

Medication for Opioid Use Disorders in Recovery Residences...

Civil Rights and Responsibilities Under the ADA

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**Opioid
Response
Network**



Working with communities.

- ✧ The SAMHSA-funded *Opioid Response Network (ORN)* assists states, organizations and individuals by providing the resources and technical assistance they need locally to address the opioid crisis and stimulant use.
- ✧ Technical assistance is available to support the evidence-based prevention, harm reduction, treatment and recovery of opioid use disorders and stimulant use disorders.

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Working with communities.

- ✧ The *Opioid Response Network (ORN)* provides local, experienced consultants in prevention, treatment and recovery to communities and organizations to help address this opioid crisis and stimulant use.
- ✧ *ORN* accepts requests for education and training.
- ✧ Each state/territory has a designated team, led by a regional Technology Transfer Specialist (TTS), who is an expert in implementing evidence-based practices.



Contact the Opioid Response Network

- ✦ To ask questions or submit a request for technical assistance:
 - Visit www.OpioidResponseNetwork.org
 - Email orn@aaap.org
 - Call 401-270-5900



Medication for Opioid Use Disorders in Recovery Residences...Civil Rights and Responsibilities Under the ADA

Agenda

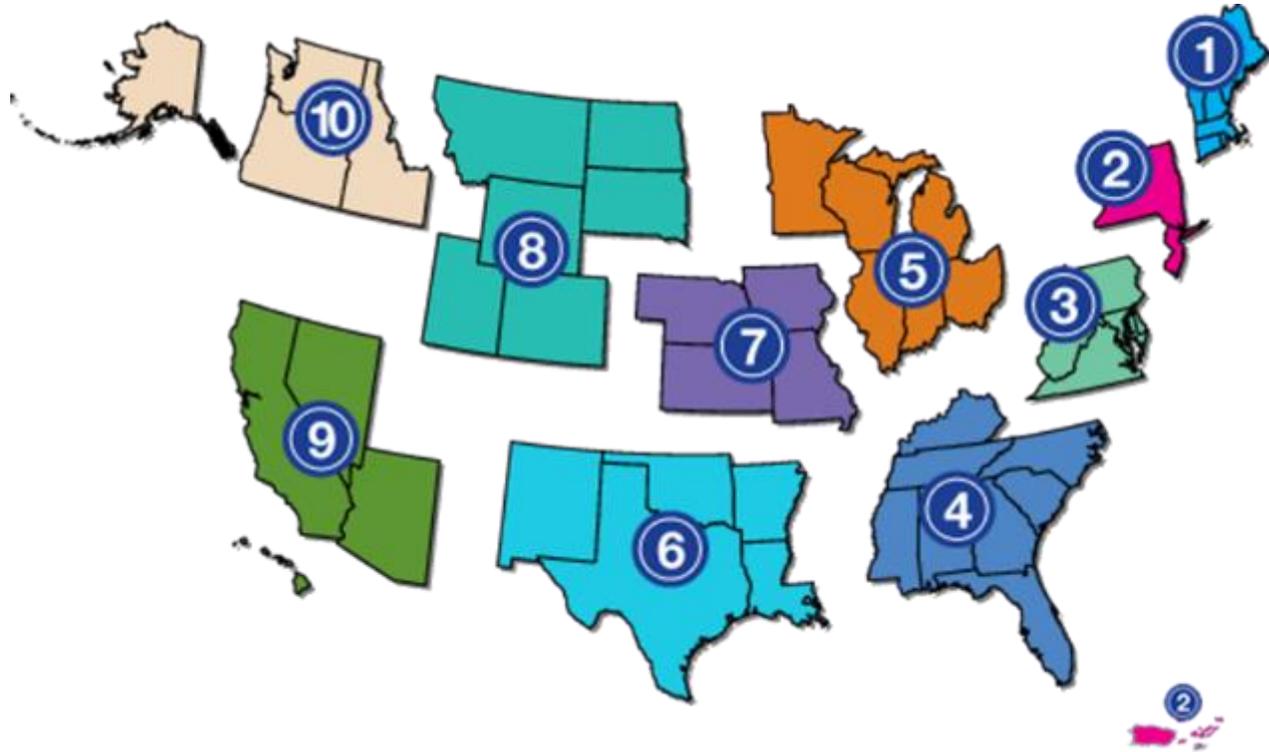
- How and Why Addiction is a Disability Under the ADA
- Civil Rights of People with MOUD in Recovery Residences
- Obligations of Recovery Residences to People with MOUD
- Steps Recovery Residences Can Take Towards Voluntary Compliance





