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

As the overdose crisis continues, many people with and at risk of substance use disorders (SUDs) seek care from emergency departments (EDs). Evidence-based SUD protocols that respond to the needs of this population exist and can be incorporated into ED workflow successfully. Many hospitals, however, have not adopted those practices, leaving ED practitioners with insufficient institutional support to care for these patients. This short guide explains why hospital adoption of these protocols is in the best interests of patients as well as hospital administrators and practitioners. It also explains how hospitals can violate federal civil rights law when they do not adopt these protocols.

LAC LEGAL ACTION CENTER

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## What are evidence-based practices for ED patients with substance use-related conditions?

- SUD screening and diagnostic assessment;
- Offer of buprenorphine for opioid withdrawal and moderate or severe opioid use disorder;
- Warm handoff to SUD treatment, alongside naloxone at discharge, for anyone who uses opioids or substances with which opioids can be mixed.

Patients are not required to accept these services, but hospitals should offer and be able to provide them.

## Who benefits from hospital adoption of these practices?

Patients, ED practitioners, and hospital administrators! Providing these practices:

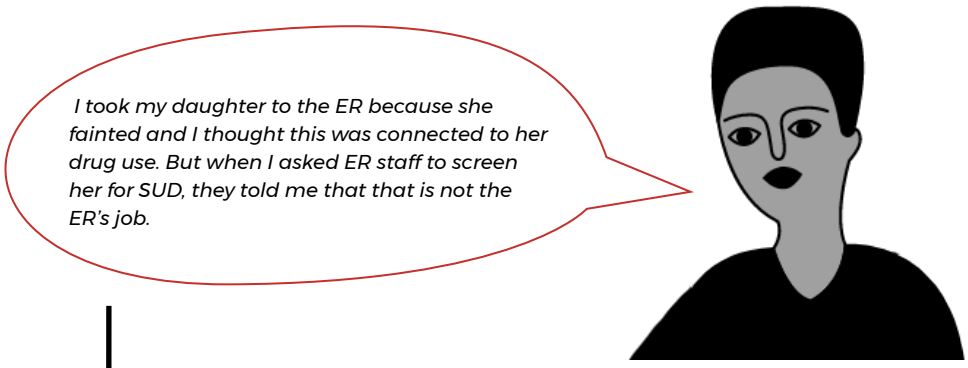
- Increases patients' rates of SUD treatment retention and lowers self-reported use of non-prescribed drugs;
- Provides the most cost-effective care, in part, by reducing repeat ED visits;
- Means joining other hospitals in making evidence-based practices for SUD the standard of care in emergency medical settings; and
- Reduces exposure to potential legal liability.

## What federal laws can hospitals violate when they do not adopt these practices?

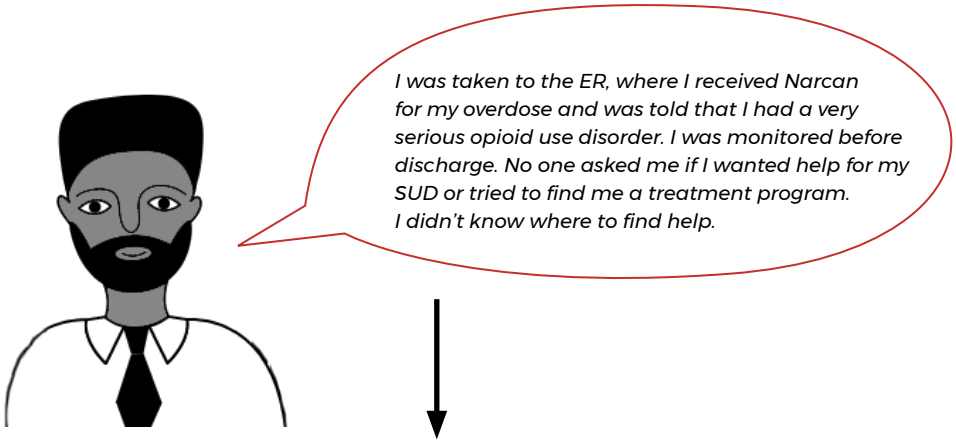
- **Emergency Medical Treatment and Labor Act ("EMTALA").**
  **This law requires most hospital EDs to do the following before patient discharge or transfer:**
  - ◊ Identify medical emergencies. Hospital EDs satisfy this requirement by screening patients for SUDs and conducting diagnostic assessments for this condition. A patient whose SUD would seriously threaten their health without immediate medical attention has an emergency medical condition.

