

BILL ANALYSIS

H.B. 119
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Public Health
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Organ transplantation helps heal bodies and save lives, but there are concerns regarding organ transplant discrimination on the basis of an individual's disability and perceived quality of life. It has been noted that such perceptions may not take into account that some disabilities require a medication regimen that can contribute to organ failure to such an extent that even a highly active, well-functioning adult with a disability such as Down syndrome may need a transplant to survive. Misplaced perceptions regarding such a person's quality of life, it has been asserted, may factor into the decision to deny an organ transplant to such an individual. H.B. 119 seeks to reduce the number of Texans who are denied an organ transplant by prohibiting a health care provider from taking certain actions solely on the basis of an individual's disability.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 4 of this bill.

ANALYSIS

H.B. 119 amends the Health and Safety Code to prohibit a health care provider, including an organ procurement organization, from taking any of the following actions solely on the basis of an individual's disability:

- determining an individual is ineligible to receive an organ transplant;
- denying medical or other services related to an organ transplant, including evaluation, surgery, counseling, and postoperative treatment;
- refusing to refer the individual to a transplant center or other related specialist for evaluation or an organ transplant;
- refusing to place an individual on an organ transplant waiting list or placing the individual at a position lower in priority on the list than the position the individual would have been placed if not for the individual's disability; or
- declining insurance coverage for any procedure associated with the organ transplant, including post-transplant care.

H.B. 119 authorizes a health care provider to consider an individual's disability when making a treatment or coverage recommendation or decision solely to the extent that a physician or surgeon, following an individualized evaluation of the potential recipient, determines the disability is medically significant to the organ transplant. The bill expressly does not require a referral or recommendation for, or the performance of, a medically inappropriate organ transplant. A health care provider may not consider an individual's inability to independently

comply with post-transplant medical requirements as medically significant if the individual has the necessary support system to assist the individual in complying with the requirements.

H.B. 119 requires a health care provider to do the following:

- make reasonable modifications in policies, practices, or procedures as necessary to make services, including transplant-related counseling, information, coverage, or treatment, available to an individual with a disability, unless the provider can demonstrate that making the modifications would fundamentally alter the nature of the services;
- ensure that an individual with a disability is not denied services because auxiliary aids and services are absent unless the provider can demonstrate that providing the services with auxiliary aids and services present would fundamentally alter the services provided or would impose an undue burden on the provider; and
- comply with the requirements of Titles II and III of the federal Americans with Disabilities Act of 1990.

The bill sets out certain examples of reasonable modifications. The bill's provisions apply to each stage of the organ transplant process, and a violation of those provisions is grounds for disciplinary action by the regulatory agency that issued a license, certificate, or other authority to a health care provider who committed the violation.

H.B. 119 requires the executive commissioner of the Health and Human Services Commission to adopt any rules necessary to implement the bill's provisions not later than January 1, 2022.

EFFECTIVE DATE

September 1, 2021.