National Network

Information, Guidance, and Training on the
Americans with Disabilities Act



1-800-949-4232

ADAta.org

Grant Funded by the National
Institute on Disability, Independent
Living and Rehabilitation Research
through the Administration for
Community Living and US Health and
Human Services.



**How & Why
Disability
Is an
Addiction**

Three Federal Disability Rights Laws:

Section 504 of the Rehabilitation Act of 1973

The Americans with Disabilities Act (ADA)

The Fair Housing Act (FHA)

Section 504 of the 1973 Rehabilitation Act



Kitty Cone (left) and Judy Heumann (right)
leaders in the movement to pass Section 504

Prohibits discrimination
on the basis of disability
in any program or activity
receiving federal financial
assistance.

Americans with Disabilities Act



July 26, 1990

President George H. W. Bush signing the ADA. Rev. Harold Wilke, rear left; Evan Kemp, left; Sandra Parrino, rear right; & Justin Dart

- **The ADA, a civil rights law** ensures that people with disabilities have the same rights and opportunities as everyone else.
- Includes people with addiction to alcohol, and those in recovery from addiction to opioids and other drugs.

Reference: [https://www.ada.gov/law-and-regs/ada/Sec. 12114. Illegal use of drugs and alcohol \(a\)](https://www.ada.gov/law-and-regs/ada/Sec.12114.Illegal%20use%20of%20drugs%20and%20alcohol%20(a))

The Five Titles of the ADA

Title I **Employment**

Title II **State and Local Governments**

Title III **Public Accommodations**

Title IV **Telecommunications**

Title V **Miscellaneous**

State and Local Governments (Title II of the ADA)

People with disabilities must be able to participate in or benefit from all state and local government **services, programs and activities**.

- Courts
- Corrections
- Public Education
- Public Transportation
- Recreation
- Health Care
- Social Services
- Voting

Recovery Residences (RR) receiving state and local government funds have obligations under the ADA to serve people with disabilities, including those with medications tied to their disabilities such as legally prescribed medication for opioid use disorder (MOUD).

***Note:** If no state funding, then either Title III of the ADA, the Fair Housing Act, or Section 504 may apply to Recovery Residences.

Public Accommodations (Title III of the ADA)

The ADA requires places of **business and non-profits** to provide **goods and services to people with disabilities**.

- Social Services
- Health Care
- Hospitals
- Private Schools
- Day Care Centers
- Hotels
- Movie Theaters
- Pharmacies

Recovery Residences (RR) that are non-profits or private businesses have obligations under the ADA to serve people with disabilities, including those with medications tied to their disabilities such as legally prescribed medication for opioid use disorder (MOUD).

***Note:** If not a business or non-profit, then Title II, the Fair Housing Act, or Section 504 may apply to Recovery Residences.

The Fair Housing Act (FHA)

- **The Fair Housing Act** provides housing protections for individuals with disabilities (1988)
- These protections apply in most private housing, state and local government housing, public housing and any other federally-assisted housing programs and activities.
- **The Fair Housing Act prohibits discrimination** in housing and housing-related transactions because of disability.

The Fair Housing Act (FHA) Continued

In 1988, **two critical disability-related** items were added to the Fair Housing Act:

1. Housing providers should make **reasonable accommodations** in rules, policies, practices, or services.
2. Consider allowing **reasonable modifications**, alterations or changes to an existing facility (structural change).

Who Must Comply with the Fair Housing Act?

- **Courts have applied the FHA to:** individuals, corporations, associations and others involved in the provision of housing and residential lending, including property owners, housing managers, schools, homeowners' and condominium associations, lenders, real estate agents, and brokerage services.
- Courts have also applied the Act to state and local governments, most often in the context of exclusionary zoning that affects people with disabilities, usually concerning the location of group homes.

