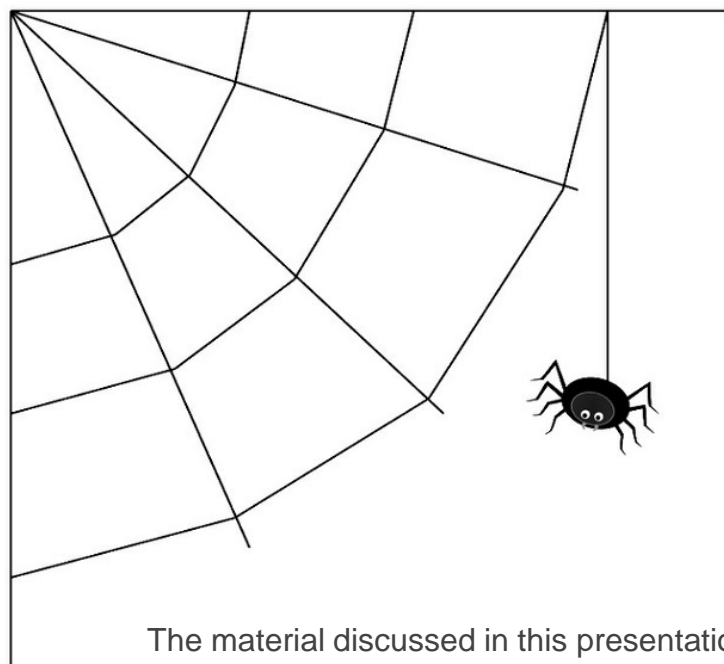


You are appreciated.

You are appreciated.

What a tangled web we weave: the necessity of website accessibility



Morissa S. Fregeau
Associate General Counsel
UnitedHealthcare

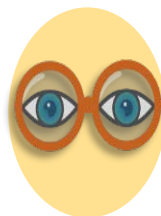
The material discussed in this presentation is intended for general information purposes only and should not be construed as legal advice.



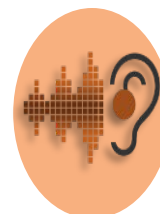
Removing Barriers

**1 in 5 persons in the U.S.
has a disability**

- U.S. Census 2010



Visual



Auditory



Dexterity



Cognitive

Assistive Technologies

Alternative
Keyboard



Screen Reader



Screen Magnifier

Closed
Captioned



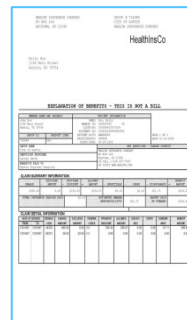
Voice Control

Alternative Pointing
Device

What Needs to be Accessible?



