



844372

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/11/2020	.	
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The Committee on Banking and Insurance (Bean) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

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

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

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

(a) "Auxiliary aids and services" means:



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11 1. Qualified interpreters or other effective methods of
12 making aurally delivered materials available to individuals with
13 hearing impairments.

14 2. Qualified readers, recorded texts, texts in an
15 accessible electronic format, or other effective methods of
16 making visually delivered materials available to individuals
17 with visual impairments.

18 3. Supported decisionmaking services, including any of the
19 following:

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

23 b. The provision of information to a person designated by
24 the individual, consistent with federal and state laws governing
25 the disclosure of health information.

26 c. Measures used to ensure that the individual's guardian
27 or legal representative, if any, is included in decisions
28 involving the individual's health care and that medical
29 decisions are in accordance with the individual's own expressed
30 interests.

31 d. Any other aid or service that is used to provide
32 information in a format that is readily understandable and
33 accessible to individuals with cognitive, neurological,
34 developmental, or intellectual disabilities.

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

36 1. A licensed health care practitioner as defined in s.
37 456.001.

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

39 3. Any other entity responsible for potential recipients of



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40 an anatomical gift or organ transplant.

41 (c) "Disability" has the same meaning as "developmental
42 disability" and "intellectual disability" as those terms are
43 defined in s. 393.063.

44 (d) "Organ transplant" means the transplantation or
45 transfusion of a part of a human body into the body of another
46 individual for the purpose of treating or curing a medical
47 condition.

48 (e) "Qualified individual" means an individual who has a
49 disability and meets the clinical eligibility requirements for
50 the receipt of an anatomical gift or an organ transplant,
51 regardless of:

- 52 1. The support networks available to the individual;
53 2. The provision of auxiliary aids and services; or
54 3. Reasonable modifications to the policies, practices, or
55 procedures of a covered entity pursuant to subsection (4).

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

58 (a) Consider a qualified individual ineligible to receive
59 an anatomical gift or organ transplant.

60 (b) Deny medical or other services related to an organ
61 transplant, including evaluation, surgery, counseling, and
62 posttransplant treatment and services.

63 (c) Refuse to refer the individual to an organ procurement
64 organization or a related specialist for the purpose of
65 evaluation or receipt of an organ transplant.

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

68 (e) Place a qualified individual at a lower priority



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69 position on an organ transplant waiting list than the position
70 at which the qualified individual would have been placed if not
71 for the disability.

72 (3) (a) A covered entity may take an individual's disability
73 into account if, following an individualized evaluation of him
74 or her, a physician finds the individual's disability to be
75 medically significant to the provision of the anatomical gift or
76 organ transplant, but only to the extent that the covered entity
77 is making treatment or coverage recommendations or decisions for
78 the individual.

79 (b) If an individual has the necessary support system to
80 assist him or her in complying with posttransplant medical
81 requirements, a covered entity may not consider the individual's
82 inability to independently comply with the posttransplant
83 medical requirements to be medically significant for the
84 purposes of paragraph (a).

85 (4) A covered entity shall make reasonable modifications to
86 policies, practices, or procedures when the modifications are
87 necessary to allow an individual with a disability access to
88 services, including transplant-related counseling, information,
89 coverage, or treatment, unless the covered entity can
90 demonstrate that making the modifications would fundamentally
91 alter the nature of the services. Such modifications shall
92 include, but not be limited to, communication with the persons
93 responsible for supporting the individual with his or her
94 postsurgical and posttransplant care, including medication. Such
95 modifications shall also consider the support networks available
96 to the individual, including, but not limited to, family,
97 friends, and home and community-based services coverage when



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98 determining whether the individual is able to comply with
99 posttransplant medical requirements.

100 (5) A covered entity shall take such steps as may be
101 necessary to ensure that an individual with a disability is not
102 denied services, including transplant-related counseling,
103 information, coverage, or treatment, due to the absence of
104 auxiliary aids and services, unless the covered entity can
105 demonstrate that taking the steps would fundamentally alter the
106 nature of the services being offered or would result in an undue
107 burden on the covered entity.

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

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

115 Section 2. Section 627.64197, Florida Statutes, is created
116 to read:

117 627.64197 Coverage for organ transplants.—A health
118 insurance policy issued, delivered, or renewed on or after July
119 1, 2020, in this state by an insurer which provides coverage for
120 organ transplants on an expense-incurred basis may not deny
121 coverage for an organ transplant solely on the basis of an
122 insured's disability. This section may not be construed to
123 require such insurer to provide coverage for an organ transplant
124 that is not medically necessary. For purposes of this section,
125 the term "organ transplant" has the same meaning as in s.
126 765.523.



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127 Section 3. Section 627.65736, Florida Statutes, is created
128 to read:

129 627.65736 Coverage for organ transplants.—A group health
130 insurance policy delivered, issued, or renewed on or after July
131 1, 2020, in this state by an insurer or nonprofit health care
132 services plan which provides coverage for organ transplants on
133 an expense-incurred basis may not deny coverage for an organ
134 transplant solely on the basis of an insured's disability. This
135 section may not be construed to require such insurer or
136 nonprofit health care service plan to provide coverage for an
137 organ transplant that is not medically necessary. For purposes
138 of this section, the term "organ transplant" has the same
139 meaning as in s. 765.523.

140 Section 4. Section 641.31075, Florida Statutes, is created
141 to read:

142 641.31075 Coverage for organ transplants.—A health
143 maintenance contract issued or renewed on or after July 1, 2020,
144 in this state by a health maintenance organization which
145 provides coverage for organ transplants may not deny coverage
146 for an organ transplant solely on the basis of a subscriber's
147 disability. This section may not be construed to require such
148 health maintenance organization to provide coverage for an organ
149 transplant that is not medically necessary. For purposes of this
150 section, the term "organ transplant" has the same meaning as in
151 s. 765.523.

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

153
154 ===== T I T L E A M E N D M E N T =====

155 And the title is amended as follows:



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156 Delete everything before the enacting clause
157 and insert:

158 A bill to be entitled
159 An act relating to nondiscrimination in organ
160 transplants; creating s. 765.523, F.S.; defining
161 terms; prohibiting certain entities from making
162 certain determinations or engaging in certain actions
163 related to organ transplants solely on the basis of an
164 individual's disability; specifying an instance where
165 certain entities may consider an individual's
166 disability, with an exception; requiring certain
167 entities to make reasonable modifications in their
168 policies, practices, and procedures under certain
169 circumstances, with an exception; providing criteria
170 for such modifications; requiring certain entities to
171 take certain necessary steps to ensure an individual
172 with a disability is not denied services, with
173 exceptions; providing a cause of action for injunctive
174 and other relief; providing construction; creating ss.
175 627.64197, 627.65736, and 641.31075, F.S.; prohibiting
176 insurers, nonprofit health care service plans, and
177 health maintenance organizations that provide coverage
178 for organ transplants from denying coverage solely on
179 the basis of an individual's disability under certain
180 circumstances; providing construction; defining the
181 term "organ transplant"; providing an effective date.