



Substance Use Disorders and Access to Healthcare Services

Overdose deaths are a serious and growing public health crisis in North Carolina. The number of people diagnosed with substance use disorder (SUD) has significantly increased over the last decade, along with the number of reported overdose deaths. For instance:

- In North Carolina, and nationally, overdose death rates are higher than traffic crash death rates¹
- The overdose rate in NC from 2017-2021 was 27.6 per 100,000 residents²
- In 2020, 41% of those who died by overdose had at least one documented interaction with a health care provider.³

Disability rights laws have an important role to play in combatting this crisis. These laws provide people with SUDs equal access to lifesaving medical, rehabilitation, and harm reduction services. This factsheet explains the legal rights people with SUD have to protect themselves against discrimination in healthcare settings.

Title II and Title III of the ADA

The Americans with Disabilities Act – the “ADA” – is a federal civil rights law for people with disabilities.⁴

- It prohibits hospitals, treatment programs, and services administered or managed by state and local governments from discriminating based on disability in their programs or services.⁵

¹ NCDHHS Division of Public Health Injury and Violence Prevention Branch, *NC Overdose Data: Trends and Surveillance* [PowerPoint slides], available at <https://injuryfreenc.dph.ncdhhs.gov/DataSurveillance/overdose.htm/> (last visited 7/20/2023).

² NCDHHS Division of Public Health Injury and Violence Prevention Branch, *Opioid and Substance Use Action Plan Data Dashboard*, available at <https://www.ncdhhs.gov/opioid-and-substance-use-action-plan-data-dashboard> (last visited 7/20/2023).

³ *Id.*

⁴ 42 U.S.C. § 12101, *et seq.*

⁵ 42 U.S.C. §§ 12131-12165.

- It also prohibits private hospitals and treatment settings that are open to the public from denying medical or rehabilitation services, offering only unequal or separate services, or offering services in a segregated setting because a person has a disability or is associated with a person with a disability.⁶
- It does not apply to "private clubs" or religious entities.⁷

The ADA applies to most hospitals, treatment centers, clinics, recovery homes, medical offices, skilled nursing facilities (SNF), and homecare agencies.⁸

What is SUD and When is It a Protected Disability?

SUD occurs when the recurrent use of alcohol and/or drugs causes significant mental and/or physical impairment. Under the ADA, having a SUD will often satisfy the definition of a disability because it is a condition that substantially impacts a person's brain functioning and/or ability to function in daily life.⁹ As such, people with alcohol use disorders and people in recovery from SUD are likely to have protected disabilities under the ADA. For instance, the ADA would prohibit employers from firing employees because they were in recovery from a cocaine use disorder.

But the ADA has special rules for people with SUD who are currently engaging in the illegal use of drugs. The ADA does not protect people against discrimination based on the current illegal use of drugs except if the person is seeking health services.¹⁰ For instance, the ADA would prohibit hospitals from denying healthcare services to patients

⁶ For examples of places of public accommodations, see 42 U.S.C. § 12181(7).

⁷ 42 U.S.C. § 12187. A private club is one in which membership must be voted on by other members.

⁸ Other state and federal laws with similar anti-disability discrimination prohibitions include Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §§ 701 to 796, Section 1557 of the Patient Protection and Affordable Care Act, 42 U.S.C. § 1557, Section VIII of the Civil Rights Act (Fair Housing Act), 42 U.S.C. §§ 3601-19, Emergency Medical Treatment & Labor Act, 42 USCS § 1395dd, and North Carolina Persons with Disabilities Protection Act, N.C. Gen. Stat. § 168A.

⁹ Under the ADA, a disability is a condition that substantially limits at least one major life activity, such as caring for yourself, thinking, concentrating, communicating, working, or brain functioning. 42 U.S.C. § 12102.

¹⁰ 42 U.S.C. § 12210(c) (“[A]n individual shall not be denied health services, or services provided in connection with drug rehabilitation, on the basis of the current illegal use of drugs if the individual is otherwise entitled to such services.”)

based on the current use of illegal methamphetamines, but the ADA would not prohibit employers from firing their employees for the same reason.

What are Examples of SUD-Based Discrimination?

SUD-based discrimination may take many different forms, including:

- treating someone differently or unequally because of their SUD or because of fears and assumptions about SUD;
- using policies and procedures that prevent people with SUD from participating in a program or receiving services; or
- failing to provide a requested “reasonable accommodation” (or “modification”) that is needed for a person with a SUD to participate in a program or receive a service.