Reference: [The FHA law and the U.S. Department of Housing and Urban Development's FHA regulations](#)

Who is Exempt from the Fair Housing Act (FHA)?

The reasonable accommodation requirements of the Act do not apply to a private individual owner who sells their own home so long as the owner:

- (1) Does not own more than three single-family homes
- (2) Does not use a real estate agent
- (3) Does not employ any discriminatory advertising or notices
- (4) Has not engaged in a similar sale of a home within a 24-month period
- (5) And is not in the business of selling or renting dwellings

<https://www.hud.gov/sites/documents/huddojstatement.pdf>

The Definition of Disability Under the ADA, FHA and Section 504 of the Rehabilitation Act

1. Have a physical or mental impairment that substantially limits one or more **major life activities**, e.g. bi-polar disorder, diabetes, alcohol use disorder; or
2. Have a **history** of a physical or mental impairment, e.g. substance use disorder, cancer, heart disease; or
3. Is **regarded as** having such an impairment e.g. perceived as having an impairment, but does not have an impairment

***A person must meet one of the three prongs to qualify as a person with a disability**

What are Major Life Activities?

Major life activities include, but are not limited to:

Caring for oneself, thinking, learning, working, breathing, sleeping, seeing, hearing, concentrating, walking, lifting, bending, and major bodily functions such as neurological and brain functions.

*Not an exhaustive list

Mitigating Measures

The determination of whether an impairment substantially limits a major life activity is to be made without regard to the beneficial effects of mitigating measures such as medication , prosthetics, mobility devices, hearing aids and cochlear implants - to name just a few mitigating measures.



Scenario-Mitigating Measures



A person has Opioid Use Disorder (OUD). When he takes his medication to treat his OUD, he can keep pace with his colleagues, in terms of ability to complete tasks together and speed. But, without his medication he has great difficulty concentrating, focusing and remembering.

This person has a disability under the ADA because the determination of whether he's substantially limited in the major life activity of working is made without considering the medication.

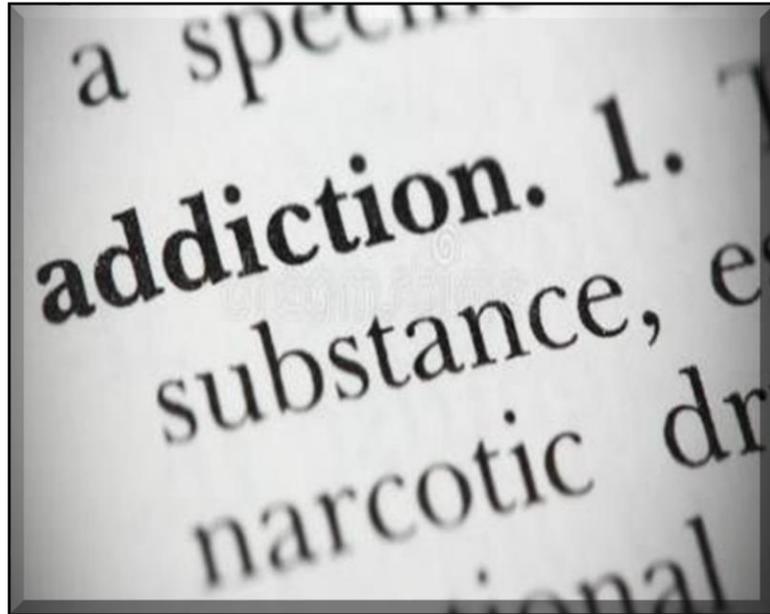
The ADA Treats AUD and SUD Differently



People with **Alcohol Use Disorder (AUD)** have ADA protections in recovery and while using alcohol.

People with **Substance Use Disorders (SUD)** have ADA protections in recovery, and **when not engaging in the illegal using drugs.**

Alcohol Use Disorder



- Is generally a “disability” regardless of whether the person is in recovery or currently drinking alcohol.
- The addiction must substantially limit a major life activity, like learning, working, sleeping, or thinking, etc.

Opioid Use Disorders



A person has civil rights protections:

- In recovery
- And when no longer engaging in the current illegal use of drugs.

WEB: <https://www.ada.gov/topics/opioid-use-disorder/#:~:text=The%20Americans%20with%20Disabilities%20Act,doctor%20to%20treat%20their%20OUD.>

What Does “In Recovery” Mean?



