Anti-Discrimination Protections for People Who Have Used Drugs

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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.



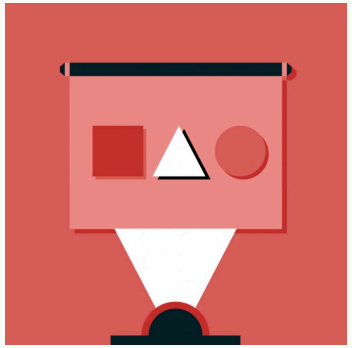
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Free Legal Services in New York

- **Criminal Record Barriers:** Criminal record review, employment, licensing, housing
- **HIV:** Privacy, discrimination, and more
- **Substance Use Disorders:** Discrimination, privacy, insurance access

- For individuals, service providers, and attorneys
- Onsite or remote workshops and trainings
- Call 212-243-1313
- Share our **flyer**

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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

CALL our Helpline
(888) 614-5400

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

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

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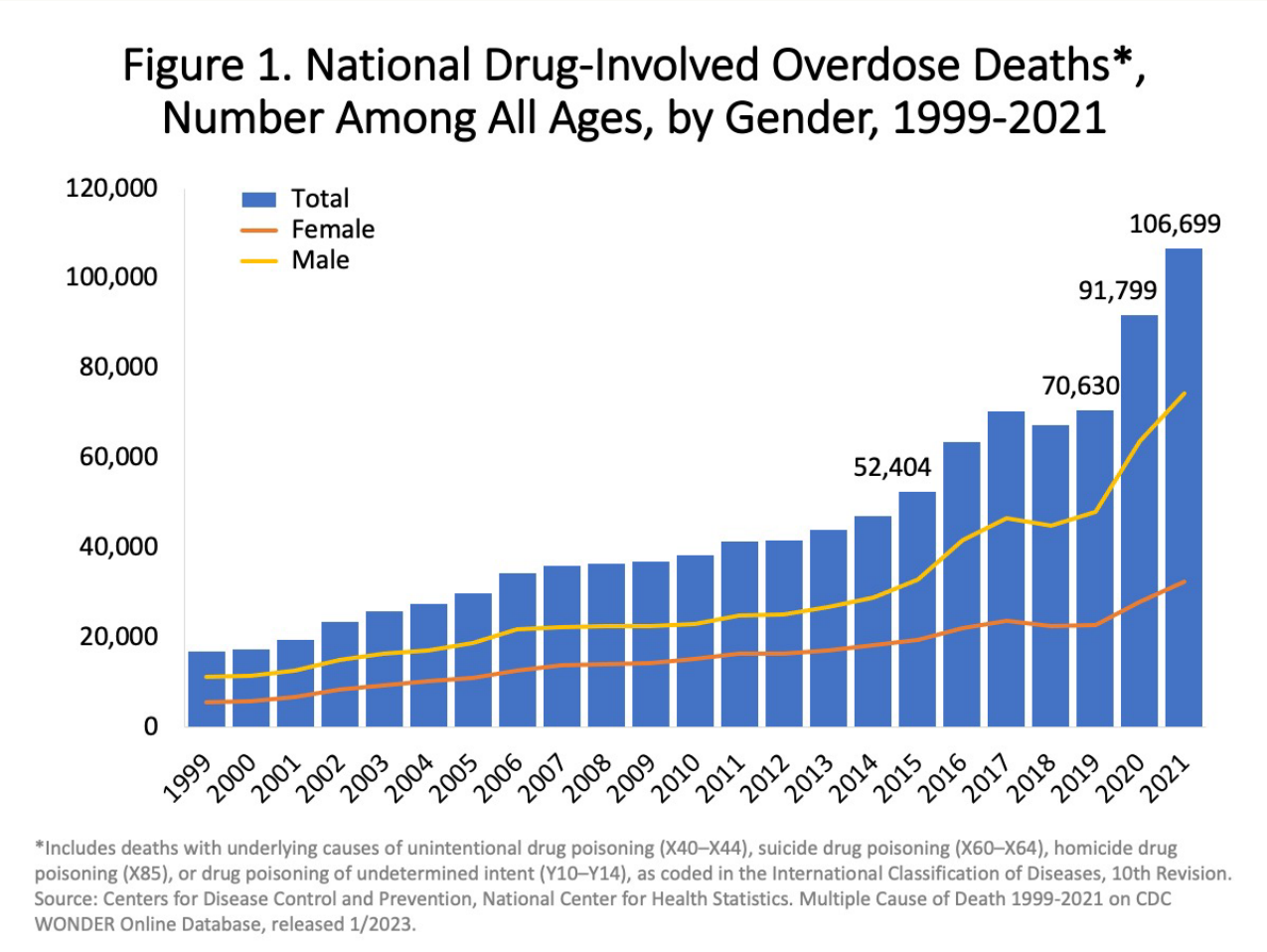
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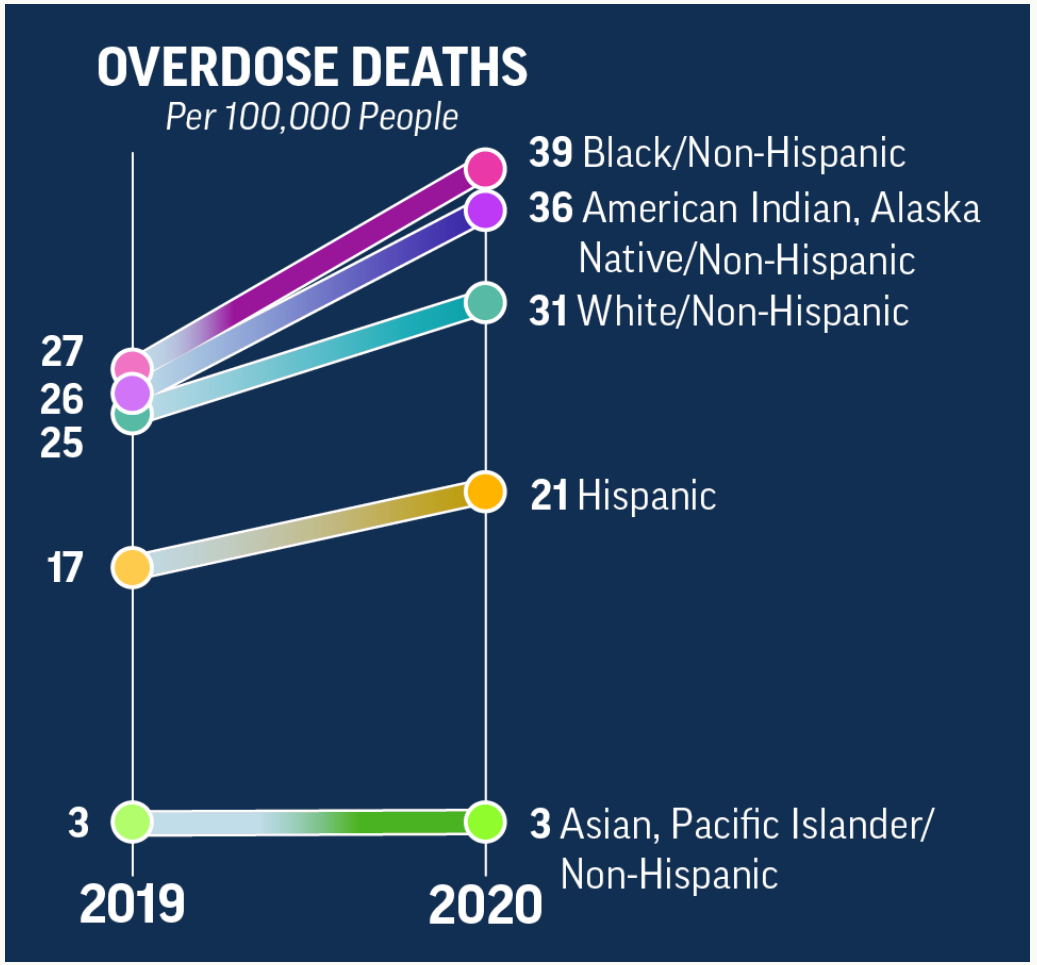
Language Matters.
Words Have Power.
People First.

