

# Rapid Research Report: Medication Assisted Treatment in Prison (Region VIII)

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## Background Information

This report summarizes the current availability of Medication Assisted Treatment (MAT) modifications for inmates in state and federally funded prisons in the Rocky Mountain Region (Region VIII). As Opioid Use Disorders (OUD) are disabilities protected under the ADA, the use of MATs, an effective treatment for OUD, is of interest to the Rocky Mountain ADA Center in order to increase awareness of the application of the ADA to OUDs and educate the public accordingly. The Rocky Mountain Region includes Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming. Although Region VIII is the focus of this report, the nationwide availability of MAT for prison inmates was investigated on a broader scale as well.

MAT is a form of substance abuse treatment that uses a combination of counseling, behavioral therapies, and Food and Drug Administration (FDA) approved medications.<sup>4</sup> Specifically, MAT is used for the treatment of OUDs, including heroin and medical pain relievers containing opiates. The use of MAT has been shown to increase patient survival, increase retention in treatment, decrease illicit opiate usage, increase the ability of a patient to gain and maintain employment, and improve birth outcomes among pregnant patients.

The three medications that have been approved by the FDA for use in MAT include methadone, buprenorphine, and naltrexone.<sup>5</sup> Methadone is used for the treatment of addiction to heroin and narcotic pain medication, and works to reduce opioid cravings, withdrawal symptoms, and lessens the overall effects of opioids.<sup>6</sup> Methadone is a Schedule II drug, meaning it is classified under the Controlled Substance Act as having a high potential for abuse and dependence.<sup>7</sup> Methadone may only be dispensed through an opioid treatment program (OTP) that has been certified by Substance Abuse and Mental Health Services Administration (SAMHSA).<sup>8</sup> The length of use of methadone for MAT is recommended to be a minimum of twelve months.<sup>9</sup>

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<sup>4</sup> *Medication-Assisted Treatment (MAT)*, Substance Abuse and Mental Health Services Administration, <https://www.samhsa.gov/medication-assisted-treatment> (last visited Mar. 29, 2020).

<sup>5</sup> *Medication and Counseling Treatment*, Substance Abuse and Mental Health Services Administration, <https://www.samhsa.gov/medication-assisted-treatment/treatment#medications-used-in-mat> (last visited Mar. 29, 2020).

<sup>6</sup> *Methadone*, Substance Abuse and Mental Health Services Administration, <https://www.samhsa.gov/medication-assisted-treatment/treatment/methadone> (last visited Mar. 19, 2020).

<sup>7</sup> See *Drug Scheduling*, United States Drug Enforcement Agency, <https://www.dea.gov/drug-scheduling> (last visited Mar. 19, 2020); 21 U.S.C. § 1801 et seq (2006).

<sup>8</sup> *Methadone*, Substance Abuse and Mental Health Services Administration, <https://www.samhsa.gov/medication-assisted-treatment/treatment/methadone> (last visited Mar. 19, 2020).

<sup>9</sup> *Principles of Drug Addiction Treatment: A Research-Based Guide (Third Edition)*, National Institute on Drug Abuse (NIDA), <https://www.drugabuse.gov/node/pdf/675/principles-of-drug-addiction-treatment-a-research-based-guide-third-edition> (last visited Mar. 29, 2020).

Buprenorphine is a medication that helps to decrease the effects of physical opioid dependency, such as withdrawal symptoms and cravings. Buprenorphine is a Schedule III drug, meaning the risk for dependence is low to moderate and there is less of a risk of abuse.<sup>10</sup> Buprenorphine may be prescribed and dispensed by a larger range of qualifying professionals as described in the Drug Addiction Treatment Act (DATA) of 2000.<sup>11</sup> The FDA has currently approved different forms of buprenorphine, including Bunavail, Suboxone, and Zubsolv.<sup>12</sup>

Naltrexone is a medication that prevents the sedative and euphoric effects of opioids by blocking opioid receptors, and is also used in the treatment of alcoholism.<sup>13</sup> Naltrexone is an unscheduled drug, meaning it can be prescribed by any licensed physician.<sup>14</sup> Naltrexone can be prescribed in a pill form to be taken daily or in an injectable extended-release form (Vivitrol) injected once per month. To prevent potentially dangerous interactions, naltrexone can only be taken seven to ten days after opioid usage has ceased.<sup>15</sup>