Boston Common 2022
Celebrating Recovery Month September
Massachusetts Organization for Recovery

The ADA’s Definition of Recovery:

1. Has ceased engaging in the current illegal use of drugs
2. Is participating in a supervised rehabilitation program, *or*
3. Has been successfully rehabilitated

Reference: Americans with Disabilities Act, As Amended Section 12114

What Does “Illegal Use of Drugs” Mean?



1. Use of **illegal drugs** such as heroin or cocaine
2. Use of **legal drugs** such as opioids:
BUT person has no prescription
OR has a fraudulent prescription
OR is using more than prescribed

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.”
- Current is not limited to the number of weeks or days, but is determined on a case-by-case basis.

Civil Rights for People with MOUD in Recovery Residences

Some Recovery Residences Don't Allow the Use of MOUD.



Do residents have protections under the ADA?

Yes, a person with OUD is a person with a disability and has a right to take their doctor prescribed medication to treat their OUD.

To refuse a person with a disability entry into a home based on their medical prescription may be a violation of the ADA, the Fair Housing Act, or Section 504.

If a recovery home operator disagrees, they must prove that accepting a person with MOUD would drastically alter the nature of their program or be an administrative burden (an undue burden).

Livia's Scenario



- Livia is a person with OUD and is taking doctor prescribed MOUD. She has applied to live in a recovery residence for people in early recovery.
- She is denied admission because the residence has a policy of refusing to admit people with OUD who are taking suboxone to treat their OUD.
- The residence manager asks Livia to change her medication, or maybe go to another house that allows MOUD because there is no staff to dispense the medication.

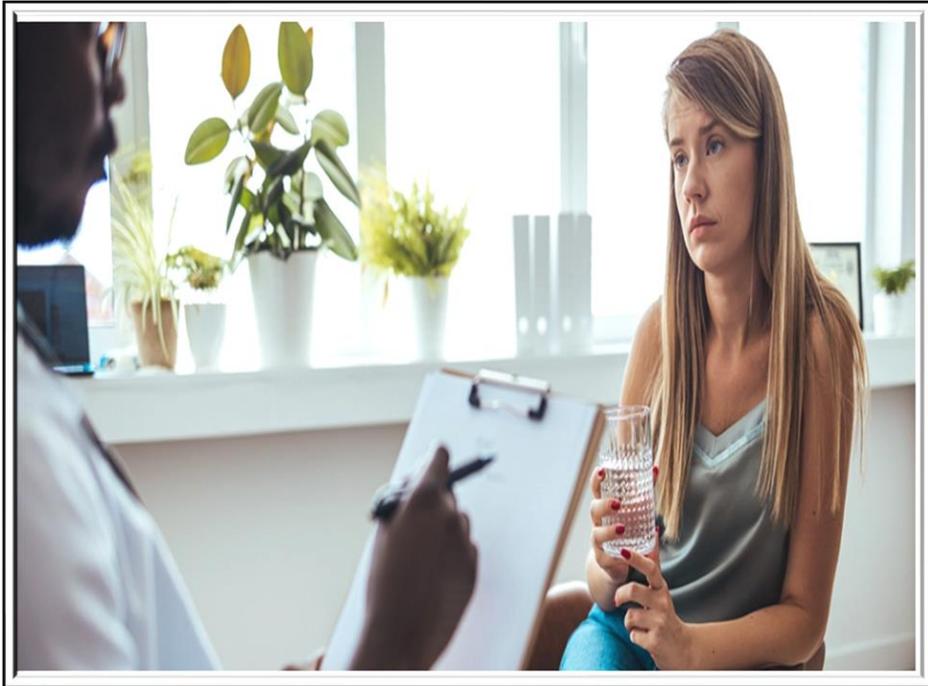
Does Livia have protections?

Answer to Livia's Scenario

Yes, she is a person with a disability because she has a history of OUD.

- Excluding her because of her doctor prescription is illegal discrimination, assuming that Livia meets the residences other eligibility requirements.
- Turning someone away, asking a person to change their medication, or to go to a house that allows MOUD are all problematic under the ADA and FHA and Section 504.
- Whether a person has a history of OUD, cancer, diabetes, high blood pressure, ADHD, depression, anxiety, or traumatic brain injury etc., it may be illegal to turn that person away based upon their disability and for taking a legally prescribed doctor medication, including MOUD.

