

# The Right to Medication for Opioid Use Disorder

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# Breaking Barriers. Defending Dignity.

The Legal Action Center uses legal and policy strategies to fight discrimination, build health equity, and restore opportunity for people with criminal records, substance use disorders, and HIV or AIDS.

# LANGUAGE MATTERS WORDS HAVE POWER PEOPLE FIRST

The Legal Action Center uses affirming language to promote dignity and combat stigma and discrimination

# Denying access to skilled nursing facilities because of someone's OUD/MOUD may violate multiple laws

- Americans with Disabilities Act (ADA)
- Rehabilitation Act of 1973 (Rehab. Act)
- NYS and local anti-discrimination laws

# Anti-Discrimination Laws:

- ▶ Prohibit **discrimination** against people with disabilities, including OUD
  - ▶ Treating someone differently *because of* their disability
  - ▶ Having neutral policy that disproportionately impacts people with a disability
  - ▶ Refusing to provide a reasonable accommodation
- ▶ These anti-discrimination protections apply to all health care facilities including SNFs and other rehabilitation or nursing facilities

# DOJ Settlements – SNFs that Excluded People on MOUD

- ▶ U.S. Dept. of Justice - 3 settlements with skilled nursing facilities that excluded patients on methadone or buprenorphine
- ▶ Said it violates the ADA
  - ▶ [DOJ Settlement with Charlwell Operating Nursing Facility, LLC \(2018\)](#)
  - ▶ [DOJ Agreement with Athena Health Care Systems \(2019\)](#)
  - ▶ [DOJ Settlement with Alliance Health and Human Services \(2020\)](#)

# Evidence of Possible Discrimination by SNFs Based on OUD/MOUD

- ▶ SNF policy does not admit people taking MOUD or with OUD
- ▶ Different policies for MOUDs compared to other medications
- ▶ SNF says someone must change their dose/medication without medical justification
- ▶ SNF says it cannot provide the type of services someone (with OUD) needs
- ▶ Comments by the SNF about someone's past drug use, or increased risk of misusing an IV

# Reasonable Accommodation

- ▶ SNFs also have an obligation to provide a “reasonable accommodation” to people with disabilities
- ▶ A reasonable accommodation is a change in the way that the SNF typically operates or a change in policies that allows someone with a disability to access services – as long as it does not “fundamentally alter” the nature of the program/services offered or constitute an “undue burden”



# Reasonable Accommodation

- ▶ Example:

- ▶ Jane needs SNF care but SNF has a no MOUD policy
- ▶ SNF has no “waivered” physicians and does not permit outside prescriptions
- ▶ Jane asks for “reasonable modification” so she can continue buprenorphine prescribed by her primary care doctor
- ▶ SNF denies Jane’s request
- ▶ This is likely discrimination because allowing Jane to continue buprenorphine would not be an “undue burden” or “fundamentally alter” the SNF’s services

# SNF's May Raise Defense that MOUD Poses a "Direct Threat" to Others

- ▶ MSNF might say;
  - ▶ MOUD could be diverted
  - ▶ The population taking MOUD is high risk and a different demographic
- ▶ These statements are based on generalized assumptions and stigma
- ▶ They do not constitute a "direct threat"

# What is the “Direct Threat” Defense?

- ▶ A “**direct threat**” to the health and safety of themselves or others
  - ▶ Must be a significant risk of substantial harm
  - ▶ Based on:
    - ▶ Individualized assessment
    - ▶ Objective, factual evidence

# What about the Illegal Use of Drugs?

- ▶ Anti-discrimination laws generally do not apply to people engaging in the CURRENT illegal use of drugs
- ▶ They do apply to someone in recovery from OUD
- ▶ But remember, even if someone is currently engaging in the illegal use of drugs they cannot be denied health services because of their illegal drug use

# LAC's Current Work: SNFs

- ▶ LAC is currently investigating this discrimination by SNFs in New York City and New York State
- ▶ If a patient or someone you know is experiencing discrimination, please share our contact information with them: [rjoab@lac.org](mailto:rjoab@lac.org)
- ▶ For more information visit our website: <https://www.lac.org/news/seeking-patients-on-medication-for-opioid-use-disorder-who-need-admission-to-a-long-term-care-facility>

# LAC Resources

- ▶ LAC helps people who are being discriminated against because of their OUD in many settings
  - ▶ Employment, child welfare, health care, Criminal legal
- ▶ We have many resources on our [MAT ADVOCACY TOOLKIT](#) that help people learn about and advocate for their rights
- ▶ Fill out LAC's [Intake form](#) or call (212) 243-1313