Under the Americans with Disabilities Act (ADA), an Opiate Use Disorder (OUD) is considered a disability because it is a physical or mental impairment that substantially limits one or more major life activities. The ADA applies to state and local government programs, including state-run prisons.<sup>16</sup> The ADA also applies to the protection of a person in recovery from an OUD as long as they are no longer engaging in the illegal use of drugs.<sup>17</sup> The use of MAT for the treatment of OUD is protected under the ADA. Title II of the ADA prohibits discrimination on the basis of a disability in local and state governments.<sup>18</sup> The United States Supreme Court has held that the ADA applies to inmates of government-run prisons under Title II on both the state and

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<sup>10</sup> *Drug Scheduling*, United States Drug Enforcement Agency, <https://www.dea.gov/drug-scheduling> (last visited Mar. 19, 2020).

<sup>11</sup> Drug Addiction Treatment Act of 2000, 21 U.S.C. 801 § 3501 (2016).

<sup>12</sup> *Buprenorphine*, Substance Abuse and Mental Health Services Administration, <https://www.samhsa.gov/medication-assisted-treatment/treatment/buprenorphine> (last visited Mar. 29, 2020).

<sup>13</sup> *Naltrexone for Alcoholism Treatment*, Addiction Center, <https://www.addictioncenter.com/alcohol/naltrexone-for-alcoholism-treatment/> (last visited Apr. 24, 2020).

<sup>14</sup> *Naltrexone: its clinical utility*, National Center for Biotechnology Information, <https://www.ncbi.nlm.nih.gov/pubmed/3832903> (last visited Apr. 7, 2020).

<sup>15</sup> *Naltrexone*, Substance Abuse and Mental Health Services Administration, <https://www.samhsa.gov/medication-assisted-treatment/treatment/naltrexone> (last visited Mar. 29, 2020).

<sup>16</sup> American Civil Liberties Union National Prison Project, *Know Your Rights Legal Rights of Disabled Prisoners* (Nov. 2011), [https://www.aclu.org/sites/default/files/images/asset\\_upload\\_file735\\_25737.pdf](https://www.aclu.org/sites/default/files/images/asset_upload_file735_25737.pdf).

<sup>17</sup> *The ADA, Addiction and Recovery*, ADA National Network, <https://adata.org/factsheet/ada-addiction-and-recovery> (last visited Mar. 29, 2020).

<sup>18</sup> 42 U.S.C. § 12132 (2012).

federal level.<sup>19</sup> Privately-run prisons are private entities, and Title I or II of the ADA generally do not apply. However, privately-run prisons are subject to the Title III protections of the ADA, and may be liable for Title II ADA protections when contracting with public entities.<sup>20</sup> Federal prisons, as part of federal executive agencies, are subject to the Rehabilitation Act of 1973, which, like the ADA, provides protections against discrimination on the basis of a disability.<sup>21</sup> Courts have interpreted both the ADA and the Rehabilitation Act as providing similar levels of protections for individuals with disabilities.<sup>22</sup>

The World Health Organization has referred to both buprenorphine and methadone as “essential medicines” in combating OUD.<sup>23</sup> Further support for MAT access has come from the Food and Drug Administration and the President’s Office of National Drug Control Policy (ONDCP).<sup>24</sup> The use of MAT in prisons has been very limited historically. Recently, some incarcerated individuals have successfully brought suit against the Federal Bureau of Prisons (BOP) and state-level prisons or other correctional facilities to force them to provide access to MAT. In one such suit, *Pesce v. Coppinger*, an inmate with an OUD brought a § 1983 claim against state county-level correctional facility officials for violating his right to access methadone treatment under both the ADA and the Eighth Amendment.<sup>25</sup> A § 1983 claim is a civil action for the deprivation of rights including those granted under the U.S. Constitution and other laws, while the Eighth Amendment protects against, among other things, cruel and unusual punishment.<sup>26,27</sup> The state District Court judge in *Pesce* granted the inmate’s motion for a preliminary injunction, holding that the inmate was likely to succeed on the merits of his claim under both the ADA and the Eighth Amendment.

