

1 A bill to be entitled
2 An act relating to nondiscrimination in organ
3 transplants; creating s. 765.523, F.S.; defining
4 terms; prohibiting certain entities from making
5 certain determinations or engaging in certain actions
6 related to organ transplants solely on the basis of an
7 individual's disability; specifying an instance where
8 certain entities may consider an individual's
9 disability, with an exception; requiring certain
10 entities to make reasonable modifications in their
11 policies, practices, and procedures under certain
12 circumstances, with an exception; requiring certain
13 entities to take certain necessary steps to ensure an
14 individual with a disability is not denied services,
15 with exceptions; providing a cause of action for
16 injunctive and other relief; providing construction;
17 creating ss. 627.64197, 627.65736, and 641.31075,
18 F.S.; prohibiting insurers, nonprofit health care
19 service plans, and health maintenance organizations
20 that provide coverage for organ transplants from
21 denying coverage solely on the basis of an
22 individual's disability under certain circumstances;
23 providing construction; defining the term "organ
24 transplant"; providing an effective date.
25

HB 1179

2020

26 WHEREAS, the Americans with Disabilities Act prohibits
27 discrimination against individuals with disabilities, yet many
28 individuals with disabilities still experience discrimination in
29 accessing critical health care services, and

30 WHEREAS, in other states nationwide, individuals with
31 mental or physical disabilities have historically been denied
32 lifesaving organ transplants based on assumptions that their
33 lives are less worthy, that they are incapable of complying with
34 posttransplant medical requirements, or that they lack adequate
35 support systems to ensure compliance with posttransplant medical
36 requirements, and

37 WHEREAS, although organ procurement organizations must
38 consider medical and psychosocial criteria when determining if a
39 patient is suitable to receive an organ transplant, organ
40 procurement organizations that participate in Medicare and other
41 federally funded programs are required to use patient selection
42 criteria that result in a fair and nondiscriminatory
43 distribution of organs, and

44 WHEREAS, residents of this state in need of organ
45 transplants are entitled to assurances that they will not
46 encounter discrimination on the basis of a disability, NOW,
47 THEREFORE,

48

49 Be It Enacted by the Legislature of the State of Florida:

50

51 Section 1. Section 765.523, Florida Statutes, is created
52 to read:

53 765.523 Discrimination in access to anatomical gifts and
54 organ transplants prohibited.—

55 (1) As used in this section, the term:

56 (a) "Auxiliary aids and services" means:

57 1. Qualified interpreters or other effective methods of
58 making aurally delivered materials available to individuals with
59 hearing impairments.

60 2. Qualified readers, recorded texts, texts in an
61 accessible electronic format, or other effective methods of
62 making visually delivered materials available to individuals
63 with visual impairments.

64 3. Supported decisionmaking services, including any of the
65 following:

66 a. The use of a support person to assist an individual in
67 making medical decisions, communicating information to the
68 individual, or ascertaining his or her wishes.

69 b. The provision of information to a person designated by
70 the individual, consistent with the Health Insurance Portability
71 and Accountability Act and other applicable laws and rules
72 governing the disclosure of health information.

73 c. If an individual has a court-appointed guardian or
74 other legal representative authorized to make health care
75 decisions on his or her behalf, any measures used to ensure that

76 | the guardian or legal representative is included in decisions
77 | involving the individual's health care and that medical
78 | decisions are in accordance with the individual's own expressed
79 | interests.

80 | d. Any other aid or service that is used to provide
81 | information in a format that is readily understandable and
82 | accessible to individuals with cognitive, neurological,
83 | developmental, or intellectual disabilities.

84 | (b) "Covered entity" means any of the following:

85 | 1. A licensed health care practitioner as defined in s.
86 | 456.001.

87 | 2. A health care facility as defined in s. 408.07.

88 | 3. A residential facility licensed under chapter 393.

89 | 4. An institutional medical unit in a correctional
90 | facility.

91 | 5. Any other entity responsible for potential recipients
92 | of an anatomical gift.

93 | (c) "Disability" means, with respect to an individual, a
94 | physical or mental impairment that substantially limits one or
95 | more major life activities of the individual, a record of the
96 | individual having such impairment, or the individual being
97 | regarded as having such impairment.

98 | (d) "Organ transplant" means the transplantation or
99 | transfusion of a part of a human body into the body of another
100 | individual for the purpose of treating or curing a medical

101 condition.