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

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Overdose Crises





Sources: NIDA; CDC

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Overdose Crises

In 2021, provisional data from CDC estimate **more than 107,000 people died of a drug overdose, with 75% of those deaths involving an opioid**… A key component of the federal government response to the overdose crisis is expanding access to medications for opioid use disorder. **However, only 18% of people with opioid use disorder receive medication as treatment.** Though the benefits of providing safe and effective medication for opioid use disorder are well-known, decades of **stigma** against treating substance use disorders with medication has contributed to minimal reach.

-National Institute on Drug Abuse, July 2022

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Overdose Crises



Source: CDC

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Common Discrimination

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

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

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Why does discrimination happen?

- Stigma against people who use drugs
- Stigma and misunderstanding about addiction medication, primarily medication to treat opioid use disorder (MOUD)
- Beliefs that people who use drugs have caused their own health conditions and are less worthy of care
- Lack of education about MOUD regulation and how SNFs and other facilities can provide it
- Multi-layered with discrimination based on race, other disabilities, etc.

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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.
- Stacey is taken to the E.R. after an opioid overdose. E.R. staff administer naloxone, provide rehydration, and restore their respiratory function. After a few hours in the E.R., Stacey is discharged. No one offers her MOUD, naloxone to reverse a future overdose, or help connecting to OUD care in the community.
- Pete is hospitalized for endocarditis, a heart infection caused by his injection drug use. The hospital will not conduct a valve replacement surgery even though the surgery is consistent with clinical standards. The doctor believes the surgery is not a good use of resources because of Pete's drug use.

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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 the three Food and Drug Administration (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

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Myths & Facts

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

FACT: Buprenorphine and methadone are opioids, but are long-acting medications designed to treat symptoms of addiction – like cravings and withdrawal

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

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

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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

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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 that the prescribed dose should be increased

MOUD effectively treats only OUD – not other substance use

Use of other substances may be a sign that the individual needs additional supports

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Anti-Discrimination Laws

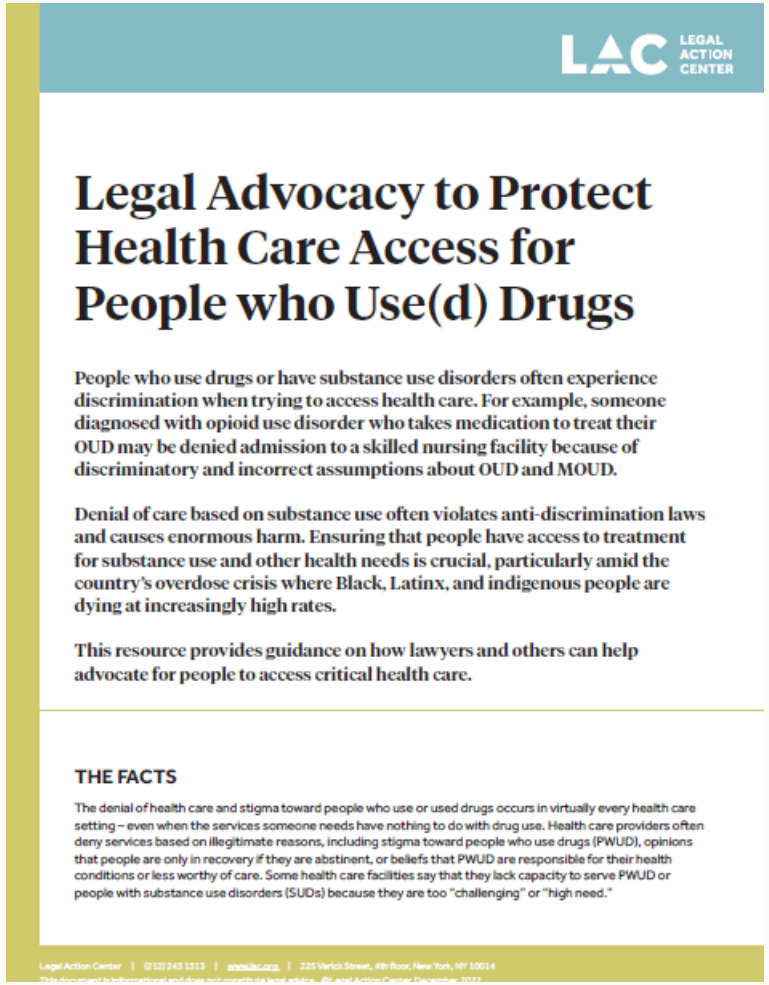
Anti-discrimination laws protect the rights of people who use or used drugs to access treatment, healthcare, housing, work, and more

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 entities
Affordable Care Act, Section 1557 (ACA)	Health care entities receiving federal funding
Fair Housing Act (FHA)	Housing and related services
NYS/NYC Human Rights Laws	State and city entities and public accommodations

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Who do the anti-discrimination laws protect?

