



## Health Care and the ADA: Including People With Disabilities

ADA National Network Learning Session

### “Opioid Use Disorder and the Americans with Disabilities Act in Health Care Settings”

The Session is Scheduled to begin at 2:30 pm ET

Telephone Option: 805-309-2350 Access Code: 5552153 (not a toll free #)

Local numbers can be found at: [http://adapresentations.org/local\\_numbers.php](http://adapresentations.org/local_numbers.php)

Real-time captioning can be accessed by choosing the  icon in the Audio & Video panel.

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## Opioid Use and Treatment

- In 2017, the U.S. Department of Health & Human Services (HHS) declared a **public health emergency** regarding increase use of opioids.
- Drug overdose is the leading cause of unintentional injury-associated death in the United States. In fatal drug overdoses in 2017, prescription opioids were involved in 24.2%.\*
- Medication-assisted treatment (MAT) is treatment for opioid use disorder (OUD) that combines the use of medications such as methadone, buprenorphine, or naltrexone with counseling and behavioral therapies.

\*Scholl L, Seth P, Kariisa M, Wilson N, Baldwin G. Drug and opioid-involved overdose deaths—United States, 2013–2017. *MMWR Morb Mortal Wkly Rep* 2018

## Access to Health Care:

### Definition of Disability

3

### 3- Prong Definition of Disability

An individual with a physical or mental impairment

- 1) That substantially limits one or more major life activities
  - Duration of impairment is **usually** (though not always) greater than 6 months
  - Do not consider presence of mitigating measures
- 2) Who has a record (a.k.a. history) of such an impairment
- 3) Who is regarded as having such an impairment, even though they do not have the impairment

4

## Major Life Activities Examples

Major life activities include but are not limited to:

- Walking
- Seeing
- Hearing
- Breathing
- Speaking
- Learning
- Concentrating
- Working (in a broad class of jobs)

5

## Major Bodily Functions Can = Major Life Activities

- Immune system
- Endocrine system (e.g., thyroid, diabetes)
- Neurological function
- Brain
- Normal cell growth (e.g., cancer)
- Respiratory system
- Digestive system (including intestines)
- Bladder
- Reproductive system
- Circulatory system

6



## Associational Discrimination

An individual who is “associated” with a person with a disability (e.g., family member, spouse, domestic partner, etc.) is also protected from discrimination.



9

## Impairments that Are Episodic or in Remission

Impairments that are episodic or that go into remission are considered disabilities if they substantially limit a major life activity **when active**.

Examples: bipolar disorder, post-traumatic stress disorder, epilepsy, **addiction** and cancer.

10

## Record of an Impairment

Definition of disability includes those who have a record or **history** of an impairment that substantially limits a major life activity, e.g. someone who completed a drug rehabilitation program and is no longer illegally using drugs.



11

## Regarded as Having an Impairment

Being **regarded as** having an impairment, e.g. perceived as having an addiction but does not.



12

## Recovery

The ADA protects a person who is no longer engaging in the current illegal use of drugs, and who can meet the requirements of the definition of disability.



13

## Illegal Use of Drugs



- Use of Illegal drugs such as heroin or cocaine; or
- Use of controlled substances:

**FOR WHICH** person has no prescription  
**IS** using more than is prescribed  
**OR** has a fraudulent prescription

14

## What Does “Current” Mean?

Current illegal use of drugs means:

“Illegal use occurred **recently enough to justify a reasonable belief** that a person’s drug use is a **real and ongoing problem.**”

Under the ADA, if a covered entity makes a decision based on a person’s **current** illegal use of drugs, that person is **not covered** by the law.

15

## Under ADA, “In Recovery” Means:

- 1) is in recovery from substance use disorder
- 2) has ceased engaging in the illegal use of drugs
- 3) is either participating in a supervised rehabilitation program or
- 4) has been successfully rehabilitated

16

## Generally, People In Recovery Are Covered by ADA

- The ADA generally covers those in recovery from Substance Use Disorder (SUD) or Opioid Use Disorder (OUD) who currently do not engage in the illegal use of drugs
- This can include individuals using Medication-Assisted Treatment (MAT)

17

## Distinction between alcohol addiction and the illegal use of drugs



18

## Alcohol Addiction



**Alcohol addiction** generally is a “disability” regardless of whether it is in the present or in the past. However, the addiction must substantially limit a major life activity.

Note: Employers need not allow employees to use alcohol before or during work hours.

19

## Access to Health Care:

## ADA and Employment

20

## Nondiscrimination in Employment

- Covered employers may not discriminate against qualified individuals with disabilities in hiring or on-the-job.
- Further, qualified employees may not be excluded from participation in, or be denied the benefits of, the goods, services, programs, or activities of employment, on the basis of disability.



