

# BIG IDEAS

ADVANCING SOLUTIONS TO CURB FATAL OVERDOSES IN THE UNITED STATES

## THE AMERICANS WITH DISABILITIES ACT AND SUBSTANCE USE DISORDER

### RIGHTS, RESPONSIBILITIES, AND LOOKING AHEAD

IN APRIL 2022, THE DEPARTMENT OF JUSTICE (DOJ) released [Guidance on the Americans with Disabilities Act and the Opioid Crisis: Combating Discrimination Against People in Treatment or Recovery](#) (DOJ Guidance)<sup>1</sup> on protections afforded to individuals with substance use disorder under the Americans with Disabilities Act (ADA). This follows a [Technical Assistance Manual on the Employment Provisions \(Title I\) of the Americans with Disabilities Act](#), issued by the Equal Employment Opportunity Commission (EEOC) on protections afforded under Title I of the ADA.<sup>2</sup>

The ADA, passed by Congress and signed into law by President George H. W. Bush in 1990, marked a watershed moment in protecting the rights of individuals with disabilities nationwide. At the bill signing ceremony, President Bush noted that the ADA was “the world’s first comprehensive declaration of equality for people with disabilities.”<sup>3</sup> He stated further that passage of the law marked “a bright new era of equality, independence, and freedom.”<sup>4</sup>

For some, however, the ADA has been more of a promise than reality, since it has not often been used to protect the rights of individuals with substance use disorder. This was especially true for individuals being treated with medication for opioid use disorder, such as methadone or buprenorphine. Over the past few years, landmark litigation brought on behalf of

### TO FILE A DISABILITY DISCRIMINATION CLAIM WITH THE DOJ OR EEOC

#### TO FILE A CLAIM WITH THE DOJ:

Go to the DOJ Civil Rights Division website and fill out the contact form—<https://civilrights.justice.gov/report/>.

#### REPORTS CAN ALSO BE FILED BY PHONE OR MAIL:

- Phone: (202) 514-3847
- Mail:  
U.S. Department of Justice  
Civil Rights Division  
950 Pennsylvania Avenue, NW  
Washington, D.C. 20530-0001

#### TO FILE A CHARGE OF DISCRIMINATION WITH EEOC:

Go to the EEOC Public Portal and submit an online inquiry—<https://publicportal.eeoc.gov/portal/>. Someone will be in touch to interview you, after which a formal charge may be filed.

individuals receiving medication for opioid use disorder from Massachusetts<sup>5</sup> to Washington state<sup>6</sup> has spurred progress on this issue.

**THE LAW:** The ADA defines a disability as “a physical or mental impairment that substantially limits one or more major life activities.”<sup>7</sup> This includes people who have a record of such an impairment<sup>8</sup> and people whose disability is mitigated by medication.<sup>9</sup> It also includes individuals who do not have a disability but are regarded as having a disability.<sup>10</sup>

Individuals with substance use disorder can be protected by the ADA if they meet this definition.<sup>11</sup> Additionally, the ADA only applies to individuals who are “no longer engaging in the illegal use of drugs” and are either participating in treatment, have “successfully completed a supervised drug rehabilitation program,” or “have otherwise been rehabilitated successfully.”<sup>12</sup> The ADA permits employers to prohibit alcohol use in the workplace. However, unlike individuals engaged in current use of drugs, individuals with an alcohol use disorder may be protected under the ADA if they are actively engaged in alcohol use if they can otherwise perform the essential functions of their job.<sup>13</sup>

**RECENT DOJ ACTIONS:** **DOJ Guidance** issued in April 2022 explicitly clarifies that the ADA protects individuals who are engaged in a course of treatment that includes medication for opioid use disorder approved by the Food and Drug Administration (FDA).<sup>14</sup>

In 2021 and 2022, the DOJ has taken **enforcement actions** against government entities and other institutions for discrimination against people using medication for opioid use disorder.

- The DOJ filed an **action** in February 2022 against the Unified Judicial System of Pennsylvania, alleging unlawful discrimination in violation of the ADA against justice-involved individuals with opioid use disorder. The claim

followed an investigation finding that county courts has been mandating that individuals limit or stop using medication prescribed as part of a treatment plan.<sup>15</sup>

- In March 2022, the DOJ stated in a **letter of finding** to the Indiana State Nursing Board that the board violated Title II of the ADA by barring a nurse, who had a prescription for methadone, from partaking in the Indiana State Nursing Assistance Program, a program that monitors nurses in recovery and is a requirement for nurses recovering from addiction to maintain, or have reinstated, an active nursing license necessary for employment.<sup>16</sup> A **settlement** was reached in September 2022 allowing nurses to remain on medications for opioid use disorder while participating in the program.
- In 2021, the DOJ and the US Department of Health and Human Services reached a **settlement agreement** with skilled nursing facilities in Massachusetts that had denied admission to individuals on the basis of their use of medication for opioid use disorder.<sup>17</sup>
- In March 2022, the DOJ reached a **settlement** with Ready to Work, a nonprofit organization in Colorado that connects people experiencing homelessness with social, residential, and career services. The settlement resolved a complaint under Title III of the ADA that Ready to Work discriminated against an individual by denying her admission to its program because she used a prescribed medication to treat her opioid use disorder. Under the agreement, Ready to Work must adopt non-discrimination policies, implement staff trainings on anti-discrimination, and report on compliance.<sup>18</sup>

These actions have sent a strong message about the ADA and the rights of individuals with substance use disorder.