◊ Stabilize medical emergencies. Hospital EDs satisfy this requirement when they offer the evidence-based practices listed above. These services reduce the likelihood of a patient's condition deteriorating materially upon discharge or transfer by:

- addressing cravings and withdrawal;
- reducing a patient's risk of death and overdose post-discharge; and
- improving access to ongoing SUD care.



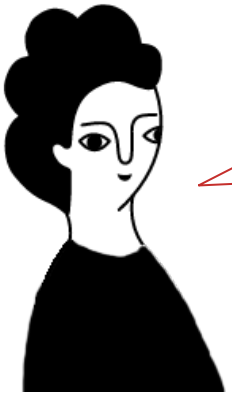

**Likely EMTALA violation because the ED did not conduct a screening to detect and assess for SUD.**




**Likely EMTALA violation because the ED did not offer medication for opioid use disorder and a facilitated referral to SUD treatment, failing to satisfy EMTALA's stabilization mandate.**

- **Disability rights laws. The Americans with Disabilities Act and Rehabilitation Act of 1973 prohibit disability-based discrimination in healthcare and other settings, including:**

  ◊ Denial of evidence-based services for SUD because of stereotypes about people with SUDs, rather than legitimate medical reasons.

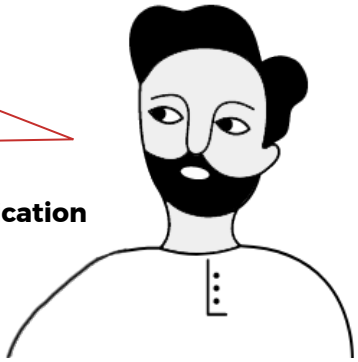


*I am a peer in the ER and heard staff there refer to Mr. Smith, who had stomach pain secondary to SUD, as "just a homeless person looking for a fix." No one offered anything for his addiction. They did not offer to help him find addiction care after his discharge. They didn't even give him naloxone.*

**Disability rights violation if the ED did not offer evidence-based SUD services because of stereotypical assumptions about people with SUD.**

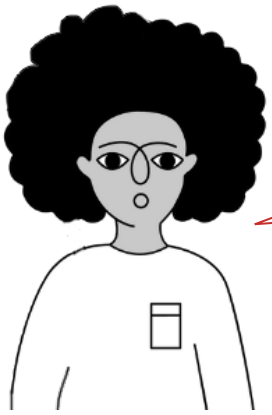
  ◊ Methods of administering healthcare services that have the purpose or effect of denying evidence-based services to people who use substances or have SUD.

*I want to start my ED patients with opioid addiction on buprenorphine, but my hospital pharmacy will not stock it.*



**Disability rights violation if the pharmacy will not stock this medication because it is primarily used for opioid use disorder or because of assumptions that people with this condition will misuse this medication or overwhelm the ED seeking care.**

  ◊ Failure to make reasonable modification(s) of policies or practices to provide evidence-based services upon request.



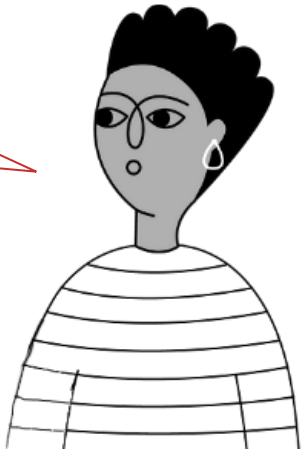
*When I went to the ER after overdosing on opioids, I asked for Suboxone, but my request was denied. ER staff told me that this ER does not provide Suboxone.*

**Likely disability rights violation because administration of Suboxone is a reasonable accommodation to this ED's practice of not administering medication for opioid use disorder.**

- **Title VI of the Civil Rights Act of 1964. This law prohibits federally funded EDs from discriminating on the basis of race, including:**

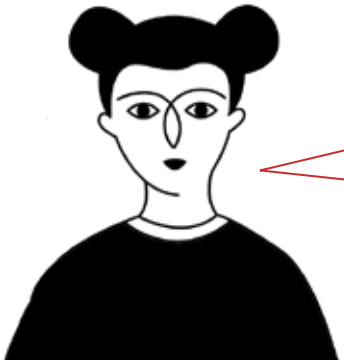
  ◊ Not offering evidence-based services for SUD to patients of a certain race, but offering them to patients of other races.

