



National Network

Information, Guidance and Training on the
Americans with Disabilities Act

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The Americans with Disabilities Act, Addiction and Recovery for State and Local Governments

The Americans with Disabilities Act (ADA) ensures that people with disabilities have the same rights and opportunities as everyone else. This includes people with addiction to alcohol and people in recovery from opioid and other drugs.

The ADA applies to all state and local government departments and agencies of those governments (“public entities”). Examples include the criminal justice system (jails, prisons, probation, and the courts) and State and local government-operated recovery homes. The ADA requires that all programs, services, and activities are accessible to and usable by people with disabilities. The ADA also requires that when a person with a disability asks for a modification of policies or the way the program operates, that modification must be considered.

Definition of Disability

A person has a disability under the ADA if the person:

1. Has a physical or mental impairment that substantially limits one or more **major life activities**, e.g., someone with bi-polar disorder, diabetes, or addiction to alcohol; or
2. Has a **history** of an impairment that substantially limited one or more major life activities, e.g., someone who is in remission from cancer or someone in recovery from the illegal use of drugs; or
3. Is **regarded** as having such an impairment, e.g. A prison assumes that an inmate has an addiction to drugs (even though that inmate does not have an addiction), and takes a negative action based on that belief, such as placing the inmate in a segregated cell.

Major life activities include, but aren’t limited to, walking, seeing, caring for oneself, learning, thinking, communicating, as well as the operation of bodily functions, such as neurological and brain functions.

Addiction is generally considered a disability because it is an impairment that affects the brain and neurological functions.

Addiction to alcohol and the illegal use of drugs are treated differently under the ADA. Addiction to alcohol is generally considered a disability whether the use of alcohol is in the **present** or in the **past**. For people with an addiction to opioids and other drugs, the ADA only protects a person **in recovery who is no longer engaging in the current illegal use of drugs**.



Illegal use of drugs means:

- Use of illegal drugs such as heroin or cocaine; and/or
- The misuse of prescription medications such as opioids or morphine where the person has **no** prescription, has a **fraudulent** prescription, or is using **more medication than prescribed**.

In recovery means:

- Is in recovery and is no longer engaged in the illegal use of drugs; or
- Is participating in a supervised rehabilitation program and is no longer using drugs illegally.

“Current” illegal use of drugs:

- Means the use of the drugs occurred recently enough to have a reasonable belief that a person’s drug use is a real and ongoing problem.
- Can be demonstrated where a person fails a drug test or indicates they may fail such a test.
- Isn’t limited to days, weeks, or months but is decided on a case by case basis.

At the time this factsheet was written, different court cases (*Quinones v. Univ. of Puerto Rico and Salley v. Circuit City Stores, Inc.*) defined “current use” as anywhere between five weeks to three months.

A person who has a legally prescribed medication to treat their substance use disorder (such as Suboxone, Methadone, or Vivitrol etc.), and is no longer engaging in the illegal use of drugs is a person with a disability and is protected by the ADA.

Social Service Programs

Scenario: Lillian stopped using **heroin** two years ago when she began using medication to treat her substance use disorder, including **Methadone** treatments, which she is still taking. She also regularly sees a counselor. Lillian’s mother, Jane believes Methadone is the same as heroin and calls child protective services (CPS) to have Lillian’s two children removed from the home. When the CPS worker interviews Lillian about her mother’s complaint, Lillian tells him she takes Methadone as part of her recovery and shows the worker documentation to prove it. The CPS worker isn’t sure that Methadone is a treatment drug and tells Lillian that he still plans to remove her children and give custody to Jane.

Is Lillian protected under the ADA? Yes, she is protected under the ADA because she has a history of an impairment (addiction to heroin) and hasn’t used illegal drugs for two years. Therefore, there is a good chance that there isn’t an ongoing problem. The CPS worker violated the ADA when he refused to work with Lillian because of her history of drug use. The CPS worker is also incorrectly regarding Methadone as an illegal drug. Methadone is a legally prescribed medication, just like insulin is prescribed for diabetes.

Criminal Justice System

Scenario: David has an addiction to opioids but stopped using them three years ago when he entered a treatment program, which includes a daily dose of **Suboxone**, a daily prescription medication used to treat opioid use disorder. David was recently arrested for robbing a convenience store and was sentenced to jail. When he arrived at the county jail, he provided officials a prescription from his doctor for Suboxone. The Sheriff is concerned about the **safety risk** of administering Suboxone in a jail environment because other inmates could access the drug.



Under the ADA, is the jail required to administer Suboxone to David? Yes, court cases (*Pesce v Coppinger and Godsey v Sawyer*) have found that the ADA requires correction programs (jails and prisons) to administer medications prescribed to treat substance use disorders. The correctional system must find a way to administer and monitor Suboxone in a way that doesn't cause a security or safety risk.

