

SETTLEMENT AGREEMENT

UNDER THE AMERICANS WITH DISABILITIES ACT BETWEEN

THE UNITED STATES OF AMERICA

AND CVS PHARMACY, INC.

BACKGROUND

1. The parties to this Settlement Agreement (Agreement) are the United States of America (United States) and CVS Pharmacy, Inc. (CVS) (collectively, the Parties).
2. CVS owns and/or operates www.cvs.com (Website), which is available through the Internet to computers, mobile devices, tablets, and other similar devices. Through its vaccine registration website, currently found at <https://www.cvs.com/immunizations/covid-19-vaccine> (Vaccine Registration Portal), CVS provides the ability to privately and independently obtain information about, and schedule an appointment to receive, a COVID-19 vaccination.
3. The United States initiated a compliance review under Title III of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §§ 12181–12189, and its implementing regulation, 28 C.F.R. pt. 36, to determine whether individuals with disabilities have full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations offered by CVS through its Vaccine Registration Portal.
4. Following this review, the United States determined that portions of CVS's Vaccine Registration Portal were not accessible to some individuals with disabilities, including those who use screen reader software and those who have difficulty using a mouse to navigate websites, in violation of the ADA. For example, individuals with disabilities who use screen reader software to access CVS's Vaccine Registration Portal encounter (1) radio buttons, checkboxes, and form fields that are not labeled correctly; (2) an interface for entry of insurance information that does not provide complete information to screen reader users or allow them to navigate the options presented; and (3) images that provide information to sighted users but are not described for screen reader users. Individuals who, because of disability, navigate websites without using a mouse are unable to navigate the Vaccine Registration Portal because, for example, they would need to press the Tab key hundreds, or potentially thousands, of times to move past one control, would be stuck in the control, and would unexpectedly navigate to other controls that are hidden from view. Because of such barriers, individuals with disabilities are unable to fully and equally access the Vaccine Registration Portal to privately and independently obtain information about the COVID-19 vaccination and/or schedule a COVID-19 vaccination appointment.

5. Title III of the ADA, 42 U.S.C. §§ 12181–12189, and its implementing regulation, 28 C.F.R. pt. 36, prohibit discrimination on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation by any private entity that owns, leases (or leases to), or operates a place of public accommodation. 42 U.S.C. § 12182(a); 28 C.F.R. § 36.201(a).
6. CVS expressly denies that it has violated Title III of the ADA, and by entering into this Agreement, does not admit any wrongdoing. CVS represents that it has cooperated fully in the process of working toward an amicable resolution of this matter. This Agreement is the result of a negotiated compromise, and the terms of this Agreement shall not be deemed to constitute an admission by CVS of any violation or liability under Title III of the ADA or any other law or regulation. CVS expressly denies that WCAG 2.1 AA (as that term is identified in Paragraph 13) is binding or has the force of law or regulation with respect to CVS’s website accessibility obligations, except as otherwise stated in this Agreement, unless and until legislation is passed requiring conformance with, or the United States Department of Justice promulgates final ADA Title III regulations adopting as the applicable technical standard, WCAG 2.1 AA.
7. CVS represents that it has been making significant investments in digital accessibility for many years, including the accessibility of the Website, its Vaccine Registration Portal, and other Vaccine Content (as that term is defined in Paragraph 13). CVS represents that it has approximately 100 employees on its digital Accessibility Team, of which approximately 40 percent have vision, hearing, mobility or cognitive disabilities; that it has developed an automated accessibility templated process used in manual testing, supplemented by automated accessibility testing, with frequent new releases to correct identified issues, and periodic User Experience and End to End testing. CVS represents that it has used the services of two national accessibility consultants to do yearly audits to supplement its internal processes and that it provides training and resources to those involved in developing new digital content or features. CVS further represents that it has engaged in extensive efforts to provide access to COVID-19 vaccines to individuals who are unable to make a vaccine appointment online for any reason, including, but not limited to, walk-in appointments and scheduling by telephone, and has delivered over 49 million COVID-19 vaccine doses to date.

TITLE III COVERAGE

8. CVS is a private entity that owns and/or operates sales and service establishments whose operations affect commerce. 42 U.S.C. §§ 12181(7), 12182(a); 28 C.F.R. §§ 36.104, 36.201(a). CVS is a public accommodation subject to Title III of the ADA. 42 U.S.C. § 12181(7)(E)–(F); 28 C.F.R. § 36.104.

