

## OFFICE OF THE GOVERNOR

### Governor's Office of Information Technology

## RULES ESTABLISHING TECHNOLOGY ACCESSIBILITY STANDARDS

### 8 CCR 1501-11

*[Editor's Notes follow the text of the rules at the end of this CCR Document.]*

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#### 11.1 Authority

The Chief Information Officer in the Office of Information Technology is authorized by the provisions of section 24-37.5-106 (4), C.R.S. and section 24-85-103, C.R.S. to establish rules regarding accessibility standards for an individual with a disability for information technology systems employed by state agencies.

The rules are intended to be consistent with the requirements of the State Administrative Procedures Act, section 24-4-101 et seq., C.R.S. (the "APA").

#### 11.2 Scope and Purpose

- A. The purpose of these rules is to define the accessibility technical standards and compliance parameters for individuals with a disability for information technology systems. The reason for the rules is to improve the accessibility and usability of government information technology products and services in Colorado.
- B. The rules recognize that technology and accessibility standards are evolving and, given the diversity of needs of residents of our state, there is no standard that can guarantee universal access. Therefore, while making best efforts to make information technology accessible, these rules also acknowledge that reasonable accommodations or modifications are an important component of compliance.
- C. The rules apply to all information and communication technology (ICT) that is both public-facing and internal-facing, that is procured, developed, maintained, or used by public entities and state agencies.
  - 1. This information and communication technology (ICT) includes but is not limited to websites, applications, kiosks, digital signage, digital documents, video, audio, and third-party tools that are owned or controlled by the public entity.
  - 2. The rules apply to the components of hardware that transmit information to a user or have a user interface.
- D. Compliance with these rules does not necessarily ensure compliance with other laws, rules, and regulations.

#### 11.3 Applicability

Section 24-34-802(1)(c), C.R.S. specifies that the accessibility standards for individuals with a disability as established by these rules apply to public entities as defined in section 24-34-301(18), C.R.S. Public entities must fully comply with these standards established pursuant to section 24-85-103(2.5), C.R.S.

The rules apply to all information and communication technology (ICT) that is in active use on or after July 1, 2024 and any ICT that is newly created, developed, acquired, or purchased on or after July 1, 2024. For ICT not in active use, the rules apply when the ICT is altered or updated, or when an accessible version is requested by an individual with a disability.

These rules do not require a public entity to take any action that would fundamentally alter the nature of its programs, services, or activities, impose an undue burden, or pose a direct threat to the health or safety of others.

#### 11.4 Definitions

**Accessible or accessibility:** has the same meaning as defined in section 24-85-102(1.5), C.R.S., or as superseded by a future statute, which is perceivable, operable, and understandable digital content that reasonably enables an individual with a disability to access the same information, engage in the same interactions, and enjoy the same services offered to other individuals, with the same privacy, independence, and ease of use as exists for individuals without a disability.

**Accessibility standards for individuals with a disability:** as used in section 24-34-802(1)(c), C.R.S. means these rules, 8 CCR 1501-11 Rules Establishing Technology Accessibility Standards.

**Active use:** means regularly used by members of the public to apply for, gain access to, or participate in a public entity's services, programs, or activities. Active use also means currently used by employees to perform their job duties. ICT in active use includes the authorized, official version or versions, not previous versions that may still be available, archives, working products, or drafts.

**Conforming alternate version:** has the same meaning as defined in the Web Content Accessibility Guidelines (WCAG), which is a version that

- A. conforms at the designated level, and
- B. provides all of the same information and functionality in the same human language, and
- C. is as up to date as the non-conforming content, and
- D. for which at least one of the following is true:
  - 1. the conforming version can be reached from the non-conforming page via an accessibility-supported mechanism, or
  - 2. the non-conforming version can only be reached from the conforming version, or
  - 3. the non-conforming version can only be reached from a conforming page that also provides a mechanism to reach the conforming version

**Direct threat:** a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices or procedures, or by the provision of auxiliary aids or services.

**Fundamental alteration:** something that would change the essential nature of the entity's programs or services.

**Hardware:** a tangible device, piece of equipment, or physical component of ICT, such as telephones, computers, multifunction copy machines, and keyboards.