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<sup>19</sup> *Pennsylvania DOC v. Yeskey*, 524 U.S. 206 (1998).

<sup>20</sup> See *Edison v. Douberly*, 604 F.3d 1307 (11th Cir. 2010); *The Americans with Disabilities Act and Prisoners*, Prison Legal News, <https://www.prisonlegalnews.org/news/2013/sep/15/the-americans-with-disabilities-act-and-prisoners/> (last visited Apr. 24, 2020); 28 CFR § 35.152(a) (2016).

<sup>21</sup> Rehabilitation Act of 1973, 29 U.S.C. § 794(a).

<sup>22</sup> American Civil Liberties Union National Prison Project, *Know Your Rights Legal Rights of Disabled Prisoners* (Nov. 2011), [https://www.aclu.org/sites/default/files/images/asset\\_upload\\_file735\\_25737.pdf](https://www.aclu.org/sites/default/files/images/asset_upload_file735_25737.pdf).

<sup>23</sup> *Effective Treatments for Opioid Addiction*, National Institute on Drug Abuse, <https://www.drugabuse.gov/publications/effective-treatments-opioid-addiction/effective-treatments-opioid-addiction> (last visited Mar. 19, 2020).

<sup>24</sup> See U.S. Food and Drug Administration, *FDA approves first generic versions of Suboxone sublingual film, which may increase access to treatment for opioid dependence* <http://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm610807.htm> (June 14, 2018); Office of National Drug Control Policy, *National Drug Control Strategy* <https://www.whitehouse.gov/wpcontent/uploads/2019/01/NDCS-Final.pdf>, (Jan. 2019).

<sup>25</sup> *Pesce v. Coppinger*, 355 F.Supp.3d 35 (D. Mass. 2018).

<sup>26</sup> 42 U.S.C. § 1983 (2012).

<sup>27</sup> U.S. Const. amend. XIII.

In another case that is currently still active, *Godsey v. Sawyer*, an inmate along with the American Civil Liberties Union (ACLU) brought a suit against the BOP for their refusal to provide access to MAT for those who were previously on a form of MAT prior to their incarceration.<sup>28</sup> Specifically, the inmate is suing to continue her access to her prescribed Suboxone treatment, which began before her incarceration, during her incarceration. The plaintiff's cause of action in *Godsey* is also based on violations of the Rehab Act and the Eighth Amendment. The ACLU also recently represented an inmate in a suit against the BOP for denying his access to buprenorphine based on claims grounded in the Rehabilitation Act, the Administrative Procedures Act (APA), and Eighth Amendment grounds as well.<sup>29</sup> The suit, filed on behalf on inmate Leaman Crews, was able to reach a settlement where only the specific inmate alone would be allowed to continue to have access to buprenorphine because of his past medical usage. However, buprenorphine was not made available to the general inmate population in the correctional facility that was the subject of this case.<sup>30</sup>

Although MAT is recommended as the best practice for the treatment of OUDs, the cost of the MAT medications can be inhibiting. In 2016, the cost of buprenorphine was estimated at \$200 to \$450 per month, and the cost of naltrexone was estimated to be triple that figure. Some state Medicaid programs may not cover all three forms of approved MAT medications, further creating funding issues, especially for newly-released inmates who may not have other healthcare options available. For many prisons, the cost of a full MAT program for inmates is prohibitive, which inhibits the implementation of such programs.<sup>31</sup>

## Research Question

Do federally and/or state funded prisons allow medication-assisted treatments (MAT) as a reasonable modifications (i.e. methadone, buprenorphine, or naltrexone) for inmates recovering from substance use disorders? What procedures do prisons use to comply with the ADA on a state level or the Rehabilitation Act on a federal level in order to provide MATs? As OUDs are disabilities protected under the ADA, the use of MATs, an effective treatment for OUDs, is of interest to the Rocky Mountain ADA Center in order to increase awareness of the application of the ADA to OUDs and educate the public accordingly.

