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CS/HB 1179

2020 Legislature

1  
2 An act relating to nondiscrimination in organ  
3 transplants; creating s. 765.523, F.S.; providing  
4 definitions; 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; providing criteria  
13 for such modifications; requiring certain entities to  
14 take certain necessary steps to ensure an individual  
15 with a disability is not denied services, with  
16 exceptions; providing a cause of action for injunctive  
17 and other relief; providing construction; creating ss.  
18 627.64197, 627.65736, and 641.31075, F.S.; prohibiting  
19 insurers, nonprofit health care service plans, and  
20 health maintenance organizations that provide coverage  
21 for organ transplants from denying coverage solely on  
22 the basis of an individual's disability under certain  
23 circumstances; providing construction; defining the  
24 term "organ transplant"; providing an effective date.  
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26 | Be It Enacted by the Legislature of the State of Florida:

27 |  
 28 |       Section 1. Section 765.523, Florida Statutes, is created  
 29 | to read:

30 |       765.523 Discrimination in access to anatomical gifts and  
 31 | organ transplants prohibited.—

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

33 |       (a) "Auxiliary aids and services" means:

34 |       1. Qualified interpreters or other effective methods of  
 35 | making aurally delivered materials available to individuals with  
 36 | hearing impairments.

37 |       2. Qualified readers, recorded texts, texts in an  
 38 | accessible electronic format, or other effective methods of  
 39 | making visually delivered materials available to individuals  
 40 | with visual impairments.

41 |       3. Supported decisionmaking services, including any of the  
 42 | following:

43 |       a. The use of a support person to assist an individual in  
 44 | making medical decisions, communicating information to the  
 45 | individual, or ascertaining his or her wishes.

46 |       b. The provision of information to a person designated by  
 47 | the individual, consistent with federal and state laws governing  
 48 | the disclosure of health information.

49 |       c. Measures used to ensure that the individual's guardian  
 50 | or legal representative, if any, is included in decisions

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51 involving the individual's health care and that medical  
 52 decisions are in accordance with the individual's own expressed  
 53 interests.

54 d. Any other aid or service that is used to provide  
 55 information in a format that is readily understandable and  
 56 accessible to individuals with cognitive, neurological,  
 57 developmental, or intellectual disabilities.

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

59 1. A licensed health care practitioner as defined in s.  
 60 456.001.

61 2. A health care facility as defined in s. 408.07.

62 3. Any other entity responsible for potential recipients  
 63 of anatomical gifts or organ transplants.

64 (c) "Disability" has the same meaning as "developmental  
 65 disability" and "intellectual disability" as those terms are  
 66 defined in s. 393.063.

67 (d) "Organ transplant" means the transplantation or  
 68 transfusion of a part of a human body into the body of another  
 69 individual for the purpose of treating or curing a medical  
 70 condition.

71 (e) "Qualified individual" means an individual who has a  
 72 disability and meets the clinical eligibility requirements for  
 73 the receipt of an anatomical gift or an organ transplant,  
 74 regardless of:

75 1. The support networks available to the individual;

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76           2. The provision of auxiliary aids and services; or  
 77           3. Reasonable modifications to the policies, practices, or  
 78 procedures of a covered entity pursuant to subsection (4).  
 79           (2) A covered entity may not do any of the following  
 80 solely on the basis of an individual's disability:  
 81           (a) Consider a qualified individual ineligible to receive  
 82 an anatomical gift or organ transplant.  
 83           (b) Deny medical or other services related to an organ  
 84 transplant, including evaluation, surgery, counseling, and  
 85 posttransplant treatment and services.  
 86           (c) Refuse to refer the individual to an organ procurement  
 87 organization or a related specialist for the purpose of  
 88 evaluation or receipt of an organ transplant.  
 89           (d) Refuse to place a qualified individual on an organ  
 90 transplant waiting list.  
 91           (e) Place a qualified individual at a lower priority  
 92 position on an organ transplant waiting list than the position  
 93 at which the qualified individual would have been placed if not  
 94 for the disability.  
 95           (3) (a) A covered entity may take an individual's  
 96 disability into account if, following an individualized  
 97 evaluation of him or her, a physician finds the individual's  
 98 disability to be medically significant to the provision of the  
 99 anatomical gift or organ transplant, but only to the extent that  
 100 the covered entity is making treatment or coverage

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101 recommendations or decisions for the individual.

102 (b) If an individual has the necessary support system to  
103 assist him or her in complying with posttransplant medical  
104 requirements, a covered entity may not consider the individual's  
105 inability to independently comply with the posttransplant  
106 medical requirements to be medically significant for the  
107 purposes of paragraph (a).

108 (4) A covered entity shall make reasonable modifications  
109 to policies, practices, or procedures when the modifications are  
110 necessary to allow an individual with a disability access to  
111 services, including transplant-related counseling, information,  
112 coverage, or treatment, unless the covered entity can  
113 demonstrate that making the modifications would fundamentally  
114 alter the nature of the services. Such modifications shall  
115 include, but need not be limited to, communication with the  
116 persons responsible for supporting the individual with his or  
117 her postsurgical and posttransplant care, including medication.  
118 Such modifications shall also consider the support networks  
119 available to the individual, including, but not limited to,  
120 family, friends, and home and community-based services coverage  
121 when determining whether the individual is able to comply with  
122 posttransplant medical requirements.

123 (5) A covered entity shall take such steps as may be  
124 necessary to ensure that an individual with a disability is not  
125 denied services, including transplant-related counseling,

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126 information, coverage, or treatment, due to the absence of  
 127 auxiliary aids and services, unless the covered entity can  
 128 demonstrate that taking the steps would fundamentally alter the  
 129 nature of the services being offered or would result in an undue  
 130 burden on the covered entity.

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

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

138 Section 2. Section 627.64197, Florida Statutes, is created  
 139 to read:

140 627.64197 Coverage for organ transplants.—A health  
 141 insurance policy issued, delivered, or renewed on or after July  
 142 1, 2020, in this state by an insurer which provides coverage for  
 143 organ transplants on an expense-incurred basis may not deny  
 144 coverage for an organ transplant solely on the basis of an  
 145 insured's disability. This section may not be construed to  
 146 require such insurer to provide coverage for an organ transplant  
 147 that is not medically necessary. For purposes of this section,  
 148 the term "organ transplant" has the same meaning as in s.  
 149 765.523.

150 Section 3. Section 627.65736, Florida Statutes, is created

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151 to read:

152 627.65736 Coverage for organ transplants.—A group health  
153 insurance policy delivered, issued, or renewed on or after July  
154 1, 2020, in this state by an insurer or nonprofit health care  
155 services plan which provides coverage for organ transplants on  
156 an expense-incurred basis may not deny coverage for an organ  
157 transplant solely on the basis of an insured's disability. This  
158 section may not be construed to require such insurer or  
159 nonprofit health care service plan to provide coverage for an  
160 organ transplant that is not medically necessary. For purposes  
161 of this section, the term "organ transplant" has the same  
162 meaning as in s. 765.523.

163 Section 4. Section 641.31075, Florida Statutes, is created  
164 to read:

165 641.31075 Coverage for organ transplants.—A health  
166 maintenance contract issued or renewed on or after July 1, 2020,  
167 in this state by a health maintenance organization which  
168 provides coverage for organ transplants may not deny coverage  
169 for an organ transplant solely on the basis of a subscriber's  
170 disability. This section may not be construed to require such  
171 health maintenance organization to provide coverage for an organ  
172 transplant that is not medically necessary. For purposes of this  
173 section, the term "organ transplant" has the same meaning as in  
174 s. 765.523.

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