

Using Civil Rights Law to Advance Health Justice for People Who Use Drugs

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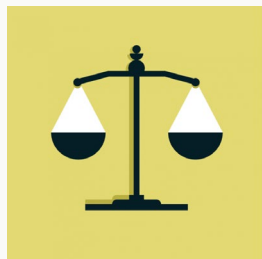


Breaking Barriers. Defending Dignity.

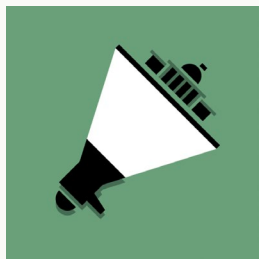
The Legal Action Center (LAC) uses legal and policy strategies to fight discrimination, build health equity, and restore opportunity for people who use drugs, have conviction records, and have HIV or AIDS.



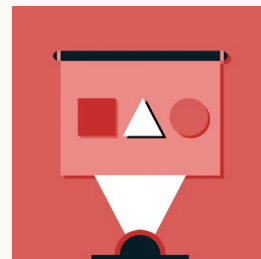
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Community Health Access to Addiction and Mental Healthcare Project (CHAMP)

CHAMP can help you:

- **KNOW** your insurance rights
- **FIGHT** insurance denials for mental health and addiction care
- **CHALLENGE** insurance barriers & discrimination
- **GET** the most from your coverage
- **RECEIVE** fair reimbursement
- **LEARN** about options for low-cost care for the uninsured

AND MUCH MORE!

So you can access treatment for mental health & substance use disorders, including medication.

***CALL our Helpline
(888) 614-5400***

***Helpline Hours:
Monday-Friday
9 – 4 p.m.***

Language Matters. Words Have Power. People First.

The Legal Action Center uses affirming language to promote dignity and combat stigma and discrimination.

Examples of Preferred Language

Source:
[Changing the Narrative](#)

Terms and phrases to be avoided in specific context and situations:

RECOVERY DIALECTS

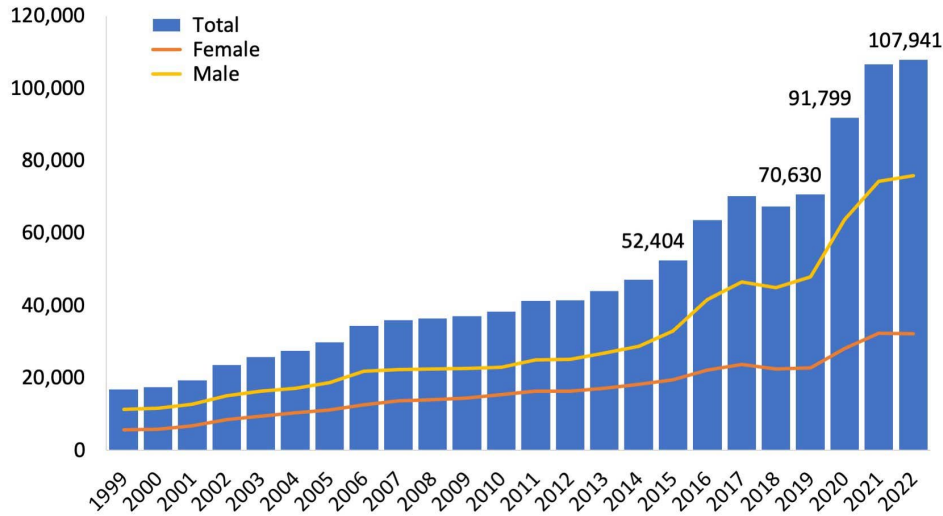
Language matters but can change depending on the setting we are in. Choosing when and where to use certain language and labels can help reduce stigma and discrimination towards substance use and recovery.

	Mutual Aid Meetings	In Public	With Clients	Medical Settings	Journalists
Addict	✓	✗	✗	✗	✗
Alcoholic	✓	✗	✗	✗	✗
Substance Abuser	✗	✗	✗	✗	✗
Opioid Addict	✓	✗	✗	✗	✗
Relapse	✓	✗	✗	✗	✗
Medication-Assisted Treatment	✗	✗	✗	✗	✗
Medication-Assisted Recovery	✓	✓	✓	✓	✓
Person w/ a Substance Use Disorder	✓	✓	✓	✓	✓
Person w/ an Alcohol Use Disorder	✓	✓	✓	✓	✓
Person w/ an Opioid Use Disorder	✓	✓	✓	✓	✓
Long-Term Recovery	✓	✓	✓	✓	✓
Pharmacotherapy	✓	✓	✓	✓	✓