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<sup>28</sup> *Godsey v. Sawyer*, American Civil Liberties Union Washington, <https://www.aclu-wa.org/cases/godsey-v-sawyer> (last visited Apr. 13, 2020).

<sup>29</sup> *Kansas and Missouri ACLUs Sue On Behalf Of Inmate Who Risks Death Because Prison Officials Are Denying Him Opioid Treatments*, American Civil Liberties Union Kansas, <https://www.aclukansas.org/en/press-releases/kansas-and-missouri-aclus-sue-behalf-inmate-who-risks-death-because-prison-officials> (last visited Apr. 13, 2020).

<sup>30</sup> Kelly Burch, *Kansas Prisoner To Get Medication-Assisted Treatment, But Others Won't*, The Fix, (Sept. 13, 2019). <https://www.thefix.com/kansas-prisoner-medication-assisted-treatment>.

<sup>31</sup> National Sheriff's Association, *Jail-Based Medication Assisted Treatment* (Oct. 2018), <https://www.sheriffs.org/publications/Jail-Based-MAT-PPG.pdf>.

## State Summaries: Access to MAT in the Rocky Mountain Region

### Methodology

As an initial step, each of the state corresponding departments of corrections or prisons for the states in Region VIII were searched using an online search engine. After locating the appropriate website for each state, forms for requesting information were completed and submitted requesting information about their state's modifications for MAT for inmates. If a response was received, the information given was investigated further, including any applicable statutes or administrative regulations by the use of Westlaw<sup>32</sup> and an online search engine. If the information received in the response was of a nature indicating the development of a MAT program in the future, that information was reported as well. If no response was received, further research was conducted through analyzing state legislative materials, relevant news articles, relevant policies and procedures, and online descriptions of OUD treatment options currently available through each state's corresponding department of corrections or prison websites. Relevant case law was searched on Westlaw for each state in the region, as well as for the federal circuit court jurisdictions. Search phrases included: "inmate access to methadone," "inmate access to buprenorphine," "inmate access to naltrexone," and "medication assisted treatment." The findings from each state and for the federal level is summarized below.

### Colorado

After the request for information was submitted, a response was received from the Constituent Services Coordinator for the Colorado Department of Corrections (DOC). The purpose of the Colorado DOC policy under Colorado Administrative Regulation § 250-78 is to establish criteria and referral procedures for the use of MAT in the Colorado prison system. Under this regulation, MAT is defined as: "Treatment that includes a pharmacologic intervention (medication) as part of the treatment plan. This could include, but is not limited to: mental health programs with psychotropic medication or substance abuse treatment paired with methadone, Antabuse, or Vivitrol."<sup>33</sup> The regulation also included specific procedures for the availability of MAT for inmates released to parole, parolees, parolees who are going to be, or are currently in, Short-Term Intensive Residential Remediation Treatment Program and Intensive Residential Treatment Program, and parolees who are in custody awaiting parole revocation hearing or in custody for jail-based treatment in lieu of revocation. Part of this program also includes initial training for Corrections Program Officers (CPO) and reporting procedures. The listed available medication for use in the program included Narcan (naloxone) nasal spray for use in suspected opioid overdoses, and Vivitrol (naltrexone) for the use in treatment of OUDs. Currently, methadone and buprenorphine were not listed as available medications.

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<sup>32</sup> <https://1.next.westlaw.com/> (2020).

<sup>33</sup> Col. Rev. Stat. § 250-78 (2018).

A search of “Colorado Department of Corrections Medication Assisted Treatment” led to Colorado Senate Bill 19-008, entitled “Substance Use Disorder Treatment in Criminal Justice System.” This Bill was signed into law in May of 2019. Part of the enacted legislation includes a requirement that if an individual was receiving MAT in a local jail prior to incarceration in DOC custody, the DOC must continue to provide MAT to that inmate as defined under Colorado Revised Statute 23-21-803(4).<sup>34</sup>

A Westlaw search of the phrases noted in the Methodology section above for both Colorado state and federal Tenth Circuit legal cases with search phrases noted above resulted in no relevant case law regarding this research question for Colorado.