What do the laws prohibit?



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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."

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Who do the laws protect?

- People with **disabilities**
- Disability is an impairment that substantially limits major life activites
- SUD is generally considered to be a disability
  - But only SUD not currently involving illegal use of drugs
  - Laws generally exclude people currently engaging in illegal use of drugs
  - AUD is covered
- However, even someone currently using drugs illegally, cannot be denied health and treatment services because of their drug use

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Polling Question

- 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?

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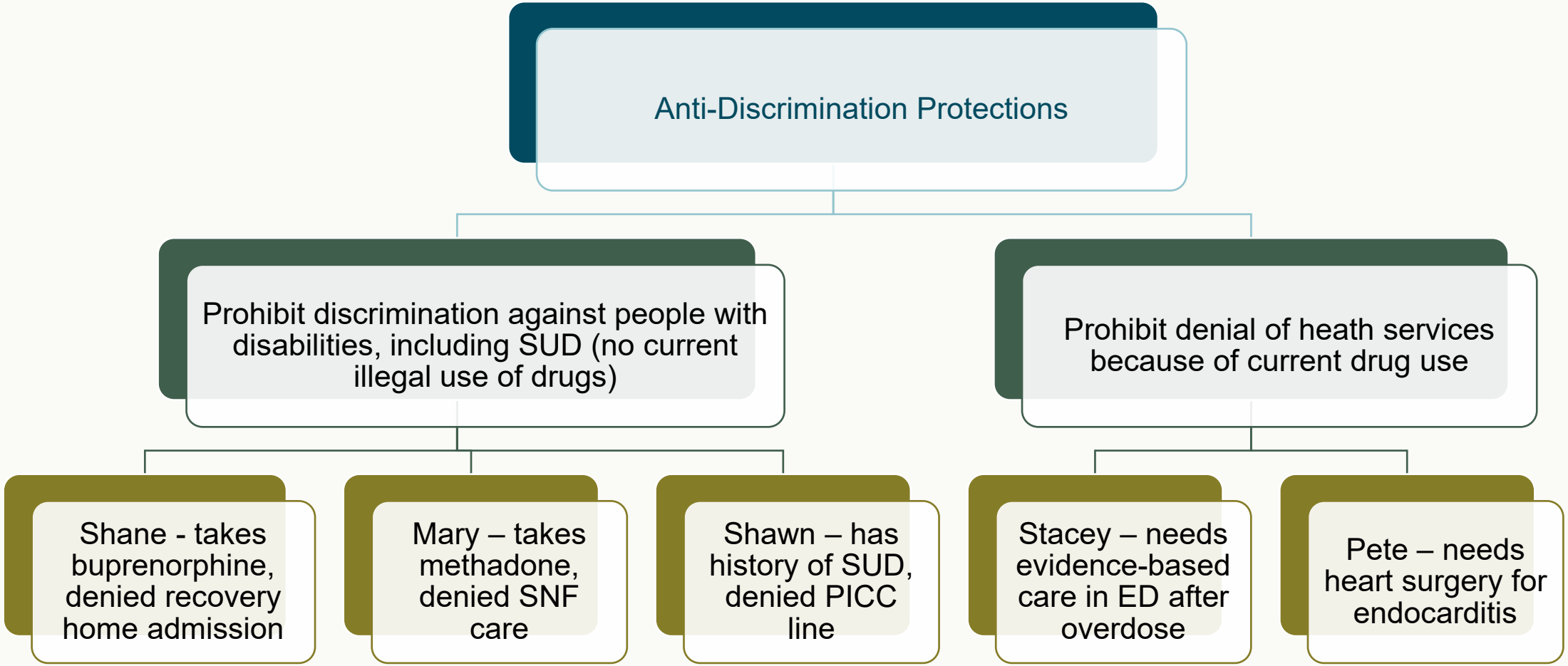
Polling Answer

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

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Who do the laws protect?



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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

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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
- Having admission criteria that screen out or tend to screen out people with disabilities
- Having 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

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Prohibiting MOUD



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

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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

Pesce 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 methadone for the treatment of opioid use disorder (OUD) 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. Aroostook Cty., 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.

Kortlever v. Whatcom 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 Whatcom 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.