Here are some possible examples¹¹ of discriminatory acts:

- Mary uses methadone as prescribed for her SUD. She was denied admission to a skilled nursing facility because the facility has a policy of not admitting people who use methadone.
- After her surgery, a hospital refused to discharge Althea to home care – an option it provides to other patients for this surgery – because her medical records show a SUD.
- A nursing home asks questions about alcohol use and refuses to admit Gary when he answers that he has attended a treatment center and AA meetings over the years.
- A recovery home with an “abstinence only” drug policy for residents refuses to admit Tiffany because she uses Suboxone to treat her SUD.
- A recovery home charges an additional fee to residents if they use medications, like Suboxone, for treating their SUD.
- Shane asks a nursing home for a ride to a clinic so that he can receive methadone and the nursing home refuses.
- Even though the procedure was clinically appropriate, a hospital denied Pete a heart valve replacement because he uses heroin.
- A doctor refused to offer Jenny any pain medication after her knee surgery because he was afraid she would start using methamphetamines again.

When Do You Have a Right to an Accommodation?

The ADA requires healthcare and treatment facilities to provide reasonable

¹¹ These examples are illustrative and intended only for educational purposes, not legal advice.

accommodations to remove access barriers for people with disabilities. An accommodation is an adjustment to “the way things are usually done” to provide a person with a disability an equal opportunity to participate in a program and receive services. Here are a few examples of accommodations that a person with SUD might request:

- Asking a facility to modify its “abstinence only” drug policy to accommodate your use of a prescribed medication;
- Asking hospital staff to provide you with medicine to assist with the withdrawal symptoms you are experiencing during an extended hospital stay;
- Asking a facility to transport you to a methadone clinic or recovery support group;
- Asking a facility to allow you to use your disability-related personal items, such as insulin needles, wheelchair, or service animal.

How Do You Request an Accommodation?

Your right to receive an accommodation is not automatic.

1. You must first request the accommodation from the facility or business.

Tip: Put Your Request in Writing

- State that you are a person with a disability.
- State that you are requesting a reasonable accommodation to assist in your access to healthcare.
- State specifically what you need help with and emphasize how the accommodation will improve your access to healthcare.

Tip: Check for an Accommodation Policy

Many facilities have policies for how to request accommodations. You can often find them on their websites. If there is an accommodation policy then follow the instructions. If there is no policy, then provide the accommodation request to whoever is in charge and keep a copy of the request for yourself.

2. If your need for the accommodation is not obvious, the facility or business may request medical documentation to show that the accommodation is related to your disability. You do not have to provide general medical information that is unrelated to your disability and accommodations.
3. The accommodation may be denied if it is a significant expense or difficult to provide, taking into account the overall resources of the facility or business.

Tip: Verify the Reason for the Denial

When an accommodation is denied, try to obtain the specific reason for the denial and ask for it in writing.

4. The facility or business may also offer you an alternate accommodation to the one you requested. This alternate is acceptable when it is effective and provides you equal access to the program and services.

Tip: Act in Good Faith

When a facility or business offers you an alternative accommodation and you are unsure if the alternative will work, then try to use the alternative for a short time to see if it suits your needs. This will allow you to explain later why the alternative does or does not work for you.

How to Enforce your ADA Rights

- #1 Contact an attorney.** Call Disability Rights NC at 1-877-235-4210, 919-856-2195 or contact us online at <https://disabilityrightsn.org/get-help/apply-for-legal-help/>. While we cannot guarantee that Disability Rights NC will take your case, we will at least provide you with legal information and resources.
- #2 File a complaint with the U.S. Department of Justice.** If you have questions about how to file a complaint or would like to request a complaint packet, contact the Department’s ADA Information Line at 1-800-514-0301 or visit its website at www.ada.gov.
- #3 File a complaint with the U.S. Department of Health and Human Services.** If you were discriminated against by a healthcare provider, you may learn how to file a complaint with the U.S. Department of Health and Human Services at <https://www.hhs.gov/civil-rights/filing-a-complaint/index.html>.

Retaliation is Prohibited. If you take steps to enforce your rights, the person, service or facility about which you filed a complaint is not allowed to retaliate against you. Retaliation includes, but is not limited to, the denial of services, intimidation, or threats. Retaliation is an additional violation of the ADA.

Where Can You Learn More?

To learn more about combatting discrimination against people with substance use disorders, visit the Legal Action Center’s information portal at <https://www.lac.org/major-project/legal-help-4-pwud> and the Department of Justice’s guidance at https://archive.ada.gov/opioid_guidance.pdf.

Disability Rights North Carolina is a 501(c)(3) nonprofit organization headquartered in Raleigh. It is a federally mandated protection and advocacy system with funding from the U.S. Department of Health and Human Services, the U.S. Department of Education, and the Social Security Administration.

Its team of attorneys, advocates, paralegals and support staff provide advocacy and legal services at no charge for people with disabilities across North Carolina to protect them from discrimination on the basis of their disability. All people with disabilities living in North Carolina are eligible to receive assistance from Disability Rights NC.

Contact us for assistance or to request this information in an alternate format.

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