## Montana

After the request for information was submitted to the Montana Department of Corrections (MTDOC), a response was received from the Communications Director for the Montana Department of Corrections, explaining that Montana is currently in the process of establishing a MAT program for inmates in the state prisons. On February 28, 2020, the MTDOC released a press release entitled, “DOC, community partners explore medication-assisted treatment to help offenders with substance abuse disorders.”<sup>35</sup> The stated goal of the MTDOC is to have a program in place to provide MAT to inmates by the end of 2020. There was no indication which medications would be included with this program. A search of the MTDOC website led to a listing of the policies applicable to their facilities. Policy Number DOC 5.4.1 on Offender Treatment Programs is part of the policy chapter on Offender Programs.<sup>36</sup> Section D of this policy is entitled Substance Use Disorder (SUD), and outlines several requirements for facilities providing SUD treatment programs, but no specific mention of any of the three MAT medications or inmate access to MAT currently.

A Westlaw search of the phrases noted in the Methodology section above for both Montana state and federal Ninth Circuit legal cases with search phrases noted above resulted in no relevant case law regarding this research question for Montana.

## North Dakota

No response was received from the North Dakota Department of Corrections and Rehabilitation (NDDOCR). A search on the NDDOCR website for “medication assisted treatment”

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<sup>34</sup> Col. Rev. Stat. § 17-2-113.8 3(a) (2018).

<sup>35</sup> Montana Department of Corrections, *DOC, Community Partners Explore Medication-Assisted Treatment To Help Offenders With Substance Use Disorders* (Feb. 28, 2020) <https://news.mt.gov/doc-community-partners-explore-medication-assisted-treatment-to-help-offenders-with-substance-use-disorders>.

<sup>36</sup> State of Montana Department of Corrections Policy Directive, Policy No. DOC 5.4.1. (effective July 1, 2008, revised June 3, 2019).

led to the 2017-2019 NDDOCR Biennial Report. This report detailed a newly introduced methadone program for inmates. Specifically, the Report states that inmates are able to continue MAT with methadone when they enter a NDDOCR facility provided the remainder of their sentence is less than two years and that they had started methadone treatment prior to incarceration. The report also states an initiated program for the inclusion of suboxone in treatment programs in September of 2019 but listed no further information regarding the use of suboxone.<sup>37</sup>

A Westlaw search of the phrases noted in the Methodology above for both North Dakota state and federal Eighth Circuit legal cases with search phrases noted above resulted in no relevant case law regarding this research question for North Dakota.

## South Dakota

No response was received from the South Dakota Department of Corrections (SDDOC). A search of the SDDOC's website led to Policy 1.3.A.8 entitled Offender Drug Testing, Sanctions and Treatment.<sup>38</sup> Section six of this policy specifically relates to chemical dependency treatment and details the procedures for identifying inmates with chemical dependency issues. Section six also notes based on the severity of an inmate's chemical dependency, there are placements available in treatment programs, but there is no mention of the use either MAT or the three approved medications.

A Westlaw search of the phrases noted in the Methodology above for both South Dakota state and federal Eighth Circuit legal cases with search phrases noted above resulted in no relevant case law regarding this research question for South Dakota.

## Utah

A response was received from the Clinical Services Bureau Director for Utah State Prison, stating Utah does have in place a MAT program supplying Vivitrol injections just prior to release from prison. From here, a search of "Utah state prisons Vivitrol" was performed to investigate the specifics of Utah's MAT program. This search led to an article entitled, "State panel recommends steps to cut jail deaths, but funds, training and personnel needed" in the Daily Herald, a local Utah newspaper.<sup>39</sup> This article referenced Utah Senate Bill 205, which was passed

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<sup>37</sup> North Dakota Dept. of Corrections and Rehabilitation, *2017-2019 Biennial Report* (2020) [https://www.docr.nd.gov/sites/www/files/documents/Biennial%20Report%20Archive/2017-2019%20Biennium%20Report\\_links.pdf](https://www.docr.nd.gov/sites/www/files/documents/Biennial%20Report%20Archive/2017-2019%20Biennium%20Report_links.pdf).

