

SENATE AMENDMENTS

2nd Printing

By: Landgraf, Turner of Dallas, White,
Holland, et al.

H.B. No. 119

A BILL TO BE ENTITLED

1 AN ACT
2 relating to prohibiting organ transplant recipient discrimination
3 on the basis of certain disabilities.

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

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

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

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

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

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

14 (1) "Auxiliary aids and services" includes:

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

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

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

24 (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.

ADOPTED

APR 29 2021

By: Zaffirini

Lacey Law
Secretary of the Senate

H.B. No. 119

Substitute the following for H.B. No. 119:

By: D. Baskin

C.S.H.B. No. 119

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6 and Safety Code, is amended to read as follows:

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15 methods of making aurally delivered materials available to
16 individuals with hearing impairments;

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

20 (C) provision of information in a format readily
21 accessible and understandable to individuals with cognitive,
22 neurological, developmental, or intellectual disabilities;

23 (D) acquisition or modification of equipment or
24 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
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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.

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 87TH LEGISLATIVE REGULAR SESSION

April 29, 2021

TO: Honorable Dade Phelan, Speaker of the House, House of Representatives

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: HB119 by Landgraf (Relating to prohibiting organ transplant recipient discrimination on the basis of certain disabilities.), **As Passed 2nd House**

No significant fiscal implication to the State is anticipated.

The bill would add additional definitions to the Health and Safety Code and would prohibit a health care provider or health care facility from determining an individual as ineligible for medical services related to an organ transplant on the basis of a disability. The bill would allow disciplinary action by the regulatory agency that issued a license, certificate, or other authority to a health care provider who commits the violation.

The Health and Human Services Commission and the Texas Medical Board have indicated any costs related to rulemaking and possible increases in complaints and investigations would be minimal and could be absorbed within available resources.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 503 Texas Medical Board, 529 Hlth & Human Svcs Comm

LBB Staff: JMc, LBO, AKI, JLI, AF

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 87TH LEGISLATIVE REGULAR SESSION

April 24, 2021

TO: Honorable Lois W. Kolkhorst, Chair, Senate Committee on Health & Human Services

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: HB119 by Landgraf (Relating to prohibiting organ transplant recipient discrimination on the basis of certain disabilities.), **Committee Report 2nd House, Substituted**

No significant fiscal implication to the State is anticipated.

The bill would add additional definitions to the Health and Safety Code and would prohibit a health care provider or health care facility from determining an individual as ineligible for medical services related to an organ transplant on the basis of a disability. The bill would allow disciplinary action by the regulatory agency that issued a license, certificate, or other authority to a health care provider who commits the violation.

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LBB Staff: JMc, AKI, JLI, AF

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 87TH LEGISLATIVE REGULAR SESSION

April 20, 2021

TO: Honorable Lois W. Kolkhorst, Chair, House Committee on Health & Human Services

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: HB119 by Landgraf (Relating to prohibiting organ transplant recipient discrimination on the basis of certain disabilities.), **As Engrossed**

No significant fiscal implication to the State is anticipated.

The bill would add additional definitions to the Health and Safety Code and would prohibit a health care provider from determining an individual as ineligible for medical services related to an organ transplant on the basis of a disability. The bill would allow disciplinary action by the regulatory agency that issued a license, certificate, or other authority to a health care provider who commits the violation.

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Source Agencies: 503 Texas Medical Board, 529 Hlth & Human Svcs Comm

LBB Staff: JMc, AKI, JLI, AF

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 87TH LEGISLATIVE REGULAR SESSION

March 8, 2021

TO: Honorable Stephanie Klick, Chair, House Committee on Public Health

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: HB119 by Landgraf (Relating to prohibiting organ transplant recipient discrimination on the basis of certain disabilities.), **As Introduced**

No significant fiscal implication to the State is anticipated.

The bill would add additional definitions to the Health and Safety Code and would prohibit a health care provider from determining an individual as ineligible for medical services related to an organ transplant on the basis of a disability. The bill would allow disciplinary action by the regulatory agency that issued a license, certificate, or other authority to a health care provider who commits the violation.

The Health and Human Services Commission and the Texas Medical Board have indicated any costs related to rulemaking and possible increases in complaints and investigations would be minimal and can be absorbed within available resources.

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LBB Staff: JMc, AKi, JLi, AF