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In the Foreground

Welcome New ADA Center Staff Member

Welcome Michelle Cook to our Mid-Atlantic ADA Center team! Michelle will be contributing her knowledge of the ADA through virtual and in-person trainings, technical assistance, social media, and many other avenues. Driven by a desire for justice in all aspects of the American experience, she takes pride in providing the necessary support to allow others to achieve their own aspirations for inclusion and equity.

For over 12 years, Michelle has been a noteworthy leader in the accessibility, disability, and inclusion field. You may know her from her role as an Accessibility Specialist at the National Center on Accessibility, or as Accessibility Program Manager at the Epley Institute for Parks and Public Lands.

Michelle holds a Bachelor of Science in Health and Physical Education from West Chester University of Pennsylvania and a Master of Science in Recreation Therapy from Indiana University.

Outside of work, Michelle enjoys camping, hiking, swimming, fishing, bowling, and playing games with her partner, Kathryn, daughter, Mika, and very good dog, Moose Potato.

Focal Point

ADA and Addiction

Individuals who are working to recover from addictions such as alcoholism and substance use disorders are generally considered to be people with disabilities who are protected under the ADA. While the law excludes from protection those who are currently engaged in illegal drug use, those who are not currently engaged in such use should not be discriminated against based on their addictions. People who experience alcoholism are similarly protected, regardless of whether they currently consume alcohol.

Alcoholism

Because the consumption of alcohol is not illegal for adults, alcoholics do not need to refrain from drinking to be protected under the ADA. However, they can be held to valid standards of conduct in employment or programs that require sobriety. For example, an employer does not have to allow an employee with alcoholism to drink or to be under the influence of alcohol at work, and the employer can expect compliance with legitimate, consistently applied job performance requirements.

Substance Use Disorders

The illegal use of drugs, which includes using prescription medications in an illegal manner (e.g., taking higher doses than prescribed or taking someone else's medication), is addressed

differently under the ADA. Covered entities may consistently take actions based on illegal drug use. For example, employers can refuse to hire applicants who fail tests for illegal drug use, regardless of whether or not the individual could perform the job. However, care should be taken to distinguish between test results that reveal illegal use of drugs and *legal* use of medications. Many people appropriately, legally take a variety of medications to treat a broad range of conditions, including addictions.

Recent years have seen a spike in opioid addictions, and a resultant increase in the numbers of individuals working to recover from those addictions. Unfortunately, we have also seen claims that entities covered by the ADA engaged in discrimination based on outmoded opinions about people with addictions and/or uninformed judgments about the appropriateness of using medications to treat their conditions. Federal agencies have filed several lawsuits and entered settlement agreements to enforce provisions of the ADA that seek to ensure people with disabilities, with the advice of their doctors, can choose effective treatment options without experiencing exclusion and denial of opportunities based on stereotypes and bias. Recent examples in our region include:

- An employer in West Virginia rescinded a job offer upon learning of the applicant's use of Suboxone to treat her opioid use disorder (OUD). According to the U.S. Equal Employment Opportunity Commission (EEOC), the

employer made its decision based on generalized information about possible side effects of Suboxone, without any individualized assessment of the applicant. The employer agreed to pay \$60,000 to the applicant, establish policies to ensure individualized assessments of the abilities of applicants and employees with disabilities, train staff, and appoint a compliance monitor within the company. See the [EEOC's press release \(https://www.eeoc.gov/newsroom/professional-transportation-inc-pay-60000-settle-eeoc-disability-discrimination-suit\)](https://www.eeoc.gov/newsroom/professional-transportation-inc-pay-60000-settle-eeoc-disability-discrimination-suit).

- The U.S. Department of Justice (DOJ) has entered several settlement agreements with health care providers across the country to resolve allegations that patients were refused admission or denied treatment based on their OUDs and/or use of medication-assisted treatments. Most of these agreements require the health care providers to revise policies and practices, implement extensive staff training programs and record-keeping procedures, and in many cases, pay damages to complainants and civil penalties to the United States. An example in our region is the [agreement with Selma Medical Associates, Inc. \(https://www.ada.gov/selma_medical_sa.html\)](https://www.ada.gov/selma_medical_sa.html), a private medical practice that provides primary and specialty care in Virginia.

