

1-1 By: Landgraf, et al. H.B. No. 119  
 1-2 (Senate Sponsor - Zaffirini, Seliger)  
 1-3 (In the Senate - Received from the House March 25, 2021;  
 1-4 April 8, 2021, read first time and referred to Committee on Health  
 1-5 & Human Services; April 26, 2021, reported adversely, with  
 1-6 favorable Committee Substitute by the following vote: Yeas 9,  
 1-7 Nays 0; April 26, 2021, sent to printer.)

1-8 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-9				
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16	X			
1-17	X			
1-18	X			

1-19 COMMITTEE SUBSTITUTE FOR H.B. No. 119 By: Buckingham

1-20 A BILL TO BE ENTITLED  
 1-21 AN ACT

1-22 relating to prohibiting organ transplant recipient discrimination  
 1-23 on the basis of certain disabilities.

1-24 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-25 SECTION 1. The heading to Subchapter S, Chapter 161, Health  
 1-26 and Safety Code, is amended to read as follows:

1-27 SUBCHAPTER S. ALLOCATION OF KIDNEYS AND OTHER ORGANS AVAILABLE FOR  
 1-28 TRANSPLANT

1-29 SECTION 2. Section 161.471, Health and Safety Code, is  
 1-30 amended to read as follows:

1-31 Sec. 161.471. DEFINITIONS [~~DEFINITION~~]. In this  
 1-32 subchapter:

1-33 (1) "Auxiliary aids and services" means:

1-34 (A) qualified interpreters or other effective  
 1-35 methods of making aurally delivered materials available to  
 1-36 individuals with hearing impairments;

1-37 (B) qualified readers, taped texts, or other  
 1-38 effective methods of making visually delivered materials available  
 1-39 to individuals with visual impairments;

1-40 (C) provision of information in a format readily  
 1-41 accessible and understandable to individuals with cognitive,  
 1-42 neurological, developmental, or intellectual disabilities;

1-43 (D) acquisition or modification of equipment or  
 1-44 devices; and

1-45 (E) other services and actions similar to those  
 1-46 described by Paragraphs (A), (B), (C), and (D).

1-47 (2) "Disability" has the meaning assigned by the  
 1-48 Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et  
 1-49 seq.).

1-50 (3) "Health care facility" means a facility licensed,  
 1-51 certified, or otherwise authorized to provide health care in the  
 1-52 ordinary course of business, including a hospital, nursing  
 1-53 facility, laboratory, intermediate care facility, mental health  
 1-54 facility, transplant center, and any other facility for individuals  
 1-55 with intellectual or developmental disabilities.

1-56 (4) "Health care provider" means an individual or  
 1-57 facility licensed, certified, or otherwise authorized to provide  
 1-58 health care in the ordinary course of business or professional  
 1-59 practice, including a physician, hospital, nursing facility,  
 1-60 laboratory, intermediate care facility, mental health facility,

2-1 transplant center, and any other facility for individuals with  
 2-2 intellectual or developmental disabilities.

2-3 (5) "Organ [~~,"organ~~] procurement organization" means  
 2-4 an organization that is a qualified organ procurement organization  
 2-5 under 42 U.S.C. Section 273 that is currently certified or  
 2-6 recertified in accordance with that federal law.

2-7 SECTION 3. Subchapter S, Chapter 161, Health and Safety  
 2-8 Code, is amended by adding Section 161.473 to read as follows:

2-9 Sec. 161.473. DISCRIMINATION ON BASIS OF DISABILITY  
 2-10 PROHIBITED. (a) A health care provider may not, solely on the  
 2-11 basis of an individual's disability:

2-12 (1) determine an individual is ineligible to receive  
 2-13 an organ transplant;

2-14 (2) deny medical or other services related to an organ  
 2-15 transplant, including evaluation, surgery, counseling, and  
 2-16 postoperative treatment;

2-17 (3) refuse to refer the individual to a transplant  
 2-18 center or other related specialist for evaluation or receipt of an  
 2-19 organ transplant; or

2-20 (4) refuse to place the individual on an organ  
 2-21 transplant waiting list or place the individual at a position lower  
 2-22 in priority on the list than the position the individual would have  
 2-23 been placed if not for the individual's disability.

2-24 (b) Notwithstanding Subsection (a), a health care provider  
 2-25 may consider an individual's disability when making a treatment  
 2-26 recommendation or decision solely to the extent that a physician,  
 2-27 following an individualized evaluation of the potential transplant  
 2-28 recipient, determines the disability is medically significant to  
 2-29 the organ transplant. This section does not require a referral or  
 2-30 recommendation for, or the performance of, a medically  
 2-31 inappropriate organ transplant.