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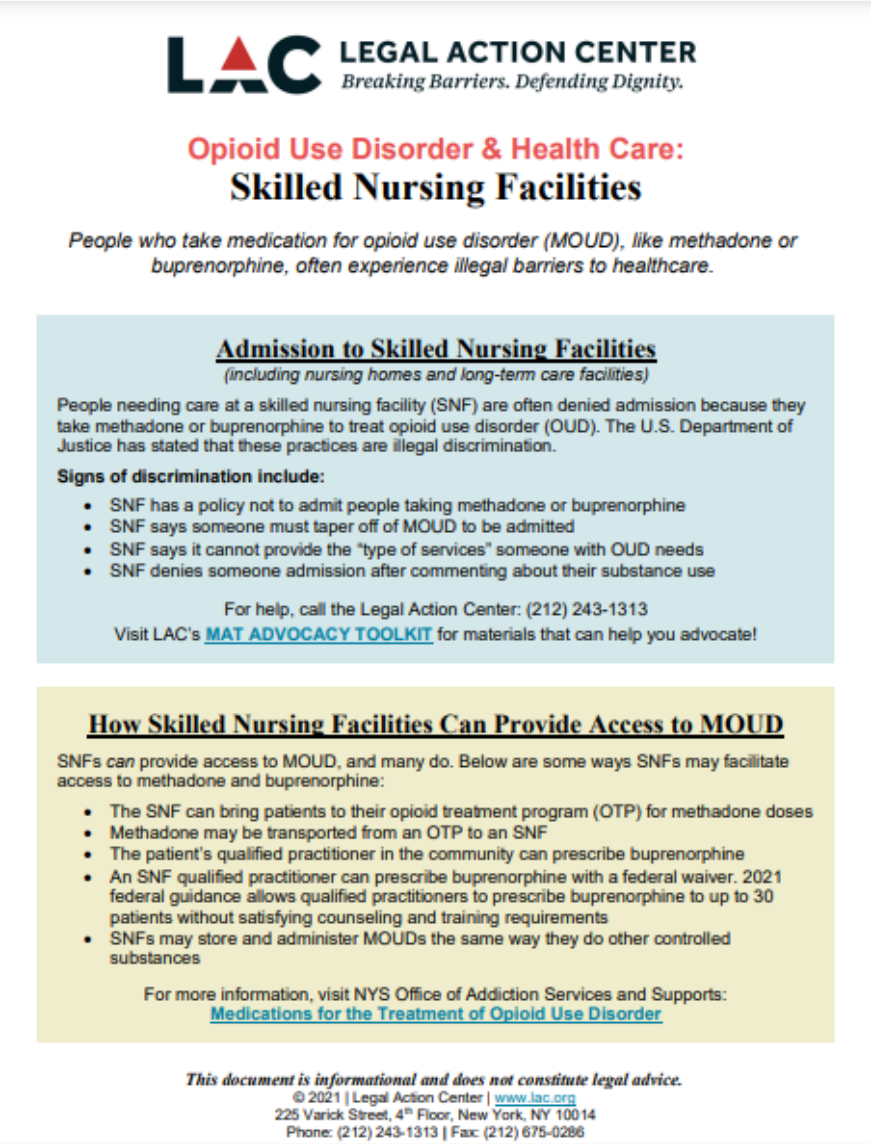
See LAC's **Cases Involving Discrimination Based on Treatment with Medication for Opioid Use Disorder (MOUD)**

- 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; child welfare systems; employment; residential work and social service programs

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Mary & SNFs

- Mary needs SNF care after hospitalization, but is denied admission because she takes methadone
- Blanket policy & no individual analysis
- DOJ has multiple settlements with SNFs making clear that excluding people who take MOUD exclusion violates the ADA & ACA



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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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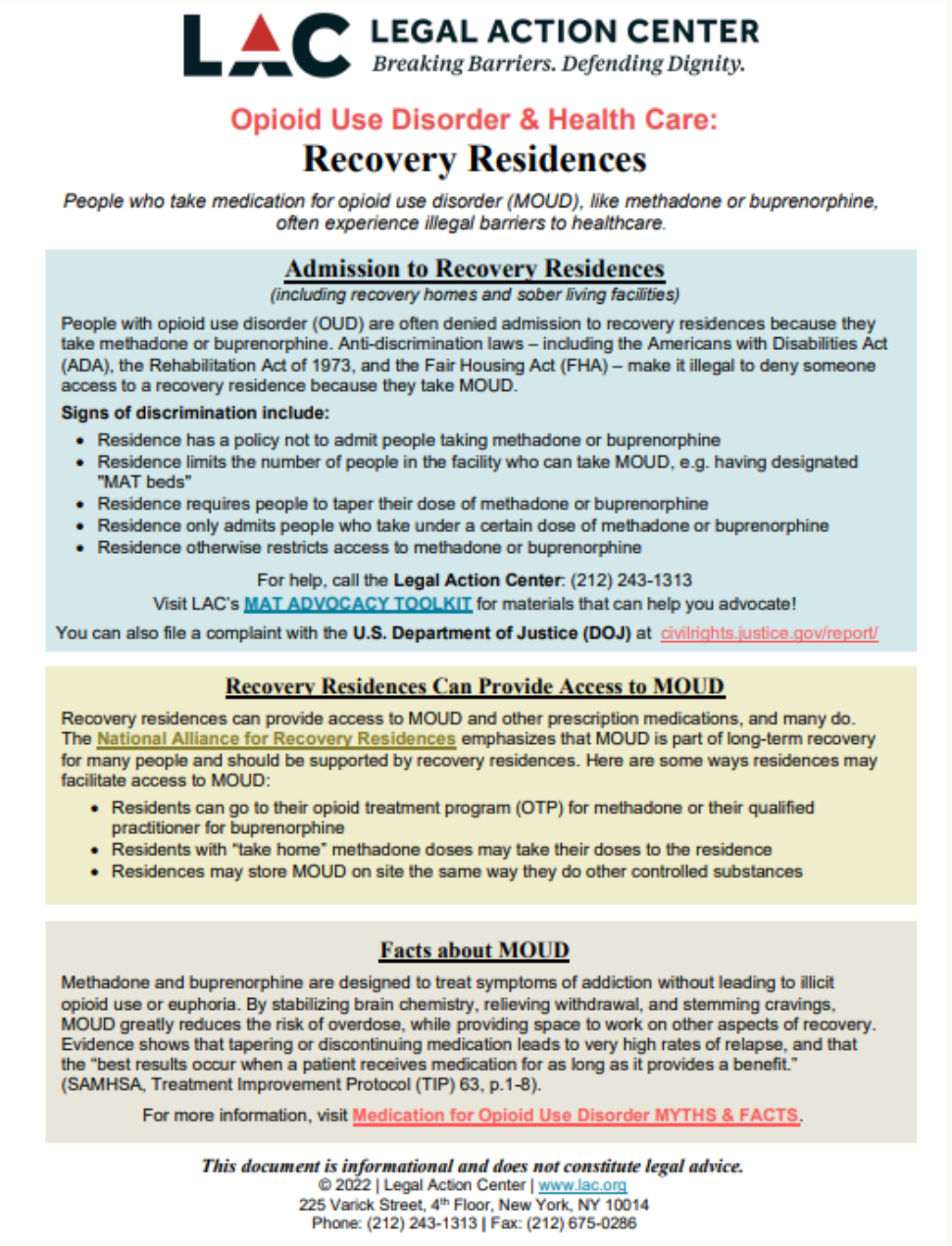
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Polling Question

- Shane takes buprenorphine to treat OUD.
- Drug court mandate: Shane must live in recovery housing.
- But recovery homes in Shane's area do not allow MOUD, saying they are "abstinence-based" and have nowhere to store the medication.
- **Is this legal?**

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- No…prohibiting MOUD is discrimination because of disability.
- No case law on this yet



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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/

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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Polling Question

- 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.

