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Via U.S. Mail

The Honorable Greg Abbott
Governor of Texas
Office of the Governor
P.O. Box 12428
Austin, Texas 78711-2428

Dr. John Hellerstedt,
Commissioner, Texas Department of State Health Services
P.O. Box 149347
Austin, Texas 78714

RE: Need for effective and accessible communications concerning the COVID 19 Vaccine

Dear Governor Abbott and Commissioner Hellerstedt,

Disability Rights Texas (DRTx) writes to get assurances that communications related to the upcoming governmental effort to allocate and distribute the COVID-19 vaccine are provided in accessible and effective formats for persons with disabilities. This vaccine provides a necessary and much anticipated opportunity to protect the public health, safety, and societal welfare. This collective opportunity, however, is contingent on affording every individual the same information regarding vaccinations. This opportunity is even more critical for persons with disabilities who may have underlying conditions that make them more vulnerable to illness. In the coming weeks, COVID vaccine information will become readily available, and it is imperative that persons with disabilities receive such information in an effective and accessible manner.

DRTx seeks to support and aid in efforts to ensure all information and communications involving the COVID-19 vaccine are accessible and effective for persons with disabilities. This information is necessary for all persons, including those with disabilities, to make an informed decision as to whether they will take the vaccine. To that end, state and local governments, in conjunction with executed agreements with private healthcare providers who would supply the COVID-19 vaccine, must make available accessible information to guarantee effective communication.

The Centers for Disease Control and Prevention (CDC) published a "COVID vaccine playbook," which provides a framework for a COVID communication program by defining objectives, identifying audiences, differentiating phases, available activities, and channels for COVID communications. This playbook addresses crisis and emergency risk communication (CERC) and emphasizes the necessity of effective communications. Effective communication for individuals with disabilities requires accessible communications and are not only necessary to ensure individuals with disabilities are afforded an equal opportunity to benefit from the COVID vaccine, but also critical in meeting the CDC's objectives in responding to this emergency and restoring societal functioning.

While Texas' COVID vaccination plan follows the federal framework provided by CDC, the emphasis on effective communication is lacking. This is concerning to us and our constituents, as both federal and state laws ensure nondiscriminatory practices in all situations where communication involving the COVID-19 vaccine is applicable.

Texas' plan to "implement a statewide integrated communications/outreach/engagement plan" must ensure inclusive practices for communications to individuals with disabilities. DRTx recognizes this will be an evolving process, which includes a multiplicity of modalities and a variety of third parties to educate and inform the public about the COVID-19 vaccine. DRTx's hope is to support you in this endeavor by not only assisting in educating the public, but also providing subject matter expertise on accessibility.

COVID-19 has created an unprecedented situation in that the entire State is responding to a disaster in the form of a public health emergency. The COVID-19 vaccine is a necessary response to mitigate the risk and injury associated with the pandemic. State and local governments and third-party vendors that implement notification methods, procedures, materials, and equipment used to communicate information about emergencies have an affirmative obligation to make such information accessible. Accessible information will afford effective communication and incorporate facts and data about the vaccine itself, as well as notice about all of the mechanisms Texas will use to distribute and allocate the vaccine.

This initiative requires a collective effort to provide clear, concise information and guidance about the vaccine and consequential distribution. Thus, all COVID-19 vaccine information conveyed via websites, TV broadcasts, emergency and wireless alerts, by public health officials and emergency management or by places of public accommodation, which will act as points of distribution for the vaccine, must be accessible and accommodate the needs of individuals with disabilities. For example, websites containing vaccine information must be navigable via voice commands and not only by use of a keyboard or mouse for individuals who do not have access to a keyboard or a mouse due to their disability; or information provided via a website needs to be accessible to individuals who use screen reader technology. For communication to be accessible, it must also be given using plain language that is clear and easily understandable. Denying effective communication to persons with disabilities denies them due process and any potential benefit from emergency services.