Other Signs of Discrimination



- Limiting the number of people in the facility who can take MOUD, e.g. having designated "MAT beds."
- Requiring people to taper their dose of methadone or buprenorphine (Suboxone).
- Admitting people who take under a certain dose of methadone or buprenorphine (Suboxone).

General Nondiscrimination

In many ways this is the heart of the ADA:

- Ensure an equal opportunity to participate and benefit in programs, services and activities.
- Prohibit exclusion, segregation, and unequal treatment.
- Prohibit eligibility criteria that screen out people with disabilities.
- Requires administering services, programs, and activities in the most integrated setting appropriate.

Dominic's Scenario



- Dominic has a legally prescribed medication to treat Opioid Use Disorder. He applies to a certified recovery residence near his home.
- The residence operator responds that his application is rejected due to their medication policies to not accept certain FDA-approved medications that may be “mind and mood altering.”

Does Dominic have ADA protections?

Responding to Dominic's Request

- Yes, Dominic has protections, a policy to not accept certain FDA-approved medications tied to a disability is a discriminatory policy in violation of the federal disability laws.
- Dominic has a right to file a complaint with DOJ or HUD if the residence rejects his application based solely on his doctor prescribed medication.
- The residence needs to change their discriminatory policy to a non-discriminatory policy to be compliant with the law.

**A Non-Discriminatory
POLICY
IS NEEDED**

A non-discrimination policy is required for compliance with **the ADA**.

A non-discrimination policy is a prerequisite for making **reasonable accommodations/modifications** to policies, practices, services, or structures that may be necessary so that a person with a disability has an equal opportunity to use and enjoy a dwelling/service or space.

“Reasonable Modifications” Under the ADA (Title II and III) “Reasonable Accommodations” Under the Fair Housing Act

- A resident with “take home” doctor prescribed methadone or suboxone doses may take their doses to the residence.
- The residence stores MOUD on site the same way they store other controlled substances.

- A resident can go to their opioid treatment program (OTP) for methadone or their qualified practitioner for suboxone.

Housing Discrimination Ready to Work in Boulder, Colorado



- Is a non-profit program that provides residential, work, and social services for unhoused people in Colorado.
- Discriminated against an individual with OUD by denying her admission to its program because she used prescribed MOUD.
- **Settlement Agreement:** Train staff on MOUD and the ADA's requirements, report on compliance with the Settlement Agreement, and pay the complainant \$7,500 in compensatory damages.

Steps That Recovery Residences Can take to Voluntarily Comply with the Law

- 1. Develop non-discriminatory policies, practices and procedures**
- 2. Training:**
 - a) Staff training on the requirements of the Fair Housing Act, the ADA, and Section 504 of the 1973 Rehabilitation Act.
 - b) Intake staff on policies, practices and procedures.
- 3. Review website** for discriminatory policies and language
- 4. Participate in evidence-based research** on the effectiveness of MOUD in recovery housing through a civil rights lens.

Summary

1. Persons with AUD and OUD have civil rights protections under the ADA, the FHA and Section 504.
2. The ADA treats AUD and SUD differently.
3. Recovery residences must have clear non-discrimination policies and procedures accepting applicants with disabilities with and without medications, including legally prescribed MOUD.
4. For recovery home providers and people with OUD, civil rights can provide guidance on how to care for one another, and help address stigma and the addiction crisis.

Summary of Federal Laws that can Apply to Recovery Residence

Federal nondiscrimination laws provide housing protections for individuals with disabilities. These protections apply in most private housing, state and local government funded housing, public housing and any other federally-assisted housing programs and activities.

- **Americans with Disabilities Act (Titles II and III)** prohibit discrimination on the basis of disability in all programs, services, and activities of public entities and by private entities that own, operate, or lease places of public accommodation.
- **The Fair Housing Act** prohibits discrimination in housing and housing-related transactions because of disability.
- **Section 504 of the Rehabilitation Act** prohibits discrimination on the basis of disability in any program or activity receiving federal financial assistance.