102 (e) "Qualified individual" means an individual who has a
 103 disability and meets the eligibility requirements for the
 104 receipt of an anatomical gift, regardless of:

- 105 1. The support networks available to the individual;
- 106 2. The provision of auxiliary aids and services; or
- 107 3. Reasonable modifications to the policies or practices
 108 of a covered entity, including modifications to allow:

- 109 a. Communication with the persons responsible for
 110 supporting the individual with his or her postsurgical and
 111 posttransplant care, including medication; and

- 112 b. The consideration of support networks available to the
 113 individual, including family, friends, and home and community-
 114 based services funded through Medicare, the state's Medicaid
 115 managed medical assistance program, or another health plan in
 116 which the individual is enrolled or any program or source of
 117 funding available to the individual, in determining whether the
 118 individual is able to comply with posttransplant medical
 119 requirements.

120 (2) A covered entity may not do any of the following
 121 solely on the basis of an individual's disability:

- 122 (a) Consider a qualified individual ineligible to receive
 123 an anatomical gift or organ transplant.

- 124 (b) Deny medical or other services related to an organ
 125 transplant, including evaluation, surgery, counseling, and

126 posttransplant treatment and services.

127 (c) Refuse to refer the individual to an organ procurement
128 organization or a related specialist for the purpose of
129 evaluation or receipt of an organ transplant.

130 (d) Refuse to place a qualified individual on an organ
131 transplant waiting list.

132 (e) Place a qualified individual at a lower priority
133 position on an organ transplant waiting list than the position
134 at which the qualified individual would have been placed if not
135 for the disability.

136 (3) (a) A covered entity may take an individual's
137 disability into account if, following an individualized
138 evaluation of him or her, a physician finds the individual's
139 disability to be medically significant to the provision of the
140 anatomical gift, but only to the extent that the covered entity
141 is making treatment or coverage recommendations or decisions for
142 the individual.

143 (b) If an individual has the necessary support system to
144 assist him or her in complying with posttransplant medical
145 requirements, a covered entity may not consider the individual's
146 inability to independently comply with the posttransplant
147 medical requirements to be medically significant for the
148 purposes of paragraph (a).

149 (4) A covered entity shall make reasonable modifications
150 in policies, practices, or procedures when the modifications are

151 necessary to allow an individual with a disability access to
152 services, including transplant-related counseling, information,
153 coverage, or treatment, unless the covered entity can
154 demonstrate that making the modifications would fundamentally
155 alter the nature of the services.

156 (5) A covered entity shall take such steps as may be
157 necessary to ensure that an individual with a disability is not
158 denied services, including transplant-related counseling,
159 information, coverage, or treatment, due to the absence of
160 auxiliary aids and services, unless the covered entity can
161 demonstrate that taking the steps would fundamentally alter the
162 nature of the services being offered or would result in an undue
163 burden on the covered entity.

164 (6) If a covered entity violates this section, the
165 qualified individual who is affected by the violation may bring
166 an action in the appropriate circuit court for injunctive or
167 other equitable relief.

168 (7) This section may not be construed to require a covered
169 entity to make a referral or recommendation for or perform a
170 medically inappropriate organ transplant.

171 Section 2. Section 627.64197, Florida Statutes, is created
172 to read:

173 627.64197 Nondiscrimination of coverage for organ
174 transplants.—A health insurance policy issued, delivered, or
175 renewed on or after July 1, 2020, in this state by an insurer

176 which provides coverage for organ transplants on an expense-
177 incurred basis may not deny coverage for an organ transplant
178 solely on the basis of an insured's disability. This section may
179 not be construed to require such insurer to provide coverage for
180 an organ transplant that is not medically necessary. For
181 purposes of this section, the term "organ transplant" has the
182 same meaning as in s. 765.523.

183 Section 3. Section 627.65736, Florida Statutes, is created
184 to read:

185 627.65736 Nondiscrimination of coverage for organ
186 transplants.-A group health insurance policy delivered, issued,
187 or renewed on or after July 1, 2020, in this state by an insurer
188 or nonprofit health care services plan which provides coverage
189 for organ transplants on an expense-incurred basis may not deny
190 coverage for an organ transplant solely on the basis of an
191 insured's disability. This section may not be construed to
192 require such insurer or nonprofit health care service plan to
193 provide coverage for an organ transplant that is not medically
194 necessary. For purposes of this section, the term "organ
195 transplant" has the same meaning as in s. 765.523.

196 Section 4. Section 641.31075, Florida Statutes, is created
197 to read:

198 641.31075 Nondiscrimination of coverage for organ
199 transplants.-A health maintenance contract issued or renewed on
200 or after July 1, 2020, in this state by a health maintenance

HB 1179

2020

201 organization which provides coverage for organ transplants may
202 not deny coverage for an organ transplant solely on the basis of
203 a subscriber's disability. This section may not be construed to
204 require such health maintenance organization to provide coverage
205 for an organ transplant that is not medically necessary. For
206 purposes of this section, the term "organ transplant" has the
207 same meaning as in s. 765.523.

208 Section 5. This act shall take effect July 1, 2020.