The ADA and its Implications for Patients with OUD

Anna-Maria South, MD
Rebekah Joab
Learning Objectives

➢ Review evidence-based treatment with medications for opioid use disorder (MOUD)
➢ Describe the Americans with Disabilities Act (ADA)
➢ Discuss landmark cases and settlements to ensure ADA compliance by covered entities
Guiding Principles

• Opioid use disorder (OUD) is a chronic medical condition
• ADA gives civil rights protections to individuals with disabilities
• OUD is a disability
• Discrimination based on MOUD is a violation of the ADA
• Physicians need to advocate for patients to ensure compliance by public entities with the ADA
Figure 1. National Drug-Involved Overdose Deaths*
Number Among All Ages, by Gender, 1999-2020

*Includes deaths with underlying causes of unintentional drug poisoning (X40-X44), suicide drug poisoning (X60-X64), homicide drug poisoning (X85), or drug poisoning of undetermined intent (Y10-Y34), as coded in the International Classification of Diseases, 10th Revision.
Source: Centers for Disease Control and Prevention, National Center for Health Statistics. Multiple Cause of Death 1999-2020 on CDC WONDER Online Database, released 32/2023.

Figure 2. National Drug-Involved Overdose Deaths*, Number Among All Ages, 1999-2020

*Includes deaths with underlying causes of unintentional drug poisoning (X40–X44), suicide drug poisoning (X60–X64), homicide drug poisoning (X85), or drug poisoning of undetermined intent (Y10–Y14), as coded in the International Classification of Diseases, 10th Revision. Source: Centers for Disease Control and Prevention, National Center for Health Statistics. Multiple Cause of Death 1999-2020 on CDC WONDER Online Database, released 12/2021.
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Addressing the Opioid Overdose Crisis: MOUD **Must** Be Part of the Solution


Learning Objectives

✓ Review evidence-based treatment with medications for opioid use disorder (MOUD)
➢ Describe the Americans with Disabilities Act (ADA)
➢ Discuss landmark cases and settlements to ensure ADA compliance by covered entities
Overdose Crises

Source: CDC
Anti-Discrimination Laws

Anti-discrimination laws protect the rights of people who use drugs or have substance use disorders to access treatment, healthcare, housing, work, and more.

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<thead>
<tr>
<th>Anti Discrimination Laws</th>
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<td>Americans with Disabilities Act (ADA)</td>
<td>- State and local governments (includes jails, prisons, courts, etc.)</td>
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<td>- Places of public accommodation (hospitals, recovery homes, skilled nursing facilities)</td>
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<td>- Employers</td>
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<td>Rehabilitation Act of 1973</td>
<td>Federally funded entities</td>
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<td>Affordable Care Act, Section 1557 (ACA)</td>
<td>Health care entities receiving federal funding</td>
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<td>Fair Housing Act (FHA)</td>
<td>Housing and related services</td>
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Who do the laws protect?

- People with disabilities
  - Impairment that substantially limits one or more major life activity/body function

- **Substance use disorder** is generally considered a disability
  - But laws do not protect illegal use of drugs
  - So only SUD not currently involving illegal use of drugs
  - Alcohol is protected whether past or present use

- However, even if someone currently uses drugs illegally, they cannot be denied health and treatment services because of their drug use
Protections Under
ADA, Rehabilitation Act, ACA

- Prohibits discrimination against people with disabilities, including SUD (no current illegal use of drugs)
- Prohibits denial of health services because of drug use
- Discrimination because people take MOUD
What do the Laws prohibit?

Covered entities may not...

