

By: Landgraf

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. 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 2. 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 services;

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

3 (F) other similar services and actions.

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

7 (3) "Health care provider" means:

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

14 (B) an organ procurement organization.

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

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

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

27 (B) permitting the individual to designate a

1 person to support the individual in communicating, processing
2 information, or making medical decisions;

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

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

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

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

20 SECTION 3. Subchapter S, Chapter 161, Health and Safety
21 Code, is amended by adding Section 161.473 to read as follows:

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

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

27 (2) deny medical or other services related to an organ

1 transplant, including evaluation, surgery, counseling, and
2 postoperative treatment;

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

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

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

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

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

26 (d) A health care provider shall make reasonable
27 modifications in policies, practices, or procedures as necessary to

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

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

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

13 (A) family;

14 (B) friends; or

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

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

19 (ii) Medicare;

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

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

24 (e) A health care provider shall ensure that an individual
25 with a disability is not denied services, including
26 transplant-related counseling, information, coverage, or
27 treatment, because auxiliary aids and services are absent unless

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

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

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

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

14 SECTION 4. Not later than January 1, 2022, the executive
15 commissioner of the Health and Human Services Commission shall
16 adopt any rules necessary to implement Subchapter S, Chapter 161,
17 Health and Safety Code, as amended by this Act.

18 SECTION 5. This Act takes effect September 1, 2021.