<sup>38</sup> South Dakota Dept. of Corrections, 1.3.A.8 Offender Drug Testing, Sanctions & Treatment (effective May 30, 2019) <https://doc.sd.gov/documents/Offender%20Drug%20Testing,%20Sanctions%20&%20Treatment5302019.pdf>.

<sup>39</sup> Mark Shenefelt, *State panel recommends steps to cut jail deaths, but funds, training and personnel needed* (Dec. 4, 2018) [https://www.heraldextra.com/news/local/crime-and-courts/state-panel-recommends-steps-to-cut-jail-deaths-but-funds/article\\_d60b226f-4bdb-567a-a464-e97cf60190c4.html](https://www.heraldextra.com/news/local/crime-and-courts/state-panel-recommends-steps-to-cut-jail-deaths-but-funds/article_d60b226f-4bdb-567a-a464-e97cf60190c4.html).

in 2018. A search of this bill led to the bill's description on the Utah government page.<sup>40</sup> This bill relates to in-custody deaths and alcohol and substance use treatment policies in county jails and the Department of Corrections (DOC) in Utah. Specifically, this bill requires both county jails and prisons under the Utah DOC to produce annual reports to the state's Commission on Criminal and Juvenile Justice detailing the policies, procedures, and protocols for the treatment of inmates experiencing withdrawal from substances, including opiates, and the jail or prison's use of medications in treating such inmates, including the medications currently approved for MAT.

A Westlaw search of the phrases noted above for both Utah state and federal Tenth Circuit legal cases with search phrases noted above resulted in no relevant case law regarding this research question for Utah.

## Wyoming

No response was received from the Wyoming Department of Corrections. A search for the Wyoming Department of Corrections policies led to the WY DOC Department Policy website.<sup>41</sup> From this website, "PP 4.302 Offender Substance Abuse Testing, Sanctioning & Treatment" was selected under Institutional Services.<sup>42</sup> This led to the full text of Wyoming Department of Corrections Policy and Procedure #4.302, which listed various policies concerning substance abuse treatment for inmates, but nothing specifically about the use of MAT.

A Westlaw search of the phrases noted in the Methodology above for both Wyoming state and federal Tenth Circuit legal cases with search phrases noted above resulted in no relevant case law regarding this research question for Wyoming.

## Federal Bureau of Prisons

## Methodology and Findings

Information requests were submitted online for both the Federal BOP, as well as the American Corrections Association (ACA) for information on a federal level. No responses were received as a result of the requests.

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<sup>40</sup> S.B. 205, 2018 Leg., 62nd Reg. Sess. (Utah 2018).

<sup>41</sup> *Department and Policies*, Wyoming Department of Corrections, <https://sites.google.com/a/wyo.gov/doc/home/policies> (last visited Apr. 10, 2020).

<sup>42</sup> Wyoming Dept. of Corrections, *Policy and Procedure #4.302* (effective Jan. 31, 2020).

A search of “bureau of prisons MAT” led to a U.S. Department of Justice (DOJ) Budget Request for the year of 2021.<sup>43</sup> Within this budget request was a reference to the First Step Act of 2018 and further references to the Act as a criminal justice reform bill aimed to reduce recidivism, including through the use of MAT. A search of “First Step Act of 2018” led to the BOP’s website providing an overview of the First Step Act (FSA) (P.L. 115-391).<sup>44</sup> This site led to a link for the Congressional Research Service (CRS) report on the FSA. The CRS report pointed to the Second Chance Act, which authorizes the DOJ to give grants to prisons in order to improve existing drug treatment programs and establish new drug treatment programs in prisons, including the use of MAT. Through the FSA, the BOP is required to submit a report assessing the availability of MAT to BOP inmates, and the capacity of the BOP to provide such services. Included in this is a requirement for the expansion of MAT availability to inmates, which the BOP will be required to execute.<sup>45</sup>