- **Is this legal?**

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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).

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Stacey & the Emergency Room

Stacey went to the ER after an overdose but was only treated for acute symptoms.

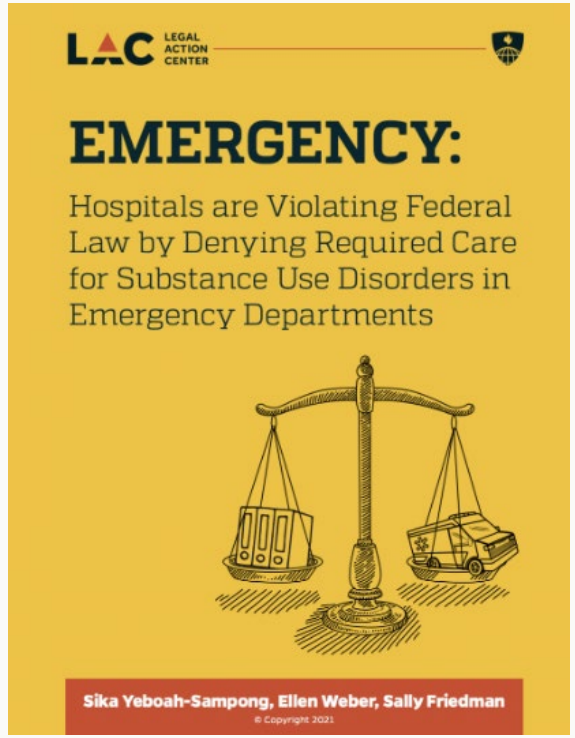
What Should ER Have Done Differently?…Implement Evidence-Based Practices:

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 against future overdose

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Discrimination in Emergency Rooms

LAC report: ***Emergency: Hospitals Are Violating Federal Law by Denying Required Care for Substance Use Disorders in Emergency Departments*.**



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

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Pete & Inpatient Hospital Care

- Pete was denied a valve replacement for his endocarditis, because the hospital did not think the surgery was a good use of resources
- 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

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Additional Examples and Emerging Issues

- Refusal of care by home health agencies to accept people in recovery or currently using
- Delays of surgeries – that are not medically necessary – requiring a sustained period of abstinence
- Surveillance of SSPs and zoning restrictions on treatment programs
- Refusal to treat xylazine wounds
- Denial of pain medication to people who have used drugs

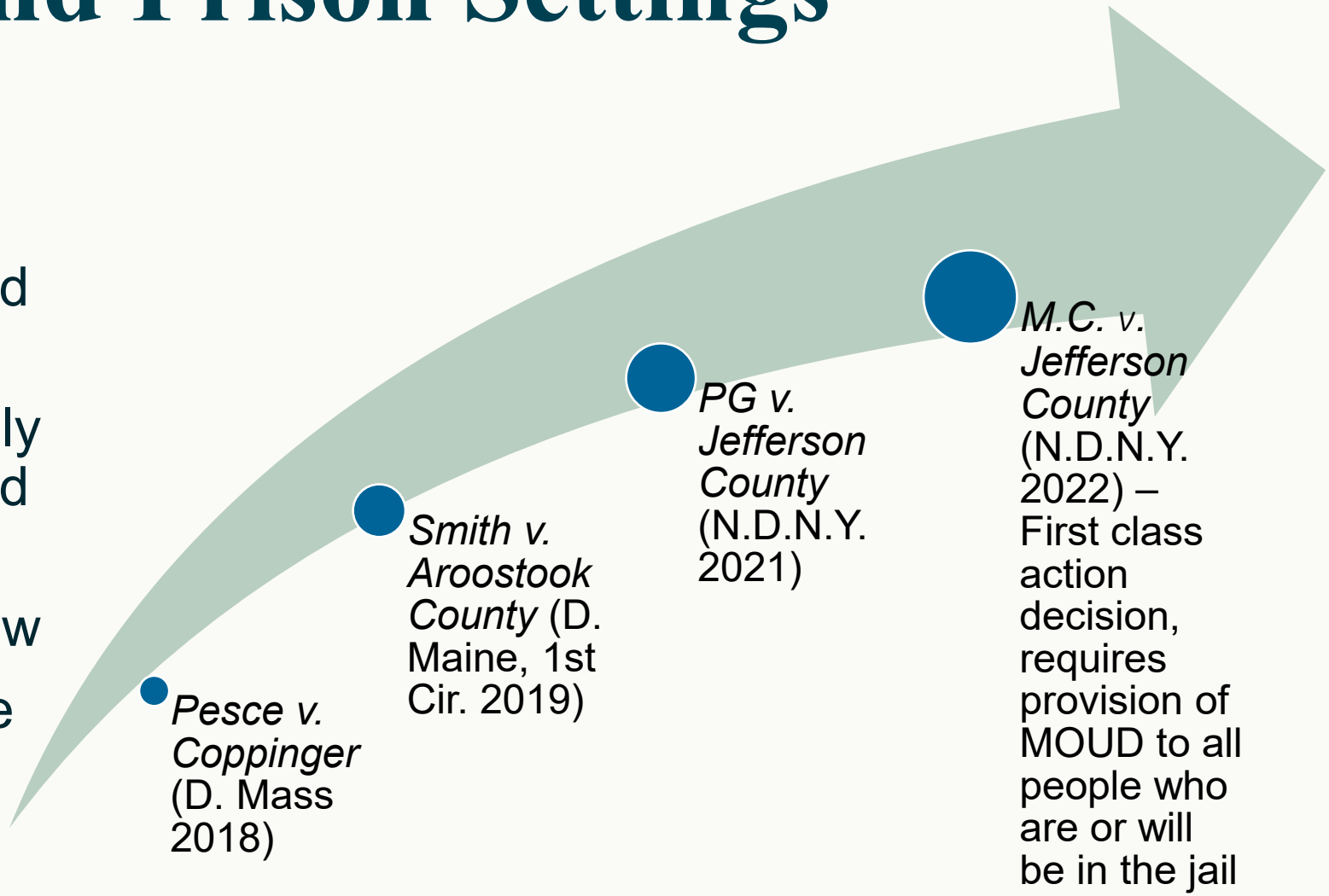
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Other Settings Where Anti-Discrimination Laws Apply

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MOUD in Jail and Prison Settings

- Four decisions holding that denying access to MOUD in jails likely violates the ADA and the 8th Amendment
- Together, these decisions apply to people who are incarcerated pre-trial or after a conviction
- NYS MOUD in Corrections Law
- Litigation may continue (single dosing, disciplinary violations, etc.)