*I was taken to the ER after overdosing on heroin, but no one offered me buprenorphine for my opioid addiction. A few weeks later I was talking with my friend, who is white and also has a heroin problem. She went to the same ER that I did, but she was offered buprenorphine.*



**Violation if there is evidence that ED staff denied services because of this patient's race.**

  ◊ Not offering evidence-based services for SUD in a hospital or community where patients of a certain race or ethnicity experience a higher rate of need for these services.



*I'm a social worker and frequently go to our hospital's ED to help with discharge for patients with drug and alcohol-use related emergencies. Most of these patients are Black or Latino. Our policy is not to offer Suboxone in the ED. Instead we give every patient with a substance use condition a list of local SUD treatment providers.*

**Violation if relevant demographic data indicate that the hospital practice of not offering evidence-based services for SUD disparately impacts Black and Latino patients with substance use-related emergencies.**

Visit Legal Action Center's ("LAC") website for additional information about how these laws apply to ED care of people with SUD.

## How can my hospital provide these services when there are so few places to send our patients after discharge?

Many hospitals do not adopt evidence-based services due to concerns about limited community resources, but treatment resources are available in most communities.

- **Seek out local providers of SUD services and think broadly about potential partners.** For example, Maine's Mount Desert Island Hospital and New Mexico's Zuni Comprehensive Health Center – two rural hospitals – provide facilitated referrals to local SUD and primary care providers after administering buprenorphine in their EDs. And New York's Northwell Health's Pathways to Recovery Program works with local community-based organizations to connect patients to SUD care post-ED discharge.
- **Incorporate non-medical staff into the discharge process.** For example, Health Promotion Advocates at Yale New Haven Health Hospital's ED help facilitate direct referrals to ongoing SUD care, and New York City Health and Hospitals EDs partner with peers, social workers, and counselors to help connect patients to care.
- **Establish on-site bridge clinics so that patients can receive interim SUD services (e.g., buprenorphine) while they are being connected to ongoing community-based SUD care.** Cook County Health hospital EDs help link patients to ongoing SUD care through the Medication Assisted Treatment Bridge Clinic with the help of licensed clinician social workers and counselors.

Concern about limited community services is not a sufficient legal justification to not provide these services.

## How can my hospital fund ED integration of these services?

Resources are available to deliver these services.

- **Use existing hospital infrastructure and resources.** For example, SUD screening questions can be embedded into the electronic health record, and nonmedical staff that are already in EDs can assist with facilitated referrals to SUD care.
- **Bill Medicare for the evidence-based services using code G2213.** Ask your state Medicaid program to reimburse this code.
- **Seek out grants that can support your work.** For example, California Bridge and Community Foundation for Southeast Michigan provide grants to hospitals in their states for ED adoption of evidence-based SUD services. Federal grants support these services. And many states are receiving opioid settlement monies that could be used to fund hospital integration of these services in EDs.

At baseline, cost alone does not justify a hospital's violation of any of the federal laws listed above.

## How can these federal laws be enforced?

Patients and their loved ones as well as state and federal agencies can enforce these laws.

- **Federal agency investigations.** Individuals can file complaints with the following agencies, which may investigate suspected legal violations:
  - **Centers for Medicare & Medicaid Services** (via local health departments) for EMTALA violations.
  - **U.S. Department of Justice** for disability rights violations.
  - **U.S. Department of Health & Human Services (Office of Civil Rights)** for Title VI violations.
- **Lawsuits.** Federal agencies also can bring enforcement actions in court. Individuals can do the same for violations of disability rights laws and, in some instances, for Title VI violations. Individuals can also file lawsuits against hospitals – not providers – for EMTALA violations.

## What about urgent care centers?

**Disability rights laws apply to urgent care centers. EMTALA and Title VI also apply to some of these entities.**

- **EMTALA** applies to urgent care centers that are satellite facilities of hospitals through which they bill Medicare.
- **Title VI** applies to urgent care centers that receive federal funding – for example, urgent care centers that are subject to EMTALA.

## How can my hospital learn how to integrate these required ED services?

A wide range of resources is available from experts like the American College of Emergency Physicians, California Bridge, and Mosaic Group which all offer technical assistance to hospitals to integrate these services into EDs. Many hospitals have successfully incorporated these services, and so can others!