9. The Attorney General is authorized to conduct periodic reviews of covered entities' compliance with Title III of the ADA. 42 U.S.C. § 12188(b)(1)(A)(i); 28 C.F.R. § 36.502(c).
10. The Attorney General is also authorized to bring a civil action on behalf of the United States in federal court if the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of discrimination or any person with a disability or group of persons with disabilities has been discriminated against and such discrimination raises an issue of general public importance. 42 U.S.C. § 12188(b)(1)(B).
11. Given the importance of ensuring that all individuals, including those with disabilities, have a full and equal opportunity to access information about the COVID-19 vaccination and to schedule a COVID-19 vaccination appointment at a CVS location, the Parties agree that it is in their best interests, and the United States believes that it is in the public interest, to voluntarily enter into this Agreement. The Parties agree to the following provisions.

GENERAL NONDISCRIMINATION REQUIREMENTS

12. As required by Title III of the ADA and its implementing regulation, CVS:
 - a. Shall not discriminate on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations provided through its Vaccine Registration Portal. 42 U.S.C. § 12182(a); 28 C.F.R. § 36.201;
 - b. Shall not deny individuals with disabilities the opportunity to participate in and benefit from the goods, services, facilities, privileges, advantages, and accommodations provided through its Vaccine Registration Portal. 42 U.S.C. § 12182(b)(1)(A)(i); 28 C.F.R. § 36.202(a);
 - c. Shall not provide individuals with disabilities an unequal opportunity to participate in or benefit from the goods, services, facilities, privileges, advantages, and accommodations provided through its Vaccine Registration Portal. 42 U.S.C. § 12182(b)(1)(A)(ii); 28 C.F.R. § 36.202(b);
 - d. Shall take the necessary steps to ensure that individuals with disabilities are not excluded, denied services, segregated, or otherwise treated differently because of the absence of auxiliary aids and services (including accessible electronic and information technology), unless CVS can demonstrate that taking those steps would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations being offered or would result in an undue burden. 42 U.S.C. § 12182(b)(2)(A)(iii); 28 C.F.R. § 36.303; and

- e. Shall not utilize standards or criteria or methods of administration that have the effect of discriminating on the basis of disability. 42 U.S.C. § 12182(b)(1)(D); 28 C.F.R. § 36.204.

ACTIONS TO BE TAKEN BY CVS

13. Vaccine Registration Portal Accessibility Conformance.

As long as CVS continues to offer the Vaccine Registration Portal for use by the public (at its current URL or another), CVS shall ensure full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations provided by and through the Vaccine Registration Portal. As of the Effective Date, CVS shall ensure that the Vaccine Registration Portal, all information contained on the Vaccine Registration Portal, any direct links from the Website leading to the Vaccine Registration Portal, and any other information about the COVID-19 vaccine on the Website (collectively, Vaccine Content), conform to the Web Content Accessibility Guidelines 2.1, Level AA (June 5, 2018), published by the World Wide Web Consortium, available at www.w3.org/TR/WCAG/ (WCAG 2.1 AA). As used in this Agreement, WCAG 2.1 AA incorporates the Level A and Level AA Success Criteria. Vaccine Content includes, but is not limited to, all of the information, resources, files, images, graphics, text, audio, video, multimedia, and services included within Vaccine Content. Conformance shall have the same meaning as in WCAG 2.1 AA.

14. Compliance with this Agreement. For purposes of this Agreement, the Parties agree that:

- a. CVS is only required to modify, or seek the modification of, third-party content, products, tools, and/or platforms, where those are required for the user to schedule a vaccination appointment or complete vaccination-related forms on the Vaccine Registration Portal. Nothing in this Agreement requires CVS to make such modifications to third-party content, products, tools, and/or platforms that do not appear on the Vaccine Registration Portal.
- b. Nothing in this Agreement shall require CVS to modify Vaccine Content to exceed conformance with, or provide a greater level of accessibility and usability than would be achieved through conformance with, WCAG 2.1 AA.
- c. Any instances of nonconformance with WCAG 2.1 AA that are identified in advance of, but within fewer than thirty (30) days of, the Effective Date will be remediated in accordance with the timelines set forth in subparts (a) and (b) of Paragraph 19.
- d. A limited number of isolated instances of noncompliance with Paragraph 13 during the Term of the Agreement shall not constitute a material breach of this

Agreement if those failures would not prevent a person with a disability from accessing the substantive information CVS provides about the COVID-19 vaccine, scheduling a vaccination appointment, or completing vaccination-related forms on the Vaccine Registration Portal.

- e. If CVS is unable to comply with Paragraph 13 or Paragraph 19 in a particular, discrete circumstance, it may provide the United States with a written request for a limited exception, which the United States shall not unreasonably deny. The request shall set forth the reason(s) limiting CVS's ability to comply with Paragraph 13 or Paragraph 19 in the specific instance and the steps CVS will take to enhance accessibility.

