



**CONSORTIUM FOR CITIZENS
WITH DISABILITIES**

November 29, 2021

Kristen Clarke
Assistant Attorney General for Civil Rights
950 Pennsylvania Ave., NW
Washington DC

Dear Assistant Attorney General Clarke,

The undersigned members of the Consortium for Citizens with Disabilities (CCD) Rights Task Force write to urge the U.S. Department of Justice to resume the rulemaking processes that it began in 2010 concerning accessibility of website information, next generation 9-1-1, and non-fixed equipment and furniture under the Americans with Disabilities Act (ADA). CCD is the largest coalition of national organizations working together to advocate for federal public policy that ensures the self-determination, independence, empowerment, integration and inclusion of children and adults with disabilities in all aspects of society.

On July 26, 2010, the 20th anniversary of the ADA, the Department published a series of Advance Notices of Proposed Rulemaking (ANPRMs) under Titles II and III of the ADA. One ANPRM covered accessibility of web information and services of state and local government entities under Title II and public accommodations under Title III.¹ A second ANPRM addressed accessibility of non-fixed equipment and furniture under Title II and Title III.² A third ANPRM concerned accessibility of next generation 9-1-1 under Title II. In 2017, the Department withdrew these ANPRMs and NPRMs.

The absence of regulations in these areas has exacerbated the barriers that disabled people face every day. Further, the COVID-19 pandemic, which has disproportionately affected disabled people and particularly those who are Black, Indigenous, and other People of Color, has made the need for rulemaking in each of these areas even more significant; the inability to access medical care, emergency services, and web-based services has made the pandemic's effects even more acutely felt.

The ubiquitous reliance on technology today means that the ability to access websites is essential

¹ Later, the Department split this into two separate rulemakings, one concerning Title II and one concerning Title III, and published a Supplemental ANPRM regarding access under Title II.

² The Department later noticed its intent to proceed with one proposed rule for medical equipment and furniture and beds in guestrooms and a separate proposed rule for other non-fixed furniture and equipment standards.

to people's ability to do a myriad of activities that most of us take for granted. Web accessibility barriers have reduced or denied access to groceries, healthcare, transportation, employment, entertainment, restaurants, and shopping. Both public services and public accommodations are increasingly incorporating webpages, mobile applications, kiosks, and other Internet-enabled products into their operation to streamline customer access, increase convenience, and accommodate staffing shortages. As many information sources, services, and transactions move online, people with disabilities are left behind due to a lack of digital accessibility and inclusion. The need for website access has become even more acute as the pandemic has continued to force many formerly in-person interactions online.

While the courts have been largely consistent in interpreting the ADA's standards for website accessibility in recent years,³ covered entities continue to view the absence of regulations as a license to operate inaccessible websites. Millions of websites continue to deprive people with disabilities of equal access. In February 2021, the WebAIM Million project analyzed the top one million websites and found that 97.4% of pages reviewed had at least one accessibility error (such as missing form labels and alt text) with an average of 51 errors per page. Accordingly, it is critical that the Department expeditiously conduct a new rulemaking establishing website accessibility standards, clarifying the obligations of covered entities to provide access, and clarifying that websites themselves can be a place of public accommodation.

The absence of regulations for non-fixed equipment and furniture has also exacerbated barriers faced by people with disabilities—for example, in accessing needed medical care. Too often, people with disabilities are unable to get needed medical care due to their inability to access basic medical treatment. For example, many wheelchair users report that they are not able to be properly weighed in a doctor's office, access medical diagnostic equipment, or receive proper eye or dental examinations and treatment. Sometimes people with disabilities must travel far in order to obtain accessible medical care. Even in rooms designated as accessible for people with mobility impairments, beds are often too high to facilitate a transfer from a wheelchair or lack underbed clearance for a lift. As a result, they cannot access the bed, which is arguably the most important feature in a hotel room.

Existing ADA requirements for barrier removal or program accessibility have proved insufficient. Many covered entities have failed to provide accessible equipment and furnishings due to the absence of more specific regulatory standards. Earlier this year, the National Council on Disability released a report, "[Enforceable Accessible Medical Equipment Standards—A Necessary Means to Address the Health Care Needs of People with Mobility Disabilities](#)," which called on the Department to adopt the U.S. Access Board's medical diagnostic equipment standards. To achieve true access for people with disabilities, the Department must issue a rule with specific accessibility standards for non-fixed equipment and furniture.

The absence of specific regulatory standards for Next Generation 9-1-1 (NG9-1-1) deployment has also had a significant impact on people with disabilities, particularly those who have challenges communicating through traditional 9-1-1 calls including deaf and hard of hearing

³ Courts have consistently viewed the Web Content Accessibility Guidelines (WCAG) 2.0, level AA as the governing standards for website access. The same standard was incorporated into the Section 508 regulations for federal agencies.

people, people with speech disabilities, autistic people, people with intellectual disabilities, and many others. Delayed access or lack of access to emergency services can mean the difference between life and death.

In the last decade or so, advancements in modern communications technology have far outpaced those in the existing 9-1-1 system, and now require a more advanced 9-1-1 system to be compatible with communications technology used by disabled people. The existing 9-1-1 system is outdated and is primarily voice-based. A small percentage of public safety answering points offer text messaging capability, and even so, most of these can only handle minimal data delivered with said calls. By contrast, NG9-1-1 would enable non-voice messaging of various types, including photo, video, and data transmission. Regulations requiring a transition to NG9-1-1 are essential to ensure an efficient and effective deployment that is inclusive of all people, including those who have disabilities that find voice calls inaccessible. Moreover, NG9-1-1 would be extremely beneficial to anyone who might need to contact emergency services in situations where it would not be safe to make a voice call. Further, new federal legislation requiring the operation of a nationwide 9-8-8 system by July 2022 necessitates the inclusion of 9-8-8 in any rulemaking concerning the accessibility of NG9-1-1.

We urge the Department to act quickly to develop specific standards in each of these areas. Specific standards for compliance would go a long way in facilitating compliance with the ADA. Eleven years after rulemaking in these areas was initially begun, it is time to complete those rulemakings.

Sincerely,

American Council for the Blind

American Foundation for the Blind

Autistic Self Advocacy Network

Bazelon Center for Mental Health Law

CommunicationFIRST

Disability Rights Education and Defense Fund

Epilepsy Foundation

Paralyzed Veterans of America

Perkins School for the Blind

TDI

United Spinal Association

cc: Rebecca Bond
Anne Raish