• Deny participation or services because of SUD
• Deny equal participation/services because of SUD
• Have admission criteria that screen out or tend to screen out people with SUD
• Have methods of administration that discriminate against people with SUDs
• Deny reasonable modifications for people with SUDs
• Deny health services due to current illegal use of drugs
Discrimination v. Legitimate Decisions

• Decisions based on stigma, rather than objective, medical evidence = discrimination
• Failure to complete an individual assessment often indicates discrimination
• Total bans on MOUD are well established as discriminatory
Department of Justice (DOJ) Guidelines for the ADA for Patients with OUD

• Describes how the ADA protects individuals with OUD, and other SUDs, from discrimination

• “The ADA protects people with disabilities from discrimination by social services agencies; child welfare agencies; courts; prisons and jails; medical facilities, including hospitals, doctors’ offices, and skilled nursing facilities; homeless shelters; and schools, colleges, and universities.”

Source: The United States Department of Justice. Civil Rights Division. The Americans with Disabilities Act and Opioid Crisis: Combating Discrimination Against People in Treatment or Recovery. April 5, 2022
LAC Resources

Sample Letters to Courts, Parole/Probation, Jails/Prisons, or Child Welfare Agencies

Legal Advocacy to Protect Health Care Access for People who Use(d) Drugs

People who use drugs or have substance use disorders often experience discrimination when trying to access health care. For example, someone diagnosed with opioid use disorder who takes medications to treat their OUD might be denied admission to a skilled nursing facility because of discriminatory and incorrect assumptions about OUD and MOUD.

Detail of care based on substance use often violates anti-discrimination laws and causes enormous harm. Ensuring that people have access to treatment for substance use and other health needs is crucial, particularly amid the country’s overdose crisis where Black, Latinx, and Indigenous people are dying at increasingly high rates.

This resource provides guidance on how lawyers and others can help advocate for people to access critical health care.

The FACTS

The demand for health care and related benefits to people who use or use drugs (or who are in recovery) is rising due to texting-based on CDS, the percentage of patients who are taking medications to treat OUD, and the increasing awareness of how misuse and addiction affect people. The demand for health care and related benefits is rising due to texting-based on CDS, the percentage of patients who are taking medications to treat OUD, and the increasing awareness of how misuse and addiction affect people.

Contact LAC

To Whom a Law Enforcement Officer Might Write,

You have been contacted by LAC, a non-profit organization dedicated to improving the lives of people affected by incarceration. We are concerned about the misuse and addiction affecting people affected by incarceration.

LAC provides information on how to access health care and related benefits to people who use or use drugs (or who are in recovery). They are available to provide guidance on how to access health care and related benefits.

LAC also advocates for the rights of people affected by incarceration and encourages the use of evidence-based and harm-reduction approaches to reduce the harm caused by OUD and MOUD.

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Learning Objectives

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✓ Describe the Americans with Disabilities Act (ADA)
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Case 1: A Patient with OUD who needs physical rehab

- 24 year old male with OUD on buprenorphine
- Admitted for acute hypoxic respiratory failure due to COVID-19
- Now needs acute rehab for debility after being in the MICU
- Rehab declines patient due to patient OUD and being on buprenorphine
Case 1: A Patient with CF and OUD (cont)

Settlement Agreements under the ADA

• SNIF cannot screen out an individual/a group of individuals (patients with OUD) from receiving health care services

Sample letter:

Discussion Questions

• Is this a potential ADA violation?
  ➢ Yes. The settlements explain this.
  ➢ Blanket policies denying admission to people taking MOUD in health care settings like recovery homes and skilled nursing facilities are illegal.

• What could you do to advocate for this patient if you were his doctor?
  ➢ Educate the patient and other providers about the ADA to ensure compliance and file a complaint with e.g., assistant US attorney, so it can be investigated to determine if it is an ADA violation.
Case 2: A Patient with OUD Seeking Care for Post-Traumatic Stress Disorder (PTSD)

• You are a PCP and have a patient with OUD on buprenorphine is seeking treatment for PTSD
• Refer patient to psychiatrist for management
• Calls outpatient psychiatry clinic to make an appointment
• Clinic demands for patient to be off MOUD for several months to establish care for PTSD
Case 2: A Patient with OUD Seeking Care for PTSD (cont.) - Settlement