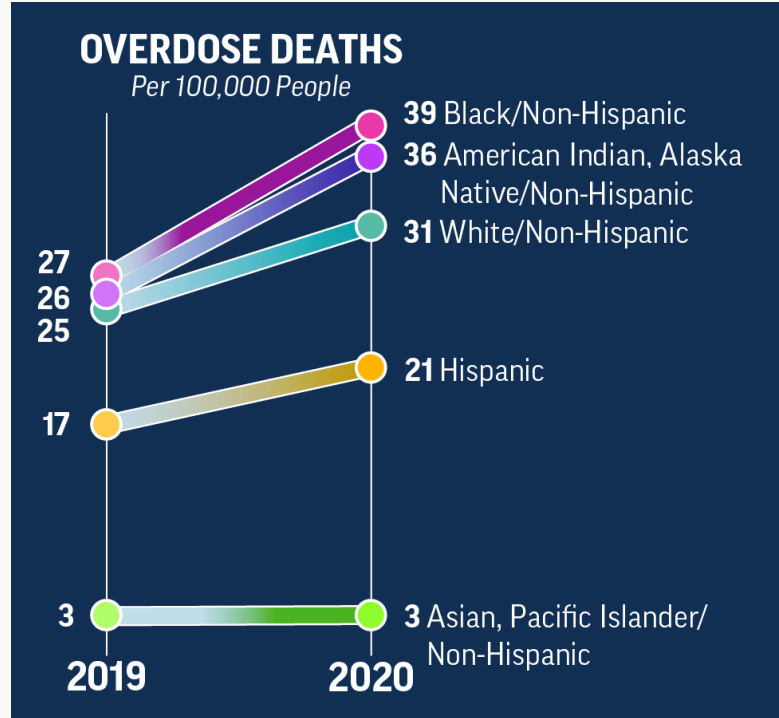
Credit: Robert D Ashford et al., *Drug and Alcohol Dependence* (2018)

Overdose Crises

Figure 1. National Drug Overdose Deaths*, Number Among All Ages, by Sex, 1999-2022



*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 1999-2022 on CDC WONDER Online Database, released 4/2024.



Sources: [NIDA](#); [CDC](#)

Overdose Crisis

“A great part of the tragedy of this opioid crisis is that . . . we now possess effective treatment strategies that could address it and save many lives, yet **tens of thousands of people die each year because they have not received these treatments.**”

-Nora D. Volkow, M.D. & Eric M. Wargo, PhD, National Institute on Drug Abuse, Annals of Internal Medicine

Only 18% of people with opioid use disorder (OUD) receive medication for OUD.

Barriers to Care

Many barriers to care, generally worse for Black and Brown people, pregnant people, and other marginalized groups, including:

- Insufficient insurance coverage – private and public (Medicaid and Medicare)
- Too few providers of SUD care
- Criminalization, removal of children, and other punishment for drug use
- Fear of disclosure leads people not to seek care
- **Stigma and discrimination against people who use(d) drugs – in health care, housing, employment, criminal legal and family regulation systems. That's today's topic!**

What we will cover

1. Discrimination Against People With SUD
 - What it Looks Like
 - Why It Happens
2. Legal Protections
3. How Public Health Officials Can Advance the Rights of People with SUDs and Further Health Equity

Common Discrimination – Health Care

People are denied health care **because they take medication** to treat substance use disorder (SUD) – often MOUD

People are denied health care **because of their drug use** – past or present

What does this look like?

- Mary takes methadone for OUD and needs short-term rehabilitation in an SNF after a hospitalization. SNFs refused to admit Mary, saying they do not admit people who take methadone.
- Shane takes buprenorphine to treat their OUD. A drug court mandates Shane to live in recovery housing. However, the recovery homes in Shane's area do not allow MOUD.
- Shawn had surgery and needs intravenous (IV) antibiotic treatment after discharge from the hospital. Although the hospital typically discharges someone needing this care with a peripherally inserted central catheter (PICC), the hospital tells Shawn that because of his history of substance use, home care is not an option.
- Dani goes to the E.R. after an opioid overdose. E.R. staff administer naloxone, provide rehydration, and restore their respiratory function. After a few hours, Dani is discharged. No one offers MOUD, naloxone to reverse a future overdose, or help connecting to OUD care in the community.
- Tyler is hospitalized for endocarditis, a heart infection caused by injection drug use. The hospital will not do valve replacement surgery even though surgery is consistent with clinical standards. The doctor believes the surgery is not a good use of resources because of Tyler's drug use.

Why does discrimination happen?

- Stigma against people who use drugs, have addiction, or use medication to treat opioid use disorder (MOUD)
- Beliefs that people who use drugs cause their own health conditions -- less worthy of care
- Lack of education about supports needed for people with SUDs
- Confusion about MOUD regulation and how SNFs and other facilities can provide it
- Multi-layered w/ discrimination based on race, other disabilities, etc.

Medications for Opioid Use Disorder are the Standard of Care

- Medications for opioid use disorder (MOUD) / medication assisted treatment (MAT) / medication for addiction treatment (MAT)
- Methadone, buprenorphine, and injectable naltrexone are FDA approved medications to treat opioid use disorder (OUD)
- MOUD is often used in combination with counseling and behavioral therapies to provide a whole-patient approach to treatment

Myths & Facts

MYTH: Treatment with MOUD “substitutes one addiction for another”

FACT: Buprenorphine and methadone are opioids, but are long-acting medications that reduce cravings and withdrawal – symptoms of addiction

Heroin, oxycodone, and other substances that lead to OUD are short-acting, create euphoria, and cause cravings and withdrawal

Buprenorphine and methadone stabilize brain chemistry and do not lead to compulsive illicit use or euphoria.