21

## Unlawful Medical/Disability Inquiries in Employment

- An employer may not ask a job applicant to answer medical questions or take a medical exam before extending a job offer.
- An employer also may not ask job applicants if they have a disability (or about the nature of an obvious disability). An employer may ask job applicants whether they can perform the job and how they would perform the job, with or without a reasonable accommodation.
- After a job is offered, the law allows an employer to condition the job offer on the applicant answering certain medical questions or successfully passing a medical exam, but only if all new employees in the same type of job have to answer the questions or take the exam.

22

## Unlawful Medical/Disability Inquiries in Employment

- If a job applicant or employee tests positive for drugs commonly used in medically-assisted treatment (MAT) like Methadone or Suboxone, the employer cannot refuse to hire the applicant or terminate the employee.
- Instead, the employer must conduct an individualized inquiry to determine if that applicant or employee can perform the essential functions of his or her job with or without a reasonable accommodation.

23

## Case Example: EEOC v. Appalachian Woods, Inc.

- The U.S. Equal Employment Opportunity Commission (EEOC) filed a lawsuit in October of 2018 against Appalachian Wood Products, Inc., a Clearfield, Pennsylvania-based supplier of cabinet components to the kitchen and bath industry. The EEOC alleged that Appalachian Woods violated federal law when it subjected factory applicants to unlawful medical inquiries and refused to hire qualified applicants based on their disability or medical treatment (taking Methadone or Suboxone) without first evaluating their ability to safely perform their jobs.
- Case pending (delay due to government shutdown)

24

## Case Example: EEOC v. Steel Painters, LLC

- In a complaint filed in June of 2018, the U.S. Equal Employment Opportunity Commission (EEOC) alleged that Steel Painters, LLC, a Beaumont, Texas-based painting company, unlawfully fired a worker because it regarded him as disabled and because of his record of a disability. The employee had been dependent on opioid medication in the past but was in recovery treatment.
- Trial pending (delay due to government shutdown)

25

## Employment Defenses Available

- Covered employers are allowed to have defenses:
- Undue hardship - an action requiring significant difficulty or expense
- Requirement for absence of prohibited drugs (e.g., for transportation providers, crane operators, etc.)
- Direct threat to employee or others that cannot be eliminated through reasonable accommodation determined after individualized assessment

26

## **Access to Health Care:**

### **Prohibited Discrimination under ADA Titles II and III**

27

## **General Nondiscrimination**

Qualified individuals with disabilities may not be excluded from participation in, or be denied the benefits of, the goods, services, programs, or activities of a public entity or a public accommodation, or be subjected to discrimination by any public entity or public accommodation, on the basis of disability.

28



## **Settlement Example: Selma Medical Associates, Inc.**

- Selma Medical Associates (Selma), a Winchester, Virginia medical facility that provides primary and specialty care, allegedly refused to accept a prospective patient for an appointment due to the patient's use of Suboxone.
- The facility allegedly regularly turned away prospective patients who lawfully took controlled substances to treat their medical conditions.



## **Settlement Example: Selma Medical Associates, Inc.**

- In a settlement agreement with the U.S. Department of Justice, Selma agreed:
  - not to deny services on the basis of disability, including opioid use disorder
  - not to apply standards or criteria that screen out individuals with disabilities
  - to adopt non-discrimination policies and train staff
  - to pay \$30,000 in damages to complainant and a \$10,000 civil penalty

## Settlement Example: Charlwell Operating, LLC

- Charlwell Operating, a skilled nursing facility in Massachusetts allegedly denied admission to a **patient** with Opioid Use Disorder (OUD) due to the patient's use of Suboxone.
- In a settlement with the U.S. Department of Justice, Charlwell agreed to:
  - Adopt a non-discrimination policy
  - Provide training on the ADA and OUD to admissions personnel
  - Pay a civil penalty of \$5,000 to the United States

## Policy Modification Requirements

Covered entities must modify policies and procedures so that people with disabilities are not denied the opportunity to participate in or benefit from goods, services, facilities, or privileges



## Medications Necessary for A Disability

- Even if their policy says no medications, in-patient treatment centers have an obligation to provide legally prescribed medications to people entering with a prescription (e.g., insulin) when the center has a medication dispensary program.



33

## Nondiscrimination Defenses Available

- Covered entities are allowed to have legitimate safety requirements.
- Other possible defenses:
  - Fundamental alteration of a program
  - Undue burden – significant administrative requirements or expense
  - Direct threat to others that cannot otherwise be eliminated

34

## Access to Health Care:

### Modification of Policy: Service Animals

35

### Modifying No Pet Policies

Entities covered by the ADA must modify their no pet policies to allow service animals in all areas of facilities where members of the public are allowed to go, including services, programs or activities.



36

## Service Animal Definition

- A service animal must be a dog.
  - Miniature horses may be used if policies and procedures can be modified to allow them in a space.
- Service animals must perform work or a task that is directly related to their handler's disability.

37

## Is Emotional Support Considered “Work” or a “Task”?

- The definition of a service animal says, **no**. “The provision of emotional support, well-being, comfort, or companionship ... [without more] does not constitute work or tasks for the purpose of this definition.”
- The ability to “soothe” is not work.



