

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" means:

(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 readily accessible and understandable to individuals with cognitive, neurological, developmental, or intellectual disabilities;

(D) acquisition or modification of equipment or devices; and

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

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

6 (3) "Health care facility" means a facility licensed,
7 certified, or otherwise authorized to provide health care in the
8 ordinary course of business, including a hospital, nursing
9 facility, laboratory, intermediate care facility, mental health
10 facility, transplant center, and any other facility for individuals
11 with intellectual or developmental disabilities.

12 (4) "Health care provider" means an individual or
13 facility licensed, certified, or otherwise authorized to provide
14 health care in the ordinary course of business or professional
15 practice, including a physician, hospital, nursing facility,
16 laboratory, intermediate care facility, mental health facility,
17 transplant center, and any other facility for individuals with
18 intellectual or developmental disabilities.

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

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

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

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

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

6 (3) refuse to refer the individual to a transplant
7 center or other related specialist for evaluation or receipt of an
8 organ transplant; or

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

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

25 (1) a known disability; and

26 (2) the necessary support system to assist the
27 individual in reasonably complying with the requirements.

1 (d) A health care facility shall make reasonable
2 modifications in policies, practices, or procedures as necessary to
3 allow individuals with a disability access to organ
4 transplant-related services, including transplant-related
5 counseling, information, or treatment, unless the health care
6 facility can demonstrate that making the modifications would
7 fundamentally alter the nature of the services or would impose an
8 undue hardship on the facility. Reasonable modifications in
9 policies, practices, and procedures may include:

10 (1) communicating with persons supporting or
11 assisting with the individual's postsurgical and post-transplant
12 care, including medication; and

13 (2) considering the support available to the
14 individual in determining whether the individual is able to
15 reasonably comply with post-transplant medical requirements,
16 including support provided by:

17 (A) family;

18 (B) friends; or

19 (C) home and community-based services, including
20 home and community-based services funded by:

21 (i) Medicaid;

22 (ii) Medicare;

23 (iii) a health plan in which the individual
24 is enrolled; or

25 (iv) any other program or source of funding
26 available to the individual.

27 (e) A health care provider shall make reasonable efforts to

1 comply with the policies, practices, and procedures, as applicable,
2 developed by a health care facility under Subsection (d), as
3 necessary to allow an individual with a known disability access to
4 organ transplant-related services, including transplant-related
5 counseling, information, or treatment, unless the health care
6 provider can demonstrate that compliance would fundamentally alter
7 the nature of the services or would impose an undue hardship on the
8 health care provider.

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

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

25 (h) This section applies to each stage of the organ
26 transplant process.

27 (i) A violation of this section is grounds for disciplinary

1 action by the regulatory agency that issued a license, certificate,
2 or other authority to a health care provider who committed the
3 violation. Before a regulatory agency may take disciplinary action
4 against a health care provider for a violation, the applicable
5 regulatory agency shall:

6 (1) notify the health care provider of the agency's
7 finding that the health care provider has violated or is violating
8 this section or a rule adopted under this section; and

9 (2) provide the health care provider with an
10 opportunity to correct the violation without penalty or reprimand.

11 (j) A physician who in good faith makes a determination that
12 an individual's disability is medically significant to the organ
13 transplant, as described by Subsection (b), does not violate this
14 section.

15 (k) A health care provider who in good faith makes a
16 treatment recommendation or decision on the basis of a physician's
17 determination that an individual's disability is medically
18 significant to the organ transplant, as described by Subsection
19 (b), does not violate this section.

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

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

President of the Senate

Speaker of the House

I certify that H.B. No. 119 was passed by the House on March 25, 2021, by the following vote: Yeas 145, Nays 0, 1 present, not voting; and that the House concurred in Senate amendments to H.B. No. 119 on May 3, 2021, by the following vote: Yeas 144, Nays 0, 1 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 119 was passed by the Senate, with amendments, on April 29, 2021, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor