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H.B. No. 119

A BILL TO BE ENTITLED

AN ACT

relating to prohibiting organ transplant recipient discrimination
on the basis of certain disabilities.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. This Act may be cited as Daniel's Law.

SECTION 2. The heading to Subchapter S, Chapter 161, Health
and Safety Code, is amended to read as follows:

SUBCHAPTER S. ALLOCATION OF KIDNEYS AND OTHER ORGANS AVAILABLE FOR
TRANSPLANT

SECTION 3. Section 161.471, Health and Safety Code, is
amended to read as follows:

Sec. 161.471. DEFINITIONS [~~DEFINITION~~]. In this
subchapter:

(1) "Auxiliary aids and services" includes:

(A) qualified interpreters or other effective
methods of making aurally delivered materials available to
individuals with hearing impairments;

(B) qualified readers, taped texts, or other
effective methods of making visually delivered materials available
to individuals with visual impairments;

(C) provision of information in a format
accessible to individuals with cognitive, neurological,
developmental, or intellectual disabilities;

(D) provision of supported decision-making

1 services;

2 (E) acquisition or modification of equipment or
3 devices; and

4 (F) other similar services and actions.

5 (2) "Disability" has the meaning assigned by the
6 Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et
7 seq.).

8 (3) "Health care provider" means:

9 (A) an individual or facility licensed,
10 certified, or otherwise authorized to provide health care in the
11 ordinary course of business or professional practice, including a
12 physician, hospital, nursing facility, laboratory, intermediate
13 care facility, mental health facility, and any other facility for
14 individuals with intellectual or developmental disabilities; and

15 (B) an organ procurement organization.

16 (4) "Organ [~~,"organ]~~ procurement organization" means
17 an organization that is a qualified organ procurement organization
18 under 42 U.S.C. Section 273 that is currently certified or
19 recertified in accordance with that federal law.

20 (5) "Supported decision making" means the use of a
21 support person to assist an individual in making medical decisions,
22 communicate information to the individual, or ascertain an
23 individual's wishes, including:

24 (A) allowing the individual's attorney-in-fact
25 or agent under a medical power of attorney or any person the
26 individual selects to be included in communications related to the
27 individual's medical care;

1 (B) permitting the individual to designate a
2 person to support the individual in communicating, processing
3 information, or making medical decisions;

4 (C) providing auxiliary aids and services to
5 assist the individual in communicating and processing
6 health-related information, including the use of assistive
7 communication technology;

8 (D) providing information to persons designated
9 by the individual in a manner consistent with the Health Insurance
10 Portability and Accountability Act of 1996 (Pub. L. No. 104-191),
11 regulations adopted under that Act, and other applicable laws and
12 regulations governing disclosure of health information;

13 (E) providing health information in a format that
14 is readily understandable by the individual; and

15 (F) if the individual has a court-appointed
16 guardian or other individual responsible for making medical
17 decisions on behalf of the individual, ensuring that the individual
18 is included in decisions involving the individual's health care and
19 that medical decisions are made in accordance with the individual's
20 expressed interests.

21 SECTION 4. Subchapter S, Chapter 161, Health and Safety
22 Code, is amended by adding Section 161.473 to read as follows:

23 Sec. 161.473. DISCRIMINATION ON BASIS OF DISABILITY
24 PROHIBITED. (a) A health care provider may not, solely on the
25 basis of an individual's disability:

26 (1) determine an individual is ineligible to receive
27 an organ transplant;

1 (2) deny medical or other services related to an organ
2 transplant, including evaluation, surgery, counseling, and
3 postoperative treatment;

4 (3) refuse to refer the individual to a transplant
5 center or other related specialist for evaluation or an organ
6 transplant;

7 (4) refuse to place an individual on an organ
8 transplant waiting list or place the individual at a position lower
9 in priority on the list than the position the individual would have
10 been placed if not for the individual's disability; or

11 (5) decline insurance coverage for any procedure
12 associated with the organ transplant, including post-transplant
13 care.

14 (b) Notwithstanding Subsection (a), a health care provider
15 may consider an individual's disability when making a treatment or
16 coverage recommendation or decision solely to the extent that a
17 physician or surgeon, following an individualized evaluation of the
18 potential recipient, determines the disability is medically
19 significant to the organ transplant. This section does not require
20 a referral or recommendation for, or the performance of, a
21 medically inappropriate organ transplant.

22 (c) A health care provider may not consider an individual's
23 inability to independently comply with post-transplant medical
24 requirements as medically significant for the purposes of
25 Subsection (b) if the individual has the necessary support system
26 to assist the individual in complying with the requirements.

27 (d) A health care provider shall make reasonable

1 modifications in policies, practices, or procedures as necessary to
2 make services, including transplant-related counseling,
3 information, coverage, or treatment, available to an individual
4 with a disability, unless the health care provider can demonstrate
5 that making the modifications would fundamentally alter the nature
6 of the services. Reasonable modifications may include:

7 (1) communicating with persons responsible for
8 supporting an individual with postsurgical and post-transplant
9 care, including medication; and

10 (2) considering the support available to the
11 individual in determining whether the individual is able to comply
12 with post-transplant medical requirements, including support
13 provided by:

14 (A) family;

15 (B) friends; or

16 (C) home and community-based services, including
17 home and community-based services funded by:

18 (i) the medical assistance program
19 established under Chapter 32, Human Resources Code;

20 (ii) Medicare;

21 (iii) a health plan in which the individual
22 is enrolled; or

23 (iv) any other program or source of funding
24 available to the individual.

25 (e) A health care provider shall ensure that an individual
26 with a disability is not denied services, including
27 transplant-related counseling, information, coverage, or

1 treatment, because auxiliary aids and services are absent unless
2 the health care provider can demonstrate that providing the
3 services with auxiliary aids and services present would
4 fundamentally alter the services provided or would impose an undue
5 burden on the health care provider.

6 (f) A health care provider shall comply with the
7 requirements of Titles II and III of the Americans with
8 Disabilities Act of 1990 (42 U.S.C. Section 12131 et seq.).

9 (g) This section applies to each stage of the organ
10 transplant process.

11 (h) A violation of this section is grounds for disciplinary
12 action by the regulatory agency that issued a license, certificate,
13 or other authority to a health care provider who committed the
14 violation.

15 SECTION 5. Not later than January 1, 2022, the executive
16 commissioner of the Health and Human Services Commission shall
17 adopt any rules necessary to implement Subchapter S, Chapter 161,
18 Health and Safety Code, as amended by this Act.

19 SECTION 6. This Act takes effect September 1, 2021.