15. Website Accessibility Notice and Feedback. CVS provides a notice, and shall continue to provide such notice, prominently and directly linked from the Website homepage and from the Vaccine Registration Portal, with a statement of CVS's commitment to facilitate the accessibility and usability of the Website for all individuals with disabilities. The notice includes, and shall continue to include, an email address and a toll-free telephone number (which shall accept calls made using video relay services) where customers with disabilities can provide feedback on how accessibility can be improved and can request assistance if they experience technical difficulties with the Website.
16. Website Accessibility Consultant and Evaluation. CVS shall continue to retain its current independent consultants (Website Accessibility Consultants) who are knowledgeable about accessible website development and WCAG 2.1 AA, throughout the Term of the Agreement. The Website Accessibility Consultants' duties shall (individually or collectively) include: (1) advising CVS on how to conform Vaccine Content to WCAG 2.1 AA and stay compliant; and (2) verifying that Vaccine Content conforms to WCAG 2.1 AA by the Effective Date and for the Term of the Agreement, including by conducting both automated and manual testing. Should CVS wish to replace its Website Accessibility Consultants during the Term of the Agreement, the proposed replacements must be acceptable to the United States, whose approval shall not be unreasonably withheld.
17. Automated Website Accessibility Testing. CVS shall continue to utilize its current automated accessibility testing tools to evaluate conformance of Vaccine Content with WCAG 2.1 AA. CVS shall conduct automated accessibility tests of Vaccine Content prior to scheduled Vaccine Content releases after the Effective Date for the Term of this Agreement to identify any instances where Vaccine Content is not in conformance with WCAG 2.1 AA, and CVS shall resolve any instances of nonconformance consistent with Paragraph 19 below.
18. User Accessibility Testing. By the Effective Date and every thirty (30) days thereafter for the Term of this Agreement, tests for accessibility of Vaccine Content shall include testing conducted by individuals with different disabilities, including individuals who are blind, individuals who have low vision, and individuals with

disabilities who have difficulty using a mouse. Testing required by this Paragraph shall include the usability of the webpages that are essential to the use of Vaccine Content by customers and the public, such as the webpages required to register for a COVID-19 vaccination appointment. CVS shall resolve any instances of nonconformance with WCAG 2.1 AA identified through testing required by this Paragraph in accordance with Paragraph 19 below. CVS shall transmit the results of such tests to the United States pursuant to its reporting obligations in Paragraph 21.

19. Remediation Timeline. CVS shall be in compliance with Paragraphs 17-18 of this Agreement as long as issues of nonconformance with WCAG 2.1 AA identified and/or discovered as a result of the testing required in Paragraphs 17-18 are addressed in accordance with the following definitions and timelines:
 - a. Critical Issues. Instances where Vaccine Content is not in conformance with WCAG 2.1 AA and that prevent a person with a disability from accessing the substantive information CVS provides about the COVID-19 vaccine, scheduling a vaccination appointment, or completing vaccination-related forms on the Vaccine Registration Portal will be resolved within ten (10) days of identification of the nonconformance.
 - b. Other Issues. All other instances where Vaccine Content is not in conformance with WCAG 2.1 AA will be resolved within thirty (30) days of identification of the nonconformance.
20. Website Accessibility Training. Within thirty (30) days after the Effective Date of this Agreement, and at least once annually thereafter for the Term of this Agreement, CVS shall provide training to all persons (CVS's employees, contractors, and consultants) who design, develop, maintain, manage, or otherwise have responsibility for the Vaccine Content (Website Content Personnel). This training shall include instruction on how to conform Vaccine Content with WCAG 2.1 AA and the terms of this Agreement (Website Accessibility Training). For persons who must receive Website Accessibility Training pursuant to this Agreement, but who did not receive training on a designated annual training date required under this Agreement (for instance, because they were on leave or because they began their affiliation with CVS subsequent to the training date), CVS shall provide the Website Accessibility Training to such persons within fifteen (15) days after the individual's hire or return from leave. CVS shall provide to the United States a summary of the types of training provided, as part of its reporting obligations under Paragraph 21.
21. Recordkeeping and Reporting. CVS shall submit a report via email to the United States on its compliance with its obligations under this Agreement by June 1, 2022, and thereafter on September 1, December 1, March 1, and June 1 for the Term of the Agreement. The reports will detail CVS's compliance with this Agreement, including the itemized requirements identified in Paragraphs 13-20. Each report shall include all communications provided by users of the Website provided pursuant to Paragraph 15, an explanation of each action CVS has taken in response to each

comment provided, or if no action is taken in response to a particular comment, CVS shall include an explanation of why no action was taken. This report shall also include the results of all testing conducted pursuant to Paragraphs 16-18, and, if not already indicated on those testing reports, an explanation of each action CVS has taken in response to accessibility issues identified through testing, or if no action is taken, CVS shall include an explanation of why no action was taken. At the request of either party, the Parties will meet following the March report to conduct an annual review of implementation, terms, and conditions of the Agreement.

