

Ending Medical Complicity with Skilled-Nursing Facility Discrimination Against People with Opioid Use Disorder

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Rose (name has been changed for privacy) lay in bed in the surgical intensive care unit after falling down the stairs, awaiting surgery to stabilize her spine. She worried as much about where she would recover after hospitalization as about whether her surgery would be successful. Rose needed physical therapy and nursing care, often offered in skilled-nursing facilities (SNFs), but she had opioid use disorder (OUD) and received treatment with methadone. From past hospitalizations, she knew that nearby SNFs did not accept patients treated with methadone. She had been in sustained remission for more than a decade, but this did nothing to improve her discharge options.

Opioid use disorder is a chronic, treatable disease. Medications for opioid use disorder (MOUD), specifically methadone and buprenorphine, are lifesaving, reducing mortality by 50% (1). Yet those who work in hospitals know it is accepted and common for SNFs to discriminate against people with OUD, often specifically because they are treated with MOUD. Discriminatory admission practices are so ingrained that SNFs openly list OUD or MOUD as their reason for rejection (2). Patients with OUD are less likely to find an accepting SNF even though hospitals refer them to more facilities and preferentially refer them to facilities that are more likely to accept them (3).

Pervasive discrimination by SNFs leads to unnecessary and potentially dangerous changes in clinical care. Patients languish in acute care hospitals that lack resources to provide intensive physical therapy (4). Such prolonged hospitalizations increase overall hospital bed occupancy, which has been associated with increased mortality (5). Clinicians may change their patients' MOUD so that SNFs will accept them (6), or alter intravenous antibiotic recommendations to facilitate discharge home, rather than to an SNF. Even then, discrimination can prevent patients from receiving home antibiotic infusions because hospitals, home care agencies, and home infusion companies may not allow patients to receive intravenous antibiotics at home due to concerns about their using the indwelling line for illicit drugs, although studies indicate these concerns are likely unfounded (7).

An SNF's refusal to admit someone because they are treated with MOUD violates the Americans with Disabilities Act (ADA), the Rehabilitation Act of 1973, and the Patient Protection and Affordable Care Act (8). Under these laws, people may not "by reason of . . . disability, be excluded from participation in . . . the services, programs, or activities" of covered entities, including SNFs. People with substance use disorders generally are considered to have a "disability" unless they are currently engaging in the illegal use of drugs. Even if they are actively using drugs, they

may not be denied health services (including SNF care) because of their use.

The U.S. Department of Justice (DOJ) and the U.S. Department of Health and Human Services Office of Civil Rights have entered into numerous settlements with SNFs that denied admission to persons treated with MOUD (9). The settlements note that although SNFs may impose legitimate safety requirements based on actual risks, such requirements cannot be based on speculation or stereotypes about persons with disabilities. Arguments on the part of SNFs that they cannot facilitate provision of methadone, lack a health care professional with addiction training, and cannot securely store MOUD do not survive legal scrutiny. The settlements imposed civil monetary penalties up to \$60 000. In April 2022, the DOJ issued guidance stating that "the facility's [SNF's] exclusion of patients based on their OUD would violate the ADA" (10). While the settlements have focused on people taking MOUD, discrimination against any person with OUD or any substance use disorder is illegal. These DOJ actions have made SNFs' obligations clear, yet more must be done to end discrimination.

Health care workers cannot tolerate such discrimination, which restricts access to lifesaving treatment and creates barriers to other necessary medical care, especially during an unprecedented overdose crisis. We outline steps we can each take to end this accepted but illegal form of discrimination (Table).

1. Ensure access to all forms of MOUD in the hospital.

Treatment with MOUD is evidence-based and lifesaving. It should be offered to all people with OUD.

2. Provide evidence-based, equitable care for all.

Discrimination by SNFs constrains the care people receive. People treated with MOUD should be referred to all SNFs, whether or not the SNFs usually accept people receiving MOUD. If care plans must change in response to discriminatory SNF rejections, it should be done only with patient-centered discussions of the alternatives.

3. Engage hospital administrators in addressing discriminatory practices.

Addressing discrimination is in the interest of our patients and hospitals. Inability to advance care leads to prolonged hospitalization, uncompensated days, and increased bed occupancy that affect the overall health and mortality of all hospitalized patients (5).