38

## What Can You Ask?

- You may ask the handler:
  - Is this a service animal required because of disability?
  - What specific tasks has the animal been trained to perform?
  
- Cannot inquire about the nature of the handler's disability
- Cannot ask to see the task performed



39

## Service Animal Control

- A service animal must be under the control of its handler
- A service animal must have a harness, leash, or other tether, unless either the handler is unable because of a disability ... or would interfere with the service animal's safe, effective performance of work or tasks, in which case the service animal must be otherwise **under the handler's control** (e.g., voice control, signals, or other effective means)

40

## Service Animal Conduct

- An entity covered by ADA may ask an individual with a disability to remove a service animal from the premises if—
  - the animal is out of control AND
  - the animal’s handler does not take effective action to control it; OR
  - the animal is not housebroken

41

## Service Animals In Training



- ADA does not address service animals in training
- Under many State laws, service animals in training are allowed anywhere service animals may go. They may, however, be required to wear a tag that identifies their status as service animals in training.

42

## Service Animals in Recovery Programs

- If an individual wants to bring a service animal into a treatment program:
- The handler must remain with the dog and be responsible for the dog's care and grooming
- Staff at the rehabilitation program must try to separate any other recovery program staff or clients from the service dog if they have allergies that rise to the level of a disability.

43

## Defenses for Service Animals

- Service animals may be excluded from a public place if:
  - Infection control must be maintained (like in a burn unit or operating room)
  - It is a fundamental alteration of the program (e.g., zoo animals who are predators or prey may react to dogs)
  - The animal poses a direct threat to others by its behavior (e.g., running off-leash, barking, growling, biting) or lack of cleanliness

44

## **Access to Health Care: Effective Communication**

45

## **Effective Communication**

- Covered entities must ensure that people with disabilities that affect communication have communication access that is equally effective as that provided to people without disabilities.
  - Disabilities Covered:
  - Hearing, Vision and Speech
- Effective communication shall be provided through auxiliary aids and services.

46

## Auxiliary Aids and Services Examples

- Qualified interpreter
- Real-time captioning
- Assistive listening device
- Telephone relay services
- Exchanging notes
- Qualified reader
- Alternative format materials
  - Large print / Braille
  - Audio cassette/CD



47

## Determining Auxiliary Aid or Service

- A covered entity must make an assessment of the nature, length, complexity, and the context of the communication, as well as the person's typical method of communication to determine what auxiliary aid or service to use.



48

- Q: When Is Communication Effective?
- A: When the person actually *understands* the information
- Q: How do you know that you have achieved effective communication?
- A: Ask the person to repeat back to you what they have understood, if appropriate
- Excellent Resource - USDOJ Effective Communication Fact Sheet  
<https://www.ada.gov/effective-comm.htm>

49

## Effective Communication Defenses Available

- Fundamental alteration of a program – e.g., request to turn on all lights in a planetarium to see the interpreter
- Undue burden – significant administrative requirements or expense (e.g., providing an interpreter or real-time captioning 24-7 in a recovery program, or asking that program to buy expensive computer screen reading program for one recovery client with a vision impairment)

50

## Access to Health Care: Resources

51

## Where to File an ADA Complaint

- Equal Employment Opportunity Commission  
[https://www.eeoc.gov/federal/fed\\_employees/filing\\_complaint.cfm](https://www.eeoc.gov/federal/fed_employees/filing_complaint.cfm)

1-800-669-4000

1-800-669-6820 (TTY for Deaf/Hard of Hearing callers only)

1-844-234-5122 (ASL Video Phone for Deaf/Hard of Hearing callers only)

- U.S. Department of Justice

[https://www.ada.gov/filing\\_complaint.htm](https://www.ada.gov/filing_complaint.htm)

1-800-514-0301 (voice)

1-800-514-0383 (TTY)

52

## ADANN Health Care Resources

- Healthcare and the ADA webinar series at [www.adapresentations.org](http://www.adapresentations.org)
- Healthcare and the ADA factsheets available at [www.adata.org](http://www.adata.org) (search for Healthcare)
- Regional ADA Center websites with links to state and federal resources (e.g., [www.adapacific.org/healthcare](http://www.adapacific.org/healthcare))
- ADA questions can be answered at 800-949-4232 or by email
- Training from regional ADA Centers

53

## Barrier-Free Health Care Initiative (DOJ)

- A partnership of the Department of Justice Civil Rights Division and U.S. Attorney's offices across the nation – resource for court cases
  - Target enforcement efforts on a critical area for individuals with disabilities
  - Launched on the 22nd anniversary of the ADA in July 2012
  - <https://www.ada.gov/usao-agreements.htm>

54



## Contact Us

**ADA National Network Technical Assistance Hotline**  
1-800-949-4232 (free and confidential answers on the ADA)

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