

SETTLEMENT AGREEMENT
UNDER THE AMERICANS WITH DISABILITIES ACT BETWEEN
THE UNITED STATES OF AMERICA

AND

HY-VEE, INC.

BACKGROUND

1. The parties to this Settlement Agreement (Agreement) are the United States of America (United States) and Hy-Vee, Inc. (Hy-Vee) (collectively, the Parties).
2. Hy-Vee owns and/or operates www.hy-vee.com, which is available through the Internet to computers, mobile devices, tablets, and other similar devices. Through its vaccine registration website, currently found at www.hy-vee.com/my-pharmacy/covid-vaccine (Vaccine Registration Portal), Hy-Vee 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 Hy-Vee through its Vaccine Registration Portal.
4. Following this review, the United States determined that Hy-Vee's Vaccine Registration Portal was not accessible to some individuals with disabilities, including those who use screen reader software and those who have difficulty using a mouse to navigate the website, in violation of the ADA. For example, individuals with disabilities who use screen reader software to access Hy-Vee's Vaccine Registration Portal encountered (1) images, buttons, and form fields that were unlabeled or had inaccurate alternative text or labels and (2) pop-up windows, error messages, and drop-down menus that were not reported to screen readers. Individuals who, because of disability, navigate the website without using a mouse were unable to navigate the Vaccine Registration Portal because, for example, certain buttons (including available vaccination times) could not be selected using a keyboard. Because of such issues, individuals with disabilities were 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. Hy-Vee denies that it has violated Title III of the ADA in connection with any aspect of its business, including access to vaccines for individuals with disabilities and the Vaccine Registration Portal. This Agreement is a negotiated compromise resolution and none of the terms of this Agreement shall be deemed to constitute an admission by Hy-Vee of any violation or liability under Title III of the ADA or any other law or regulation. Hy-Vee states 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 (e.g., walk-in appointments, scheduling by telephone, mobile vaccination clinics), and has delivered over 2 million vaccine doses to date. Hy-Vee further states that it has made a number of accessibility enhancements to the Vaccine Registration Portal since the DOJ commenced its review and continues to do so. Hy-Vee will

continue to cooperate with the United States in modifying the Vaccine Registration Portal so that it is fully accessible to individuals with disabilities.

6. 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).

TITLE III COVERAGE

7. Hy-Vee 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). Hy-Vee 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.
8. 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).
9. 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).
10. 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 Hy-Vee 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

11. As required by Title III of the ADA and its implementing regulation, Hy-Vee:
 - 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 Hy-Vee 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 HY-VEE

12. **Vaccine Registration Portal Accessibility Conformance.** Hy-Vee shall ensure full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations provided by and through the Vaccine Registration Portal for the Term of the Agreement as outlined in this Paragraph.
- a. Within ten (10) days of the Effective Date, and for the Term of the Agreement, Hy-Vee shall resolve any issues on its website that would prevent a person with a disability from privately and independently accessing the substantive information Hy-Vee provides about the COVID-19 vaccine on Hy-Vee's website; from scheduling a vaccination appointment on the Vaccine Registration Portal; or from completing vaccination-related forms on the Vaccine Registration Portal.
 - b. Within ninety (90) days of the Effective Date (the Conformance Date), the Vaccine Registration Portal, (1) any navigation path on www.hy-vee.com leading to the Vaccine Registration Portal, (2) any information contained on or linked to from the Vaccine Registration Portal, and (3) any other aspect of www.hy-vee.com referencing, referring to, or otherwise incorporating information about the COVID-19 vaccine (Vaccine Content) conforms to Web Content Accessibility Guidelines 2.1, Level AA, published by the World Wide Web Consortium, (WCAG 2.1 AA). As used in this Agreement, WCAG 2.1 AA incorporates the Level A and Level AA Success Criteria. Conformance shall have the same meaning as in WCAG 2.1.
 - c. Nothing in this Paragraph 12 requires Hy-Vee to modify, or seek the modification of, third-party content, except where the third-party content is required for the user to schedule a vaccination appointment or complete vaccination-related forms on the Vaccine Registration Portal.
13. If Hy-Vee is unable to comply with Paragraph 12 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 Hy-Vee's ability to comply with Paragraph 12 in the specific instance and the steps Hy-Vee will take to enhance accessibility. A limited number of isolated instances of noncompliance with Paragraph 12 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 Hy-Vee provides about the COVID-19 vaccine, scheduling a vaccination appointment, or completing vaccination-related forms on the Vaccine Registration Portal.