• Cannot withhold medical care for patients for being on MOUD

• If lacking expertise to treat condition due to OUD: Do not have to treat OUD, but refer to a provider who can

• Clinic to provide nondiscriminatory care for patients with OUD and ensure compliance with the ADA

Discussion Questions

• Is this an ADA violation?
  ➢ Yes. A recent settlement helps establishes this

• What avenues of advocacy can you think of for the patient to use?
  ➢ Let’s discuss the physician’s role as an advocate
Case 3: Incarcerated Patient with OUD and Chest Wall Abscess

- Hospitalized for injection related chest wall abscess
- Receives appropriate medical management for his injection
- Diagnosed with severe OUD
- Desires buprenorphine to treat OUD
- Guards at bedside interrupt buprenorphine administration: “You know he can’t have this in jail, right?”
Discussion Questions

• What are some complicating factors for this patient?
  ➢ Barriers to treatment as carceral system is interfering with medical care

• Does the ADA still apply?
  ➢ Yes. Incarcerated patients with OUD on MOUD are still protected by the ADA and the Eighth/14 Amendments

• How can you advocate for this patient?
  ➢ Barriers require multistep approach
The ADA for Incarcerated Patients on MOUD

• Discontinuation of MOUD = ADA violation

• Ex) Agreement between the United States of America and Lexington-Fayette Urban County Government Division of Community Corrections

• Not all jails or prisons are currently compliant with the ADA
  ➢ Continued advocacy is needed

Source: Legal Action Center https://www.lac.org/assets/files/Cases-involving-denial-of-access-to-MOUD.pdf
Right to Health Care Under the 8th Amendment

• Eighth Amendment (1971): prohibits cruel and unusual punishment of incarcerated patients

• Supreme Court upheld protection to apply to health care: deliberate indifference to serious medical need

• Incarcerated patients should receive same standard of care as nonincarcerated patients

• MOUD is the standard of care for OUD

Source: Constitution of the United States. Eighth Amendment
Avenues for Advocacy for Patients and Physicians

Education – Use LAC’s resources found at https://www.lac.org/major-project/legal-help-4-pwud

File Administrative Complaints:

• ADA – file with DOJ at ada.gov or https://beta.ada.gov/file-a-complaint/

• Rehabilitation Act – file with OCR: https://www.hhs.gov/civil-rights/filing-a-complaint/index.html

• FHA – file with HUD: https://www.hud.gov/program_offices/fair_housing_equal_opp/online-complaint#_How_To_File


Don’t forget state agency complaints – including Attorneys General!

New York – Contact LAC for any discrimination based on SUD

North Carolina/Kentucky – Contact LAC for denial of healthcare based on SUD
How to File a Potential ADA violation

A possible ADA violation occurs for a patient with OUD

Ensure violation based on discrimination, not on an individualized medical assessment

Document details (e.g., conversations, emails) and provide them when submitting a case

Submit a case for investigation of a potential ADA violation
How to File a Potential ADA violation

Ensure that either:

• Patient signs release of information form OR de-identify data to be compliant with Health Insurance Portability and Accountability Act (HIPAA)

Optional:

• Discuss violation with the patient (patient can also file on their own behalf – the more complaints received, the more information that the assistant US attorney will have)

• Be available for assistant US attorney for follow up
Considerations when filing ADA violation

• DOJ can investigate public entities and places of public accommodation (private hospitals, SNFs, etc.)
• Assistant US attorney represents the United States
• Monetary settlements are often smaller amounts
• Goal: To ensure public entities/places of public accommodation are compliant with ADA
Guiding Principles

• OUD is a chronic medical condition
• ADA gives civil rights protections to individuals with disabilities
• OUD is a disability
• Discrimination based on MOUD is a violation of the ADA
• Physicians need to advocate for patients to ensure compliance by public entities with the ADA
Acknowledgements

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Sources