**Information and Communication Technology (ICT):** Information technology and other equipment, systems, technologies, or processes, for which the principal function is the creation, manipulation, storage, display, receipt, or transmission of electronic data and information, as well as any associated content. Examples of ICT include, but are not limited to: computers and peripheral equipment; information kiosks and transaction machines; telecommunications equipment; customer premises equipment; multifunction office machines; software; applications; web sites; videos; and, electronic documents. The term does not include any equipment that contains embedded information technology that is used as an integral part of the product, but the principal function of which is not the acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information. However, if the embedded information technology has an externally available web or computer interface, that interface is considered ICT. For example, Heating, Ventilation, and Air Conditioning (HVAC) equipment such as thermostats or temperature control devices, and medical equipment where information technology is integral to its operation are not considered information technology.

**Public entity:** has the same meaning as defined in section 24-34-301(18), C.R.S., or as superseded by a future statute, which is (a) Any state or local government; or (b) Any department, agency, special district, or other instrumentality of a state or local government.

**Reasonable accommodation:** as it pertains to ICT, reasonable accommodation is a modification or adjustment to a program, service, activity, job, or the work environment that will enable an individual with a disability to participate in the program, service, activity, application process, or perform essential job functions.

**Reasonable modification:** as it pertains to ICT, reasonable modification is a modification in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability.

**Single digital product:** as used in section 24-34-802(2)(b), C.R.S. means ICT that share a common purpose, intended to support a single program or service, created by the same author, group, or organization, including:

- A. Electronic communications
- B. Digital documents like PDFs and graphics
- C. Mobile applications
- D. Desktop applications
- E. Websites
- F. Digital kiosks
- G. Input devices
- H. Digital video files
- I. Audio recordings

**Technical standards:** as used in these rules, technical standards refers to the standards for conformance in section 11.5 Technical Standards for Technology Accessibility.

**Undue burden:** an action that requires significant financial, technical, or administrative difficulty or expense.

**Web Content Accessibility Guidelines (WCAG):** a single shared standard for web content accessibility that meets the needs of individuals, organizations, and governments internationally, as published by the World Wide Web Consortium (W3C). (<https://www.w3.org/WAI/standards-guidelines/wcag>)

### 11.5 Technical Standards for Technology Accessibility

The technical standards for technology accessibility for ICT include the following to the extent that they would not require a public entity to take any action that would fundamentally alter the nature of its programs or services, impose an undue burden, or pose a direct threat to the health or safety of others:

- A. W3C WCAG 2.1 conformance levels A and AA, as published on Sep. 21, 2023, not including any later amendments or versions, hereby incorporated by reference and available from the Office of Information Technology during regular business hours or at <https://www.w3.org/TR/WCAG21/>
- B. Hardware that contains a user interface may also need to meet, as applicable, the technical standards contained in US Section 508 of the Rehabilitation Act of 1973 Chapter 4: Hardware, as issued on Jan. 22, 2018, not including any later amendments or versions, hereby incorporated by reference and available from the Office of Information Technology during regular business hours or at <https://www.access-board.gov/ict/#chapter-4-hardware>

### 11.6 Technology Accessibility Statement

- A. Each public entity shall develop and publicly post in a conspicuous place a technology accessibility statement.
- B. The technology accessibility statement shall include, at a minimum:
  - 1. A commitment to a timely response to reports of inaccessible ICT or requests for a reasonable accommodation or modification.
  - 2. A prominent notice informing individuals with disabilities on how to request reasonable accommodations or modifications or to report inaccessible ICT. The notice shall provide more than one contact method, which could include an accessible form to submit feedback, an email address, or a toll-free phone number (with TTY), to contact personnel knowledgeable about the accessibility of the ICT.

### 11.7 Compliance

A public entity is in compliance with these rules for ICT that does not fully conform with the technical standards in the following cases:

- A. An individual with a disability is not substantially hindered, with reasonable accommodations or modifications if needed, from accessing or engaging effectively in the same or substantially equivalent services, programs, and activities that the public entity offers through its ICT to those without disabilities, with substantially equivalent ease of use.
- B. The public entity meets the requirements of the technology accessibility statement described in section 11.6, while also providing reasonable accommodations or modifications for ICT that does not fully conform with the technical standards, and the public entity can provide evidence of making good faith progress on its plan to remove accessibility barriers across its inventory of ICT. A plan could include but is not limited to the following:
  - 1. Annual status updates demonstrating progress on advancing technology accessibility.

