

November 29, 2022

The Honorable Gavin Newsom
California State Capitol
1303 10th Street, Suite 1173
Sacramento, California 95814

Mark Ghaly, M.D.
Secretary, Health and Human Services Agency
California Health and Human Services
1600 Ninth Street, Room 460
Sacramento, CA 95814

Dear Governor Newsom and Secretary Ghaly:

We are organizations and networks representing people with disabilities who may need information about abortion or abortion services through California's abortion portal, <https://abortion.ca.gov/>. We include blind people, deaf people,¹ people with intellectual, developmental, and learning disabilities, people with mobility disabilities, and people who are higher weight.

We commend your leadership and great effort in defending and expanding abortion rights, abortion care, and abortion information in California. We applaud your achievement in launching California's abortion portal.

At the same time, we demand more to make the portal accessible and relevant to disabled Californians.

Abortion Rights and the Disability Community

People with disabilities are sexual beings and have the same right to and need for abortion as others. Disabled people have the right to self-determination and bodily autonomy. We have the right to make our own decisions. We already face barriers to sex education, contraception, perinatal care, and abortion, even before the outrageous ruling in *Dobbs* and its aftereffects. Medical offices, facilities, equipment,² and websites are not accessible. Telehealth is not accessible. Healthcare providers do not

¹ By "deaf people" we mean people who are deaf, Deaf, hard of hearing, DeafBlind, and DeafDisabled.

² Nancy R. Mudrick, M.S.W., Ph.D., *et al.*, Presence of Accessible Equipment and Interior Elements in Primary Care Offices (2019), <https://dredf.org/wp-content/uploads/2019/10/Presence-of-Accessible-Equipment-and-Interior-Elements-in-Primary-Care-Offices.pdf>.

understand their obligations under the ADA.³ They are likely to be biased against us as people with disabilities.⁴ We are more likely to live in poverty and we are more likely to rely on the government for health care. Many of us are multiply marginalized. The government already tries to control our lives and our bodies.

We are more likely to be sexually assaulted. This is especially true for people with intellectual and developmental disabilities. People with intellectual disabilities are seven times more likely to be sexually assaulted than people without disabilities.⁵ And people with intellectual and developmental disabilities often have legal and practical barriers to reproductive health care, such as guardianships and conservatorships, and residential or family situations that do not support or permit self-determination.

Some of us have complex medical conditions and pregnancy is dangerous. People with many different disabilities have a higher risk of maternal mortality and pregnancy complications such as gestational diabetes, preeclampsia, hypertension, hemorrhage, and premature delivery.⁶ People with certain disabilities have an increased risk of cesarean delivery as well as increased risks of complications from surgery and anesthesia. For example, people with dwarfism face a range of serious complications during pregnancy, usually need cesarean delivery, and are at much higher risk of adverse consequences from anesthesia.

Disabled people need access to abortion. And disabled people have unique needs in accessing abortion care.

California's abortion portal responds to critical health care needs for untold thousands of people. The organizational structure of the site is simple and intuitive and uses relatively

³ Lisa I. Iezzoni, et al., "US Physicians' Knowledge About The Americans With Disabilities Act And Accommodation Of Patients With Disability," 41:1 Health Affairs 96 (2022), <https://www.healthaffairs.org/doi/abs/10.1377/hlthaff.2021.01136> (abstract).

⁴ H Lisa I. Iezzoni, "Physicians' Perceptions Of People With Disability And Their Health Care," 40:2 Health Affairs (Feb. 2021), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8722582/>; Gina Kolata, "These Doctors Admit They Don't Want Patients With Disabilities," New York Times (Oct. 19, 2022), <https://www.nytimes.com/2022/10/19/health/doctors-patients-disabilities.html>.

⁵ Joseph Shapiro, "The Sexual Assault Epidemic No One Talks About," NPR (Jan. 8, 2018), <https://www.npr.org/2018/01/08/570224090/the-sexual-assault-epidemic-no-one-talks-about>.

⁶ Jessica L. Gleason, PhD, MPH, et al., "Risk of Adverse Maternal Outcomes in Pregnant Women With Disabilities," JAMA Network Open (Dec. 15, 2021), <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2787181>.

simple English text to communicate complex and vital information. We applaud this effort and achievement.