**CURRENT DRUG USE EXCEPTION:** If someone is no longer engaged in the illegal use of drugs, either because the person has completed or is

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**DOJ GUIDANCE ISSUED IN APRIL 2022 EXPLICITLY CLARIFIES THAT THE ADA PROTECTS INDIVIDUALS WHO ARE ENGAGED IN A COURSE OF TREATMENT THAT INCLUDES FDA-APPROVED MEDICATION FOR OPIOID USE DISORDER.**

currently in a treatment program, that individual is protected by the ADA.<sup>19</sup> In contrast, if a person has a substance use disorder and currently uses illegal drugs, that person is not protected under the ADA.<sup>20</sup> In fact, an amendment was added on the Senate floor in 1989 that explicitly excluded individuals who currently use illegal drugs from the ADA.<sup>21</sup> The language of the ADA does not contemplate a recurrence of drug use, something that is common during many people's recovery.<sup>22</sup> Although case law has developed that guides the applicability of the ADA in these circumstances, the language of the law does not account for the chronic nature of substance use disorder.

#### **ACTIONS TO ENSURE COMPLIANCE WITH**

**THE ADA:** While addiction policy advocates have rightly heralded the DOJ and EEOC guidance and enforcement actions, additional steps are necessary to fulfill the promise of the ADA and protect people with a substance use disorder.

Relying upon litigation to expand access to medication for opioid use disorder to populations in need is a slow, piecemeal process that does not meet the urgency of the moment.

- **State policymakers** should expand access to medication for opioid use disorder by ensuring availability in all venues covered under the ADA, including long-term care facilities, court systems, hospitals, and correctional settings.
- **Licensing boards** should identify and revise policies that place a blanket prohibition on the use of medication for opioid use disorder.
- **Those who may be sued for violating the ADA** should take proactive steps in advance of litigation to ensure that policies that may run afoul of the law are revised. State and local governments can do this by undertaking reviews similar to the one conducted by the US Attorney in Massachusetts.<sup>23</sup> This review provided sheriffs and local governments across Massachusetts with the information necessary to make certain they were in compliance with the ADA and identified the steps necessary to revise its policies.
- **Congress** should also consider removing the caveat of "current use of illegal drugs" in the ADA to reflect the science of recovery and the consensus that a return to use is often part of an individual's recovery process.

## RESOURCES

In light of legal actions taken against institutions with blanket policies prohibiting medication for opioid use disorder, resources have been developed to expand access to such programs. The following are recent toolkits and other relevant materials:

- Department of Justice, [The Americans with Disabilities Act and the Opioid Crisis: Combating Discrimination Against People in Treatment or Recovery](#);
- Equal Employment Opportunity Commission, [A Technical Assistance Manual on the Employment Provisions \(Title I\) of the Americans with Disabilities Act](#);
- National Council for Mental Wellbeing, [Medication-Assisted Treatment \(MAT\) for Opioid Use Disorder in Jails and Prisons: A Planning and Implementation Toolkit](#);
- National Association of Drug Court Professionals, [Treatment Court Practitioner Tool Kit](#);
- National Commission on Correctional Health Care, [Standards](#);
- National Sheriffs Association & National Commission on Correctional Health Care, [Jail-Based Medication-Assisted Treatment: Promising Practices, Guidelines, and Resources for the Field](#);
- Commonwealth of Massachusetts, [The Care of Residents with Opioid & Stimulant Use Disorders in Long-Term Care Settings Toolkit](#);
- Legal Action Center, [MAT/MOUD Advocacy Toolkit](#);
- O'Neill Institute for National and Global Health Law, [Access to Evidence-Based Treatment for Substance Use Disorder](#);
- Vital Strategies & Legal Action Center, [Upholding and Expanding Rights for People Who Use Drugs](#).<sup>24</sup>