22. Delivery of Information to the United States. All reports and materials required pursuant to this Agreement to be delivered to the United States shall be delivered to the undersigned counsel via electronic mail at anne.langford@usdoj.gov, joy.welan@usdoj.gov, and amy.romero@usdoj.gov, or other persons subsequently specified by the United States.

OTHER PROVISIONS

23. Effective Date. The effective date of this Agreement is the date of the last signature below.
24. Term. The duration of this Agreement will be thirty (30) months from the Effective Date.
25. Subsequent Legislation/Regulations. If during the Term of this Agreement, legislation is passed modifying Title III of the ADA, or the United States Department of Justice promulgates final ADA Title III regulations regarding digital/online accessibility generally and/or website accessibility specifically, the Parties agree to promptly discuss the impact, if any, of such developments on the terms of the Agreement. If the Parties agree, this discussion may lead to modification of the Agreement. However, in no circumstance shall any difference of opinion regarding the impact of such developments on the terms of the Agreement be subject to the “Notice and Opportunity to Cure” procedure laid out in Paragraph 26.
26. Notice and Opportunity to Cure. For purposes of this Agreement, the Parties agree that:
- a. Notification in Writing. If the United States believes that there has been non-compliance with any term of this Agreement, the United States shall give prompt written notice to CVS and its counsel. CVS shall be given an opportunity to cure of not less than fifteen (15) days after receipt of the notice.
 - b. Meet and Confer. If after the cure period in subparagraph (a) of this Paragraph 26, the United States believes CVS has not remedied the identified issue, the United States will notify counsel for CVS in writing, and the Parties agree to meet and confer in good faith within fifteen (15) business days thereafter.

- c. Application for Further Relief. If the meeting required by subparagraph (b) of this Paragraph 26 does not lead to a resolution satisfactory to the United States, then, with at least five (5) days' written notice to CVS, the United States may seek enforcement of this Agreement with an appropriate Federal District Court.
27. Non-Waiver. Failure by the United States to enforce any provision or deadline of this Agreement shall not be construed as a waiver of its right to enforce any provision or deadline of the Agreement.
28. Titles. Titles and other headings contained in this Agreement are included only for ease of reference and shall have no substantive effect.
29. Timelines. Any timelines for performance fixed by, or pursuant to, this Agreement may be modified by mutual written agreement of the Parties.
30. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same Agreement. Electronic signatures are acceptable.
31. Severability. If any term of this Agreement is determined by any court to be unenforceable, the other terms of this Agreement shall nonetheless remain in full force and effect.
32. Binding Nature of Agreement. This Agreement shall be binding upon CVS (as well as the agents, contractors, and employees of CVS).
33. Authority. The signatories represent that they have the authority to bind the respective parties identified below to the terms of this Agreement, and CVS represents that no other party is a necessary signatory to this Agreement in order to carry out its obligations.
34. Entire Agreement. This Agreement constitutes the entire agreement between the Parties on the matters raised herein and no other statement or promise, written or oral, made by any party or agents of any party, that is not contained in this written Agreement shall be enforceable.
35. Modification of Agreement. Any modification of this Agreement shall be by written agreement of the Parties. At any time, CVS may request consultation on, or modification of, the terms of this Agreement.
36. Consideration. In consideration of the terms of this Agreement as set forth above, the United States agrees to refrain from filing a civil suit under Title III as a result of the investigation leading to this Agreement, except as provided in this Paragraph and in Paragraphs 26, 37 and 38. Nothing contained in this Agreement is intended or shall

be construed as a waiver by the United States of any right to institute proceedings against CVS for violations of any statutes, regulations, or rules administered by the United States or to prevent or limit the right of the United States to obtain relief under the ADA for violations unrelated to this matter.

37. Review and Enforcement. The United States may review or monitor CVS's compliance with this Agreement or the ADA at any time. If the United States believes that the Agreement or any requirement thereof has been breached, the United States may institute a civil action in an appropriate Federal District Court to enforce this Agreement or the ADA.
38. Other Violations. This Agreement is not intended to remedy any potential violations of the ADA or any other law, other than those specifically addressed by this Agreement. Nothing in this Agreement shall preclude the United States from filing a separate action under the ADA for any alleged violation not covered by this Agreement.
39. Continuing Responsibility. This Agreement does not affect CVS's continuing responsibility to comply with all aspects of the ADA.

By their signatures below, the Parties respectfully consent to the execution of all aspects of this Agreement.

FOR THE UNITED STATES OF AMERICA:

ZACHARY A. CUNHA
United States Attorney
District of Rhode Island

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/s/ Amy R. Romero
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FOR CVS PHARMACY, INC.:

/s/ Patrick Walsh

Patrick Walsh

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4/8/22

Date