

# BIG IDEAS

ADVANCING SOLUTIONS TO CURB FATAL OVERDOSES IN THE UNITED STATES

## RECOVERY HOUSING AND CIVIL RIGHTS LAWS: RIGHTS AND OBLIGATIONS RELATED TO MEDICATIONS FOR OPIOID USE DISORDER

**HOUSING IS A BASIC HUMAN NEED.** For people with substance use disorder (SUD), a safe and stable place to live is crucial to support long-term recovery and can mean the difference between life and death. The Substance Abuse and Mental Health Services Administration (SAMHSA) recognizes stable and safe housing as one of four major dimensions of recovery.<sup>1</sup> Recovery housing is a key part of a continuum of care that includes affordable housing and evidence-based treatment for people with SUD.<sup>2</sup>

Recently, SAMHSA released *Best Practices for Recovery Housing*.<sup>3</sup> The document provides guidance for states and local communities seeking to expand access to recovery housing across the country. As stated in the document, recovery houses are “[f]ounded on social model recovery principles, the recovery housing setting is the service.” Conflicts have arisen, however, when recovery houses ban or otherwise prohibit individuals using prescribed medications for opioid use disorder (MOUD).

MOUD have been shown to reduce overdoses and help people sustain recovery.<sup>4</sup> However, punitive policies and practices in some recovery housing, including discriminatory restrictions and

bans on MOUD, remain in place. Such restrictive recovery housing rules and policies are often connected to homelessness and housing insecurity, and may exacerbate SUD symptoms.<sup>5</sup> Restrictions on the use of MOUD, when coupled with a drug supply saturated with illegal fentanyl, can be deadly.<sup>6</sup>

### RECOVERY HOUSING AND EVIDENCE-BASED PRACTICES

SAMHSA defines recovery housing as “safe, healthy, family-like substance free living environments that support individuals in recovery from addiction.”<sup>7</sup> A central premise of recovery

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residences is peer support, as well as connections to services that promote long-term recovery.”<sup>8</sup> Residences offer stable living conditions and readily available social supports, including employment resources and permanent housing solutions.<sup>9</sup> Positive outcomes associated with recovery housing include decreased substance use, lower rates of incarceration, higher income, increased employment, and improved family relationships.<sup>10</sup> Evidence-based treatment for opioid use disorder (OUD), including the use of prescribed medications, complements the effectiveness of recovery housing.<sup>11</sup>

Unfortunately, too many of the nation’s approximately 18,000 recovery homes<sup>12</sup> restrict or ban the use of MOUD.<sup>13</sup> These barriers remain despite the scientific evidence and support from leading medical organizations, including the American Medical Association, World Health Organization, and the National Academies of Science, Engineering, and Medicine. Each of these organizations recognize MOUD as the standard of care for the treatment of OUD.<sup>14</sup> MOUD restrictions are often rooted in stigma, as well as concerns that individuals who are not on MOUD may misuse the prescribed MOUD.<sup>15</sup> Studies show that MOUD reduces overdose deaths, illegal drug use, and criminal recidivism rates.<sup>16</sup> For these reasons, SAMHSA recommends recovery housing operators remove barriers and restrictions to any medications prescribed to treat behavioral or physical health conditions.

## RECOVERY HOUSING AND COMPLIANCE WITH FEDERAL LAW

SUD is a disability, defined under the Americans with Disabilities Act (ADA) as a physical or mental impairment that affects a major life function.<sup>17</sup> An individual with SUD is therefore protected by civil and disability rights laws

and provided certain protections in places of employment, by governments, in places of public accommodation, by recipients of federal funds, and in dwellings.<sup>18</sup>

Courts have routinely held that a policy or practice that bans the use of MOUD by covered entities violates federal disability laws.<sup>19</sup> Therefore, recovery homes that deny residents access to prescribed medications, including MOUD, or deny admission to people using prescribed medications, may violate the ADA, Section 504 of the Rehabilitation Act, the Fair Housing Act, and/or related state laws.<sup>20</sup> Discriminatory practices include excluding or denying admission to individuals prescribed MOUD, removing residents who are taking prescribed MOUD, limiting the number of individuals in the facility who can be on prescribed MOUD, requiring individuals to taper their dose of MOUD, or otherwise restricting access to their prescribed medications.<sup>21</sup>

### Americans With Disabilities Act

Public accommodations under the ADA include social service facilities, such as homeless shelters and recovery homes.<sup>22</sup> The ADA prohibits discrimination against people in recovery from SUD who are not engaging in illegal drug use.<sup>23</sup> Under the ADA, an individual’s use of prescribed medication, including MOUD, is not an “illegal use of drugs” if taken under the supervision of a licensed healthcare professional.<sup>24</sup> Even if a person is engaged in the illegal use of drugs, public entities cannot deny that person health services or services provided in connection with drug treatment on the basis of their current illegal use of drugs if they are otherwise entitled to such services.<sup>25</sup>

The Department of Justice issued guidance on ADA protections for individuals with SUD in 2022. It clarified ADA protections afforded to

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individuals using legally-prescribed medications for treatment of their OUD.<sup>26</sup> The same legal analysis applies to recovery homes; however, it is important to note that recovery homes operated by a religious entity are excluded from Title III, the public accommodations section of the ADA.<sup>27</sup>

