



November 12, 2023

U.S. Department of Health and Human Services  
Office for Civil Rights, Attention: Disability  
Hubert H. Humphrey Building, Room 509F  
200 Independence Avenue SW  
Washington, DC 20201

RE: RIN 0945-AA15

To Whom it May Concern:

On behalf of the Association of Assistive Technology Act Programs (ATAP), we are pleased to submit comments and recommendations in support of the U.S. Department of Health and Human Services (Department) proposed regulation to implement the prohibition of discrimination on the basis of disability under section 504 of the Rehabilitation Act of 1973 (section 504) which includes new requirements prohibiting discrimination in the areas of medical treatment; web, mobile, and kiosk accessibility; and requirements for accessible medical equipment, so that persons with disabilities have an opportunity to participate in or benefit from health care programs and activities that is equal to the opportunity afforded others.

ATAP represents State and Territory Assistive Technology (AT) Act Programs formula funded under Section 4 of the Assistive Technology Act. State and Territory AT Act Programs operate in all 50 states, the District of Columbia, Puerto Rico and four territories and are available for persons with all types of disabilities, all ages, in all environments (education, employment, community living, , and information technology). State and Territory AT Act Programs are able to best match the proper assistive technology (AT) with individuals' needs, provide a device demonstration, loan a device, and provide training and support for the use of the device. Assistive technology and/or adaptive equipment can facilitate, support, and improve functionality so every individual with disability can obtain an education, gain, and maintain employment, and live independently in their community.

As Congress noted on February 28, 2023 in a resolution agreed to in the Senate<sup>1</sup>:

- Assistive technology is any item, piece of equipment, or product system that is used to increase, maintain, or improve the functional capabilities of an individual with a disability or an older adult;
- Assistive technology service is any service that directly assists an individual with a disability or an older adult in the selection, acquisition, or use of an assistive technology device.
- In 2022, the Centers for Disease Control and Prevention reported that 1 in 4 individuals in the United States, or almost 61,000,000 individuals, has a disability;
- In the 2020–2021 school year, the Department of Education reported that there were more than 7,200,000 children with disabilities;
- The Centers for Disease Control and Prevention reported that, among adults 65 years of age and older, 2 in 5 have a disability;
- Assistive technology enables individuals with disabilities and older adults to be included in their communities and in inclusive classrooms and workplaces;

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<sup>1</sup> See: S. Res. 85, *Designating March 1, 2023 as "National Assistive Technology Awareness Day"* at: <https://www.congress.gov/bill/118th-congress/senate-resolution/85/text>

- Assistive technology devices and services are necessities, not luxury items, for millions of individuals with disabilities and older adults, without which they would be unable to live in their communities, access education, or obtain, retain, and advance gainful, competitive, and integrated employment;
- The availability of assistive technology in the workplace promotes economic self-sufficiency, enhances work participation, and is critical to the employment of individuals with disabilities and older adults;
- State assistive technology programs support a continuum of services<sup>2</sup> vital and necessary to the disabled population.

As key stakeholders and experts in supporting and creating access to AT for individuals with disabilities and in support of the millions of individuals with disabilities, we remind the Department of the clear need to assure the much-needed regulation will ensure every public website, app and information and communication technology (ICT) is accessible, usable, and interoperable with assistive technology. To support the Department in assuring such accessibility, ATAP offers the following comments and recommendations:

**Recommendation:** Adopt all of the recommendations made by the Consortium for Constituents with Disabilities (CCD).

**Rationale:** ATAP strongly supports each of the recommendations made by CCD and urges the Department to adopt the recommendations consistent with the knowledge, expertise, and lived experiences of the disability community which CCD represents.

### **Section 84.10 Definitions**

**Recommendation:** Amend the definition of “Auxiliary aids and services” as noted in **bold** below:

(1) Qualified interpreters on-site or through video remote interpreting (VRI) services; notetakers; real-time computer-aided transcription services; written materials; exchange of written notes; telephone handset amplifiers; assistive listening devices; assistive listening systems; telephones compatible with hearing aids; closed caption decoders; open and closed captioning, including real-time captioning; voice, text, and video-based telecommunications products and systems, including text telephones (TTYs), videophones, and captioned telephones, or equally effective telecommunications devices; videotext displays; accessible electronic and information technology; or other effective methods of making aurally delivered information available to individuals who are deaf or hard of hearing;

(2) Qualified readers, **digital readers**; taped texts; audio recordings; Braille materials and displays; screen reader software; magnification software; optical readers; secondary auditory programs (SAP); large print materials; accessible electronic and information technology; or other effective methods of making visually delivered materials available to individuals who are blind or have low vision;

(3) Acquisition or modification of equipment or devices; and

(4) Other similar services, actions, **and accessible formats may be considered as technological advancements are made.**

**Rationale:** To maintain consistency with Title II of the ADA, to update section 504 consistent with the National Copyright Act as amended in 2018 by the Marrakesh Treaty Information Act<sup>3</sup> (which changed the term ‘specialized formats’ to accessible formats’), and to ensure individuals with disabilities are provided every opportunity to access the auxiliary aids they need, HHS must acknowledge that digital readers are quite common and should be specified. The addition of the new sentence, ‘Additional accessible formats may be considered as technological advancements are made’ is a helpful way to clarify that the list (and availability of updated technology to qualifying individuals) is flexible and that the list is not static under the law.