2-32 (c) A health care provider may not consider an individual's  
 2-33 inability to independently comply with post-transplant medical  
 2-34 requirements as medically significant for the purposes of  
 2-35 Subsection (b) if the individual has:

2-36 (1) a known disability; and

2-37 (2) the necessary support system to assist the  
 2-38 individual in reasonably complying with the requirements.

2-39 (d) A health care facility shall make reasonable  
 2-40 modifications in policies, practices, or procedures as necessary to  
 2-41 allow individuals with a disability access to organ  
 2-42 transplant-related services, including transplant-related  
 2-43 counseling, information, or treatment, unless the health care  
 2-44 facility can demonstrate that making the modifications would  
 2-45 fundamentally alter the nature of the services or would impose an  
 2-46 undue hardship on the facility. Reasonable modifications in  
 2-47 policies, practices, and procedures may include:

2-48 (1) communicating with persons supporting or  
 2-49 assisting with the individual's postsurgical and post-transplant  
 2-50 care, including medication; and

2-51 (2) considering the support available to the  
 2-52 individual in determining whether the individual is able to  
 2-53 reasonably comply with post-transplant medical requirements,  
 2-54 including support provided by:

2-55 (A) family;

2-56 (B) friends; or

2-57 (C) home and community-based services, including  
 2-58 home and community-based services funded by:

2-59 (i) Medicaid;

2-60 (ii) Medicare;

2-61 (iii) a health plan in which the individual  
 2-62 is enrolled; or

2-63 (iv) any other program or source of funding  
 2-64 available to the individual.

2-65 (e) A health care provider shall make reasonable efforts to  
 2-66 comply with the policies, practices, and procedures, as applicable,  
 2-67 developed by a health care facility under Subsection (d), as  
 2-68 necessary to allow an individual with a known disability access to  
 2-69 organ transplant-related services, including transplant-related

3-1 counseling, information, or treatment, unless the health care  
3-2 provider can demonstrate that compliance would fundamentally alter  
3-3 the nature of the services or would impose an undue hardship on the  
3-4 health care provider.

3-5 (f) A health care provider shall make reasonable efforts to  
3-6 provide auxiliary aids and services to an individual with a known  
3-7 disability seeking organ transplant-related services, including  
3-8 organ transplant-related counseling, information, or treatment, as  
3-9 necessary to allow the individual access to those services, unless  
3-10 the health care provider can demonstrate that providing the  
3-11 transplant-related services with auxiliary aids and services  
3-12 present would fundamentally alter the transplant-related services  
3-13 provided or would impose an undue hardship on the health care  
3-14 provider.

3-15 (g) A health care provider shall comply with the  
3-16 requirements of the Americans with Disabilities Act of 1990 (42  
3-17 U.S.C. Section 12101 et seq.) to the extent that Act applies to a  
3-18 health care provider. This subsection may not be construed to  
3-19 require a health care provider to comply with that Act if the Act  
3-20 does not otherwise require compliance by the health care provider.

3-21 (h) This section applies to each stage of the organ  
3-22 transplant process.

3-23 (i) A violation of this section is grounds for disciplinary  
3-24 action by the regulatory agency that issued a license, certificate,  
3-25 or other authority to a health care provider who committed the  
3-26 violation. Before a regulatory agency may take disciplinary action  
3-27 against a health care provider for a violation, the applicable  
3-28 regulatory agency shall:

3-29 (1) notify the health care provider of the agency's  
3-30 finding that the health care provider has violated or is violating  
3-31 this section or a rule adopted under this section; and

3-32 (2) provide the health care provider with an  
3-33 opportunity to correct the violation without penalty or reprimand.

3-34 (j) A physician who in good faith makes a determination that  
3-35 an individual's disability is medically significant to the organ  
3-36 transplant, as described by Subsection (b), does not violate this  
3-37 section.

3-38 (k) A health care provider who in good faith makes a  
3-39 treatment recommendation or decision on the basis of a physician's  
3-40 determination that an individual's disability is medically  
3-41 significant to the organ transplant, as described by Subsection  
3-42 (b), does not violate this section.

3-43 SECTION 4. Not later than January 1, 2022, the executive  
3-44 commissioner of the Health and Human Services Commission shall  
3-45 adopt any rules necessary to implement Subchapter S, Chapter 161,  
3-46 Health and Safety Code, as amended by this Act.

3-47 SECTION 5. This Act takes effect September 1, 2021.

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