In responding to COVID-19, we must ensure that no one is left behind by being deprived of potentially lifesaving information. We trust that you share our concerns and will take the necessary steps to lead and guide all entities involved in educating and informing the public about the COVID-19 vaccine and vaccinations. If you would like to discuss this matter further, please do not hesitate to contact us, as we are more than willing to help with the effort to ensure that persons with disabilities are fully accommodated throughout the vaccination allocation and distribution process.

Sincerely,

Mary Faithfull
Executive Director

cc: Lois Kolkhorst, Chair, Senate Committee on Health and Human Services

Accessibility Resources

- Governor’s Office of People with Disabilities (GOPD), has provided information for broadcasters on the steps that need to be taken in order to make sure information is accessible. See https://www.facebook.com/TexasCommitteeOnDisabilities/posts/2578164438978795?__tn__=K-R.
- In addition, TDEM’s Effective Communications toolkit, identifies ways to accommodate. <https://www.preparingtexas.org/Resources/documents/TDEM%20Training/Tool%20Kit/Public%20Information/Effective%20Communications%20Toolkit%20v2.1.pdf>
- Web Content Accessibility Guidelines (WCAG) <https://www.w3.org/WAI/standards-guidelines/wcag/>
- Adobe acrobat is also a remedy and the most common software program that creates Portable Document Files (PDFS). See <https://www.boia.org/blog/how-to-create-an-accessible-pdf-in-adobe-acrobat>
- CDC clear communication index, <https://www.cdc.gov/ccindex/>
- CDC’s Crisis and Emergency Risk Communications (CERC), <https://emergency.cdc.gov/cerc/>
- ADA-Title II Accessibility: https://www.ada.gov/medicare_mobility_ta/medicare_ta.htm
- ADA-Title II Emergency Management: <https://www.ada.gov/pcatoolkit/chap7emergencygmt.htm>
- Plain language guidelines <https://www.plainlanguage.gov/guidelines/>

OVERVIEW OF THE ADA, SECTION 504 and 508, CVAA, ACA, PLAIN WRITING ACT AND CORRESPONDING STATE LAW

Title II of the ADA stipulates that no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity. During this disaster and public health emergency, communications provided by state and local entities, as well as any third parties about the COVID-19 vaccine, must be effective for all individuals, which includes accessible communications for individuals with disabilities.

Section 504 of the Rehabilitation Act, also obligates entities receiving federal funds to prohibit discrimination based on disability and that solely by reason of her or his disability, cannot be excluded from the participation in, denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. The same analysis under ADA is applicable to 504. The inability of any individual with a disability to access any state and local notification, denies due process and the benefit of equitable emergency services.

Section 508 of the Rehabilitation Act, affords individuals with disabilities who are members of the public seeking information or services from a Federal department or agency, to have access to and use of information and data that is comparable to the access to and use of the information and data by such members of the public who are not individuals with disabilities.

The Twenty-First Century Communications and Video Accessibility Act (“CVAA”) updates federal communications law to increase the access of persons with disabilities to modern communications. The CVAA affords protections to individuals with disabilities in keeping up with the fast-paced technological changes that our society has witnessed and safeguards equitable access to broadband, digital and mobile innovation. Specific provisions of CVAA guarantee people with disabilities have access to emergency information.

Affordable Care Act, Section 1557 prohibits disability discrimination and affords reasonable accommodations to ensure effective communication and comprehensive notice to ensure informed decision-making related to health care activities and medical procedures.

The Plain Writing Act of 2010, is an act to enhance citizen access to Government information and services by establishing that Government documents issued to the public must be written clearly, and for other purposes. More specifically, the Act calls for plain writing that is clear, concise, well-organized, and consistent with other best practices appropriate to the subject or field and intended audience. It encourages writers and communicators to avoid jargon, redundancy, ambiguity, and obscurity.

Texas state law reinforces the ADA mandates under Chapter 121 of the Texas Human Resource Code. “[T]he policy of the state is to encourage and enable persons with disabilities to participate fully in the social and economic life of the state, to achieve maximum personal independence, to become gainfully employed, and to otherwise fully enjoy and use all public facilities available within the state.”