But, in several critical areas, the California abortion portal falls short for people with disabilities. This letter reviews these areas and calls on you to make the portal fully accessible and meaningful to disabled people. California's abortion portal is the gateway to the exercise of fundamental constitutional rights, and we seek and demand the highest level of accessibility.⁷

Blind People

We appreciate that the state of California endeavors to follow at a minimum WCAG 2.0 AA as the access standard for its webpages. See Accessibility, <https://www.ca.gov/accessibility/>. However, as launched, the abortion portal was not fully accessible to blind users and others who use screen readers. We did not complete a full audit of state's portal, as this is not our role. As of late September, the fillable field used on the Find a Provider page, <https://abortion.ca.gov/find-a-provider/>, was not properly labeled. (The label was recently added.) Further, the map results given are not accessible as the map markers do not describe what they are indicating. There are other less critical errors that we found in our high-level review. For example, the links and the alt text (for the arrow) on the main page include the same text, meaning that screen reader users hear the same text twice.⁸

From our perspective, it appears that the state committed to following WCAG 2.0 AA in designing the abortion portal, which we applaud. But it also seems that the state failed to have any blind users test the site. User testing is critical for such an important website that sets out information about a fundamental right.

Further, the state portal links to websites for about 19 organizations and 5 government agencies. We did not attempt an audit or complete review of these websites as this is not our role. However, a high-level review of a few sites showed many barriers for blind people. This letter gives a very few examples of the many barriers that exist. For example, the fillable form at <https://www.abortionfinder.org/> lacks proper labels. The date field is labeled "select date" (not date of last period). As well, that field is an edit field and not a select field, so the word "select" is confusing. Similarly, the search button reads "button button" and not "Find a Provider." There are clickable "read more" boxes

⁷ The shortfalls described occurred despite a July 21, 2022, meeting between representatives of Disability Rights Education and Defense Fund (DREDF) and members of the Governor's staff, during which DREDF advocates reviewed the areas of disability access that must be attended to in rolling out the abortion portal.

⁸ All descriptions of websites come from reviews between September 26 and October 21, 2022. Websites change frequently.

that do not state the topic to which the user will be directed. There is no “skip to main content” option.

For example, the Access RJ Support Request Form at <https://accessrj.org/access-rj-online-request-form/> asks for “date” but does not specify whether it’s date of last period, today’s date, or date of birth (it’s date of birth). It has a yes / no selection that does not state the question for screen reader. Under Recent News, the National Abortion Federation page, <https://prochoice.org/>, has “read more” links without labels that describe the topics (the links are redundant). The website for FPA Women’s Health, <https://www.fpawomenshealth.com/>, uses many images but has no alt text. This Planned Parenthood page, <https://www.plannedparenthood.org/get-care>, has two missing form labels, among other barriers. This page, <https://www.plannedparenthood.org/blog/what-are-crisis-pregnancy-centers>, lacks alt text and has very low contrast for link text. The Plan C page, <https://www.plancpills.org/>, uses an ineffective overlay for access. The headings are out of order.

For example, the Teen Legal Guide To Sex, Pregnancy, and Parenting at <https://www.teenhealthrights.org/> is not accessible to users of screen readers and has many accessibility failures. It is missing alt text and form labels. It has empty links, redundant links, and empty buttons. There is no way for a blind user to know where any link or heading will go. The contrast is wrong. Heading levels are improperly structured (skipped heading levels). There is no “skip to main content” option.

For example, the I Need An Abortion page, <https://www.ineedana.com/>, states “this information will be stored or shared, ever” when it means to say, “None of this information will be stored or shared, ever.” The keyboard navigation for “age” is confusing as it includes impossible ages such as negative numbers or age 1. There is a missing form label. The advanced search page, <https://www.ineedana.com/advanced-search>, contains more barriers. The check boxes are unlabeled, and the location field is unlabeled.

We understand that some of these organizations are receiving state funds, meaning that their websites are subject not only to generally applicable disability rights laws, but also the requirements of California Government Code sections 7405 and 11135.

Putting aside the website barriers for blind people who use screen readers, the state abortion portal does not review the legal right of blind people to request and receive from abortion providers written materials in alternative formats. See 28 C.F.R. § 35.160; 45 C.F.R. § 92.102. It does not include the obligation of abortion providers to make sure that their web-based platforms are compatible with screen readers and that any videos have audio descriptions. *Id.*; U.S. Department of Justice, Guidance on Nondiscrimination in Telehealth (July 2022), https://www.ada.gov/telehealth_guidance.pdf. This information is not provided, even though there is a section about communities with unique needs in accessing abortion

services. See California abortion access, Communities, <https://abortion.ca.gov/support/communities/>.

Deaf, DeafBlind, DeafDisabled, and Hard of Hearing People

Many people who are Deaf, DeafBlind, or DeafDisabled from birth or childhood have limited proficiency in spoken or written language and use sign language as their primary language. Nevertheless, none of the information provided on the website is made available through a video with signing by a deaf interpreter (DI). Further, none of the information provided in any written language provided at or below lower secondary level (6th to 8th grade reading level), which is sometimes referred to as plain language.