People on MOUD can function like anyone else and lead normal lives.

Myths & Facts

MYTH: MOUD should not be long-term

FACT: Decisions about length of treatment should be made by an individual and their clinician

SAMHSA: arbitrary time limits on the duration of treatment with OUD medication are not advised

Tapering or discontinuing medication leads to very high rates of relapse

Myths & Facts

MYTH: People should stop treatment with MOUD if they have a positive drug test for illicit substances

FACT: Illicit opioid use while in treatment may actually suggest the individual needs a higher dose and additional supports

MOUD effectively treats only OUD – not other substance use

Anti-Discrimination Laws Provide Protections!



Anti-Discrimination Laws

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

Anti-Discrimination Laws	Applicability
Americans with Disabilities Act (ADA)	-State and local governments -Places of public accommodation (hospitals, recovery homes, skilled nursing facilities) -Employers
Rehabilitation Act of 1973	Federally funded or operated entities
Affordable Care Act, Section 1557 (ACA)	Federally funded health care entities
Fair Housing Act (FHA)	Housing and related services
NYS/NYC Human Rights Laws	State and city entities and public accommodations

Who do the anti-discrimination laws protect?

What do the laws prohibit?

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 medication to treat their OUD may be denied admission to a skilled nursing facility because of discriminatory and incorrect assumptions about OUD and MOUD.

Denial 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 denial of health care and stigma toward people who use or used drugs occurs in virtually every health care setting – even when the services someone needs have nothing to do with drug use. Health care providers often deny services based on illegitimate reasons, including stigma toward people who use drugs (PWUD), opinions that people are only in recovery if they are abstinent, or beliefs that PWUD are responsible for their health conditions or less worthy of care. Some health care facilities say that they lack capacity to serve PWUD or people with substance use disorders (SUDs) because they are too “challenging” or “high need.”

Who's Protected? ... People With a “Disability”

a) impairment

b) that substantially limits one or more major life activities

- **SUD = Impairment**
- **SUD can substantially limit major life activities** like: caring for oneself, concentrating, thinking, working, and brain and neurological functioning
- Includes current and past disabilities as well as people “regarded as” having a disability even if they don't

Definition of “Disability”

- Courts generally find that SUD is a “disability”
- But not if currently engaging in illegal use of drugs
- AUD (even with current alcohol use) is covered
- But crucially: **people may not be denied health services because of current illegal use of drugs**
- Note: Every individual must show that *their* SUD substantially limits 1+ major life activities

