

By Senator Bean

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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  
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

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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 to  
52 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

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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 other  
74 legal representative authorized to make health care decisions on  
75 his or her behalf, any measures used to ensure that the guardian  
76 or legal representative is included in decisions involving the  
77 individual's health care and that medical decisions are in  
78 accordance with the individual's own expressed interests.

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

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

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

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

87 3. A residential facility licensed under chapter 393.

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88 4. An institutional medical unit in a correctional  
89 facility.

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

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

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

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

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

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

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

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117 individual is able to comply with posttransplant medical  
118 requirements.

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

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

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

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

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

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

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

142 (b) If an individual has the necessary support system to  
143 assist him or her in complying with posttransplant medical  
144 requirements, a covered entity may not consider the individual's  
145 inability to independently comply with the posttransplant

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146 medical requirements to be medically significant for the  
147 purposes of paragraph (a).

148 (4) A covered entity shall make reasonable modifications in  
149 policies, practices, or procedures when the modifications are  
150 necessary to allow an individual with a disability access to  
151 services, including transplant-related counseling, information,  
152 coverage, or treatment, unless the covered entity can  
153 demonstrate that making the modifications would fundamentally  
154 alter the nature of the services.

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

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

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

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

172 627.64197 Nondiscrimination of coverage for organ  
173 transplants.—A health insurance policy issued, delivered, or  
174 renewed on or after July 1, 2020, in this state by an insurer

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

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

184 627.65736 Nondiscrimination of coverage for organ  
185 transplants.—A group health insurance policy delivered, issued,  
186 or renewed on or after July 1, 2020, in this state by an insurer  
187 or nonprofit health care services plan which provides coverage  
188 for organ transplants on an expense-incurred basis may not deny  
189 coverage for an organ transplant solely on the basis of an  
190 insured's disability. This section may not be construed to  
191 require such insurer or nonprofit health care service plan to  
192 provide coverage for an organ transplant that is not medically  
193 necessary. For purposes of this section, the term "organ  
194 transplant" has the same meaning as in s. 765.523.

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

197 641.31075 Nondiscrimination of coverage for organ  
198 transplants.—A health maintenance contract issued or renewed on  
199 or after July 1, 2020, in this state by a health maintenance  
200 organization which provides coverage for organ transplants may  
201 not deny coverage for an organ transplant solely on the basis of  
202 a subscriber's disability. This section may not be construed to  
203 require such health maintenance organization to provide coverage

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204 for an organ transplant that is not medically necessary. For  
205 purposes of this section, the term "organ transplant" has the  
206 same meaning as in s. 765.523.

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