

BIG IDEAS

ADVANCING SOLUTIONS TO CURB FATAL OVERDOSES IN THE UNITED STATES

THE AMERICANS WITH DISABILITIES ACT AND SUBSTANCE USE DISORDER

RIGHTS, RESPONSIBILITIES, AND THE WAY FORWARD

IN APRIL 2022, THE DEPARTMENT OF JUSTICE (DOJ) released [guidance](#)¹ on protections afforded to individuals with substance use disorder under the Americans with Disabilities Act (ADA). This follows earlier [guidance](#) issued by the Equal Employment Opportunity Commission (EEOC) on protections afforded under Title I of the ADA.²

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.”³ He stated further that passage of the law marked “a bright new era of equality, independence, and freedom.”⁴

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 medications for opioid use disorder (MOUD), such as methadone or buprenorphine. Over the past few years, landmark litigation brought on behalf of individuals receiving MOUD from Massachusetts⁵ to Washington State⁶ has spurred progress on this issue.

THE LAW: The ADA defines a person with a disability as a person who has a physical or mental impairment that substantially limits one or more major life activities.⁷ This includes people

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.

who have a record of such an impairment⁸ or if their disability is mitigated by medication.⁹ It also includes individuals who do not have a disability but are regarded as having a disability.¹⁰

Individuals with substance use disorder can be protected by the ADA if they meet this definition.¹¹ 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.”¹² While the ADA does permit an employer to prohibit the use of alcohol in the workplace, there is no similar explicit requirement that individuals must abstain from alcohol use in order to be protected under the ADA.¹³

RECENT DOJ ACTIONS: The [guidance](#) issued by the DOJ Civil Rights Division 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.¹⁴

In the past few years, 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 follows an investigation finding that county courts have been mandating that individuals limit or stop using medication prescribed as part of a treatment plan.¹⁵
- 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.¹⁶
- In 2021, the DOJ and the US Department of Health and Human Services reached settlement agreements with skilled nursing facilities in Massachusetts that had denied patients admission to individuals on the basis of their use of MOUD.¹⁷
- In March 2022, the DOJ reached a settlement with Ready to Work, a nonprofit organization in

Colorado that connected 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 uses 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.¹⁸

- In March 2022, the DOJ reached a settlement with the Massachusetts Trial Court resolving complaints that drug courts in Massachusetts were violating the ADA by forcing participants to stop taking their prescribed MOUD without an individualized assessment by a medical professional. The complaints also alleged that drug court personnel, with no medical training, required or pressured drug court participants to take naltrexone as a condition of participation in drug court, without regard to whether a health professional recommended that specific treatment option. Under the agreement all Massachusetts drug courts must implement a policy of allowing only licensed prescribers and opioid treatment programs to make decisions regarding participants’ treatment plans, and only after conducting individualized assessments for each participant.¹⁹
- In November 2022, the DOJ reached a settlement with the Lexington-Fayette Urban County Government’s Department of Community Corrections in Kentucky to ensure that people prescribed MOUD can remain on their medication while in custody at Fayette County Detention Center.²⁰
- In May 2023, the DOJ signed a consent decree requiring the Cumberland County jail in New Jersey to provide MOUD, mental health care, and suicide prevention. This followed a DOJ finding of reasonable cause to believe that the jail’s failure to provide MOUD, together with its failure to offer adequate mental health and suicide prevention measures, violated the 8th Amendment and the ADA.²¹

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

REMAINING LEGAL ISSUES: Under the ADA, if someone is no longer engaged in the illegal use of drugs, either because the person has

already completed a treatment program or is currently in a treatment program, that individual is protected by the ADA.²² In contrast, if a person has a substance use disorder and currently uses illegal drugs, that person is not protected under the ADA.²³

In fact, an amendment was added on the Senate floor in 1989 that explicitly excluded individuals who use illegal drugs from the ADA.²⁴ The language of the ADA does not contemplate a recurrence of drug use, something that is common during many people's recovery.²⁵ 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.

However, the illegal drug use exception to the ADA provides that public entities, including zoning boards, police departments, and public hospitals, cannot deny health services or services provided in connection with drug "rehabilitation" to people who use illegal drugs.²⁶ Therefore, it violates the ADA if treatment facilities for substance use disorder, syringe service programs, and other providers of medication for opioid use disorder to people who use illegal drugs are prevented from operating under governmental rules.

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.

First, relying upon litigation to expand access to MOUD to populations in need is a slow, piecemeal process that does not meet the urgency of the moment. State policymakers can expand access to MOUD by ensuring availability in all venues covered under the ADA, including long-term care facilities, court systems, hospitals, and correctional settings. In addition, licensing boards should identify and revise policies that place a blanket prohibition on the use of MOUD.

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.²⁷ This review

RESOURCES

IN LIGHT OF LEGAL ACTIONS taken against institutions with blanket policies prohibiting medications for opioid use disorder, resources have been developed to expand access to such programs. The following are some of 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](#);
- Vital Strategies & Legal Action Center: [New Project to Equitably Enforce Anti-Discrimination Protections and Promote Rights of People Who Use Drugs](#).

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.

ENDNOTES

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- 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.
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- 5 *Pesce v. Coppinger*, Civ. A. No. 18-cv-11972-DJC (D. Mass. July 8, 2021).
- 6 *Kortlever et al v. Whatcom County, Washington et al*, No. 2:2018-cv-00823 (W.D. Wash. 2019).
- 7 42 U.S.C. § 12102(1)(A).
- 8 42 U.S.C. § 12102(1)(B).
- 9 42 U.S.C. § 12102(4)(E)(i)(I).
- 10 42 U.S.C. § 12102(1)(C).
- 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.
- 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.
- 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.
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- 21 U.S. Department of Justice Civil Rights Division. Agreement to Resolve the Department of Justice’s Investigation of the Cumberland County Jail. Department of Justice website. May 17, 2023. Accessed September 28, 2023. https://www.justice.gov/d9/press-releases/attachments/2023/05/17/2-3_0.pdf.
- 22 Americans with Disabilities Act of 1990, § 933, 101st Cong, 2nd Sess (1990). More specific citation: Americans with Disabilities Act of 1990, 42 U.S.C. § 510 (1990).
- 23 *Id.*
- 24 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>.
- 25 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>.
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