Housing

Recovery homes and half-way housing are examples of housing options that are covered under the ADA. Recovery homes serve people who need treatment for their addiction. Other housing, like half-way houses, serve people who are on probation, some of whom have addictions. Often staff of housing programs refuse to admit people who take medication prescribed to treat their substance use disorders, even if they are required to live there while on probation. If a person is prescribed medication to treat a substance use disorder, the ADA and/or the Fair Housing Act may require housing programs to admit the individual. The ADA also requires that state-funded housing provide "reasonable modifications" to individuals with disabilities, including those in recovery.

Recovery Homes

Scenario: Sofia has anxiety, depression, and addiction to alcohol, all of which affect her ability to care for herself. Her doctor prescribed **Gabapentin** to treat her anxiety and depression symptoms. Now, Sofia wants to stop drinking, so she enters a residential recovery home **run by the city** for alcohol treatment. At the intake interview, the recovery home coordinator asks Sofia if she is taking any medications. Sofia shows the coordinator her prescription for Gabapentin and explains that she takes it to help manage her anxiety and depression. The coordinator tells her that she can enter the recovery home, but she won't be allowed to take her Gabapentin because they don't allow residents to take any drugs. The coordinator fears Sofia will abuse the Gabapentin to get high.

Did the recovery home discriminate against Sofia under the ADA? Yes, the recovery home discriminated against Sofia under the ADA because she wasn't allowed to take her medication while participating in the treatment program. Sofia is considered a person with a disability because she has anxiety, depression, and addiction to alcohol, which are mental impairments that substantially limit Sofia's major life activity of caring for herself. She must be allowed to participate in the recovery program while she continues to take the Gabapentin.

Half-Way Houses

Scenario: Jason is on probation. He was ordered by a judge to live in a **county-based** half-way house as part of his probation. He is receiving medication to treat opioid use disorder, because he is in recovery from an addiction to **Percocet**, an opiate pain medicine. During the intake, the home director said they wouldn't allow Jason to take his prescribed Suboxone if he lives there. Jason knows he will be in violation of his probation if he doesn't enter this half-way house.

Did this half-way house violate the ADA? Yes, the half-way house violated the ADA. Jason is a person with a disability covered by the ADA because he is a person in recovery, i.e., no longer illegally using drugs. The half-way house must admit anyone who is receiving medication to treat substance use disorder, unless it completely changes their program (a fundamental alteration). For example, the half-way house doesn't dispense any medications, so requiring the staff to dispense Suboxone would fundamentally change their operations. However, the half-way house could allow Jason to leave each day only to receive Suboxone at a treatment center. It's important to note that people in recovery may



have other disabilities requiring accommodations, such as providing a sign language interpreter for a Deaf participant or providing materials in an alternative format for someone with a vision disability.

Healthcare Exception

So far, this factsheet has focused on people who have an addiction to alcohol or people who are in recovery from the illegal use of drugs. Generally, people can't currently be engaged in the illegal use of drugs to be protected by the ADA. However, there is one exception. A person who is currently engaging in the illegal use of drugs can't be denied healthcare or rehabilitation services because of their current use if they would otherwise qualify for these services.

Scenario: While on probation, George, who is taking Suboxone to treat his substance use disorder, is arrested for driving under the influence of alcohol and Gabapentin. His probation is revoked. George requests that he be allowed to continue taking his Suboxone prescription while serving the remainder of his sentence. His request is denied because Gabapentin, a medication for which George doesn't have a prescription, was found in his system.

Is George protected under the ADA? Yes, George is protected under the ADA because he can't be denied health care that he would normally qualify for on the basis of his current use of illegal drugs. A public entity can't deny health services, or services provided in connection with drug rehabilitation to an individual on the basis of that individual's current illegal use of drugs, if the individual is otherwise entitled to such services. This exception is important, because people often go to jail with legal Suboxone in their system, but may also have additional drugs in their system that they are illegally using. In this case, the illegal use of Gabapentin doesn't mean that the jail can withhold the legal use of Suboxone unless there is a legitimate medical reason to do so.

Need more information?

If you have questions about your rights or obligations under the ADA, contact your local ADA Center. Each center has ADA specialists who provide information and guidance to anyone requesting ADA information. You can call toll-free at 1-800-949-4232. You can also email your local center by clicking the following link and completing the form: adata.org/email. All calls and emails are treated anonymously and confidentially.

References

Drugs, Alcohol and the ADA. Great Lakes ADA Center.

http://www.adagreatlakes.org/Publications/Legal_Briefs/BriefNo33_Drugs_Alcohol_and_the_ADA.pdf



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