

The Intersection of the Americans with Disabilities Act and Municipal Zoning

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The Issue

- Developments in federal insurance requirements have expanded insurance coverage for substance abuse and mental health.
- A financial incentive for treatment facilities has been created.
- Some treatment facilities may create controversy when mixed with existing uses and the established character of zoning and building regulations in the communities where they seek to locate.
- In evaluating whether to approve a particular use or facility in a given location, local governments must be careful to fully consider and adhere to applicable federal disability protections.

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Expansion of Coverage Under the Affordable Care Act (ACA)

The 2014 implementation of the ACA resulted in additional coverage for mental health and substance abuse treatment.

- Insurers are now banned from denying coverage for substance abuse or dependency as a pre-existing condition.
- Substance abuse treatment is now one of the 10 mandatory "Essential Health Benefits" for most individual and small group health plans.
42 U.S.C. § 18022(a) and (b).
- ACA further requires applicable plans to comply with the Mental Health Parity and Addiction Equity Act (MHPAEA), which requires coverage for mental health and substance abuse treatment at the same level as primary medical care.
42 U.S.C. 18031(j).

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The ACA In Texas

Expansion of Medicaid changes rejected in Texas, however, all other changes in the ACA included in mandates to private insurance sold on the insurance exchange.

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More Patients Could Equal More Facilities

- As a result of the ACA, it was estimated that an additional 32.1 million individuals will be able to access substance abuse treatment for the first time, and 30.4 million individuals with existing behavioral health coverage would receive expanded benefits.

Substance Abuse and Mental Health Services Administration ("SAMHSA")

- 5,188,706 Texans have received expanded mental health and substance abuse disorder benefits.

U.S. Department of Health and Human Services

- Expanded coverage has provided a financial incentive for substance abuse and mental health providers to establish new facilities, or expand existing operations, in municipalities across the country.

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Types of Facilities

1. Drug and alcohol rehabilitation and treatment facilities
2. Methadone clinics (opioid replacement therapy)
3. Aftercare facilities or halfway houses
(Oxford houses)
4. Mental health facilities

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Also available as part of the eCourse

[Developments in Zoning and Special Districts: Short-Term Rentals, Historic Preservation, Public Improvement Districts and Tax Increment Reinvestment Zones, and Federal Disability Law](#)

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