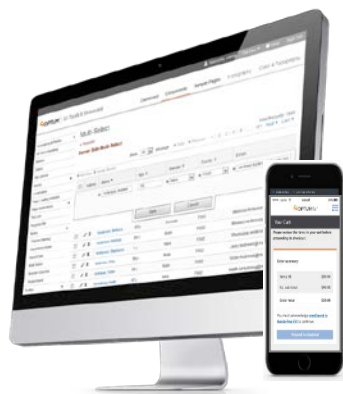
Websites



Documents



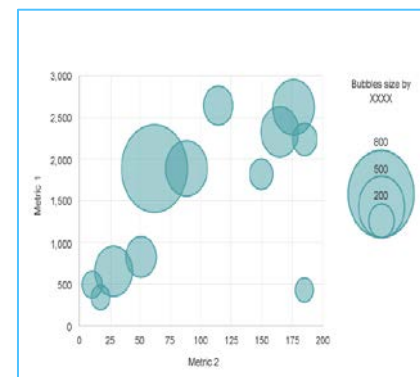
Video



Applications



Audio



Data Visualizations

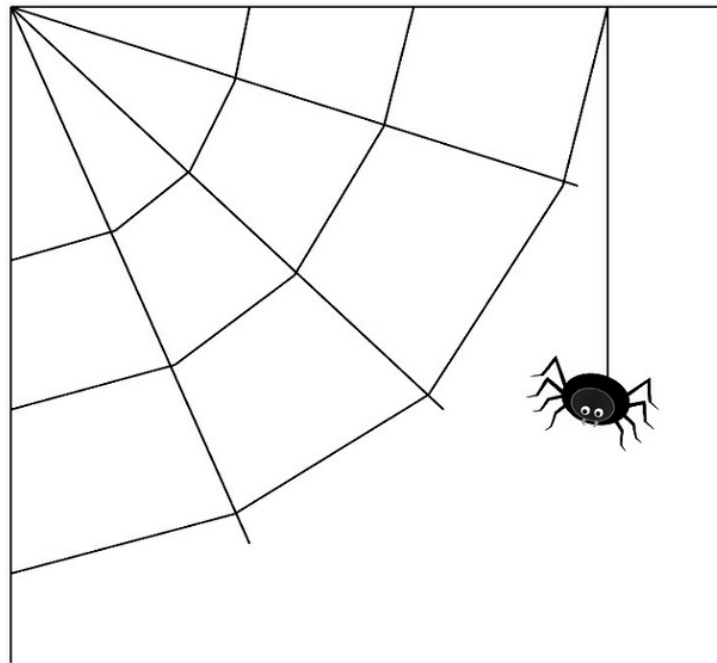
Who is responsible for Accessibility?

- ☐ Content author
- ☐ Graphic designer
- ☐ IT developer
- ☐ Interactive designer
- ☐ Business owner
- ☐ All of the above

Which one is easier to see?

<p>Your ID must be 6 characters long.</p> <p>Your ID (error): * <input type="text" value="12345"/></p> <p>Your Name: <input type="text" value="Julie"/></p> <p><input type="button" value="Continue"/></p>	<p>Your ID must be 6 characters long.</p> <p>Your ID (error): * <input type="text"/></p> <p>Your Name: <input type="text"/></p> <p><input type="button" value="Continue"/></p>
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What law applies?



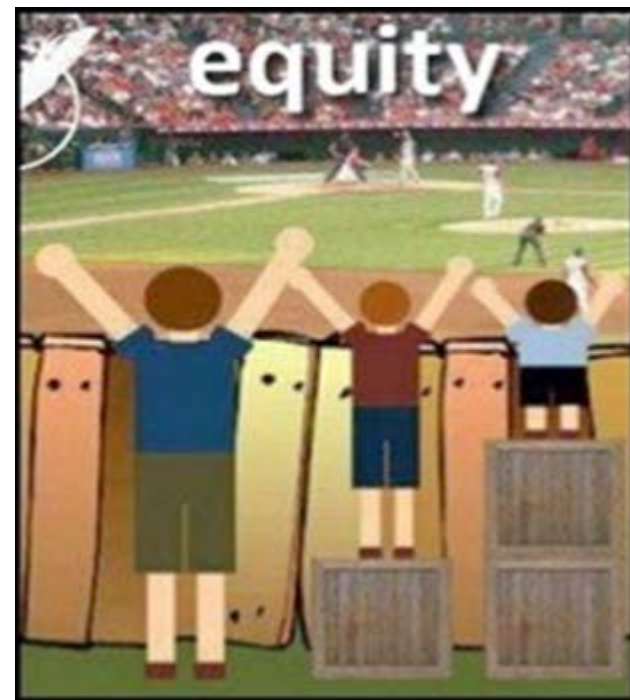
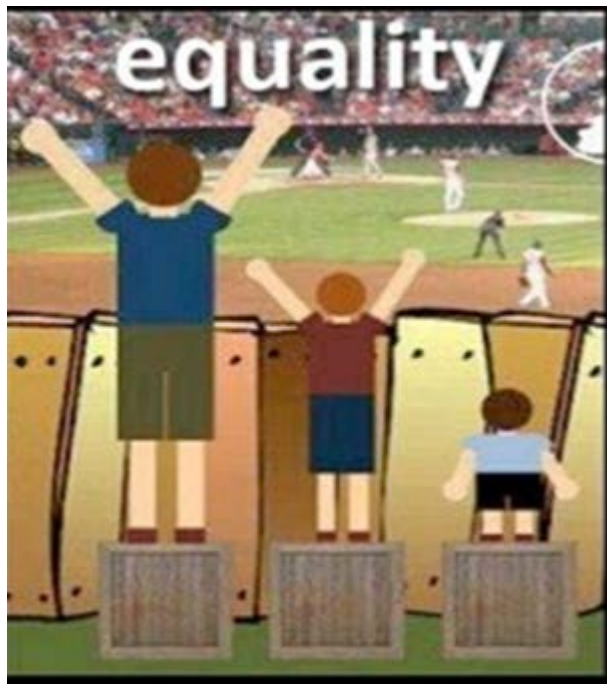
Americans with Disability Act, Title III – Public accommodation

