.R. § 15b.4(b)(4) ■ 28 C.F.R. § 35.160(a) ■ 28 C.F.R. § 41.51(b)(3) ■ 45 C.F.R. § 84.4(b)(4)

Scenario:

A public benefits agency creates additional methods of applying for benefits (for example, online applications or telephone applications). At the same time, it reduces or eliminates other methods (for example, by closing offices or limiting the ability to submit applications in person at the agency).

- *Unless the agency provides a reasonable modification of its application process for people with disabilities who need face-to-face interaction or help to apply for benefits, it is using a method of program administration that has a discriminatory effect on people with disabilities.*

Scenario:

A public benefits agency contracts with a private company to operate call centers to provide information and answer questions. The call center policy prohibits staff from providing information to third parties unless the client can be on the phone to verify identity or give the call center permission to speak with a third party.

- *This method of program administration may discriminate against people with disabilities who cannot verbally verify identity or give permission.*

Required: Communication with people with disabilities must be as effective as communication with others.

7 C.F.R. § 15b.4(d) ▪ 28 C.F.R. § 35.160(a) ▪ 28 C.F.R. § 41.51(e) ▪ 45 C.F.R. § 84.4(b)(1)(vii)

Scenario: A TTY alone does not ensure that communication with applicants and recipients with disabilities is as effective as it is with others, because TTYs do not provide effective communication for all persons with disabilities.

- They are not effective for people with limited ability to read and write English.
- They are not effective for people with both hearing and vision impairments.
- People with cognitive disabilities are unlikely to own TTYs.
- If staff are not adequately trained on how to answer TTY calls or do not return messages left on a TTY in a timely fashion, the agency's communication with persons with disabilities is not as effective as it is with others.

■ *A public benefits agency may fail to communicate effectively with people who have disabilities even though it has a TTY.*

Scenario: A public benefits agency does not accept video relay calls because they are from third parties.

■ *If a public benefits agency refuses to accept video relay calls, the agency does not provide effective communication for persons with disabilities.*

Scenario: A public benefits agency uses an Interactive Voice Response (IVR) system, but many IVRs cannot be used effectively by persons who use a TTY and a relay operator.

■ *If an agency uses an IVR, communication may not be as effective for deaf and hearing-impaired persons who use a TTY and a relay operator unless steps are taken to ensure that TTY users and others who need additional time to respond to IVR prompts can use it effectively or alternatives are offered.*

Required: Auxiliary aids and services must be provided when necessary to individuals with disabilities (such as those with impaired sensory, manual, or speaking skills), when necessary to provide an equal opportunity to benefit from the services.

28 C.F.R. § 35.160(b) ▪ 45 C.F.R. § 84.52(d)(1)

Scenario: An agency shifts from an onsite benefits application process to an online process, using community partners (such as libraries and senior centers). Persons with vision impairments may need a screen reader to use a computer, and those with impairments that affect their ability to do manual tasks may need other auxiliary aids to use a computer.

■ *If a community partner does not have a screen reader or other auxiliary aids needed by persons with disabilities, those people do not have equal opportunities to benefit from services.*

Scenario:

An agency shifts from an onsite benefits application process to an online process, using community partners (such as libraries and senior centers). An applicant needs a sign language interpreter to communicate with the community partner who is helping the person submit an application. An interpreter is not provided.

- *If neither the benefits agency nor the community partner provides interpreter services, the person who is deaf does not have an equal opportunity to get benefits.*

Websites

Public benefits agencies' websites are a part of the agencies' programs and services and are therefore subject to the ADA and Section 504 requirements.

The greater an agency's reliance on its website to provide information about programs and services or as a means of applying for benefits, the stronger the argument that the website must be accessible to persons with disabilities.

Even if an agency provides onsite information about programs and in-person applications, these alternatives do not provide access to services and information like the website does.

- *Agencies that do not have accessible websites are likely to be denying equal access to services to persons with disabilities.*

Examples of barriers to access

- * PDF documents posted on an agency website are not compatible with screen readers and Braille displays, used by individuals who are blind, or text-enlargement programs, used by individuals with low vision.
- * Images (including photographs, graphics, and icons) that are not tagged cannot be read by a screen reader.
- * Some individuals with low vision need large fonts or high contrast between foreground and background. Some websites prevent users from adjusting fonts and color contrast.

Legal Requirements, Guidelines, Standards, Tools, and Resources for Web Accessibility

There are many resources for information on web accessibility. Here are a few sources for legal requirements, guidelines, standards, and tools.

Section 508 of the Rehabilitation Act

29 U.S.C. § 794d

Section 508 applies to federal agencies. It requires electronic and information technology, including websites, to be accessible to persons with disabilities. Section 508 standards, promulgated by the U.S. Access Board in December 2000 and effective as of February 21, 2001, are codified at 36 C.F.R. Part 1194 and posted at the following websites:

- www.access-board.gov/sec508/standards.htm
- www.section508.gov/index.cfm?FuseAction=Content&ID=11

WWW Web Content Accessibility Guidelines (WCAG)

The World Wide Web Consortium's Web Accessibility Initiative (WAI) has developed detailed Web Content Accessibility Guidelines (WCAG). The second version (2.0) of these guidelines was published in April 2008. See www.w3.org/WAI/guid-tech.

Some WCAG standards are the same as Section 508 requirements, and some are different. Many states have adopted the Section 508 standards, WCAG standards, or a combination of both, for the state agency's websites. For a list of state web accessibility laws and policies, see www.hp.com/hpinfo/abouthp/accessibility/State_Web_Accessibility.pdf.

