

Organ Transplants—Nondiscrimination in Access for Individuals with Disabilities; HB 2343

HB 2343 creates law regarding nondiscrimination in access to organ transplants for individuals with disabilities.

The bill states the following findings and purpose:

- Mental or physical disability does not diminish an individual's right to health care;
- The federal Americans with Disabilities Act (ADA) prohibits discrimination against individuals with disabilities, yet many such individuals still experience discrimination in accessing critical health care services;
- In other states, individuals with disabilities have been denied lifesaving organ transplants based on assumptions their lives are less worthy, they are incapable of complying with post-transplantation medical requirements, or they lack adequate support systems to ensure compliance with post-transplantation medical requirements;
- Although organ transplant centers must consider medical and psychosocial criteria when determining whether a patient is suitable to receive an organ transplant, transplant centers that participate in Medicare, the state program for medical assistance, and other federally funded programs are required to use patient selection criteria that result in a fair and nondiscriminatory distribution of organs; and
- State residents in need of organ transplants are entitled to assurances they will not encounter discrimination on the basis of a disability.

The bill defines "covered entity" to include:

- A licensed health care provider, as defined in the Health Care Provider Insurance Availability Act;
- A medical care facility, as defined in the act governing standards for medical care facilities;
- A laboratory;
- A state psychiatric hospital, as defined in the Care and Treatment Act for Mentally Ill Persons;
- An adult care home, as defined in the act governing licensure of adult care home administrators;

- A group home, as defined in the statute governing planning and zoning of group homes;
- An institutional medical unit in a correctional facility; or
- Any entity responsible for potential recipients of the anatomical gift.

The bill defines “qualified individual” to mean an individual who has a disability (defined to have the meaning stated in the ADA) and meets the essential eligibility requirements for the receipt of an anatomical gift, with or without the support networks available to the individual, the provision of auxiliary aids and services, or reasonable modifications to the policies or practices of a covered entity, including certain modifications specified in the bill.

The bill defines “auxiliary aids and services” to include various methods of making aurally delivered materials available to individuals with hearing impairments and visually delivered materials available to individuals with visual impairments, as well as various supported decision-making services.

The bill also defines “anatomical gift” and “organ transplant.”

The bill prohibits a covered entity, solely on the basis of an individual’s disability, from:

- Considering a qualified individual ineligible to receive an anatomical gift or organ transplant;
- Denying medical and other services related to organ transplantation;
- Refusing to refer the individual to a transplant center or a related specialist for the purpose of evaluation or receipt of an organ transplant;
- Refusing to place a qualified individual on an organ transplant waiting list; or
- Placing a qualified individual at a lower-priority position on an organ transplant waiting list than the position where the individual would be placed without the disability.

A covered entity may take an individual’s disability into account when making treatment or coverage recommendations or decisions to the extent a physician, following an individualized evaluation, has found the disability to be medically significant to the provision of the anatomical gift. A covered entity may not consider the individual’s inability to independently comply with post-transplantation medical requirements to be “medically significant” if the individual has the necessary support system to assist in complying with the requirements.

A covered entity must make reasonable modifications in policies, practices, or procedures when necessary to allow an individual with a disability to access services, including transplantation-related counseling, information, coverage, or treatment, unless the entity can demonstrate the modifications would fundamentally alter the nature of the services. Similarly, a

covered entity must take necessary steps to ensure an individual with a disability is not denied services due to the absence of auxiliary aids and services, unless the entity can demonstrate taking the steps would fundamentally alter the nature of the services or would result in an undue burden.

An affected individual may bring an action in the appropriate district court for injunctive or other equitable relief if a covered entity violates the provisions of the bill, and the bill requires a district court in such an action to schedule a hearing as soon as possible and apply the same standards in rendering a judgment as would be applied in an action in federal court under the ADA.

The bill states that none of its provisions shall be construed to require a covered entity to make a referral or recommendation for or perform a medically inappropriate organ transplant.