4. File complaints with and for patients.

Health care workers should document the discrimination in the patient's chart along with its impact on the patient's health and medical care. A complaint should be

Table. Additional Actions to Combat Discrimination, by Role

Role	Action
Provider	Refer patients to <i>all</i> appropriate SNFs Document discrimination and its impact File ADA complaints with the Civil Rights Division of the DOJ online at the ADA website Educate SNFs about legal risks of discrimination against patients with OUD Advocate for federal legislation and policy changed to lower barriers to MOUD
Hospital administration	Develop institutional partnerships with OTPs and SNFs Standardize methods of response to SNF discrimination Coordinate with legal resources to bring cases for possible impact litigation
Patient	File ADA complaints with the Civil Rights Division of the DOJ online at the ADA website File complaints with OCR or State Attorneys General to enforce laws prohibiting discrimination
SNF	Understand that SNF clinicians can now prescribe buprenorphine with no additional DEA X-waiver due its elimination in the 2023 Omnibus bill Partner with OTPs to provide methadone Use OTP medical exemption to avoid daily, in-person dosing Become a medication unit to dispense methadone

ADA = Americans with Disabilities Act; DEA = U.S. Drug Enforcement Administration; DOJ = U.S. Department of Justice; MOUD = medications for opioid use disorder; OCR = U.S. Department of Health and Human Services Office of Civil Rights; OTP = opioid treatment program; OUD = opioid use disorder; SNF = skilled-nursing facility.

filed at the ADA website with identifying information with patient consent, or a report made about specific facilities without any patient information. The complaint process activates legal advocacy channels. We cannot solely rely on patients' self-advocacy to fix a broken system; we are all responsible.

5. Educate SNF staff about MOUD and illegal discrimination.

Health care workers should respond to discriminatory rejections with education on legal risks and responsibilities (a sample SNF rejection response letter is available through the Legal Action Center). We should inform SNF clinicians about avenues for learning about OUD and its treatment, including the elimination of the requirement for an X waiver to prescribe buprenorphine for OUD.

6. Advocate to improve access to MOUD throughout the health care system.

Medication for OUD is regulated differently than any other medication. In some countries, methadone can be prescribed and dispensed outside of specialized and siloed methadone treatment programs. We must advocate for office-based methadone and increased training, support, and incentives for clinicians to actually prescribe buprenorphine to patients with OUD, particularly given elimination of the X-waiver.

Ultimately, Rose was discharged to the same SNF where she had negative experiences previously because no other facility would accept her.

Health care workers cannot tolerate discrimination against people with substance use disorders in any setting. We have a duty to advocate for the health of people who use drugs and help build a more just and equitable society.

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References

1. National Academies of Sciences, Engineering, and Medicine. Medications for Opioid Use Disorder Save Lives. National Academies Pr; 2019. doi:10.17226/25310
2. Kimmel SD, Rosenmoss S, Bearnot B, et al. Rejection of patients with opioid use disorder referred for post-acute medical care before and after an anti-discrimination settlement in Massachusetts. *J Addict Med.* 2021;15:20-26. [PMID: 32675798] doi:10.1097/ADM.0000000000000693
3. Kimmel SD, Rosenmoss S, Bearnot B, et al. Northeast postacute medical facilities disproportionately reject referrals for patients with opioid use disorder. *Health Aff (Millwood).* 2022;41:434-444. [PMID: 35254930] doi:10.1377/hlthaff.2021.01242
4. Waters K, Handa L, Caballero B, et al. Substance use disorder as a predictor of skilled nursing facility referral failure. *J Gen Intern Med.* 2022;37:3506-3508. [PMID: 35419745] doi:10.1007/s11606-022-07534-0
5. Eriksson CO, Stoner RC, Eden KB, et al. The association between hospital capacity strain and inpatient outcomes in highly developed countries: a systematic review. *J Gen Intern Med.* 2017;32:686-696. [PMID: 27981468] doi:10.1007/s11606-016-3936-3
6. Bhatraju EP, Klein JW, Hall AN, et al. Low dose buprenorphine induction with full agonist overlap in hospitalized patients with opioid use disorder: a retrospective cohort study. *J Addict Med.*

2022 Jul-Aug 01;16:461-465. [PMID: 34954743] doi:10.1097/ADM.0000000000000947

7. **Appa A, Barocas JA.** Can I safely discharge a patient with a substance use disorder home with a peripherally inserted central catheter? *NEJM Evidence.* 2022;1:EVIDcon2100012. doi:10.1056/EVIDcon2100012

8. United States Code, 2012 Edition, Supplement 4, Title 24 - Labor and Title 42 - The Public Health and Welfare. 42 U.S.C. § 12132; 42 U.S.C. § 12182; 29 U.S.C. § 794; 42 U.S.C. § 18116.

9. Cases Involving Discrimination Based on Treatment with Medication for Opioid Use Disorder. Legal Action Center. 6 June 2022. Accessed at www.lac.org/assets/files/Cases-involving-denial-of-access-to-MOUD.pdf on 10 January 2022.

10. The Americans with Disabilities Act and the Opioid Crisis: Combating Discrimination Against People in Treatment or Recovery. U.S. Department of Justice, Civil Rights Division. Accessed at https://archive.ada.gov/opioid_guidance.pdf on 10 January 2022.

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