

By the Committees on Appropriations; and Banking and Insurance;
and Senator Bean

576-04306-20

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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 certain individual and group health insurers and
20 health maintenance organizations, respectively, from
21 denying coverage for organ transplants solely on the
22 basis of an individual's disability under certain
23 circumstances; providing construction; defining the
24 terms "disability" and "organ transplant"; amending s.
25 627.6699, F.S.; requiring certain health benefit plans
26 covering small employers to comply with certain
27 provisions; providing an effective date.

28
29 Be It Enacted by the Legislature of the State of Florida:

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

33 765.523 Discrimination in access to anatomical gifts and
34 organ transplants prohibited.-

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

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

37 1. Qualified interpreters or other effective methods of
38 making aurally delivered materials available to individuals with
39 hearing impairments.

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

44 3. Supported decisionmaking services, including any of the
45 following:

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

49 b. The provision of information to a person designated by
50 the individual, consistent with federal and state laws governing
51 the disclosure of health information.

52 c. Measures used to ensure that the individual's guardian
53 or legal representative, if any, is included in decisions
54 involving the individual's health care and that medical
55 decisions are in accordance with the individual's own expressed
56 interests.

57 d. Any other aid or service that is used to provide
58 information in a format that is readily understandable and

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59 accessible to individuals with cognitive, neurological,
60 developmental, or intellectual disabilities.

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

62 1. A licensed health care practitioner as defined in s.
63 456.001.

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

65 3. Any other entity responsible for potential recipients of
66 an anatomical gift or organ transplant.

67 (c) "Disability" has the same meaning as "developmental
68 disability" and "intellectual disability" as those terms are
69 defined in s. 393.063.

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

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

78 1. The support networks available to the individual;

79 2. The provision of auxiliary aids and services; or

80 3. Reasonable modifications to the policies, practices, or
81 procedures of a covered entity pursuant to subsection (4).

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

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

86 (b) Deny medical or other services related to an organ
87 transplant, including evaluation, surgery, counseling, and

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88 posttransplant treatment and services.

89 (c) Refuse to refer the individual to an organ procurement
90 organization or a related specialist for the purpose of
91 evaluation or receipt of an organ transplant.

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

94 (e) Place a qualified individual at a lower priority
95 position on an organ transplant waiting list than the position
96 at which the qualified individual would have been placed if not
97 for the disability.

98 (3) (a) A covered entity may take an individual's disability
99 into account if, following an individualized evaluation of him
100 or her, a physician finds the individual's disability to be
101 medically significant to the provision of the anatomical gift or
102 organ transplant, but only to the extent that the covered entity
103 is making treatment or coverage recommendations or decisions for
104 the individual.

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

111 (4) A covered entity shall make reasonable modifications to
112 policies, practices, or procedures when the modifications are
113 necessary to allow an individual with a disability access to
114 services, including transplant-related counseling, information,
115 coverage, or treatment, unless the covered entity can
116 demonstrate that making the modifications would fundamentally

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117 alter the nature of the services. Such modifications shall
118 include, but not be limited to, communication with the persons
119 responsible for supporting the individual with his or her
120 postsurgical and posttransplant care, including medication. Such
121 modifications shall also consider the support networks available
122 to the individual, including, but not limited to, family,
123 friends, and home and community-based services coverage when
124 determining whether the individual is able to comply with
125 posttransplant medical requirements.

126 (5) A covered entity shall take such steps as may be
127 necessary to ensure that an individual with a disability is not
128 denied services, including transplant-related counseling,
129 information, coverage, or treatment, due to the absence of
130 auxiliary aids and services, unless the covered entity can
131 demonstrate that taking the steps would fundamentally alter the
132 nature of the services being offered or would result in an undue
133 burden on the covered entity.

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

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

141 Section 2. Section 627.64197, Florida Statutes, is created
142 to read:

143 627.64197 Coverage for organ transplants.—A health
144 insurance policy that provides major medical coverage and
145 coverage for organ transplants and that is delivered, issued, or

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146 renewed on or after July 1, 2020, in this state by an insurer
147 may not deny coverage for an organ transplant solely on the
148 basis of an insured's disability. This section may not be
149 construed to require such insurer to provide coverage for an
150 organ transplant that is not medically necessary. For purposes
151 of this section, the terms "disability" and "organ transplant"
152 have the same meaning as in s. 765.523.

153 Section 3. Section 627.65736, Florida Statutes, is created
154 to read:

155 627.65736 Coverage for organ transplants.—A group health
156 insurance policy that provides major medical coverage and
157 coverage for organ transplants and that is delivered, issued, or
158 renewed on or after July 1, 2020, in this state by an insurer
159 may not deny coverage for an organ transplant solely on the
160 basis of an insured's disability. This section may not be
161 construed to require such insurer to provide coverage for an
162 organ transplant that is not medically necessary. For purposes
163 of this section, the terms "disability" and "organ transplant"
164 have the same meaning as in s. 765.523.

165 Section 4. Paragraph (g) is added to subsection (5) of
166 section 627.6699, Florida Statutes, to read:

167 627.6699 Employee Health Care Access Act.—

168 (5) AVAILABILITY OF COVERAGE.—

169 (g) A health benefit plan covering small employers which is
170 delivered, issued, or renewed on or after July 1, 2020, must
171 comply with s. 627.65736.

172 Section 5. Section 641.31075, Florida Statutes, is created
173 to read:

174 641.31075 Coverage for organ transplants.—A health

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175 maintenance contract that provides major medical coverage and
176 coverage for organ transplants and that is delivered, issued, or
177 renewed on or after July 1, 2020, in this state by a health
178 maintenance organization may not deny coverage for an organ
179 transplant solely on the basis of a subscriber's disability.
180 This section may not be construed to require such health
181 maintenance organization to provide coverage for an organ
182 transplant that is not medically necessary. For purposes of this
183 section, the terms "disability" and "organ transplant" have the
184 same meaning as in s. 765.523.

185 Section 6. This act shall take effect July 1, 2020.