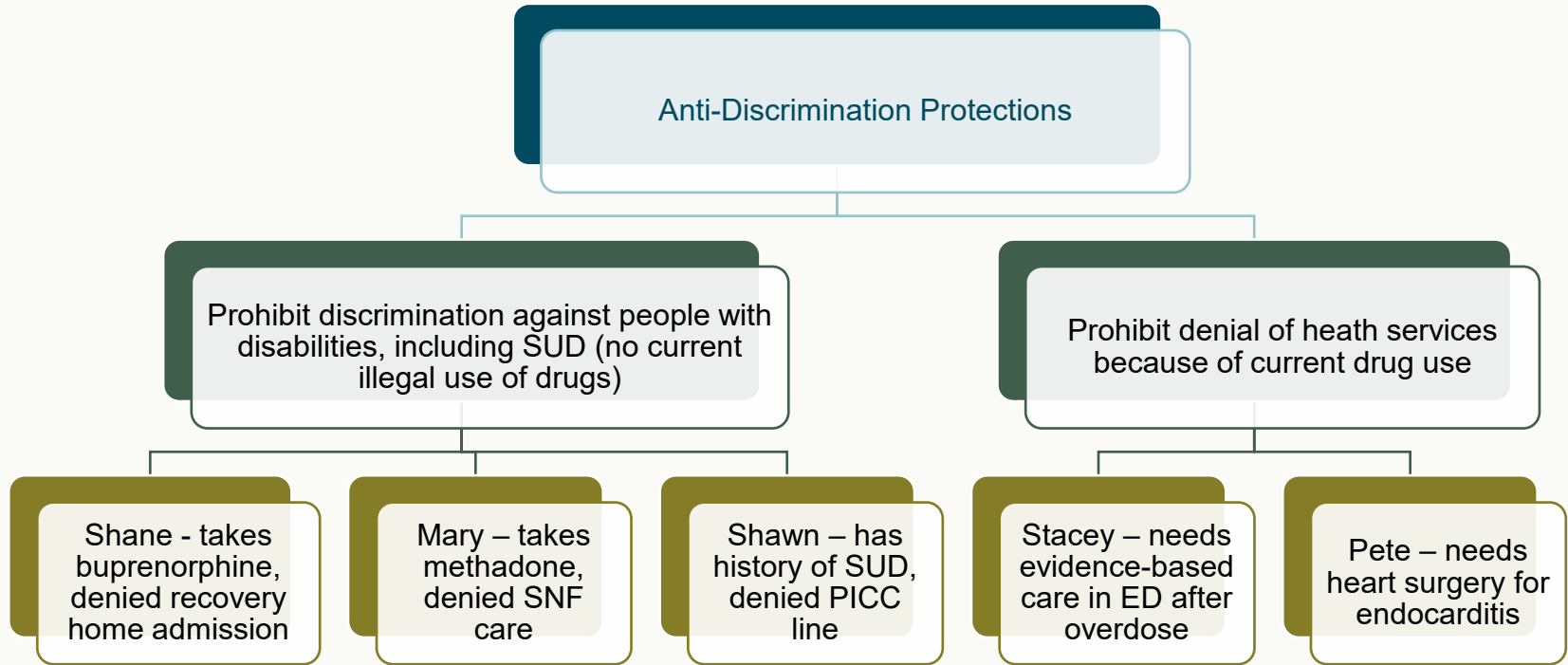
Knowledge check

- ▶ Jordan has been in recovery from cocaine use disorder for 5 years and has worked at their current job for the past 3 years. Their work performance has been outstanding, but their boss just learned that Jordan is in recovery and is thinking of firing Jordan because of their substance use disorder.
- ▶ **Is Jordan protected by anti-discrimination laws?**

Answer

- ▶ **YES.**
- ▶ Jordan's past substance use disorder is a disability if it substantially limited one or more of their major life activities.

Who do the laws protect?



What do the laws prohibit?

- **“Discrimination”**
 - 1) person has a disability
 - 2) is denied the entity’s services/programs/activities
 - 3) because of their disability
- Decisions affecting people with disabilities must be individualized and based on objective medical evidence, not on stereotypes and assumptions about people with that disability

What do the laws prohibit?

Discrimination includes...

- Denying participation or the benefits of a service on the basis of disability
- Denying *equal* participation/benefits on the basis of disability
- Admission criteria that screen out or tend to screen out people with disabilities
- Methods of administration that discriminate against people with disabilities
- Denying reasonable modifications for people with disabilities
- Denying health services due to current illegal use of drugs

continued.....

What do the laws prohibit?

Per *new* federal regulations under Sec. 504 of the Rehabilitation Act, discrimination includes:

- **Denial of medical treatment** – based on:
 - (i) Bias or stereotypes about a patient’s disability;
 - (ii) Judgments that the individual will be a burden on others due to their disability, including, caregivers, family, or society; or
 - (iii) A belief that the life of a person with a disability has lesser value than the life of a person without a disability or that life with a disability is not worth living.
 - (iv) Not offering treatment that would be offered to a similarly situated person without the underlying disability

What do the laws prohibit?

Examples of discrimination from the preamble to the Final Rule:

- “A blanket prohibition on serving persons with co-occurring morbidities might constitute [discrimination].” For example, SUD treatment provider that denies services to patients with mental illness or vice versa. (Fed. Reg. 40094)
- “A provider’s categorical judgment that all patients with a prior history of SUD are not qualified to receive medications for pain management would likely constitute discrimination.” (Fed. Reg. 40097)

Other Relevant Laws

- State and City human rights laws – prohibiting discrimination
- U.S. and State Constitutions
- Torts like malpractice / negligence
- NYS laws and regulations governing health care facilities, correctional facilities, recovery housing, and more

Some real world application of these laws...

Prohibiting or Restricting MOUD

Cases Involving Discrimination Based on Treatment with Medication for Opioid Use Disorder (MOUD)



June 6, 2022

This list highlights key cases, investigations, and government settlements/consent decrees involving denial of access to MOUD in various settings. It is not exhaustive.

Criminal Legal System

Jails and Prisons

Pece v. Coppinger, 355 F. Supp. 3d 35 (D. Mass. 2018). The court held that it likely violates both the Americans with Disabilities Act (ADA) and Eighth Amendment of the U.S. Constitution to deny an incarcerated person access to MOUD without individual assessment and contrary to the treating provider's medical recommendation. The plaintiff, soon to be incarcerated in a Massachusetts jail, alleged that the defendant jail's policy of denying incarcerated persons access to medications for the treatment of opioid use disorder (MOUD) violated Title II of the ADA and the Eighth Amendment. The court granted the plaintiff's motion for a preliminary injunction, holding that "absent medical or individualized security considerations underlying the decision to deny access to medically necessary treatment," the plaintiff was likely to succeed in his ADA claim. The court also held that the plaintiff was likely to succeed on his Eighth Amendment claim because the defendant was deliberately indifferent to his serious medical need in repeatedly ignoring the plaintiff's doctor's treatment recommendation. The court made these holdings despite the defendant's arguments that MOUD creates safety and diversion concerns.

Smith v. Aronson *Cp.*, 376 F. Supp. 3d 146 (D. Me.), aff'd, 922 F.3d 41 (1st Cir. 2019). The court held that it likely violates the ADA to deny an incarcerated person access to MOUD without a particular assessment of the individual's need for medication. This decision granting the plaintiff's motion for preliminary injunction came after the plaintiff was going to be incarcerated in the county jail and requested access to her prescribed MOUD. The court did not find persuasive defendant's concerns about safety and diversion. The case was affirmed by the First Circuit.

