ADA Audio Conference Series
www.ada-audio.org

Opioid Use Disorders and the Americans with Disabilities Act: Eliminating Discriminatory Barriers to Treatment and Recovery

September 25, 2018

This session is scheduled to begin at

2:00pm Eastern Time

Real-Time Captioning and the PowerPoint Presentation are available through the Webinar Platform.
Audio Connection is available through the webinar platform/telephone/Mobile App.

Listening to the Webinar

The audio for today's webinar is being broadcast through your computer. Please make sure your speakers are turned on or your headphones are plugged in.

You can control the audio broadcast via the Audio & Video panel. You can adjust the sound by "sliding" the sound bar left or right.

If you are having sound quality problems check your audio controls by going through the Audio Wizard **which is accessed by selecting the microphone icon on** the Audio & Video panel.

Listening to the Webinar by Mobile

IPhone, IPad, or Android (including Kindle Fire HD)):

Individuals may listen** to the session using the Blackboard Collaborate Mobile App (available free from the Apple Store, Google Play or Amazon).

** Blackboard Collaborate Mobile App does not display Closed Captioning, has limited accessibility for screen reader and Voiceover users, and will not show the "Web Tour" portion of today's program.

Captioning

Real-time captioning is provided during this webinar.

The caption screen can be accessed by choosing the "CC" icon in the Audio & Video panel.

Once selected you will have the option to resize the captioning window, change the font size and save the transcript.

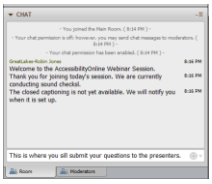
Submitting Questions

If you are listening by phone you will be instructed by the Operator on how to ask a question.

Webinar participants may type and submit questions in the Chat Area Text Box or press Control-M and enter text in the Chat Area. You will not be able to see the question after you submit it but it will be viewable by the presenters.

If you are connected via a mobile device you may submit questions in the chat area within the App

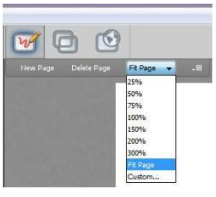
Questions may also be emailed to webinars@ada-audio.org



Please note: This webinar is being recorded and can be accessed on the ADA Audio Conference Series website at www.ada-audio.org within 24 hours after the conclusion of the session. The edited written transcript will be posted at this same site within 7 business days following the conclusion of the session.

Customize Your View

Resize the whiteboard where the presentation slides are shown to make it smaller or larger, by choosing from the drop down menu located above and to the left of the whiteboard. The default is “fit page”.



Customize Your View, *continued*

Resize/Reposition the Chat, Participant and Audio & Video panels by “detaching” and using your mouse to reposition or “stretch/shrink”.

Each panel may be detached using the icon in the upper right corner of each panel.

Technical Assistance

If you experience any technical difficulties during today’s session:

1. **In webinar platform:** Send a private chat message to the host by double clicking “Great Lakes ADA” in the participant list. A tab titled “Great Lakes ADA” will appear in the chat panel. Type your comment in the text box and “enter” (Keyboard - F6, Arrow up or down to locate “Great Lakes ADA” and select to send a message); or
2. **By Email** webinars@ada-audio.org ; or
3. **Call** 877-232-1990 (V/TTY)

Opioid Use Disorders and the Americans with Disabilities Act: Eliminating Discriminatory Barriers to Treatment and Recovery

Disability Rights Section
Civil Rights Division
U.S. Department of Justice
September 25, 2018

9

Learning Objectives

1. Enable you to understand the Americans with Disabilities Act's (ADA) protections for people with opioid use disorder
2. Help you to identify potential discrimination under the ADA that people in treatment and recovery may experience
3. Provide clear guidance on where to reach out to assist individuals in filing complaints of discrimination (DOJ or other appropriate federal agency)

10

Overview

1. Department of Justice's Response to the Opioid Epidemic
2. Overview of the Americans with Disabilities Act (ADA)
3. ADA's Application to People with Substance Use Disorders and Opioid Use Disorders
4. Filing a Complaint
5. Contact Information

Overview

ALPHABET SOUP

ADA = Americans with Disabilities Act
DOJ = Department of Justice
MAT = Medication-Assisted Treatment (treatment for OUD combining the use of medications such as methadone, buprenorphine, or naltrexone with counseling and behavioral therapies)
OUD = Opioid Use Disorder
SUD = Substance Use Disorder

DOJ's Response to the Opioid Epidemic

Prevention

Enforcement

Treatment

DOJ's Tools under the ADA

To ensure that people who have completed, or are participating in, treatment for OUD do not face unnecessary and discriminatory barriers to recovery

- Outreach
- Technical assistance
- Enforcement under the ADA
- Working in partnership with U.S. Attorney's Offices nationwide

ADA: Overview

Prohibits discrimination on basis of disability in:		
Employment	State & local Government	Public accommodations

ADA: Overview

Definition of "Disability"

- a **physical or mental impairment** that substantially limits one or more **major life activities**;
- a **record** (or past history) of such impairment; or
- being **regarded as** having a disability

ADA: Overview

Definition of "Disability" (cont.)