The U.S. Department of Justice

The Department's publication "ADA Best Practices Toolkit for State and Local Governments" includes a chapter on website accessibility. The toolkit contains a checklist for state and local governments to use to identify web accessibility problems that need to be addressed. See www.ada.gov/pcatoolkit/chap5toolkit.htm.

Online tools

There are many tools for identifying web accessibility and accessibility problems. Some are listed at the following websites:

- www.w3.org/WAI/ER/tools/complete
- www.section508.gov/index.cfm?FuseAction=Content&ID=8

Other helpful resources

Many books have been written about web accessibility. You may find the following ones particularly useful:

- Beyond ALT Text: Making the Web Easy to Use for Users with Disabilities, by Kara Pernice and Jakob Nielson, Nielson Norman Group (2001), www.nngroup.com/reports/accessibility/beyond_ALT_text.pdf.
- Web Accessibility: Web Standards and Regulatory Compliance, by Jim Thatcher et al., Friends of Ed (2006), jimthatcher.com/book2.htm.

Part 2: Section 255 of the Communications Act and Section 508 of the Rehabilitation Act

Federal laws contain accessibility requirements for electronic information technology, telecommunications equipment and services, and information services that are used by public benefits agency programs.

Section 255 of the Communications Act applies to telecommunications equipment manufacturers and service providers.

47 U.S.C. §§ 153 & 255 ▪ 36 C.F.R. Part 1193 ▪ 36 C.F.R. Part 1193 Appendix A

Section 508 applies to the development, purchase, and maintenance of phone systems, websites, computers, software, information kiosks, and other electronic and information technology and products and services.

29 U.S.C. § 794d ▪ 36 C.F.R. Part 1194

If a state has adopted one or more 508 requirements, the states' public benefits agencies must comply with those Section 508 requirements and standards in the operation of their websites, phone systems, computers, and other information technology.

Although Section 255 does not apply directly to public benefits agencies, it should inform agency purchasing and contracting and affect use of technology. This is because accessible products are available as a result of Section 255, and many products have the capacity to be set up or used in a way that provides access to people with disabilities.

Section 255 Requirements and Guidelines

- * Telecommunications products and services designed, developed, and fabricated after February 8, 1996, must be accessible to and usable by persons with disabilities, "if readily achievable." If accessibility is not readily achievable, it must be compatible with

devices and equipment used by persons with disabilities to achieve access, such as TTYs and assistive listening devices, if doing so is readily achievable.

47 U.S.C. § 255 ■ 36 C.F.R. § 1193.21

The law applies to the following equipment and services, among others

- ✓ fax machines
- ✓ pay telephones
- ✓ answering machines
- ✓ regular telephone calls
- ✓ call waiting
- ✓ caller ID
- ✓ repeat dialing
- ✓ interactive voice response systems (IVR)
- ✓ cell phones
- ✓ pagers
- ✓ computers with modems
- ✓ computer-provided directory assistance
- ✓ speed dialing
- ✓ call tracing
- ✓ voice mail systems

- * Section 255 guidelines note that IVR systems are not usable by deaf and hard-of-hearing persons. This is because there is insufficient time for a relay operator to type the choices and for the deaf caller to read the choices and type a selection. The guidelines recommend augmenting the use of an automated system with an automated TTY system or having methods for deaf callers to opt out of the automated system.

36 C.F.R. Part 1193 Appendix A ■ 63 Fed. Register 5608, 5637

Section 508 Requirements and Guidelines

- * Electronic and information technology targeting members of the public (including people with disabilities) who are seeking information or services from a federal department or agency must be developed, purchased, maintained, and used in a manner that ensures that the public has access to and use of information and data. Accessibility and usability of data for people with disabilities must be comparable to accessibility and usability for others, unless it would be an undue burden.

29 C.F.R. § 794d(a)(1)(ii) ■ 36 C.F.R. § 1194.1

The law applies to the following:

- ✓ Telecommunication products, including voice mail, IVR systems, and messaging
- ✓ Software applications and operating systems
- ✓ Web-based Internet and intranet information and applications
- ✓ Video and multimedia products
- ✓ Desktops and portable computers
- ✓ Self-contained, closed products (products that have embedded software, such as information kiosks, information transaction machines, copiers, printers, calculators, and fax machines)

- * A text equivalent for every nontext element shall be provided in Internet and intranet applications.
36 C.F.R. § 1194.22(a)
- * Voice mail and IVR shall be usable by TTY users with their TTYs.
36 C.F.R. § 1194.23(c)
- * Self-contained, closed products shall be usable by persons with disabilities without requiring the user to attach assistive technology to the product.
36 C.F.R. § 1194.25(a)

Implications of the Section 508 and Section 255 Standards for Public Benefits Agencies

- * Public benefits agencies and call centers operating under contract with public benefits agencies that use IVR telephone systems should have an opt-out function or an automated TTY system.
- * Contracts with call centers should require contractors to supplement an automated response system with an automated TTY system or have a means for people to opt out of the automated system.
- * If a state has adopted Section 508 requirements and technical standards for information kiosks, information kiosks used by public benefits agencies must meet the 508 technical standards applicable to kiosks.
- * Procurement contracts for information kiosks should specify that kiosks must be accessible to and usable by persons with disabilities and must incorporate Section 508 standards.
- * If a state has adopted Section 508 requirements and technical standards for websites, state agencies' websites must meet the 508 technical standards for web accessibility.