Kardner v. Whitson County (D. Wash. 2018). This class action lawsuit settled with an agreement to provide MOUD on class-wide basis. A class of current and future incarcerated persons at the Whitson County Jail alleged that the jail's policy prohibiting MOUD violated the ADA and Eighth Amendment. The settlement included guidelines for training and implementation of written policies for MOUD - primarily buprenorphine maintenance and induction - as well as medically-assisted withdrawal.

- Growing body of case law and DOJ/HHS settlements/guidances make clear:
 - Banning/restricting MOUD = discrimination
- Other forms of discrimination:
 - Arbitrary dose / duration limits
 - Requirements to switch medication
 - Limitations on # of program participants who can take MOUD
 - Surcharges on people taking MOUD
- Precedent in: nursing homes; doctors' offices; hospitals; jails; parole; drug courts; child welfare systems; employment; residential work and social service programs

See LAC's [Cases Involving Discrimination Based on Treatment with Medication for Opioid Use Disorder \(MOUD\)](#)

Jails & MOUD: Seminal case – set the stage for others

2018: *Pesce v. Coppinger* (Fed. court, District of MA)

- Jeffrey Pesce successfully on methadone for 2 years
- Drove to OTP with suspended license when usual ride fell through; pulled over for driving 6 MPH over speed limit; faced 60-day jail sentence
- Jail banned methadone. Feared: (i) withdrawal would interrupt recovery and progress reconnecting with son; (ii) relapse and overdose.
- Sued in federal court and won!!
- Court: likely that jail's no-methadone policy violated ADA & 8th Amendment.
 - Rejected jail's argument that Vivitrol and counseling sufficed.

Many cases since *Pesce* – jails and prisons

Many settlements – private and DOJ – jails & prisons, State/federal

Pending LAC lawsuit: Wilson v. Fulton County, NY – jail

Expected litigation – issues like single dosing, disciplinary violations

NYS law: jails & prisons must provide access to all-3 forms of MOUD (limited exceptions). N.Y. MENTAL HYG. LAW § 19.18-c (jails); N.Y. CORRECT. LAW § 626 – a (prisons).

- **Partnership with local health departments on jail implementation is crucial!!**

Other Types of Cases in the Criminal Legal System

Settlement with Unified Judicial System of PA, Jan 41, 2024

- PA courts violated ADA by prohibiting/restricting access to MOUD.

Settlement with Massachusetts Trial Court, Mar. 24, 2022

- Drug courts violated ADA by forcing participants to stop taking prescribed MOUD without individualized assessments by a medical professional

Settlement with Massachusetts Parole Board, 2021

- Parole Board violated ADA by (1) requiring parolees and prospective parolees with OUD to take Vivitrol (naltrexone) and (2) not considering health care provider's recommended treatment

SNFs & MOUD

- Many people need SNF care after hospitalization, but are denied admission because they take methadone
- Blanket rule, no individual analysis
- **DOJ settlements** with SNFs: excluding people who take MOUD violates ADA & ACA
- **PA Atty Gen** agreements - 38 SNFs
- **NY OASAS** and **DOH** developing training series



Opioid Use Disorder & Health Care: Skilled Nursing Facilities

People who take medication for opioid use disorder (MOUD), like methadone or buprenorphine, often experience illegal barriers to healthcare.

Admission to Skilled Nursing Facilities (including nursing homes and long-term care facilities)

People needing care at a skilled nursing facility (SNF) are often denied admission because they take methadone or buprenorphine to treat opioid use disorder (OUD). The U.S. Department of Justice has stated that these practices are illegal discrimination.

Signs of discrimination include:

- SNF has a policy not to admit people taking methadone or buprenorphine
- SNF says someone must taper off of MOUD to be admitted
- SNF says it cannot provide the "type of services" someone with OUD needs
- SNF denies someone admission after commenting about their substance use

For help, call the Legal Action Center: (212) 243-1313

Visit LAC's [MAT ADVOCACY TOOLKIT](#) for materials that can help you advocate!

How Skilled Nursing Facilities Can Provide Access to MOUD

SNFs can provide access to MOUD, and many do. Below are some ways SNFs may facilitate access to methadone and buprenorphine:

- The SNF can bring patients to their opioid treatment program (OTP) for methadone doses
- Methadone may be transported from an OTP to an SNF
- The patient's qualified practitioner in the community can prescribe buprenorphine
- An SNF qualified practitioner can prescribe buprenorphine with a federal waiver. 2021 federal guidance allows qualified practitioners to prescribe buprenorphine to up to 30 patients without satisfying counseling and training requirements
- SNFs may store and administer MOUDs the same way they do other controlled substances

For more information, visit NYS Office of Addiction Services and Supports:
[Medications for the Treatment of Opioid Use Disorder](#)

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State Policies Restricting Healthcare for PWUD

- Alabama Medicaid program “Sobriety Policy” denied individuals with Hepatitis C access to life-saving direct-acting antiviral agents:
 - Used alcohol or illicit drugs any time – 6 months before treatment.
 - Used alcohol or illicit drugs during their HCV treatment.
- DOJ concluded: “Discriminates against people with Hepatitis C (HCV) and substance [use] disorder (SUD) by imposing non-medically indicated sobriety restrictions ... in violation of the” ADA.
- Settlement agreement: Medicaid agency withdrew policy and agreed not to impose any new restrictions related to drug or alcohol use (e.g., treatment or counseling mandates).