We recommend that the state develop and provide the same content through videos signed by DIs, along with English captioning. We also recommend that the state create plain language content for visitors to the site, which is also needed for people with other disabilities that affect reading levels. Such content – Sign Language Videos and Plain Language Materials – could be placed as an option on the home page to the right of Find a Provider. Consultation with members of the DeafBlind community is necessary to ensure that the website content and its videos are also accessible to them.

Further, there is no information provided about the legal right of individuals who are deaf and hard of hearing to request and receive sign language, captioning, and/or other auxiliary aids and services at telehealth or in-person medical appointments from abortion providers. See 28 C.F.R. § 35.160; 45 C.F.R. § 92.102; U.S. Department of Justice, Guidance on Nondiscrimination in Telehealth (July 2022), https://www.ada.gov/telehealth_guidance.pdf. This vital information is not included, even though there is a page dedicated to “communities [who] may have unique needs in accessing abortion care,” <https://abortion.ca.gov/support/communities/>.

Nor is there any consideration of the needs of Deaf, DeafBlind, and DeafDisabled signers to receive counseling services from providers who are fluent in sign language. See *Tugg v. Towey*, 864 F. Supp. 1201, 1211 (S.D. Fla. 1994) (granting preliminary injunction requiring defendants to include mental health counselors “with sign language ability” and who possess “an understanding of the mental health needs of the deaf community”); *compare* Health and wellness, <https://abortion.ca.gov/support/health-and-wellness/>.

People With Intellectual, Developmental, and Learning Disabilities and Autistic People

Individuals with intellectual, developmental, and learning disabilities may struggle to read, particularly at higher grade levels. The English text on the portal is clearly written and free of jargon. We know that drafting such text takes time and commitment, and we applaud your commitment and achievement.

However, the reading level is generally at upper secondary level English (about 12th grade). There are no sections of the website that offer versions at lower secondary levels of education (between 6th and 8th grade reading level).⁹ Nor are there any captioned videos with simple spoken English (or other spoken languages) to provide information to people who need communication in this format. There are no drawings to accompany concepts. We request that the state develop simple spoken videos and text, in different languages and with drawings, to provide accessible abortion information to people with disabilities. As noted previously, this content – Videos and Plain Language – could be placed as an option on the home page to the right of Find a Provider.

Further, the portal provides no information about the right of people with disabilities to be accompanied by a support person, to request and receive written documents in plain language versions, or to receive other forms of reasonable accommodations. See 28 C.F.R. § 35.130(b)(7); 45 C.F.R. § 92.105; DFEH Healthcare Information, https://calcivilrights.ca.gov/wp-content/uploads/sites/32/2021/04/DFEH-Healthcare-Information-on-COVID-19-FAQ_ENG.pdf. There is no information about the right to receive abortion services while using supported decision-making. See AB 1663: The Probate Conservatorship Reform and Supported Decision-Making Act, https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB1663.

There is no information or referrals about how people with disabilities who are under a guardianship or conservatorship or who may have or be perceived as having diminished capacity – often people with intellectual and developmental disabilities – can seek an abortion.

People with Mobility Disabilities, Including Wheelchair Users, and Higher Weight People

Abortion providers that are public entities or that receive federal financial assistance – in California, most abortion providers – must operate their programs and activities to be “readily accessible to and usable by individuals with disabilities.” 28 C.F.R. § 35.150(a); 45 C.F.R. § 84.22(a). Abortion providers that are public entities or that receive federal financial assistance – in California, most abortion providers – must operate their programs and activities to be “readily accessible to and usable by individuals with disabilities.” 28 C.F.R. § 35.150(a); 45 C.F.R. § 84.22(a). This means that abortion providers must be able to readily serve people with disabilities, including through such means as acquiring accessible medical equipment, making building entrances more accessible, and using alternative accessible locations. 28 C.F.R. § 35.150(b)(1); 45 C.F.R. § 84.22(b); U.S. Dep’t of Justice, Americans with Disabilities Act, Access To

⁹ See WCAG 3.1.5 AAA, <https://www.w3.org/TR/UNDERSTANDING-WCAG20/meaning-supplements.html>.