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35

Other Types of Cases in the Criminal Legal System

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

- Courts across the PA system violated the ADA by prohibiting or restricting access to MOUD.

Settlement with Massachusetts Trial Court, Mar. 24, 2022

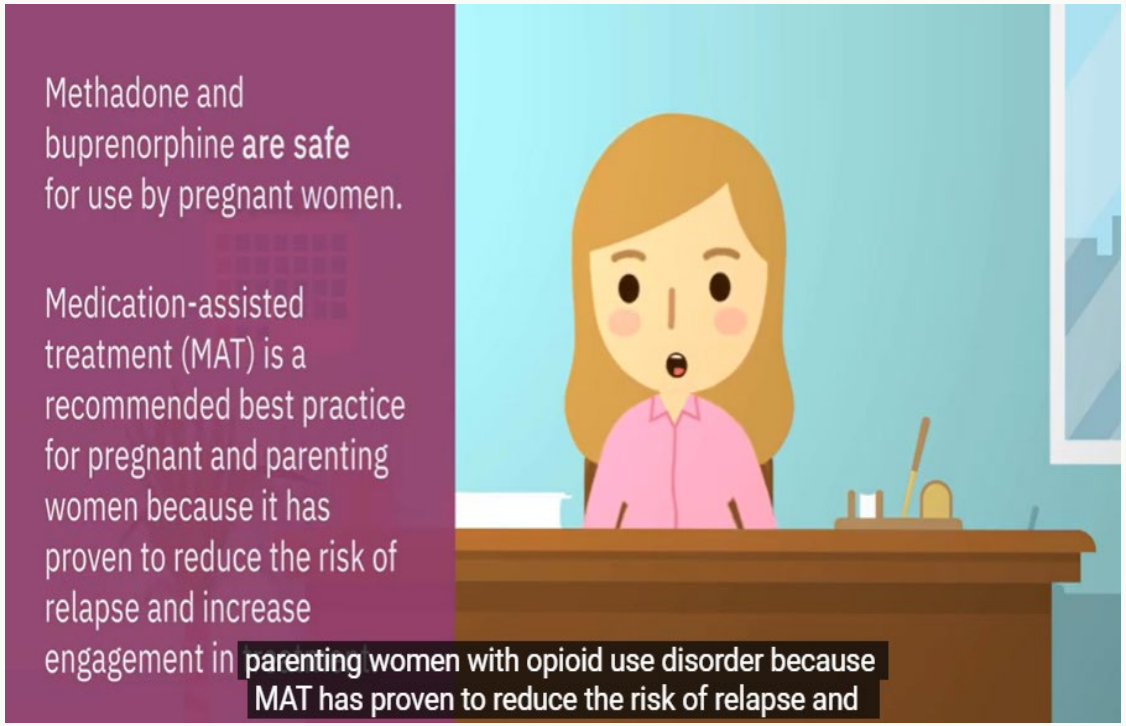
- Drug courts violated the ADA by forcing participants to stop taking prescribed MOUD without individualized assessments by a medical professional

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

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MOUD & Family Regulation System



- 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

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Employment + Anti-Discrimination Laws

- Employers may not discriminate against people with disabilities who are otherwise qualified for the job (can perform the essential duties) with or without a reasonable accommodation
- Employers are not required to excuse misconduct that is forbidden among all employees, even if an employee's misconduct stems from their disability
  - Drinking alcohol while at work may violate a misconduct rule, even though some may have AUD
  - Remember, "current illegal use of substances" is not a disability – but people currently using alcohol can be protected (if they have AUD)

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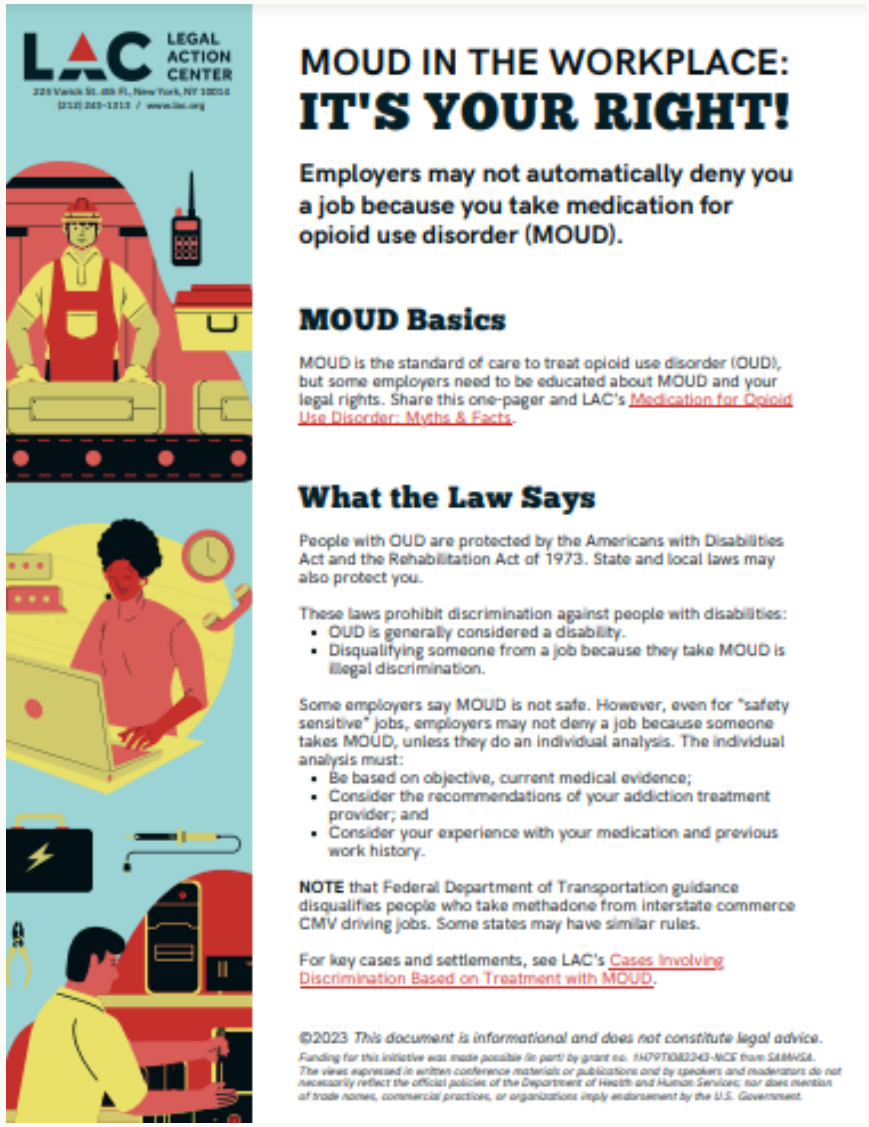
Reasonable Accommodation