MOUD & Family Regulation System

Methadone and buprenorphine are safe for use by pregnant women.

Medication-assisted treatment (MAT) is a recommended best practice for pregnant and parenting women because it has proven to reduce the risk of relapse and increase engagement in

parenting women with opioid use disorder because MAT has proven to reduce the risk of relapse and



- Parenting/custody rights cannot be withheld based on a person taking MOUD
- HHS Settlements in WV and PA
 - Complaints: family members denied custody of children because of MOUD and history of OUD – violated the ADA and Rehabilitation Act
 - Agreements: Stop discrimination against individuals with OUD, in child placement and other services

Employment and MOUD

- Many employers deny jobs or terminate employees because of MOUD
- Particularly in “safety-sensitive jobs,” although objective evidence shows methadone/buprenorphine do not impair cognition and function
- EEOC cases and settlements = cannot deny jobs because of MOUD; for any concerns, must conduct individual analysis



MOUD IN THE WORKPLACE: IT'S YOUR RIGHT!

Employers may not automatically deny you a job because you take medication for opioid use disorder (MOUD).

MOUD Basics

MOUD is the standard of care to treat opioid use disorder (OUD), but some employers need to be educated about MOUD and your legal rights. Share this one-pager and LAC's [Medication for Opioid Use Disorder: Myths & Facts](#).

What the Law Says

People with OUD are protected by the Americans with Disabilities Act and the Rehabilitation Act of 1973. State and local laws may also protect you.

These laws prohibit discrimination against people with disabilities:

- OUD is generally considered a disability.
- Disqualifying someone from a job because they take MOUD is illegal discrimination.

Some employers say MOUD is not safe. However, even for “safety sensitive” jobs, employers may not deny a job because someone takes MOUD, unless they do an individual analysis. The individual analysis must:

- Be based on objective, current medical evidence;
- Consider the recommendations of your addiction treatment provider; and
- Consider your experience with your medication and previous work history.

NOTE that Federal Department of Transportation guidance disqualifies people who take methadone from interstate commerce CMV driving jobs. Some states may have similar rules.

For key cases and settlements, see LAC's [Cases Involving Discrimination Based on Treatment with MOUD](#).

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Zoning - "Not in My Backyard"

"I believe in treatment – but we have too many programs already."

Common NIMBY Restrictions:

Bans

Spacing limits

Notification requirements

Special use permits

Denied permits

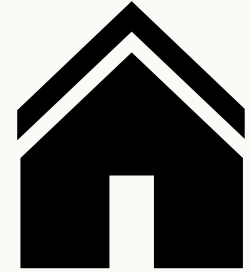
Zoning Discrimination is Illegal

- Local officials may not use zoning laws to discriminate against people with SUD. Many successful cases in New York.
- Live NY issues – opposition to mobile methadone vans, pressure on OTP in Harlem to move.
- Applies to SSPs too? Maybe – no case law yet
- Applies to Overdose Prevention Centers? Even less clear because they're prohibited by fed law

What can we expect next?

Possibilities include...

Case Study: Recovery Homes & Residential Treatment



- Shane takes buprenorphine to treat OUD.
- Drug court mandate: Shane must live in recovery housing [or attend residential treatment].
- But recovery homes [or residential treatment programs] in Shane's area do not allow MOUD, saying they are “abstinence-based” and have nowhere to store the medication.
- Shane ends up serving long prison sentence for non-compliance with the drug court mandate. Loses custody of children.
- **Legal?**

- **No**...prohibiting MOUD is discrimination because of disability.
- No case law on this yet *but*
- NY regs require residential & inpatient treatment programs to facilitate access to MOUD (14 NYCRR 818(c); 819.3(c))
- NY recovery home regs coming down the pike

**Opioid Use Disorder & Health Care:
Recovery Residences**

People who take medication for opioid use disorder (MOUD), like methadone or buprenorphine, often experience illegal barriers to healthcare.

Admission to Recovery Residences

(including recovery homes and sober living facilities)

People with opioid use disorder (OUD) are often denied admission to recovery residences because they take methadone or buprenorphine. Anti-discrimination laws – including the Americans with Disabilities Act (ADA), the Rehabilitation Act of 1973, and the Fair Housing Act (FHA) – make it illegal to deny someone access to a recovery residence because they take MOUD.