## ENDNOTES

- 1 U.S. Department of Justice Civil Rights Division. The Americans with Disabilities Act and the Opioid Crisis: Combating Discrimination Against People in Treatment or Recovery. Department of Justice website. April 5, 2022. Accessed June 15, 2022. [https://www.ada.gov/opioid\\_guidance.pdf](https://www.ada.gov/opioid_guidance.pdf).
- 2 U.S. Equal Employment Opportunity Commission. A Technical Assistance Manual on the Employment Provisions (Title I) of the Americans with Disabilities Act. Equal Employment Opportunity Commission website. January 1, 1992. Accessed June 15, 2022. <https://www.eeoc.gov/laws/guidance/technical-assistance-manual-employment-provisions-title-i-americans-disabilities-act>.
- 3 U.S. Department of Justice Civil Rights Division. Remarks of President George H. W. Bush at the Signing of the Americans with Disabilities Act. Department of Justice website. July 26, 1990. Accessed June 16, 2022. [https://www.ada.gov/ghw\\_bush\\_ada\\_remarks.html](https://www.ada.gov/ghw_bush_ada_remarks.html).
- 4 U.S. Department of Justice Civil Rights Division. Remarks of President George H. W. Bush at the Signing of the Americans with Disabilities Act. Department of Justice website. July 26, 1990. Accessed June 16, 2022. [https://www.ada.gov/ghw\\_bush\\_ada\\_remarks.html](https://www.ada.gov/ghw_bush_ada_remarks.html).
- 5 *Pesce v. Coppinger*, Civ. A. No. 18-cv-11972-DJC (D. Mass. July 8, 2021).
- 6 *Kortlever v. Whatcom County*, No. 2:2018-cv-00823 (W.D. Wash. 2019).
- 7 Americans with Disabilities Act of 1990, 42 U.S.C. § 12102.
- 8 Americans with Disabilities Act of 1990, 42 U.S.C. § 12102.
- 9 Americans with Disabilities Act of 1990, 42 U.S.C. § 12102(4)(E)(i)(I).
- 10 Americans with Disabilities Act of 1990, 42 U.S.C. § 12102.
- 11 Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12114(b), 12210(b) (1990).
- 12 Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12114(a)-(b), 12210(a)-(b) (1990).
- 13 Americans with Disabilities Act of 1990, 42 U.S.C. § 12114 (1990).
- 14 U.S. Department of Justice Civil Rights Division. The Americans with Disabilities Act and the Opioid Crisis: Combating Discrimination Against People in Treatment or Recovery. Department of Justice website. April 5, 2022. Accessed June 15, 2022. [https://www.ada.gov/opioid\\_guidance.pdf](https://www.ada.gov/opioid_guidance.pdf).
- 15 *United States of America v. The Unified Judicial System of Pennsylvania*, 2:22-CV-00709 (E.D. Pa. 2022). [https://www.ada.gov/ujs\\_comp.pdf](https://www.ada.gov/ujs_comp.pdf).
- 16 U.S. Department of Justice Civil Rights Division. The United States' Findings and Conclusions Based on Its Investigation of the Indiana State Board of Nursing under Title II of the Americans with Disabilities Act, DJ # 204-26S-205. Department of Justice website. March 25, 2022. Accessed June 15, 2022. [https://www.ada.gov/indiana\\_nursing\\_lof.pdf](https://www.ada.gov/indiana_nursing_lof.pdf).
- 17 *U.S. v. The Oaks*, Settlement Agreement, No. 19-1342 (10th Cir. 2019). <https://www.justice.gov/usao-ma/press-release/file/1458306/download>.
- 18 U.S. Department of Justice Civil Rights Division. Justice Department Secures Settlement to Resolve Disability Discrimination Against People with Opioid Use Disorder. Department of Justice website. March 17, 2022. Accessed June 30, 2022. <https://www.justice.gov/opa/pr/justice-department-secures-settlement-resolve-disability-discrimination-against-people-opioid>.
- 19 Americans with Disabilities Act of 1990, § 933, 101st Cong, 2nd Sess (1990).
- 20 Americans with Disabilities Act of 1990, § 933, 101st Cong, 2nd Sess (1990).
- 21 Senator Humphrey, Gordon J. (NH). "Americans with Disabilities Act of 1990: Senate Amendment 721." Congressional Record 134:14 (September 7, 1989) p. S19833; <https://www.congress.gov/amendment/101st-congress/senate-amendment/721>.
- 22 National Institute on Drug Abuse. Drugs, Brains, and Behavior: The Science of Addiction, Treatment and Recovery. National Institute of Health website. March 22, 2022. Accessed June 20, 2022. <https://nida.nih.gov/publications/drugs-brains-behavior-science-addiction/treatment-recovery>.
- 23 U.S. Department of Justice. U.S. Attorney Rollins Announces Correctional Facilities Statewide to Maintain All Medications for Opioid Use Disorder. Department of Justice website. April 1, 2022. Accessed June 30, 2022. <https://www.justice.gov/usao-ma/pr/us-attorney-rollins-announces-correctional-facilities-statewide-maintain-all-medications#:~:text=BOSTON%20%E2%80%93%20The%20U.S.%20Attorney%27s%20Office,entering%20a%20carceral%20facility%27s%20custody%2C>.
- 24 Vital Strategies & Legal Action Center, Upholding and Expanding Rights for People Who Use Drugs: An Initiative of the Legal Action Center and Vital Strategies.