### Rehabilitation Act

Section 504 of the Rehabilitation Act protects qualified individuals from discrimination based on their disability. The nondiscrimination requirements of the law apply to organizations that receive financial assistance from any federal department or agency. Section 504 forbids organizations and employers from excluding or denying individuals with disabilities, including people in recovery from a substance use disorder, an equal opportunity to receive program benefits and services.<sup>28</sup> Recovery homes that receive federal funds likely violate the Rehabilitation Act by denying or improperly restricting access to MOUD by residents or by preventing people who are prescribed MOUD from living at their facility. Limitations regarding the current use of illegal drugs and the healthcare exception to that limitation that apply under the ADA also apply to Section 504 and the Fair Housing Act.<sup>29</sup>

### Fair Housing Act

The Fair Housing Act protects individuals with disabilities, including SUD, from discrimination in renting or buying a home, obtaining a mortgage, seeking housing assistance, or engaging in other housing-related activities.<sup>30</sup> Given that SUD is recognized as a disability and that MOUD is a globally recognized and essential part of OUD treatment, recovery houses that deny admission to people with MOUD needs or restrict or ban MOUD access to residents likely violate the Fair Housing Act.

### Federal Enforcement Actions and Recent Litigation

The U.S. Department of Justice (DOJ) has brought enforcement actions in recent years to protect individuals with SUD from discrimination. The DOJ has sought to enforce civil rights laws on behalf of individuals with SUD or mental health disorders and to eliminate discriminatory MOUD treatment barriers by jails,<sup>31</sup> sheriffs,<sup>32</sup> and medical providers,<sup>33</sup> among other public and private entities.

## TASSINARI V. THE SALVATION ARMY ET. AL.

A recent class action lawsuit filed by Justice Catalyst Law and the Civil Rights Education and Enforcement Center, *Tassinari v. The Salvation Army et. al.*, alleged that the Salvation Army's ban on MOUD in its more than 140 recovery homes violated federal civil rights laws. According to the lawsuit, which is currently being litigated, the prohibition on MOUD forces people to make "an impossible decision: stop taking doctor-prescribed medications before enrolling in The Salvation Army's rehabilitation program, risking cravings, painful withdrawal, and other serious physical symptoms—including greatly increasing the risk of death from OUD—or forego The Salvation Army's rehabilitation programs and services—including housing—altogether."

Source: *Tassinari v. Salvation Army National Corporation*, 610 F.Supp.3d 343 (2022).

## POLICY RECOMMENDATIONS

Prohibiting the use of prescribed medications to treat OUD in recovery houses violates legal protections afforded to people with disabilities. Such practices also prevent individuals from accessing recovery housing, an important element in sustaining an individual's recovery. Based on the premise that recovery housing should be available to any individual pursuing their own recovery pathway, we provide the following recommendations:

- Prioritize Enforcement of Federal Civil Rights and Anti-Discrimination Laws:** Given the crucial role that housing plays in sustaining recovery, and the existence of policies that ban or otherwise restrict MOUD access in recovery homes, the DOJ should prioritize outreach and enforcement of the ADA, Rehabilitation Act, and Fair Housing Act. Enforcement actions, coupled with targeted education efforts on relevant laws, will help to ensure that people using prescribed MOUD have access to recovery housing.
- Prioritize Enforcement of State Civil Rights and Anti-Discrimination Laws:** Many states have laws similar to the ADA, Rehabilitation

Act, and Fair Housing Act. Where such laws exist, state Attorneys General should prioritize educational outreach and enforcement so individuals prescribed MOUD are not discriminated against in recovery housing.

- **Ensure Accountability of Entities Receiving Federal Funds:** The U.S. Department of Health and Human Services (HHS) and the U.S. Department of Housing and Urban Development (HUD) both provide grant funds for recovery housing. HHS and HUD should undertake educational efforts about MOUD in recovery housing, ensure that recovery houses receiving federal funds comply with federal laws on MOUD access, and hold accountable recovery homes that improperly restrict or deny MOUD access.

- **State Certification and Oversight:** Recovery homes in Florida, Massachusetts, and Utah must meet certain program requirements to become certified or licensed.<sup>34</sup> Such requirements include training staff, submitting documentation (such as housing policies and a code of ethics), and participating in onsite inspections to demonstrate compliance with program standards.<sup>35</sup> Implementation of certification and oversight programs in other states would help ensure quality and compliance with civil rights obligations. Certification requirements should align with SAMHSA's Best Practice Standards. States should couple certification requirements with sufficient funding to ensure recovery homes receive support for programming, training, supervision, reporting, and evaluation.

## REMOVING BARRIERS TO EVIDENCE-BASED TREATMENT AND RECOVERY HOUSING

must be a priority for local communities and government officials nationwide. Eliminating illegal restrictions on prescribed treatment medications in recovery housing will facilitate access to care for individuals with substance use disorder and help them sustain their recovery and improve conditions for themselves, their families, and their communities. The laws outlined above provide important safeguards for individuals with disabilities, including people with substance use disorder.

## ENDNOTES

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- 19 See *Pesce v. Coppinger*, 355 F.Supp.3d 35 (D. Mass 2018); *Smith v. Aroostock County*, 376 F.Supp.3d 146 (D. Maine 2018); *M.C. v. Jefferson Cnty., N.Y.* 2022 WL 1541482, (N.D.N.Y. May 16, 2022)
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