Signs of discrimination include:

- Residence has a policy not to admit people taking methadone or buprenorphine
- Residence limits the number of people in the facility who can take MOUD, e.g. having designated "MAT beds"
- Residence requires people to taper their dose of methadone or buprenorphine
- Residence only admits people who take under a certain dose of methadone or buprenorphine
- Residence otherwise restricts access to methadone or buprenorphine

For help, call the **Legal Action Center**: (212) 243-1313

Visit LAC's [MAT ADVOCACY TOOLKIT](#) for materials that can help you advocate!

You can also file a complaint with the **U.S. Department of Justice (DOJ)** at [civilrights.justice.gov/report/](https://www.civilrights.justice.gov/report/)

Recovery Residences Can Provide Access to MOUD

Recovery residences can provide access to MOUD and other prescription medications, and many do. The [National Alliance for Recovery Residences](#) emphasizes that MOUD is part of long-term recovery for many people and should be supported by recovery residences. Here are some ways residences may facilitate access to MOUD:

- Residents can go to their opioid treatment program (OTP) for methadone or their qualified practitioner for buprenorphine
- Residents with "take home" methadone doses may take their doses to the residence
- Residences may store MOUD on site the same way they do other controlled substances

Facts about MOUD

Methadone and buprenorphine are designed to treat symptoms of addiction without leading to illicit opioid use or euphoria. By stabilizing brain chemistry, relieving withdrawal, and stemming cravings, MOUD greatly reduces the risk of overdose, while providing space to work on other aspects of recovery. Evidence shows that tapering or discontinuing medication leads to very high rates of relapse, and that the "best results occur when a patient receives medication for as long as it provides a benefit." (SAMHSA, Treatment Improvement Protocol (TIP) 63, p.1-8).

For more information, visit [Medication for Opioid Use Disorder MYTHS & FACTS](#).

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Case Study: Hospital Services

- Shawn is in recovery from SUD.
- After a surgery, he needs IV antibiotic treatment. The hospital typically discharges someone needing this care with a PICC line to complete antibiotic treatment at home.
- But the hospital tells Shawn the policy is to deny IV antibiotic home care to people with history of SUD. They say Shawn can go to a nursing home or daily to an outpatient clinic for treatment.
- **Legal?**

No, it likely violates the ADA

No individual
analysis

Denial of equal benefits of hospital's
services on basis of disability

Denial of reasonable accommodation



LAC pending litigation, *Landau v. Good Samaritan Hospital et al.*:
<https://www.lac.org/resource/landau-v-good-samaritan-hospital-et-al>



If **home care agency** refuses services to Shawn, that is likely discriminatory (admission criteria that screen out people with SUD/“methods of administration” that discriminate against people with disabilities).

Case Study: Emergency Room



- Dani overdoses on heroin while using with her friends.
- Friends call 911.
- ER staff administer naloxone, restore respiratory function, rehydrate.
- After two hours, discharge Dani with list of local SUD treatment programs.
- Dani returns to active use within hours of discharge – as is foreseeable with OUD because withdrawal and cravings kick in.
- Dies of overdose from fentanyl.

What Should ER Have Done Differently?



Evidence-Based Practices:

- 1) **Diagnostic assessment** for SUD
- 2) **Offer to administer** medication for OUD
- 3) **Meaningful connection (warm handoff)** to ongoing SUD care
 - 1) Transportation needs?
 - 2) Insurance barriers?
 - 3) Language accessibility?
- 4) **Naloxone** to help protect Dani against future overdose

Discrimination in Emergency Rooms

- **LAC report:** *Emergency: Hospitals Are Violating Federal Law by Denying Required Care for Substance Use Disorders in Emergency Departments.* All substances, including alcohol.

Emergency Medical Treatment and Labor Act (EMTALA)

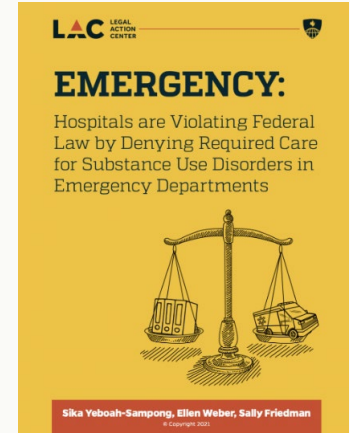
- Requires most EDs to provide certain services

ADA /Rehabilitation Act:

- Prohibits discrimination based on SUD history and recovery
- Prohibits denial of healthcare due to current illegal drug use

Title VI of the Civil Rights Act of 1964 (Title VI):

- Prohibits discrimination on basis of race or ethnicity



Tyler & Inpatient Hospital Care

- Tyler was denied a valve replacement for his endocarditis, because he was an injection drug user. The hospital physicians did not think the surgery was a good use of resources because he would inject drugs again.
- The surgery was appropriate under clinical standards – even for a current injection drug user.
- **Legal?**

Tyler & Inpatient Hospital Care

- No case yet, but...
- DOJ Agreement with Massachusetts General Hospital (MGH, 2020). Denial of lung transplant because patient took Suboxone violated the ADA. \$250,000 remedy
- Same reasoning could apply to denial of heart valve replacement or other care while hospitalized
- Tyler's mother has a pending complaint with DOJ in Pennsylvania

Additional Examples and Emerging Issues

Refusal of care by home health agencies to accept people who use(d) drugs

Delaying surgery by requiring a period of abstinence that's not medically necessary

Surveillance of SSPs and restrictions on their operation

Refusal to treat xylazine wounds

Denial of pain medication to people who have used drugs

Forced transport to the E.R. after an overdose

Emergent Efforts and Advocacy Strategies



Public Health Officials Can Make a Difference!