- The West Virginia Department of Health and Human Resources (DHHR) entered a voluntary resolution agreement with the Office of Civil Rights in the U.S. Department of Health and Human Services (OCR/HHS) to address allegations that the DHHR discriminated against an aunt and uncle who wanted to adopt their niece and nephew, who were in the custody of the state. The DHHR allegedly denied permission for the adoption because the uncle received Suboxone treatment to support his recovery from OUD. See the [OCR/HHS press release \(https://www.hhs.gov/about/news/2020/05/13/ocr-secures-agreement-west-virginia-protect-persons-recovery-opioid-use-disorder-discrimination-basis-of-disability.html\)](https://www.hhs.gov/about/news/2020/05/13/ocr-secures-agreement-west-virginia-protect-persons-recovery-opioid-use-disorder-discrimination-basis-of-disability.html).
- The Pennsylvania court system, according to the U.S. DOJ, subjected individuals under court supervision to policies that limited or prohibited the use of medications to treat their OUDs, resulting in denial of court program benefits, as well as increased risks to the health and lives of individuals who attempted to comply with court-ordered requirements to discontinue their disability-related medications. See [DOJ's press release \(https://www.justice.gov/opa/pr/justice-department-files-suit-against-pennsylvania-court-system-discriminating-against-people\)](https://www.justice.gov/opa/pr/justice-department-files-suit-against-pennsylvania-court-system-discriminating-against-people) and the [complaint](#)

(https://www.ada.gov/ujs_comp.pdf) filed in the U.S. District Court for the Eastern District of Pennsylvania.

- Note that the DOJ is interested in hearing from additional individuals who believe that a Pennsylvania court prohibited or limited their use of lawfully prescribed medication to treat OUDs; email PennCourts.OUD@usdoj.gov.

Assistant Attorney General Kristen Clarke of the DOJ's Civil Rights Division said "people with opioid use disorder ... are too often subject to discrimination rooted in stereotypes and myths rather than in science" and "deserve access to medications needed to support their recovery and to break the cycles of addiction."

Resources: EEOC Technical Assistance Documents on Opioid Addiction and Employment

- [Use of Codeine, Oxycodone, and Other Opioids: Information for Employees](https://www.eeoc.gov/laws/guidance/use-codeine-oxycodone-and-other-opioids-information-employees)
(<https://www.eeoc.gov/laws/guidance/use-codeine-oxycodone-and-other-opioids-information-employees>)
- [How Health Care Providers Can Help Current and Former Patients Who Have Used Opioids Stay Employed](https://www.eeoc.gov/laws/guidance/how-health-care-providers-can-help-current-and-former-patients-who-have-used-opioids)
(<https://www.eeoc.gov/laws/guidance/how-health-care-providers-can-help-current-and-former-patients-who-have-used-opioids>)

Zoom in on Training

[ADAcon 2022:](#)

Seeking Proposals for Workshops and Presentations

(www.adainfo.org/Content/ADAcon)

October 11 - 13, 2022

Alexandria, Virginia

Save the date for our annual conference, offered this year in collaboration with the Great Plains ADA Center! We are currently accepting proposals for workshops and presentations on the ADA and disability issues in employment, law enforcement and corrections, sports and recreation, and more!

Submit your proposals on our [call for presentation proposals webpage](https://www.adainfo.org/form/call-presentation-proposals) (<https://www.adainfo.org/form/call-presentation-proposals>) by **April 5, 2022!**

ADA National Network Online Learning

The ADA National Network's [online learning programs](http://www.accessibilityonline.org/training) (www.accessibilityonline.org/training) offer live webinars and archived sessions on a broad range of topics, including architectural design, accessible technology, arts and recreation, ADA legal developments, and much more. Upcoming sessions:



- **March 29, 2022:** [Section 508 Questions and Answers](http://accessibilityonline.org/cioc-508/session/?id=110995) (<http://accessibilityonline.org/cioc-508/session/?id=110995>)

- **April 7, 2022:** [Accessibility in the Federal Workspace](http://accessibilityonline.org/ao/session/?id=110999) (<http://accessibilityonline.org/ao/session/?id=110999>)
- **April 13, 2022:** [Ask an ADA Pro: Barrier Removal Requirements for Privately Owned and Operated Businesses](http://accessibilityonline.org/adapro/session/?id=110991) (<http://accessibilityonline.org/adapro/session/?id=110991>)
- **April 14, 2022:** [Accessible Temporary Events](http://accessibilityonline.org/arts-n-rec/session/?id=110973) (<http://accessibilityonline.org/arts-n-rec/session/?id=110973>)
- **April 19, 2022:** [The Fair Housing Act and the International Building Code](http://accessibilityonline.org/ADA-Audio/session/?id=110985) (<http://accessibilityonline.org/ADA-Audio/session/?id=110985>)
- **May 5, 2022:** [An Introduction to Website Accessibility](http://accessibilityonline.org/ao/session/?id=111000) (<http://accessibilityonline.org/ao/session/?id=111000>)

Visit our [Trainings](http://www.adainfo.org/trainings) (www.adainfo.org/trainings) pages for more information on upcoming training programs!

