

# Healthcare and Civil Rights During the COVID-19 Pandemic: Updates from the HHS Office for Civil Rights and the Department of Justice

APRIL 28, 2022

MOLLY BURGDORF, HHS OCR

JOHN WODATCH, HHS OCR

KATHLEEN WOLFE, DOJ CRT

## Agenda

- ▶ Introductory Remarks
- ▶ COVID-related Guidance and Policy by HHS and/or DOJ
- ▶ COVID-related Work by HHS and/or DOJ
- ▶ Questions and Comments

# COVID-related Guidance and Policy

- ▶ FAQs for Healthcare Providers during the COVID-19 Public Health Emergency, issued by HHS in Feb. 2022
- ▶ “Long COVID” Guidance, issued by HHS and DOJ in July 2021
- ▶ Guidance Prohibiting Disability Discrimination in COVID-19 Vaccination Programs and Factsheet on Disability Access in Vaccine Distribution, issued by HHS in April 2021

## FAQs for Healthcare Providers during the COVID-19 Public Health Emergency

- ▶ Issued by HHS
- ▶ Covers protections for individuals with disabilities under Section 504 and Section 1557
- ▶ What it is and why we issued it

## FAQs for Healthcare Providers during the COVID-19 Public Health Emergency

- ▶ Application of Section 504 and Section 1557 to Crisis Standards of Care, Visitation Policies, Testing and Contact Tracing Programs
  - ▶ Application to Crisis Standards of Care
    - ▶ Stereotypes, bias and quality of life judgments
    - ▶ Categorical exclusions on the basis of disability
    - ▶ Resource allocation decisions
    - ▶ Reasonable modifications for individuals with disabilities

## FAQs for Healthcare Providers during the COVID-19 Public Health Emergency

- ▶ Application of Section 504 and Section 1557 to Crisis Standards of Care, Visitation Policies, Testing and Contact Tracing Programs
  - ▶ Application to Crisis Standards of Care
    - ▶ Stereotypes, bias and quality of life judgments
    - ▶ Categorical exclusions on the basis of disability
    - ▶ Resource allocation decisions
    - ▶ Reasonable modifications for individuals with disabilities

## FAQs for Healthcare Providers during the COVID-19 Public Health Emergency

- ▶ Application to Visitation Policies
  - ▶ Reasonable modifications to visitation policies
  - ▶ Legitimate safety requirements
  - ▶ Effective communication
- ▶ Application to Vaccination, Testing and Contact Tracing Programs

## Guidance on “Long COVID” as a Disability Under the ADA, Section 504, and Section 1557

- ▶ Issued by HHS and DOJ
- ▶ What it is and why we issued it

## Guidance on “Long COVID” as a Disability Under the ADA, Section 504, and Section 1557

- ▶ Long COVID (and COVID-19) are physical or mental impairments.
- ▶ Many and diverse ways that long COVID can substantially limit a major life activity. For example:
  - ▶ A person with long COVID who has lung damage that causes shortness of breath, fatigue, and related effects is substantially limited in respiratory function.
  - ▶ A person with long COVID who has intestinal pain, vomiting, and nausea that have lingered for months is substantially limited in gastrointestinal function.
  - ▶ A person with long COVID who experiences memory lapses and “brain fog” is substantially limited in brain function, concentrating, and/or thinking.

## Guidance on “Long COVID” as a Disability Under the ADA, Section 504, and Section 1557

- ▶ People whose long COVID qualifies as a disability are entitled to the same protections from discrimination as any other person with a disability under the ADA, Section 504, and Section 1557.
- ▶ Needed reasonable modifications may include:
  - ▶ Providing additional time on a test for a student who has difficulty concentrating
  - ▶ Modifying procedures so a customer who finds it too tiring to stand in line can announce their presence and sit down without losing their place in line
  - ▶ Providing refueling assistance at a gas station for a customer whose joint or muscle pain prevents them from pumping their own gas

## Resources from HHS OCR on Access to COVID Vaccinations for People with Disabilities

- ▶ Guidance outlines legal standards prohibiting disability discrimination and provides concrete examples of the application of the standards in COVID vaccination programs.
- ▶ Fact Sheet sets out specific steps for covered entities to consider to promote compliance with the legal standards and equal access to the vaccine for people with disabilities.

## Resources from HHS on Access to COVID Vaccinations and Testing for People with Disabilities

- ▶ Disability Information and Access Line (DIAL)
  - connects people with disabilities to help with COVID-19 vaccinations and testing
  - ▶ Call 888-677-1199 Monday-Friday from 9 a.m. to 8 p.m. (Eastern) or email [DIAL@usaginganddisability.org](mailto:DIAL@usaginganddisability.org).
  - ▶ From the HHS Administration for Community Living (ACL)

## HHS COVID-related Complaint Resolution and Technical Assistance

- ▶ Crisis Standards of Care
  - ▶ As a result of complaints filed with HHS OCR during the COVID-19 public health emergency, and requests for technical assistance, OCR worked with States and other entities to address non-discrimination in crisis standards of care plans and practices.

## HHS COVID-related Work

- ▶ Crisis Standards of Care
  - ▶ OCR has resolved complaints regarding Crisis Standards of Care policies in several states (and regions), including Alabama, Utah, Tennessee, North Carolina, Texas, and Arizona, as well as with the Indian Health Service.