Section 504 of the Rehabilitation Act – Recipients of federal funds

Section 508 of the Rehabilitation Act – Technology for federal agencies

ACA Section 1557 – Entities that receive federal financial assistance from HHS

What do the laws have in common?



§ 36.303 Auxiliary aids and services.

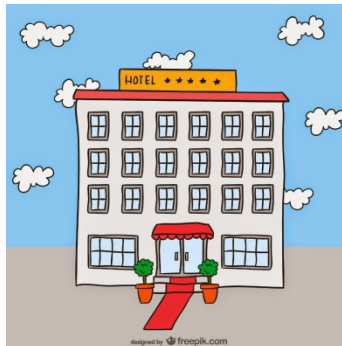
(a) *General.* A public accommodation shall take those steps that may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services,

Place of Public Accommodation

"[A] facility operated by a private entity whose operations affect commerce"

For example: hotels, restaurants, movie theaters, place of public gathering, health care provider office, hospital

28 USC Section 36.104



“A covered entity shall take appropriate steps to ensure that communications with individuals with disabilities are as effective as communications with others in health programs and activities.”

Definition of “disability” is taken from the ADA



What is the standard?

WCAG 2.0

**Web Content Accessibility Guidelines (WCAG)
From the World Wide Web Consortium (W3C)
Update to 2.1 coming this summer**

