

House Bill 119
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

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

SECTION 2. 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 3. 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;

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

(F) other similar services and actions.

SENATE VERSION (CS)

No equivalent provision.

SECTION 1. Same as House version.

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

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

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

(3) "Health care provider" means:

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

(B) an organ procurement organization.

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

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

(A) allowing the individual's attorney-in-fact or agent under a medical power of attorney or any person the individual

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

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

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

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

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selects to be included in communications related to the individual's medical care;

(B) permitting the individual to designate a person to support the individual in communicating, processing information, or making medical decisions;

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

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

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

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

SECTION 4. Subchapter S, Chapter 161, Health and Safety Code, is amended by adding Section 161.473 to read as follows:

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

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

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

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

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

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

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

(4) refuse to place an individual on an organ transplant waiting list or place 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

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

(b) Notwithstanding Subsection (a), a health care provider may 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. This section does not require a referral or recommendation for, or the performance of, a medically inappropriate organ transplant.

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

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

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

(4) refuse to place the individual on an organ transplant waiting list or place 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.

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

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

(1) a known disability; and

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the necessary support system to assist the individual in complying with the requirements.

(d) A health care provider shall 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 health care provider can demonstrate that making the modifications would fundamentally alter the nature of the services. Reasonable modifications may include:

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

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

(A) family;

(B) friends; or

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

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

(ii) Medicare;

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

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

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

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

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

(A) family;

(B) friends; or

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

(i) Medicaid;

(ii) Medicare;

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

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

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

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

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

(e) A health care provider shall make reasonable efforts to comply with the policies, practices, and procedures, as applicable, developed by a health care facility under Subsection (d), as necessary to allow an individual with a known disability access to organ transplant-related services, including transplant-related counseling, information, or treatment, unless the health care provider can demonstrate that compliance would fundamentally alter the nature of the services or would impose an undue hardship on the health care provider.

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

(g) A health care provider shall comply with the requirements of the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.) to the extent that Act applies to a health care provider. This subsection may not be construed to require a health care provider to comply with

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

(h) A violation of this section 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.

SECTION 5. Not later than January 1, 2022, the executive commissioner of the Health and Human Services Commission shall adopt any rules necessary to implement Subchapter S, Chapter 161, Health and Safety Code, as amended by this Act.

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that Act if the Act does not otherwise require compliance by the health care provider.

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

(i) A violation of this section 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. Before a regulatory agency may take disciplinary action against a health care provider for a violation, the applicable regulatory agency shall:

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

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

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

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

SECTION 4. Same as House version.

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SECTION 6. This Act takes effect September 1, 2021.

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SECTION 5. Same as House version.

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