Close-Ups: What's New

DOJ: [Guidance on Web Accessibility and the ADA](https://beta.ada.gov/web-guidance/)

(<https://beta.ada.gov/web-guidance/>)

The U.S. Department of Justice published this new guidance document to highlight its long-standing position that state and

local governments (covered by Title II of the ADA) and businesses that serve the public (covered by Title III) are required to make sure people with disabilities can access the information, goods, services, and activities offered or facilitated online. The publication:

- Describes the ways inaccessible websites can make it difficult or impossible for people with disabilities to gain information and opportunities
- Provides tips and resources on how to make web content accessible
- Outlines cases and settlement agreements that illustrate the Department's commitment to ensuring website accessibility for people with disabilities



[NCD: Health Equity Framework](https://ncd.gov/publications/2022/health-equity-framework)

(<https://ncd.gov/publications/2022/health-equity-framework>)

The National Council on Disability (NCD), recognizing the ongoing health disparities experienced by people with disabilities, developed this framework in consultation with academics, medical professionals, and disability community leaders. The framework provides a set of core priorities to guide efforts to achieve health equity, as well as a host of related components that would require legislative, regulatory, and enforcement actions.



The four areas that NCD views as foundational include:

- Designating people with disabilities as a Special Medically Underserved Population (SMUP) under the Public Health Services Act
- Requiring comprehensive disability clinical-care curricula in all U.S. medical, nursing, and other health care professional schools, and requiring disability competency education and training of medical, nursing, and other health care professionals
- Requiring the use of accessible medical and diagnostic equipment
- Improving data collection concerning health care for people with disabilities across the lifespan

Among the recommended action items:

- Establish a National Center on Disability, Health, and Health Disparities within the National Institutes of Health
- Require recipients of federal financial assistance to report crisis standards of care and health care rationing policies
- Create mandatory national guidelines regarding the need for medical offices, clinics, and hospitals to adopt “sensory friendly” environments to support patients with sensory processing disorders

- Provide mandatory industry guidance, including recommended policies, training, and best practices, to address the needs of people disabled by low level chemical and electromagnetic exposures
- Provide mandatory industry guidance to prevent behavioral health facilities from excluding patients who use mobility devices and who may need assistance with activities of daily living
- Create an “essential disability benefits” list required of all insurance products, both public and private
- Mandate Medicare coverage for low-vision devices, comprehensive hearing health, additional dental services, and features that permit wheelchairs to navigate steep inclines and a variety of terrain
- Improve and fund Medicaid services to expand home- and community-based services and reduce institutional placements
- Enhance the effective communication requirements in Title II and Title III of the ADA, including requirements for on-site American Sign Language (ASL) interpreters for patients requesting ASL interpreters during the “vital encounters” defined by the Department of Justice

- Improve benefits for veterans who need mental health care, substance abuse treatment, infertility treatments, and treatments related to exposure to toxic substances

Cool Websites

[Partnership on Inclusive Apprenticeships](https://inclusiveapprenticeship.org/)

(<https://inclusiveapprenticeship.org/>)

This organization offers guidance, instruction, and resources for individuals, employers, and intermediaries such as industry associations, post-secondary educational institutions, and workforce development organizations.

[Employer Assistance and Resource Network on Disability Inclusion \(EARN\)](https://askearn.org/)

(<https://askearn.org/>)

EARN's recently redesigned site is easy to navigate and offers a wealth of resources on recruiting, hiring, retaining, and advancing qualified workers with disabilities.

About this Publication

ADA in Focus is published three times yearly by the Mid-Atlantic ADA Center. It is also available by request in large print, Braille, and computer disk. To obtain copies in other formats, please contact us.

ADA in Focus is intended for use by individuals, state and local governments, businesses, legal entities, and others interested in developments in the Americans with Disabilities Act. This publication is intended solely as an informal guidance and should not be construed as legally binding. *ADA in Focus* does not serve as determination of the legal rights or responsibilities under the ADA for any individual, business, or entity.

TransCen, Inc. is a Rockville, Maryland based non-profit 501(c)3 organization dedicated to improving educational and employment outcomes for people with disabilities. TransCen administers the Mid-Atlantic ADA Center, providing information, guidance, and training on the American with Disabilities Act to DE, DC, MD, PA, VA, and WV.

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