<sup>2</sup> See: P.L. 117-263, the 21<sup>st</sup> Century Assistive Technology Act as included in Title LIV of the *National Defense Authorization Act of 2023* (pages 866-895), at: <https://www.congress.gov/117/bills/hr7776/BILLS-117hr7776enr.pdf>

<sup>3</sup> See: 17 USC § 121(d)(1). See also: United States Copyright Office, Understanding the Marrakesh Treaty Implementation Act, (2019) at: [https://www.copyright.gov/legislation/2018\\_marrakesh\\_faqs.pdf](https://www.copyright.gov/legislation/2018_marrakesh_faqs.pdf).

## **Section 84.56 Medical Treatment**

**Recommendation:** Adopt new provisions prohibiting discrimination on the basis of disability including the specific prohibitions outlined in § 84.56 (b)(1)-(3) for any program or activity that receives Federal financial assistance, including in the allocation or withdrawal of any good, benefit, service.

**Rationale:** ATAP agrees with the Department that “A recipient’s failure to provide treatment to an individual with disabilities who meets all qualifications for the medical treatment results in a denial of health care to a person with disabilities and, barring any applicable limitation, constitutes discrimination in violation of section 504.” Under no circumstances must an individual’s need for use of AT, ongoing support needs, and/or other factor be used to deny medical treatment to individuals with disabilities.

## **Section 84.84 Accessibility**

**Recommendation:** Make all public entity websites and mobile apps, and all forms of ICT, accessible to people with disabilities, without exception.

This rule will make a significant impact on the lives of millions of people with disabilities in the United States by covering websites and mobile apps. As such, we strongly urge the Department to apply the rule broadly to mobile apps. Mobile apps are widely used across every setting and impact access to education, employment, community living, recreation and more. Additionally, we also propose that the rule should cover Information and Communications Technologies (ICT) to fully ensure that people with disabilities can use the web, mobile applications, software, or telephones directly with access features “built into” the product or they can use their assistive technology “added onto” those products to provide access as required by Section 508.<sup>4</sup> Millions of Americans have visual, auditory, physical, speech, cognitive, and neurological disabilities that impact their ability to use the web, software, smart phones, and other ICT. Ensuring accessibility is critical for these Americans to learn, work, and live independently.

**Recommendation:** Adopt WCAG 2.2. as the standard for websites and also require adoption of the Access Board Standards for mobile apps as required by section 508.

*Web Accessibility Question 4: Are there technical standards or performance standards other than WCAG 2.1 that the Department should consider?*

*Web Accessibility Question 9: Is WCAG 2.1 Level AA the appropriate accessibility standard for mobile apps? Should the Department instead adopt another accessibility standard or alternatives for mobile apps, such as the requirements from Section 508 discussed above?*

**Rationale:** As noted by the Department, WCAG 2.1, Level AA, is the most recent standard and would be sufficient for websites, however, because WCAG 2.2 is already available and is expected to be adopted as a recommendation before the end of the year, it makes sense to adopt WCAG 2.2 in the final rule. We also encourage the Department to acknowledge that the technical standard may adjust as [expected] updates to WCAG are made and agreed to. It is imperative that this regulation does not become outdated as technical advancements are made and the access needs of individuals with disabilities concurrently change. Concurrently and, as it relates to mobile apps we also urge the adoption of the Access Board’s 508 Standards which include:

...interoperability requirements to ensure that a mobile app does not disrupt a device’s assistive technology for persons with disabilities (e.g., screen readers for persons who are blind or have low vision); requirements a user’s phone such as settings for color, contrast, and font size; and requirements for caption controls and audio description controls that enable users to adjust caption and audio control functions.

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<sup>4</sup> See: 29 U.S.C. 794d(a)(2)(A), (B).

## **Section 84.85 Accessibility**

**Recommendation:** Do not include ANY of the exceptions for website [and mobile app] accessibility as proposed in § 84.85.

**Rationale:** ATAP has signed with the Consortium for Constituents with Disabilities (CCD) in opposition to each of the exceptions. (See: CCD Letter to the Department for full explanation and rationale).

**Recommendation:** The Department must plan to fund and provide technical assistance to public entities to ensure every public website, app and information and communication technology (ICT) is accessible, usable, and interoperable with assistive technology.

**Rationale:** We know that access to and use of public websites through the use of assistive technology and/or adaptive equipment can facilitate, support, and improve functionality so that every individual with disability can obtain an education, gain, and maintain employment, and live independently in their community. In order to accelerate access to essential information through accessible and usable websites, apps and ICT that are also interoperable with AT, the Department must plan now to fund and provide technical assistance to public entities. For example, the Department could jointly fund grants with and through existing federal agency TA centers that would allow partners, such as the AT Act Programs which have the expertise and knowledge to help state and local public entities test websites and apps for accessibility, functionality, and interoperability with AT. This and a myriad of other tools and resources can be provided to public entities to ensure all new and updated platforms and hosted content do not include design flaws or other barriers that limit equal access to the public information individuals with disabilities need in all aspects of their lives.

ATAP appreciates the opportunity to comment. Please let me know if we can provide any additional information. I can be reached at (202) 344-5674 or [audrey.busch@ataporg.org](mailto:audrey.busch@ataporg.org).

Sincerely,



Audrey Busch  
Executive Director  
Association of Assistive Technology Act Programs (ATAP)