Medical Care For Individuals With Mobility Disabilities (July 2010),
https://www.ada.gov/medcare_mobility_ta/medcare_ta.htm.¹⁰

Despite this longstanding legal requirement, inaccessibility remains the norm in health care facilities in California. A 2019 study found that only 19 percent of primary care doctors in California have an accessible exam table, and only about 11 percent have an accessible scale.¹¹

California's abortion portal ignores this reality and sends people – including people traveling from out of state – to raw provider directory information with no specific information about physical accessibility by provider, and no warning about the possibility that a particular provider may not be able to serve a patient who is a wheelchair user or who is higher weight. This aspect of the portal contravenes California's own obligation under Title II of the ADA to “ensure that interested persons ... can obtain information as to the existence and location of accessible services, activities, and facilities.” 28 C.F.R. § 35.163(a).

Requests From Signatories

We request that representatives of the state of California take the following steps to respond to the access gaps identified in this letter:

- We ask that the state immediately undertake a website accessibility review to confirm compliance with WCAG 2.0 AA, with user testing by blind people who use screen readers, and a plan to remediate any barriers;
- We ask that the state promptly assess the accessibility of the partner websites to which it links, particularly those of organizations that receive state funding, and take affirmative steps to notify partners of deficiencies and seek compliance with WCAG 2.0AA;

¹⁰ The only exception is for certain small private providers under certain circumstances, who must still refer the patient to another provider with the accessible facility and equipment. 45 C.F.R. § 84.22(c).

¹¹ Nancy R. Mudrick, M.S.W., Ph.D., *et al.*, Presence of Accessible Equipment and Interior Elements in Primary Care Offices (2019), <https://dredf.org/wp-content/uploads/2019/10/Presence-of-Accessible-Equipment-and-Interior-Elements-in-Primary-Care-Offices.pdf>; Katherine Rosman, “For a Woman in a Wheelchair, Abortion Access Was One More Challenge,” *New York Times* (July 14, 2022), <https://www.nytimes.com/2022/07/14/style/abortion-accessibility-planned-parenthood.html>; see also Tara Lagu, M.D., *et al.*, Access to Subspecialty Care for Patients With Mobility Impairment: A Survey (2013), <https://dredf.org/wp-content/uploads/2015/04/Lagu-et-al-Annals-3-19-2013.pdf>.

- We ask that the state make plans to:
 - create and roll out simple captioned videos (including sign language signed by a CDI, spoken English, and other spoken languages) and plain language text to communicate core information contained in the abortion portal to users who need these forms of communication
 - include information on the portal about the rights of people with disabilities in healthcare, including the rights to effective communication (sign language, captions, alternative formats, other auxiliary aids and services), reasonable accommodations, and program access
 - include information and referrals on the portal about the rights of people who are under conservatorship or guardianship or who are perceived to have diminished capacity to seek abortion
 - include physical and programmatic access information as a component of the directory information for abortion providers including by accessing and publishing components of the “physical accessibility review” that Medi-Cal plans submit every three years to the Department of Health Care Services as part of the Facility Site Review
- We ask that the state schedule periodic, disability-specific stakeholder meetings with constituency groups referenced in this letter (people who are blind, people who are deaf, people with I/DD; people with learning disabilities; autistic people; people with mobility disabilities; and higher weight people), and provide a regular opportunity for these disability groups to provide input into California’s efforts to ensure access to abortion in the state

As an initial first step, we seek a meeting between representatives of the below-signed organizations and appropriate members of the Governor’s staff and CalHHS. You may reach the coalition by contacting Claudia Center at ccenter@dredf.org or 510-644-2555.

Thank you for your consideration, and for your commitment to the fundamental reproductive rights of Californians.

Sincerely,

Alameda County Developmental Disabilities Planning and Advisory Council

Association of Late Deafened Adults (ALDA)

Autistic Self Advocacy Network (ASAN)

Autistic Women and Nonbinary Network (AWN)

Center for Independent Living (CIL)

Central Coast Center for Independent Living (CCCIL)

Community Resources for Independent Living (CRIL)

Disability Action Center (DAC)

Disability Community Resource Center (DCRC)

Disability Rights California (DRC)

Disability Rights Education and Defense Fund (DREDF)

Disability Rights Legal Center (DRLC)

FREED Aging and Disability Resource Connection

Independent Living Resource Center San Francisco (ILRC-SF)

National Association of the Deaf (NAD)

Rolling Start, Inc.

Senior Disability Action (SDA)

Silicon Valley Independent Living Center (SVILC)

Service Center for Independent Life (SCIL)

Southern California Resource Services for Independent Living (SCRS-IL)

Stanford Medicine Alliance for Disability Inclusion and Equity (SMADIE)

Tri-County Independent Living (TCIL)

U.S. Alliance of Women, Nonbinary Persons, and Other Gender Minorities with Disabilities

Women Enabled International (WEI)

Governor Gavin Newsom
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