- **Note:** Most individuals don't know their legal rights are being violated. Most health care providers/facilities don't know about these legal obligations either!
- **Cutting edge area** – case law not developed, but DOJ and OCR guidances and settlements can be influential.



Educate Yourself and Others!

- Legal Help for People Who Use(d) Drugs & Alcohol
- MAT Advocacy Toolkit and
- Emergency Room Toolkit
- Know Your Rights Flyer
- These and more on LAC's website, www.lac.org

Education



- **Develop partnerships with:**
 - Health care providers who can educate others about SUD
 - Advocates working on these issues
 - Harm reduction organizations
 - CBOs whose clients are facing SUD discrimination
 - Legal organizations, including medical-legal partnerships
 - Regulators/public health officials

Attorney Advocacy Strategies: Out of Court Advocacy

- Use education, persuasion, and if necessary, threat of litigation, to get your clients access to health care and broader practice change.
- [Legal Advocacy Guide](#) – useful tips and sample demand letter.
- LAC has helped people overcome discriminatory denial to SNFs this way.

Attorney Advocacy Strategies: Administrative Complaints

- **ADA** – file with **DOJ** at <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
- **EMTALA** – file with agency that investigates complaints about hospitals in state where incident occurred. See Centers for Medicare & Medicaid Services list at <https://www.cms.gov/files/document/state-survey-agency-directory-june-2022.pdf>
- Don't forget **state/city agency complaints** – NYS Division of Human Rights, NY Attorney General, and city human rights agencies

Attorney Advocacy Strategies: Litigation

- Litigation is necessary to –
 - Establish case law
 - Raise overall awareness and drive systems change
 - Provide relief to client (if other avenues are unsuccessful)
- Litigation challenging denial of MOUD in jails has had major impact. Need to do same in other settings.
- LAC filed: *Landau v Good Samaritan Hospital* – hospital denied admitted patient methadone for OUD and home discharge with PICC line for IV-antibiotics

Public Health Strategies

1. **Meet** with relevant parties
2. Offer **technical assistance** – *how* to provide health services to people who use(d) drugs without incurring feared risks.
3. Ensuring that people leaving jail/prison are **connected to Medicaid**.
4. Issue **guidances** – legal requirements and “how to” practicalities
5. Need **statutory/regulatory change**?
6. Other – **let’s hear from you**. What have you done or seen done?

LAC Can Help

- LAC can provide **back-up support** – such as templates, advice, connection to resources
- LAC **resources** noted already
- Contact: Sally Friedman, sfriedman@lac.org or Rebekah Joab, rjoab@lac.org

More Resources

US DOJ Guidance on the ADA and Opioids

https://www.ada.gov/opioid_guidance.pdf

Report complaints to US DOJ

<https://civilrights.justice.gov/report/>

Find your US Attorney's Office

<https://www.justice.gov/usao/find-your-united-states-attorney>

Legal Action Center MOUD Advocacy Toolkit

<https://www.lac.org/resource/mat-advocacy-toolkit>

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

https://www.lac.org/assets/files/Advocacy-Guide_v4-w-attach-a.pdf

Summary of Cases Involving Discrimination Based on Treatment with MOUD

<https://www.lac.org/assets/files/Cases-involving-denial-of-access-to-MOUD.pdf>

EMERGENCY: Hospitals Can Violate Federal Law by Denying Necessary Care for Substance Use Disorders in Emergency Departments

<https://www.lac.org/resource/emergency-hospitals-can-violate-federal-law-by-denying-necessary-care-for-substance-use-disorders-in-emergency-departments>

Be Empow(ER)ed! Know Your Rights to Addiction Care for Drug & Alcohol-Related ER Visits

https://www.lac.org/assets/files/BeEmpowered_final.pdf

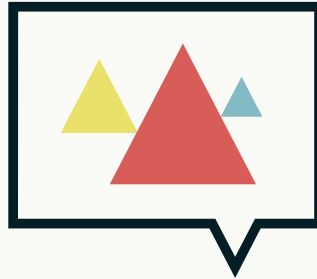
A Guide to Hospitals' Legal Obligations for ED Patients with Substance Use-Related Conditions

https://www.lac.org/assets/files/Hospital-Administrator-Guide_v3.pdf

Opioid Use Disorder & Health Care: Recovery Residences & Skilled Nursing Facilities

- <https://www.lac.org/assets/files/Recovery-Home-MOUD-Info-Sheet-Feb-2022.pdf>
- <https://www.lac.org/assets/files/SNF-MOUD-Info-Sheet-June-2021-ak-formatted.pdf>

Thank you!



www.lac.org

If you have any questions,
you can contact us at
212-243-1313.