- **Impairment** – OUDs are impairments under the ADA. Individuals with OUDs that substantially limit one or more of their major life activities are generally considered "disabled" under the ADA.

ADA: Overview

Definition of "Disability" (cont.)

- **Major Life Activities** – include caring for oneself, learning, concentrating, thinking, communicating, working, and the operation of major bodily functions, including neurological and brain functions

ADA: Overview

Definition of "Disability" (cont.)

- **Qualified** – To be eligible for the ADA's protections under Titles I and II, the individual, with or without reasonable modifications, must meet the essential eligibility requirements for the employment, the receipt of services, or the participation in programs
- **Mitigating Measures** – The determination of whether an impairment substantially limits a major life activity is made without regard to the ameliorative effects of a mitigating measure

ADA: Overview

Definition of "disability" is expansive

- The definition of "disability" should be interpreted broadly
- Whether an individual's impairment is a disability under the ADA should not demand extensive analysis
- The term "substantially limits" shall be construed broadly in favor of expansive coverage
- The definition provides an extensive, non-exhaustive list of examples of major life activities

ADA: Application to SUDs/OUDs

ADA Exclusion

"Individual with a disability" **does not include an individual who is currently engaging in the illegal use of drugs**, when the covered entity acts on the basis of such use.

ADA: Application to SUDs/OUDs

Current illegal use of drugs means "illegal use of drugs that occurred **recently enough to justify a reasonable belief** that a person's drug use is current or that continuing use is a **real and ongoing problem**."

ADA: Application to SUDs/OUDs

Does "illegal use of drugs" cover *all* opioid use? Does it cover MAT?

No. "Illegal use of drugs" does not encompass the use of a drug taken under the supervision of a licensed health care professional, or other uses authorized by the Controlled Substances Act or other Federal laws.

ADA: Application to SUDs/OUDs

But the ADA <u>does</u> protect an individual who:

- has successfully completed a supervised drug rehabilitation program and is no longer using drugs illegally, or has otherwise been rehabilitated successfully and is no longer engaging in such use
- is participating in a supervised rehabilitation program and is no longer using drugs illegally; or
- is mistakenly regarded as using drugs illegally, but in fact is not.

ADA: Application to SUDs/OUDs

Obligations of Health Care Providers to People who are Currently Illegally Using Opioids

Health care providers may not deny health or drug rehabilitation services to individuals because of their current illegal use of drugs if they are otherwise entitled to such services.

ADA: Related Disability Issues

Discrimination based on disabilities that frequently co-occur with SUDs/OUDs, such as:

- mental health disabilities, including depression, anxiety, and bipolar disorder
- HIV
- Hepatitis

ADA: Related Disability Issues

- Other examples of disability discrimination that may arise in the context of treatment for OUD:
  - Lack of physical accessibility of treatment facilities for people with mobility disabilities
  - Failure to provide auxiliary aids or services for people with vision or hearing disabilities at treatment facilities

ADA TITLE I: EMPLOYMENT

ADA TITLE I: EMPLOYMENT

Requires employers with 15+ employees to provide **qualified individuals** with disabilities an **equal opportunity** to benefit from the full range of employment-related opportunities

- Recruitment
- Pay
- Hiring & Promotions
- Reasonable accommodations
- Other privileges of employment
- Training

ADA TITLE I: EMPLOYMENT

What Might Illegal Discrimination Look Like?

- Eduardo is a check-out clerk at a local big box store and a model employee.
- He has difficulty standing for long periods of time due to muscle pains related to his methadone treatment.
- His employer refused to provide him with a stool as a reasonable accommodation so that he could sit down at the cash register when necessary until the muscle pains passed.

ADA TITLE I: EMPLOYMENT

What Might Illegal Discrimination Look Like? (cont.)

EEOC v. Volvo Group North America, No. 1:17-cv-02889 (D. Md.) Consent Decree

- Applicant alleged Volvo made a conditional job offer to a qualified applicant for a laborer position.
- During his post-offer physical examination, the applicant alleged that he explained that he was taking medically-prescribed suboxone.
- Upon reporting for his first day of work, applicant alleged Volvo informed him that it could not hire him because of his suboxone use.

