

BILL ANALYSIS

Senate Research Center

S.B. 1040
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Health & Human Services
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

For the past two decades, the Chinese government has been engaged in the vile practice of forcibly removing human organs for transplant. In June 2019, the independent China Tribunal announced its finding that China has practiced systematic forced organ removal from prisoners of conscience. It is believed that organs may have been harvested from hundreds of thousands of incarcerated people, mainly Falun Gong practitioners but also possibly Tibetan Buddhists, House Church Christians, and members of the Uyghur Muslim ethnic minority.

China has welcomed what has been deemed "transplant tourism", where individuals who are critically in need of an organ travel to China and pay thousands of dollars for one of the 60,000 to 90,000 transplant surgeries each year. Chinese hospitals are able to schedule these major organ transplant surgeries within two weeks, implying their possible foreknowledge of the heinous origin of these organ "donations."

In the 87th Session, the Texas Legislature passed S.C.R. 3 which resolved that the 87th Legislature of the State of Texas condemns China's practice of involuntary organ harvesting. In addition, S.C.R. 3 resolved that the 87th Legislature encourages the medical community to educate Texans about the risks of traveling to China for organ transplants to prevent Texas residents from unknowingly involving themselves in forced organ harvesting. Lastly, S.C.R. 3 resolved that the 87th Legislature urges the United States Congress and the U.S. president to pass laws that prohibit collaboration between the U.S. medical and pharmaceutical companies with Chinese counterparts linked to forced organ harvesting.

Key Provisions of S.B. 1040:

Prohibits health benefit plan issuers from covering human organ transplants that are performed in China or in another country known to participate in forced organ harvesting;

Prohibits health benefit plan issuers from covering human organ transplants where the sale or donation originated in China or in another country known to participate in forced organ harvesting; and

Allows the commissioner of the Department of State Health Services to designate additional countries who are known to participate in organ harvesting.

Changes in the Committee Substitute:

Adds a definition of "forced organ harvesting" from H.R. 1154 of the 118th Congress.

Changes all references of organ harvesting to forced organ harvesting.

Extends prohibitions to coverage of post-transplant care in connection to organ transplant procedures taking place in China or in another country known to participate in forced organ harvesting or if the organ originated in China or in another country known to participate in forced organ harvesting.

Provides clarification for the commissioner of state health services in designating additional countries. The substitute ties designation to the action of the government.

S.B. 1040 amends current law relating to health benefit plan coverage of a transplant of an organ that originated from or is transplanted in a country known to have participated in forced organ harvesting.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle E, Title 8, Insurance Code, by adding Chapter 1380, as follows:

CHAPTER 1380. HUMAN ORGAN TRANSPLANT

Sec. 1380.001. DEFINITION. Defines "forced organ harvesting."

Sec. 1380.002. APPLICABILITY OF CHAPTER. (a) Provides that this chapter applies only to a health benefit plan that provides benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness, including an individual, group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, or an individual or group evidence of coverage or similar coverage document that is offered by:

- (1) an insurance company;
- (2) a group hospital service corporation operating under Chapter 842 (Group Hospital Service Corporations);
- (3) a health maintenance organization operating under Chapter 843 (Health Maintenance Organizations);
- (4) an approved nonprofit health corporation that holds a certificate of authority under Chapter 844 (Certification of Certain Nonprofit Health Corporations);
- (5) a multiple employer welfare arrangement that holds a certificate of authority under Chapter 846 (Multiple Employer Welfare Arrangements);
- (6) a stipulated premium company operating under Chapter 884 (Stipulated Premium Insurance Companies);
- (7) a fraternal benefit society operating under Chapter 885 (Fraternal Benefit Societies);
- (8) a Lloyd's plan operating under Chapter 941 (Lloyd's Plan); or
- (9) an exchange operating under Chapter 942 (Reciprocal and Interinsurance Exchanges).

(b) Provides that this chapter, notwithstanding any other law, applies to:

- (1) a small employer health benefit plan subject to Chapter 1501 (Health Insurance Portability and Availability Act), including coverage provided through a health group cooperative under Subchapter B (Coalitions and Cooperatives) of that chapter;
- (2) a standard health benefit plan issued under Chapter 1507 (Consumer Choice of Benefits Plans);

- (3) a basic coverage plan under Chapter 1551 (Texas Employees Group Benefits Act);
- (4) a basic plan under Chapter 1575 (Texas Public School Employees Group Benefits Program);
- (5) a primary care coverage plan under Chapter 1579 (Texas School Employees Uniform Group Health Coverage);
- (6) a plan providing basic coverage under Chapter 1601 (Uniform Insurance Benefits Act for Employees of The University of Texas System and the Texas A&M University System);
- (7) health benefits provided by or through a church benefits board under Subchapter I (Church Benefits Boards), Chapter 22, Business Organizations Code;
- (8) the state Medicaid program, including the Medicaid managed care program operated under Chapter 533 (Medicaid Managed Care Program), Government Code;
- (9) the child health plan program under Chapter 62 (Child Health Plan for Certain Low-Income Children), Health and Safety Code;
- (10) a regional or local health care program operated under Section 75.104 (Health Care Services), Health and Safety Code;
- (11) a self-funded health benefit plan sponsored by a professional employer organization under Chapter 91 (Professional Employer Organizations), Labor Code;
- (12) county employee group health benefits provided under Chapter 157 (Assistance, Benefits, and Working Conditions of County Officers and Employees), Local Government Code; and
- (13) health and accident coverage provided by a risk pool created under Chapter 172 (Texas Political Subdivisions Uniform Group Benefits Program), Local Government Code.

Sec. 1380.003. **COVERAGE PROHIBITED.** (a) Prohibits a health benefit plan issuer from covering a human organ transplant or post-transplant care if:

- (1) the transplant operation is performed in China or another country known to have participated in forced organ harvesting, as designated by the commissioner of state health services (commissioner); or
- (2) the human organ to be transplanted was procured by a sale or donation originating in China or another country known to have participated in forced organ harvesting, as designated by the commissioner.

(b) Provides that the commissioner is authorized to designate additional countries with governments that fund, sponsor, or otherwise facilitate forced organ harvesting and is required to provide written notice to the commissioner of insurance, Teacher Retirement System of Texas, Employees Retirement System of Texas, and executive commissioner of the Health and Human Services Commission when the commissioner designates an additional country.

SECTION 2. Provides that it is the intent of the legislature that this Act combat the practice of forcibly harvesting organs from living persons for transplant without free, voluntary consent;

bring awareness to China's state-sanctioned practice of forced organ harvesting of prisoners of conscience and other vulnerable persons, including Falun Gong practitioners, Uyghur Muslims, Tibetan Buddhists, and House Church Christians; and curb illicit transplant tourism and prevent residents of this state from unknowingly involving themselves in forced organ harvesting.

SECTION 3. Requires a state agency, if necessary for implementation of a provision of this Act, to request a waiver or authorization from a federal agency, and authorizes a delay of implementation until such a waiver or authorization is granted.

SECTION 4. Makes application of Chapter 1380, Insurance Code, as added by this Act, prospective to January 1, 2024.

SECTION 5. Effective date: September 1, 2023.