14. Website Accessibility Notice and Feedback. Within ten (10) business days after the Effective Date of this Agreement, Hy-Vee shall provide a notice, entitled “Accessibility,” prominently and directly linked from the footer of the www.hy-vee.com homepage and Vaccine Registration Portal, with a statement of Hy-Vee’s policy to ensure that persons with disabilities have full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of Hy-Vee through the Vaccine Registration Portal. The notice shall 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 website accessibility can be improved on the Vaccine Registration Portal and can request assistance if they experience technical difficulties with the website.
15. Telephone Access. During the Term of this Agreement, Hy-Vee shall continue providing a notice on the home page of the Vaccine Registration Portal stating: “If you need assistance scheduling your vaccination, call 888-330-3307” or similar language. The phone line will continue to be staffed 24 hours a day with representatives trained to make vaccine appointments for callers.
16. Automated Website Accessibility Testing. By the Effective Date, Hy-Vee shall obtain an automated accessibility testing tool acceptable to the United States and shall evaluate conformance of Vaccine Content with WCAG 2.1 AA. Hy-Vee shall conduct automated accessibility tests of Vaccine Content throughout the Term of the Agreement, as an integrated and routine part of its content development, assessment, and quality control processes. Hy-Vee shall transmit the results of a test conducted in the first week of each month during the Term of this Agreement to the United States pursuant to its reporting obligations in Paragraph 20. Hy-Vee shall resolve any confirmed barriers identified by testing done pursuant to this Paragraph as soon as practicable but no later than fifteen (15) days following identification of the barrier.
17. Website Accessibility Consultant and Evaluation. Within five days after the Effective Date of this Agreement, Hy-Vee shall retain an independent consultant (Website Accessibility Consultant), approved by the United States, who is knowledgeable about accessible website development and WCAG 2.1 AA. The Website Accessibility Consultant’s duties shall include: (1) advising Hy-Vee 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 Conformance Date and for the Term of the Agreement, including by conducting both automated and manual testing.
18. User Accessibility Testing. By the Conformance Date and every 30 days for the Term of this Agreement after the Conformance Date, the accessibility of Vaccine Content shall be tested by at least one person with a disability who uses a screen reader for reasons related to their disability and at least one person with a disability who cannot use a mouse, though the same person may fulfill both requirements. Testing required by this Paragraph shall include accessing the substantive information Hy-Vee provides about the COVID-19 vaccine on Hy-Vee’s website; scheduling a vaccination appointment on the Vaccine Registration Portal; and completing vaccination-related forms on the Vaccine Registration Portal. Hy-Vee shall resolve any instances of nonconformance with WCAG 2.1 AA identified through testing required by this Paragraph within ten (10) business days after the testing is conducted.
19. Website Accessibility Training. Within forty (40) days after the Effective Date of this Agreement, and at least once annually thereafter for the Term of this Agreement, Hy-Vee shall provide training to all persons (Hy-Vee’s employees, contractors, and consultants) who design, develop, maintain, manage, or otherwise have responsibility for the content and format of 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). The requirements of this Paragraph may be fulfilled through hands-on training. Hy-Vee shall provide the Website Accessibility Training to any Website Content Personnel who are hired or who return from leave after the initial training within thirty (30) days after the individual's hire or return from leave.

20. Recordkeeping and Reporting. Hy-Vee shall submit a report via email to the United States on its compliance with its obligations under this Agreement three (3) months after the Effective Date, and every three (3) months thereafter for the Term of the Agreement. The report will include all communications provided by users of the Vaccine Registration Portal pursuant to Paragraph 14, an explanation of each action Hy-Vee has taken in response to each comment provided, or if no action is taken in response to a particular comment, Hy-Vee 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 required to be reported, along with an explanation of each action Hy-Vee has taken in response to nonconformance identified through testing, or if no action is taken, Hy-Vee shall include an explanation of why no action was taken.
21. Delivery of Information to the Department. All reports and materials required pursuant to this Agreement to be delivered to the Department shall be delivered to the undersigned counsel via electronic mail at anne.langford@usdoj.gov and joy.welan@usdoj.gov, or other persons subsequently specified by the Department.

OTHER PROVISIONS

22. Effective Date. The effective date of this Agreement is the date of the last signature below.
23. Term. The duration of this Agreement will be thirty months from the Effective Date.
24. Dispute Resolution. Any disputes under this Agreement shall be resolved according to the following procedure:
 - a. Notification in Writing. Counsel for a Party shall promptly notify counsel for the other Party in writing of any perceived non-compliance with the terms of this Agreement, or any other perceived dispute(s) related to the terms, processes, or obligations set forth in this Agreement.
 - b. Meet and Confer. Unless otherwise agreed to by the Parties in writing, with respect to any particular perceived non-compliance or dispute(s), the Parties agree to meet and confer in good faith within fifteen (15) business days after receipt of a written notification of any perceived non-compliance or dispute(s) pursuant to part (a) of this Paragraph 24.
 - c. Application for Further Relief. If the meeting required by part (b) of this Paragraph 24 does not lead to a resolution of the dispute, then, no sooner than fifteen (15) business days after providing the other Parties with written notice of an intent to terminate the meet and confer process, any party may seek to enforce the terms of this Agreement with an appropriate Federal District Court.
25. 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.

26. Titles. Titles and other headings contained in this Agreement are included only for ease of reference and shall have no substantive effect.
27. Timelines. Any timelines for performance fixed by, or pursuant to, this Agreement may be extended by mutual written agreement of the Parties.
28. 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.
29. 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.
30. Binding Nature of Agreement. This Agreement shall be binding upon Hy-Vee. Hy-Vee acknowledges that regardless of whether it relies on agents, employees, or contractors for the creation, maintenance, or alteration of Vaccine Content, Hy-Vee nevertheless remains responsible for compliance with this Agreement.
31. Authority. The signatories represent that they have the authority to bind the respective parties identified below to the terms of this Agreement.
32. 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.
33. Modification of Agreement. Any modification of this Agreement shall be by written agreement of the Parties.
34. 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 Paragraph 24. 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 Hy-Vee 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.
35. Review and Enforcement. The United States may review or monitor Hy-Vee'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.
36. 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.
37. Continuing Responsibility. This Agreement does not affect Hy-Vee'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:

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Southern District of Iowa

REBECCA B. BOND
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/s/
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December 1, 2021
Date

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December 1, 2021
Date

FOR HY-VEE, INC.

/s/

Mic Jurgens

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Hy-Vee, Inc.

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November 30, 2021

Date