

PUBLICATION

DOJ Finds Certain Hospital Transplant Policies Violate the ADA – Transplant Centers Should Take Note

Authors: Melodie Hengerer

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The Department of Justice (DOJ) recently reached a settlement agreement with a Massachusetts hospital under Title III of the Americans with Disabilities Act (ADA) to resolve claims that its transplant consideration process discriminated against patients with opioid use disorders (OUD).¹

The complaint involved a patient in need of a lung transplant due to cystic fibrosis. His local hospital transplant evaluation process revealed that the patient was actively participating in a supervised rehabilitation treatment program for OUD, a qualifying disability under the ADA. Specifically, the patient was being treated with Suboxone, a prescription medication approved by the FDA for treating OUD.

Despite the fact that the patient was not engaged in the illegal use of drugs, the hospital rejected the patient for transplant consideration and refused to further evaluate him. The hospital failed to consult addiction or pain specialists before rejecting the patient, even though consultations with other specialists were the hospital's practice when additional clinical information is required for transplant patients. Ultimately, the patient was able to receive a lung transplant at a hospital in another state, but not without considerable financial and emotional distress on the patient and his caretaker.

DOJ determined that the hospital discriminated against the patient in violation of the ADA because its transplant eligibility policy unnecessarily disqualified the patient for Suboxone use for OUD and because the hospital failed to follow its own routine policy and practice of additional clinical consultation for the patient.

Under the agreement with DOJ, the hospital must draft and implement non-discrimination transplant policies, implement employee training on ADA requirements, and adhere to specific DOJ reporting obligations. The hospital must also pay the patient and his caretaker \$250,000 for emotional distress and expenses.

This case represents another example of the recent and significant government efforts to increase patient access to transplantable organs. As we addressed in client alerts here² and here,³ considerable efforts and attention have been given in the past year to improving the performance of each of the organ donation and transplant community partners. DOJ's latest enforcement action focusing on transplant center policies is not surprising, and transplant centers should take note.

As organ donation and transplant processes continue to be heavily scrutinized, transplant centers should use this case as an opportunity to review their own transplant consideration processes to ensure that patients with OUD, or other drug addiction disorders, are not being unfairly screened out of transplant consideration. More broadly, a full review of the policies may be warranted to determine whether any processes unnecessarily disqualify patients on the basis of any disability. On review, to the extent that transplant center policies identify and prescreen for these issues, additional clinical evaluations should be equally and fairly available as they would for any other transplant candidate.

Once non-discriminatory policies are confirmed, transplant centers may wish to post or disseminate these non-discriminatory policies in conspicuous places, for the benefit of both patients and staff. It may also be wise to

implement additional internal training for transplant staff, particularly with regard to the ADA as it applies to individuals with OUD and other diseases of addiction.

If you would like assistance in reviewing and/or revising hospital or transplant center internal policies or in developing additional training on these issues, please contact [Melodie Hengerer](#) or a member of [Baker Donelson's Health Law Team](#).

¹ https://www.ada.gov/mass_gen_hosp_sa.html

² <https://www.bakerdonelson.com/organ-transplant-rates-remain-low-what-hospitals-need-to-know-to-about-their-obligation-to-help>

³ <https://www.bakerdonelson.com/new-hhs-guidance-on-solid-organ-transplantation-reducing-risk-and-increasing-availability>