- What is a “reasonable accommodation”?
  - Change(s) to work environment or the way things are customarily done that enable a person with a disability to perform their job duties
  - BUT: must not cause employer **undue hardship/burden** (e.g., significant cost, fundamental change to way company operates, etc.)
  - AND: individual with disability generally must request the reasonable accommodation

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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



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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

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Zoning Discrimination is Illegal

- Local officials may not use zoning laws to discriminate against people with SUD
- Many successful cases in New York

- Applies to SSPs too?
  - It could – no case law yet
  - Trickier for Overdose Prevention Centers, which are not allowed under federal law

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What can you do?

1. Educate yourself and others
2. File administrative complaints
3. Contact LAC with questions or for legal Assistance: 212-243-1313



Legal Help for People Who Use(d) Drugs & Alcohol

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ASSOCIATED ISSUE AREAS

Health Care Discrimination
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Discrimination in the Criminal Legal & Family Regulation Systems
READ MORE ▶

Care Within the Criminal Legal System
READ MORE ▶

Harm Reduction

Legal Services and Education to Enforce the Rights of People Who Use(d) Drugs and Alcohol

People with substance use disorders often face illegal discrimination. Federal law prohibits discrimination based on a person's substance use disorder when they are not "currently engaging in the illegal use of drugs." But even people that are currently using drugs illegally cannot be denied health services because of that illegal use.

LAC is committed to fighting such discrimination. Our team provides free legal services for people who are facing discrimination because of their drug or alcohol use or substance use disorder in settings including healthcare, employment, the criminal legal system, and the family regulation system.

LAC can help individuals, advocates, and providers. **Click on a specific topic below to learn more, complete an intake, or review resources.**

Access to MOUD/MAT

Addressing Discrimination in Health Care Settings

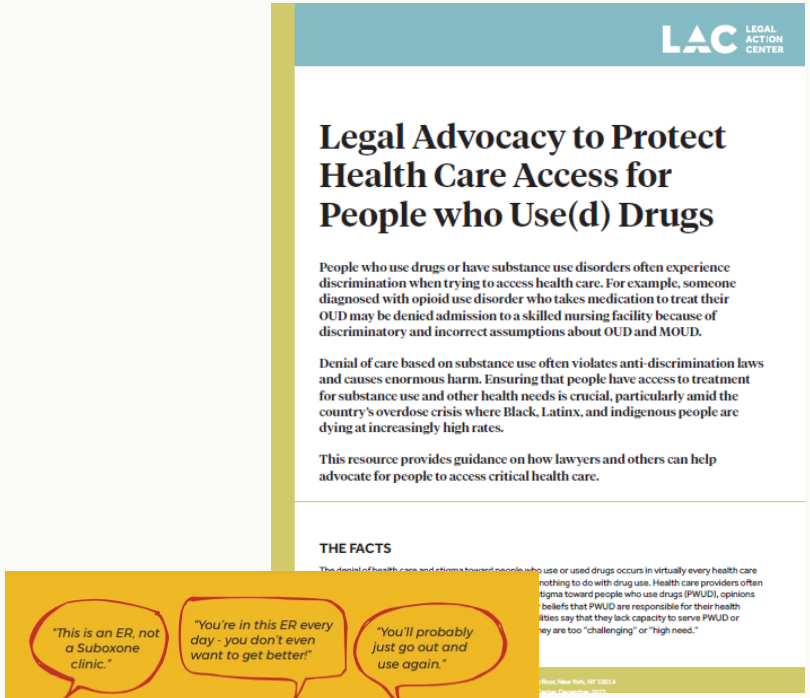
Know Your Rights in the Emergency Room

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Breaking Barriers. Defending Dignity.

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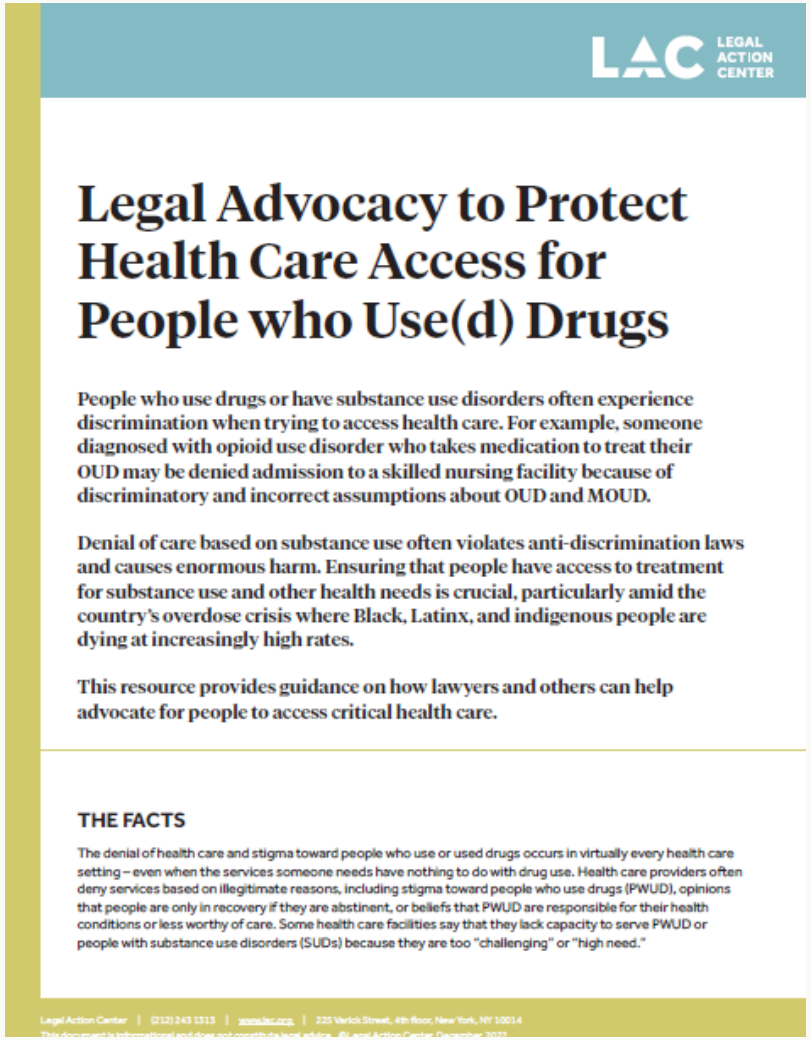
Education