The initial search also led to the BOP’s Clinical Guidance document for the Detoxification of Chemically Dependent Inmates.<sup>46</sup> In this document, a short explanation of buprenorphine is included, but it was also reported as being “not routinely used in the BOP.”<sup>47</sup> Under the section entitled Opiate Withdrawal, it is advised that some inmates, and especially pregnant inmates, should be treated with methadone or maintained on methadone for treatment of withdrawal symptoms, but there is no mention of long-term usage of methadone for OUD treatment.<sup>48</sup> This document indicated that more information about methadone could be found on the BOP’s Program Statement regarding pharmacy services. The Program Statement advised that there are only three approved uses for methadone within the BOP, including for the treatment of opiate addicted pregnant inmates, the detoxification of opiate addicted inmates, and for the treatment of severe pain.<sup>49</sup> No mention of either naltrexone or buprenorphine were found in the Program Statement.

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<sup>43</sup> *U.S. Dept. of Justice FY 2021 Budget Request*, U.S. Dept. of Justice (2020) <https://www.justice.gov/file/1246146/download>.

<sup>44</sup> *An Overview of the First Step Act*, Federal Bureau of Prisons, <https://www.bop.gov/inmates/fsa/overview.jsp> (last visited Apr. 10, 2020).

<sup>45</sup> Congressional Research Service, *The First Step Act of 2018: An Overview* (Mar. 4, 2019), p. 19, <https://crsreports.congress.gov/product/pdf/R/R45558>.

<sup>46</sup> Federal Bureau of Prisons, *Detoxification of Chemically Dependent Inmates* (Jan. 2018), <https://www.bop.gov/resources/pdfs/detoxification.pdf>.

<sup>47</sup> Congressional Research Service, *The First Step Act of 2018: An Overview* (Mar. 4, 2019), p. 17, <https://crsreports.congress.gov/product/pdf/R/R45558>.

<sup>48</sup> Congressional Research Service, *The First Step Act of 2018: An Overview* (Mar. 4, 2019), p. 16, <https://crsreports.congress.gov/product/pdf/R/R45558>.

<sup>49</sup> Federal Bureau of Prisons, *Program Statement Number p6360.01* (Jan. 15, 2005), p. 37, [https://www.bop.gov/policy/progstat/6360\\_001.pdf](https://www.bop.gov/policy/progstat/6360_001.pdf).

## Other State programs currently in place

As a means of investigating state prison MAT programs outside of the Region VIII area, a search of “state prison MAT programs” was conducted. This search led to a SAMHSA publication entitled “Use of Medication-Assisted Treatment for Opioid Use Disorder in Criminal Justice Settings” from July of 2019.<sup>50</sup> This report included summaries of current MAT programs in place in jails and prisons. Currently, there are two MAT models in several state prisons. One model, currently in place in Rhode Island and New Jersey, provides MAT medications as an effort for long-term treatment of OUDs as a means to stabilize inmates suffering from an OUD. New Jersey has a separate institution within their state Department of Corrections (NJDOC), the Mid-State Correctional Facility, that was reopened as an addiction center for male inmates in 2017. A smaller facility is also available for female inmates. Through these facilities, the NJDOC works with the Gateway Foundation, a national substance use disorder treatment provider, and provides all three currently FDA-approved MAT medications to inmates. MAT medications are not available for inmates in the remainder of the NJDOC locations.

Initially, inmates entering the NJDOC are screened to determine if substance use treatment is necessary. Through this process, if an inmate is identified as having a substance use disorder that presents at least a medium-risk, the inmate is eligible for enrollment in the NJDOC MAT program. Along with the prescription of MAT medications as needed, inmates in this program receive individualized counseling, group therapy, and other forms of health care to treat both the substance abuse disorder as well as any other co-occurring disorders for as long as deemed necessary. The commissioner of the NJ Department of Health has reported a 91% success rate for inmates in this program, compared to a 50% success rate for those receiving other forms of addiction treatment methods.<sup>51</sup>

The Rhode Island Department of Corrections (RIDOC) began offering all three FDA-approved MAT medications throughout its entire prison population in 2017. RIDOC also provides support for post-release MAT treatment through 12 MAT Centers of Excellence located around the state. The RIDOC screens new inmates for substance use disorders and inmates who are determined to have an OUD from this process are enrolled in the MAT program. If a new inmate is awaiting trial or had previously been prescribed a MAT medication, their medication or treatment is continued. Along with inmate access to the MAT medications, inmates in this program receive individual and group counseling. Once an inmate is released, the RIDOC uses a community-based approach to help the former inmate achieve successful reentry into the community, including through the continued use of MAT, psychiatric care, counseling,