ADA TITLE II: STATE & LOCAL GOVERNMENTS

ADA TITLE II: STATE AND LOCAL GOVERNMENTS

- Covers **all** activities of state & local governments regardless of the receipt of federal funding
  - Courts
  - Law enforcement services
  - Access to public education
  - Transportation
  - Recreation
  - Health care
  - Social services
  - Voting
- Subject to the applicable defenses under title II of the ADA, state and local governments are required to provide individuals with disabilities an equal opportunity to benefit from all of their programs, services & activities

ADA TITLE II: STATES AND LOCAL GOVERNMENTS

What Might Illegal Discrimination Look Like?

- A city adopts and enforces zoning rules that subject residential substance use disorder programs to a more burdensome approval process than the city requires of similar entities.

ADA TITLE II: STATES AND LOCAL GOVERNMENTS

What Might Illegal Discrimination Look Like? (cont.)

- A supervised release program prohibits people who are currently on MAT from participating—even if they are not currently illegally using drugs.
- William would benefit from this program, but since it requires individuals to have completely ceased MAT before participating, he is excluded.

ADA TITLE II: STATES AND LOCAL GOVERNMENTS

What Might Illegal Discrimination Look Like? (cont.)

- A parole board prohibits inmates with a record of drug addiction from consideration for parole.
- Jim, an inmate, has a record of drug addiction but is not currently illegally using drugs.

ADA TITLE II: STATES AND LOCAL GOVERNMENTS

What Might Illegal Discrimination Look Like? (cont.)

- Title II covers child welfare agencies' and courts' interactions with parents who are in recovery or recovered from SUD/OUD.
- Child welfare agencies and court systems should not subject parents to blanket eligibility criteria that screen out individuals with SUDs/OUD from participation in their programs, services, or activities.

ADA TITLE III: PUBLIC ACCOMMODATIONS

ADA TITLE III: PUBLIC ACCOMMODATIONS

Twelve categories of places of public accommodation, including:

Pharmacies	Insurance offices	Professional offices of health care providers	Hospitals	Social service center establishments

ADA TITLE III: SETTLEMENT AGREEMENT

What Might Illegal Discrimination Look Like?

DOJ Settlement with Charlwell Operating, LLC

- Skilled nursing facility allegedly denied admission to a patient with OUD due to the patient's use of Suboxone
- Allegedly imposed eligibility criteria that screened out individuals with OUD
- Allegedly denied equal opportunity to benefit from the facility's services

ADA TITLE III: SETTLEMENT AGREEMENT

What Might Illegal Discrimination Look Like? (cont.)

Charlwell Operating, LLC (Settlement Agreement)

- 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

41

ADA TITLE III: PUBLIC ACCOMMODATIONS

What Might Illegal Discrimination Look Like?

- Dora seeks to participate in a mentoring program for young adults through a local nonprofit agency.
- Dora reveals, as part of the required personal background information, her past struggle with an addiction to prescription pills and her pride in her 15 years of being completely drug-free.
- The agency rejects her application based on her past substance use disorder.

42

Filing an ADA Complaint/ADA Resources

File a Complaint:
https://www.ada.gov/filing_complaint.htm

Visit the Disability Rights Section's Homepage:
www.ada.gov

Call our ADA Information Line:

800-514-0301 (voice) 800-514-0383 (TTY)

Filing a Housing-Related Complaint

The U.S. Department of Housing and Urban Development (HUD)'s Office of Fair Housing and Equal Opportunity (FHEO) handles individual complaints.

- File an online complaint: www.hud.gov → Topic Areas → Housing Discrimination
- Find the phone number for your regional FHEO office
- Or call the Discrimination hotline: 800-669-9777 (voice); 800-927-9275 (TTY)
- Complaints must be filed within one year of the discriminatory act

DOJ's Housing and Civil Enforcement Section (HCE) has jurisdiction over allegations of a "pattern or practice" of discrimination.

- fairhousing@usdoj.gov
- HCE office: 800-896-7743 (voice); 202-305-1882 (TTY)

Filing an Employment-Related Complaint

The U.S. Equal Employment Opportunity Commission (EEOC) receives and investigates complaints regarding employment discrimination, including on the basis of disability.

www.eeoc.gov

info@eeoc.gov

1-800-669-4000 or 1-800-669-6820 (TTY)

53 field offices across the country

Note that an individual often has only 180 days from the date of the alleged discrimination to file.

Contact Information

Stephanie Berger
Stephanie.Berger@usdoj.gov

Savannah Weston
Savannah.Weston@usdoj.gov

Disability Rights Section
Civil Rights Division
U.S. Department of Justice
www.ada.gov
800-514-0301 (voice)
800-514-0383 (TTY)

Questions?

47

Thank you for participating in today's webinar

Next session:

THE RIGHT TO VOTE: ACCESS FOR PEOPLE WITH DISABILITIES

October 16, 2018, 2:00 – 3:30 PM EST
www.ada-audio.org

48