- **Share resources**
- **Develop partnerships** with:
  - Health care providers and addiction specialists
  - Advocates working on these issues
  - Harm reduction organizations
  - Legal organizations, including medical-legal partnerships





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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."

Legal Action Center | (212) 243 1313 | www.lac.org | 225 Varick Street, 4th floor, New York, NY 10014



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

LAC LEGAL ACTION CENTER

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

Pesce 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 methadone for the treatment of opioid use disorder (OUD) 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. Aroostook Cty., 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.

Kortlever v. Whatcom 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 Whatcom 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.



TOOLKIT

MAT/MOUD Advocacy Toolkit

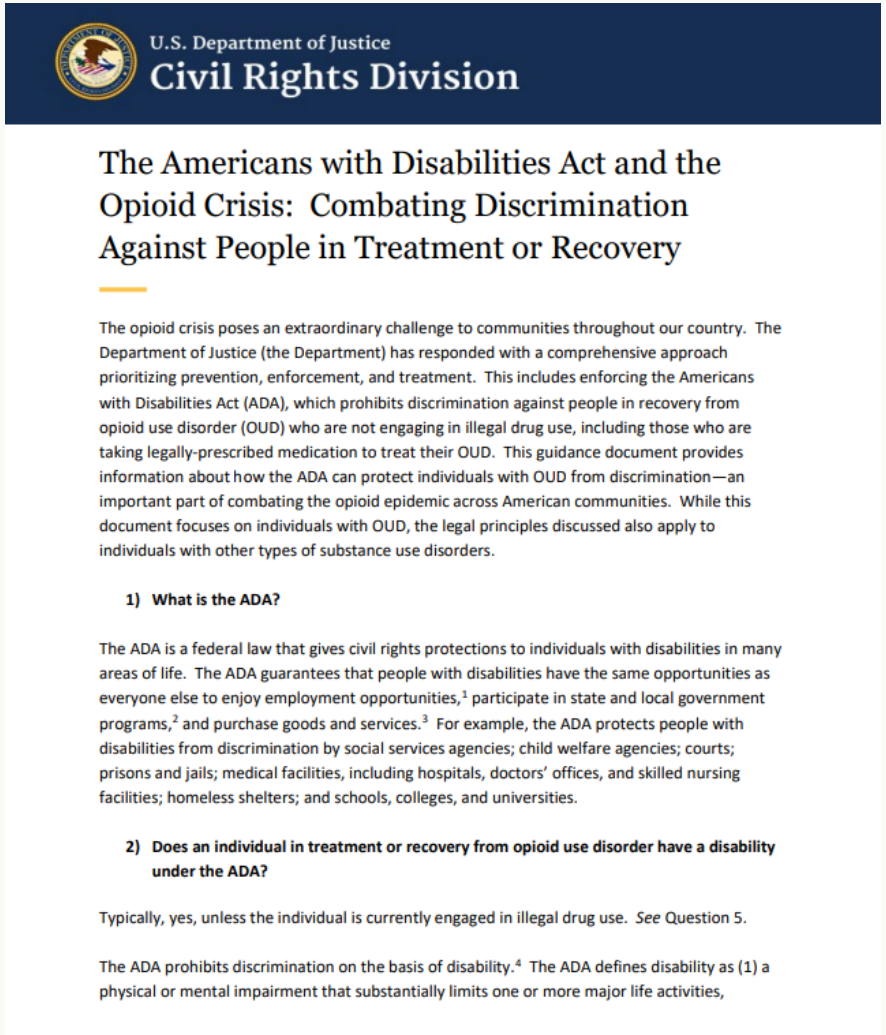
November 2022

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DOJ Guidance on MOUD

Describes how the ADA protects individuals with OUD, and other SUDs or disabilities, 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."



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

The opioid crisis poses an extraordinary challenge to communities throughout our country. The Department of Justice (the Department) has responded with a comprehensive approach prioritizing prevention, enforcement, and treatment. This includes enforcing the Americans with Disabilities Act (ADA), which prohibits discrimination against people in recovery from opioid use disorder (OUD) who are not engaging in illegal drug use, including those who are taking legally-prescribed medication to treat their OUD. This guidance document provides information about how the ADA can protect individuals with OUD from discrimination—an important part of combating the opioid epidemic across American communities. While this document focuses on individuals with OUD, the legal principles discussed also apply to individuals with other types of substance use disorders.

1) **What is the ADA?**

The ADA is a federal law that gives civil rights protections to individuals with disabilities in many areas of life. The ADA guarantees that people with disabilities have the same opportunities as everyone else to enjoy employment opportunities,[1] participate in state and local government programs,[2] and purchase goods and services.[3] For example, 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.

2) **Does an individual in treatment or recovery from opioid use disorder have a disability under the ADA?**

Typically, yes, unless the individual is currently engaged in illegal drug use. *See* Question 5.

The ADA prohibits discrimination on the basis of disability.[4] The ADA defines disability as (1) a physical or mental impairment that substantially limits one or more major life activities,

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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 agency complaints** – including Attorneys General!

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Questions?

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If you have any questions,
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