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<sup>50</sup> *Use of Medication-Assisted Treatment for Opioid Use Disorder in Criminal Justice Settings*, Substance Abuse and Mental Health Services Administration, <https://store.samhsa.gov/product/Use-of-Medication-Assisted-Treatment-for-Opioid-Use-Disorder-in-Criminal-Justice-Settings/PEP19-MATUSECJS> (last visited Apr. 10, 2020).

<sup>51</sup> *Id.* at p. 40.

education, and peer recovery support.<sup>52</sup> From 2016 to 2017, the RIDOC program was shown to reduce post-release opioid deaths by 60% and overall opioid-related deaths by 12%.<sup>53</sup>

The second model, currently utilized by Kentucky and Massachusetts, is a more focused approach on relapse prevention.<sup>54</sup> The Kentucky Department of Corrections (KYDOC) currently offers extended-release naltrexone at two-thirds of its prison locations. The KYDOC offers this form of MAT to inmates beginning five weeks prior to their release and continues for a minimum of six months post-release. After an inmate is released, inmates receive a referral to post-release services including treatment support through Recovery Kentucky. Data from this process is collected to review, including inmate behavior prior to entry and post-release data twelve months after the program has been completed.<sup>55</sup>

Similarly, the Massachusetts Department of Corrections (MADOC), through its Medication-Assisted Treatment Reentry Initiative (MATRI), offers extended release naltrexone and Vivitrol for inmates prior to release and post-release at fourteen of its sixteen state prisons. Through MATRI, inmates are screened nine months prior to their scheduled release date. If an inmate is determined to be eligible for this program, the inmate will receive MAT education, appointments with substance use counselors, and group therapy for a minimum of six months. During a six-month period prior to their release date, inmates receive aid in developing personalized treatment plans. Inmates in this program are given naltrexone beginning ten days prior to release and Vivitrol seven days prior to release. Aid is provided for inmates post-release to continue treatment for up to twelve months.<sup>56</sup>

## Conclusion

The use of MAT programs in state and federal prisons located in Region VIII has not yet become a wide-spread feature and has seen only limited yet successful implementation. Three states in Region VIII, Colorado, North Dakota, and Utah, have MAT programs in place for inmates, however none of the states offer all three approved MAT medications. Montana is in the process of developing a MAT program but has provided no specific information about which medications will be offered through its program. No specific information regarding inmate MAT access was found for South Dakota and Wyoming. There was no relevant case law found in either the federal or state levels in Region VIII for this topic. Few states have complete MAT

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<sup>52</sup> *Id.* at p. 41.

<sup>53</sup> National Sheriff's Association, *Jail-Based Medication Assisted Treatment* (Oct. 2018), <https://www.sheriffs.org/publications/Jail-Based-MAT-PPG.pdf>.

<sup>54</sup> *Use of Medication-Assisted Treatment for Opioid Use Disorder in Criminal Justice Settings*, Substance Abuse and Mental Health Services Administration, p.38, <https://store.samhsa.gov/product/Use-of-Medication-Assisted-Treatment-for-Opioid-Use-Disorder-in-Criminal-Justice-Settings/PEP19-MATUSECJS> (last visited Apr. 10, 2020).

<sup>55</sup> *Id.* at p. 42.

<sup>56</sup> *Id.* at p. 43.

programs for their inmate population, but the models used by states that have implemented such programs could be helpful in providing insight to states seeking to create a similar program.

The Federal BOP policies have some mention of MAT usage, but it is limited to methadone and to a small inmate population. Recent lawsuits by inmates of the BOP have been successful in forcing access to MAT medications that had been previously denied. Further, recent legislation has led to a strong movement to include MAT in federal prisons. Taken together, this information suggests that the BOP will soon offer more MAT programs throughout its prison system.

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