Resources

- 1. Legal Action Center on Recovery Residences and MOUD**
Web: [Recovery-Home-MOUD-Info-Sheet-Feb-2022.pdf \(lac.org\)](#)
- 2. Helping Recovery Residences Adapt Medication-Assisted Recovery**
Web: [National Alliance for Recovery Homes \(NARR\)](#)
- 3. Know Your Rights Brochure: Rights for Individuals on Medication-Assisted Treatment**
Web: [Know Your Rights: Rights for Individuals on Medication-Assisted Treatment \(samhsa.gov\)](#)
- 4. ADA, Addiction and Recovery Fact Sheets**
Web: [https://www.newenglandada.org/tools-topics/the-ada-addiction-and-recovery](#)

More Resources

1. Department of Justice Civil Rights Division

Web: [The Americans with Disabilities Act and the Opioid Crisis: Combating Discrimination Against People in Treatment or Recovery](#)

2. STAT Reporting From the Frontiers of Health and Medicine

Web: [To Protect People with Addiction from Discrimination, the Justice Dept. Turns to a Long-Overlooked Tool: The ADA](#)

3. National Association for Addiction Professionals

Harrison, O. (Spring, 2020) *How the ADA Addresses Addiction and Recovery* Advances in Addiction and Recovery Magazine, Spring 2020, V8 No.2 (p. 24-27).

Web: <https://www.newenglandada.org/tools-topics/the-ada-addiction-and-recovery>

4. Dorchak, G. and Sinkman, D. (2022). **Using the Americans with Disabilities Act to Reduce Overdose**

Deaths. *Journal of Federal Law and Practice* (Vol 1) p.113.

Web: <https://www.justice.gov/file/1467861/download>

To Learn More

Department of Justice, Disability Rights Section, ADA Information Line

Phone: 1-800-514-0301

TTY: 1-833-610-1264

Web: <https://www.justice.gov/crt/disability-rights-section>

US Department of Housing and Urban Development

Web: https://www.hud.gov/program_offices/fair_housing_equal_opp/reasonable_accommodations_and_modifications/information_for_housing_providers_landlords_property_managers

US Attorney's Office of Civil Rights

Web: <https://www.justice.gov/usao>

Maine Resources

1. Disability Rights Maine

<https://drme.org/what-we-do>

2. Human Rights Commission Maine

https://www.maine.gov/mhrc/programs_resources/fh-reg

3. Fair Housing: Maine State Housing Authority

[https://www.mainehousing.org/education/fair-housing-education/fair-housing-mainehousing#:~:text=According%20to%20fair%20housing%20laws,or%20receipt%20of%20public%](https://www.mainehousing.org/education/fair-housing-education/fair-housing-mainehousing#:~:text=According%20to%20fair%20housing%20laws,or%20receipt%20of%20public%20)

4. Alpha One Independent Living Center

<https://alphaonenow.org/>

Have an ADA Question?



Oce Harrison
oharrison@IHCDesign.org
1-617-259-1647

1-800-949-4232

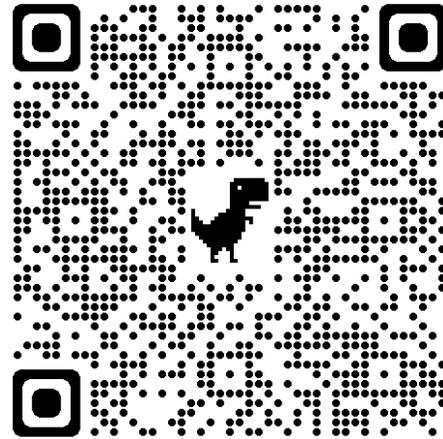
Contact Your Nearest ADA Center

<https://adata.org/find-your-region>

Funded by the National Institute on Disability, Independent Living and Rehabilitation
Research through the Administration for Community Living and US Health and Human Services.

ORN Evaluation Survey Link

Please scan the below QR code or use the link below to access a very brief survey.



Link to Survey: <https://tinyurl.com/4k4k35vv>

The survey will ask about your satisfaction with the training program you just completed as well as some basic demographic information. Your responses will help the Opioid Response Network improve the services they provide.

Thank you in advance for completing this survey!