## Other Upcoming HHS OCR Work of Note

- ▶ Rulemaking under Section 1557 of the Affordable Care Act
- ▶ Rulemaking under Section 504 of the Rehabilitation Act

## DOJ COVID-related Enforcement

- ▶ Vaccine Registration Websites
  - ▶ Title III Compliance Reviews
- ▶ Barriers Identified
- ▶ Results

## Vaccine Registration Website Title III Settlement Agreements

- ▶ CVS Pharmacy, 4.11.2022
  - ▶ 9000+ locations in all states and D.C.
- ▶ Meijer Inc., 2.2.2022
  - ▶ Approx. 250 stores in midwest/upper Midwest states
- ▶ The Kroger Co., 1.28.2022
  - ▶ Approx. 2800 locations in 35 states and D.C.
- ▶ Hy-Vee, 12.1.2021
  - ▶ Approx. 280 stores in the midwest states
- ▶ Rite Aid, 11.1.2021
  - ▶ Approx. 2500 stores in 17 states (east and west coasts)

## Examples of Barriers to Access on Vaccine Registration Websites

- ▶ On the Rite Aid website, the calendar used for scheduling vaccine appointments did not show screen reader users any available appointment times, and people who use the tab key instead of a mouse could not make a choice on a consent form that they needed to fill out before scheduling their appointment.
- ▶ On the Hy-Vee website, people who use screen readers could not hear the questions on the medical screening forms, and people who use the tab key instead of a mouse could not select available appointment times.

## Examples of Barriers to Access on Vaccine Registration Websites

- ▶ On Meijor's website, people using the tab key instead of a mouse could not proceed past the first step of the vaccine registration process. The portal also did not always tell people who use screen readers what information they were supposed to put on scheduling forms, including their first and last names, birthdate, and zip code.
- ▶ On Kroger's website, critical medical screening questions about current COVID-related symptoms, allergies and reactions to previous vaccines were not read to screen reader users. And when a screen reader user selected an available appointment time, the website told them that the appointment was "unavailable," instead of "selected."

## Examples of Barriers to Access on Vaccine Registration Websites

- ▶ On CVS's website, the types of vaccine appointments offered (e.g., influenza, pneumonia, COVID-19) were not read audibly to screen reader users at the beginning of the scheduling process. And on the page where users pick a time for their appointment, screen reader users were told that all available times were "checked," even though the user had not made any selection.
- ▶ Additionally, people who use the tab key instead of a mouse were not able to navigate past a request for insurance information in the registration process.

## Vaccine Registration Website Title III Settlement Agreements

- ▶ CVS Pharmacy, 4.11.2022
  - ▶ 9000+ locations in all states and D.C.
- ▶ Meijer Inc., 2.2.2022
  - ▶ Approx. 250 stores in midwest/upper Midwest states
- ▶ The Kroger Co., 1.28.2022
  - ▶ Approx. 2800 locations in 35 states and D.C.
- ▶ Hy-Vee, 12.1.2021
  - ▶ Approx. 280 stores in the midwest states
- ▶ Rite Aid, 11.1.2021
  - ▶ Approx. 2500 stores in 17 states (east and west coasts)

## Relief Secured in Vaccine Registration Website Agreements

- ▶ Make Vaccine Registration Portals conform with the WCAG, Version 2.1, Level AA.
- ▶ Make automated testing for accessibility an integrated part of website development, and quickly fix accessibility identified through automated testing.
- ▶ Perform manual testing, including testing by people with disabilities.
- ▶ Provide training about web accessibility to people who have responsibility for vaccine website content.
- ▶ Report regularly to the United States about compliance with the Agreements.

## Other Recent DOJ ADA Work

- ▶ Combating discriminatory barriers faced by those in treatment for Opioid Use Disorder
  - ▶ Guidance on Opioid Use Disorder and the ADA, 3.18.2022
  - ▶ Indiana State Board of Nursing, Letter of Findings, 3.25.2022
  - ▶ Ready to Work, LLC., Settlement Agreement, 3.17.2022
  - ▶ U.S. v. Unified Judicial System of Pennsylvania, 2.24.2022
  - ▶ New England Orthopedic Surgeons, Settlement Agreement, 5.20.2021
  - ▶ Massachusetts General Hosp., Settlement Agreement, 7.30.2020

## Other Recent DOJ ADA Work of Note

- ▶ U.S. v. Barnet Delaney Perkins Eye Center, amended complaint filed 4.18.2022
- ▶ Consent decrees in two healthcare litigations:
  - ▶ U.S. v. Anucha, MD, 2.17.2022
  - ▶ U.S. v. Jamaluddin, MD, 2.17.2022
- ▶ Kaiser Foundation Health Plan, Settlement Agreement, 10.15.2021
- ▶ Guidance on Web Accessibility and the ADA

## Other Recent DOJ ADA Work of Note

- ▶ U.S. v. Barnet Delaney Perkins Eye Center, amended complaint filed 4.18.2022
- ▶ Consent decrees in two healthcare litigations:
  - ▶ U.S. v. Anucha, MD, 2.17.2022
  - ▶ U.S. v. Jamaluddin, MD, 2.17.2022
- ▶ Kaiser Foundation Health Plan, Settlement Agreement, 10.15.2021
  
- ▶ Guidance on Web Accessibility and the ADA

## Questions? Comments?

- ▶ Contact Information:
  - ▶ [Molly.Burgdorf@HHS.gov](mailto:Molly.Burgdorf@HHS.gov)
  - ▶ [John.Wodatch@HHS.gov](mailto:John.Wodatch@HHS.gov)
  - ▶ [Kathleen.Wolfe@DOJ.gov](mailto:Kathleen.Wolfe@DOJ.gov)
  
- ▶ ***Thank you!***