

By the Committee on Banking and Insurance; and 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; 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:

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

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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
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:

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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 of
63 an anatomical gift or organ transplant.

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;
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 solely
80 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

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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 disability
96 into account if, following an individualized evaluation of him
97 or her, a physician finds the individual's disability to be
98 medically significant to the provision of the anatomical gift or
99 organ transplant, but only to the extent that the covered entity
100 is making treatment or coverage recommendations or decisions for
101 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 to
109 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 not be limited to, communication with the persons
116 responsible for supporting the individual with his or her

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117 postsurgical and posttransplant care, including medication. Such
118 modifications shall also consider the support networks available
119 to the individual, including, but not limited to, family,
120 friends, and home and community-based services coverage when
121 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,
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

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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
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.

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