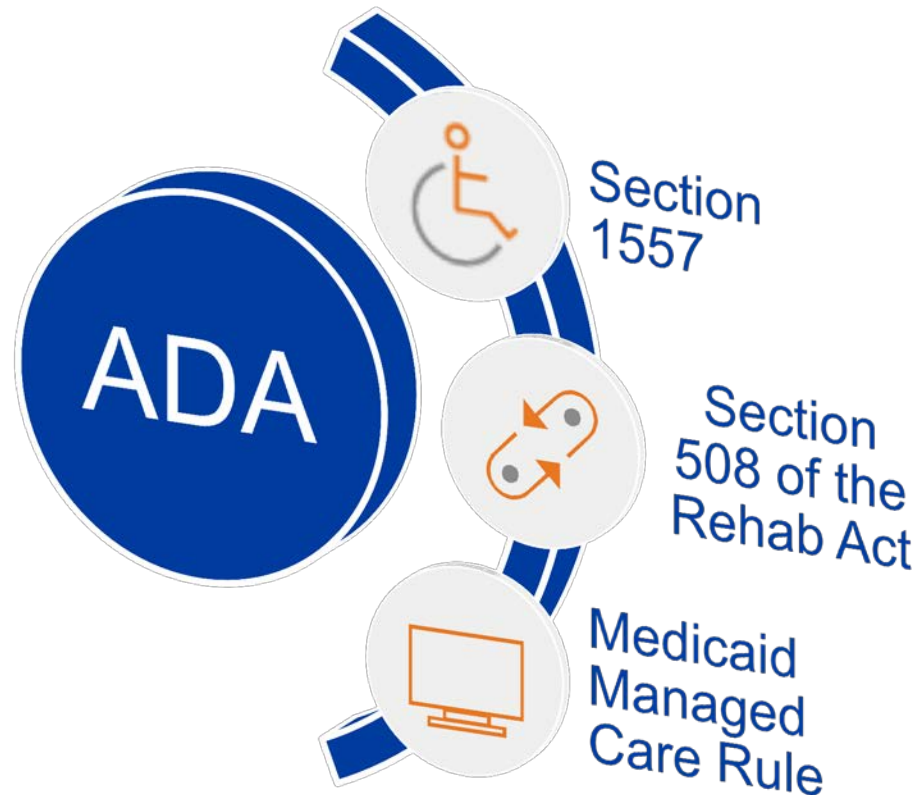
Internationally recognized

**Standard most often identified
WCAG 2.0 level AA**

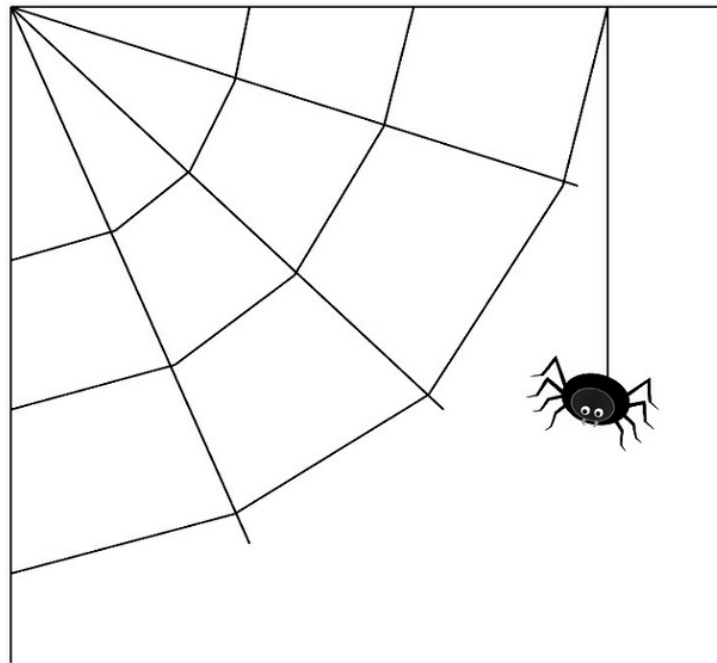
Where does the standard come from?

Public entities that choose to provide services through web-based applications or that communicate with their constituents or provide information through the Internet must ensure that individuals with disabilities have equal access to such services.

28 CFR Part 35
Appendix



What is happening in the courts?



Lessons Learned from Litigation



- Is a website or mobile application a place of public accommodation?
- Is an alternative to a website sufficient?
- Without guidance from DOJ, does a company have to comply?
- What standard applies?

Q: Is a website a place of public accommodation?

A: Maybe

There must be a nexus between physical location and website.

Gil v. Winn–Dixie (USDC S.D. FL 6/12/17)

The Court found that Winn Dixie violated Title III of the ADA by not providing an accessible website. The court determines that a website that is integrated into the physical location of the business needs to be accessible as a place of public accommodation.

2010 – Department of Justice issued Advanced Notice of Proposed Rulemaking.

2010 – 2016 – A dozen settlement agreements or consent decrees issued by DOJ.

2017 – Trump Administration withdraws Notice of Proposed Rule Making



Cases – Prior to DOJ withdrawal

What is the standard? DOJ has not issued guidance.

Robles v. Dominos (USDC C.D. CA 3/20/2017) The court dismisses stating the DOJ has not issued guidance or adopted the guidelines from the Access Board.

Is another method of access acceptable?
Maybe, determine if access is equitable.

Robles v. Dominos (USDC C.D. CA 3/20/2017)
Dominos has statement on website and mobile application, stating if an individual is having trouble accessing site to call. When individual calls, pizza order is taken. Because there is another method of access, the court implies that this may be sufficient.



Post DOJ

Without guidance from the DOJ, does a company have to comply? Yes!

What is the standard? Question of remedy

Robles v. Yum (Pizza Hut) (USDC C.D. CA 1/24/18)

"Given the DOJ's consistent position that the ADA applies to websites, the Court finds that Pizza Hut has had sufficient notice that its website must provide visually impaired individuals with full and equal access. Whether Pizza Hut's digital offerings must comply with the WCAG or any other set of noncompulsory guidelines, is a question of remedy..."

What about mobile applications?



Mobile applications also have to be accessible

Section 508 – definition of ICT

Cases have included mobile application.

Reed v. CVS (USDC C.D. CA 10/3/17)

Pizza cases

WCAG 2.1 – changes for mobile applications

What should my company do?

- Develop policies and procedures
- Choose a standard - WCAG 2.0AA
- Set up alternatives to online services
- Remediate websites
- Add accessibility statement
- Establish protocols for reviewing new pages and new websites
- Conduct an annual audit of websites