2. Prioritization of ICT considering how the ICT will impact the public entity and its users, including aspects such as legal requirements, user impact, usage metrics, and importance to the program, service, or activity.
  3. The steps the public entity is taking to remove accessibility barriers in their ICT.
  4. Timelines when inaccessible ICT will be addressed and the plan for providing reasonable accommodation and modification in the interim.
  5. Policies for regularly testing and remediating ICT.
- C. The public entity procures and provides reasonable accommodations or modifications if needed for the ICT that best meets the technical standards and also the public entity's business needs, which could include but are not limited to considerations such as audience needs, capacity, reliability, interoperability, organizational needs, privacy, and security.
- D. The public entity has created and provides a conforming alternate version according to the requirements of section 11.8.
- E. Making the ICT fully conform with the technical standards would constitute an undue burden, fundamental alteration, or pose a direct threat, or is otherwise exempted under section 11.10.

### **11.8 Conforming Alternate Versions**

A public entity may use conforming alternate versions of ICT to comply with these rules only where it is not possible or practical to make the ICT directly accessible due to undue burden, safety, or legal limitations.

Examples of conforming alternate versions could include, for instance, a website that provides identical information to a geographic information system in a non-graphical format, or a web application that uses accessible controls as an alternative to one with inaccessible controls.

### **11.9 Equivalent Facilitation**

Nothing in these rules prevents the use of designs, methods, or techniques as alternatives to those prescribed, provided that the alternative designs, methods, or techniques result in substantially equivalent or greater accessibility and usability of the ICT.

As an example, for instance, WCAG success criterion 3.3.4 requires that user submissions are automatically checked to prevent common errors in legal or financial transactions made through websites. If a public entity failed to do this (thus violating WCAG) but requires all users to separately verify important transactions in person and outside of its website prior to processing the transaction, it would meet this requirement through equivalent facilitation.

### **11.10 Undue Burden, Fundamental Alteration, or Direct Threat**

- A. Where a public entity can demonstrate that an action, full conformance with the technical standards, or a reasonable accommodation or modification would result in a fundamental alteration in the nature of a service, program, or activity, undue burden, or a direct threat to the health or safety of others, conformance is required to the extent that it does not result in a fundamental alteration, undue burden, or direct threat.

- B. In determining whether an action, conformance to the technical standards, or a reasonable accommodation or modification would impose an undue burden, the public entity shall consider all resources available to the program or component for which the ICT is being procured, developed, maintained, or used. Undue burden may be demonstrated when, depending on the type of financial, technical, or administrative barrier, at least one of the following applies:
  - 1. The resources of the program, service, or activity are not readily available, or the use of such resources would fundamentally alter the nature of the program, service, or activity;
  - 2. Contractual, legal, regulatory, or technical constraints prevent the modification of the program, service, or activity; or
  - 3. When the necessary auxiliary aids or services are not feasibly available.
- C. In determining whether an action, conformance to the technical standards, or a reasonable accommodation or modification would pose a direct threat to the health or safety of others, a public entity must make an individualized assessment, based on reasonable judgment that relies on the best available objective evidence, to ascertain:
  - 1. the nature, duration, and severity of the risk;
  - 2. the probability that the potential injury will actually occur; and
  - 3. whether reasonable modifications of policies, practices, or procedures or the provision of auxiliary aids or services will mitigate the risk.
- D. If an action would result in a fundamental alteration, undue burden, or a direct threat, a public entity shall take any other reasonable action, including providing reasonable accommodations or modifications that would not result in such an alteration, such burden, or such a direct threat but would nevertheless ensure that individuals with disabilities receive the benefits or services provided by the public entity.

**11.11 Reasonable Accommodations or Modifications**

- A. In general and in accordance with the Americans with Disabilities Act (ADA) Titles I and II (42 U.S.C. 12101 et seq.), if an individual with a disability, on the basis of disability, cannot access or does not have equal access to a program, service, or activity through a public entity's ICT, the public entity shall make reasonable accommodations or modifications for alternative access when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making such modifications would fundamentally alter the nature of the service, program, or activity, present an undue burden, or pose a direct threat to the health or safety of others.
- B. Each public entity shall post a prominent notice describing the methods to request reasonable accommodations or modifications for ICT.
- C. A public entity may not provide services or benefits to individuals with disabilities through programs that are separate or different, unless the separate programs are necessary to ensure that services are equally effective.
- D. A public entity cannot require an individual with a disability to pay to cover the cost of measures, such as providing auxiliary aids or barrier removal, that are required to provide that individual with nondiscriminatory treatment.

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**Editor's Notes**

**History**

New rule eff. 04/14/2024.