

CHAPTER 2020-139

Committee Substitute for House Bill No. 1179

An act relating to nondiscrimination in organ transplants; creating s. 765.523, F.S.; providing definitions; prohibiting certain entities from making certain determinations or engaging in certain actions related to organ transplants solely on the basis of an individual's disability; specifying an instance where certain entities may consider an individual's disability, with an exception; requiring certain entities to make reasonable modifications in their policies, practices, and procedures under certain circumstances, with an exception; providing criteria for such modifications; requiring certain entities to take certain necessary steps to ensure an individual with a disability is not denied services, with exceptions; providing a cause of action for injunctive and other relief; providing construction; creating ss. 627.64197, 627.65736, and 641.31075, F.S.; prohibiting insurers, nonprofit health care service plans, and health maintenance organizations that provide coverage for organ transplants from denying coverage solely on the basis of an individual's disability under certain circumstances; providing construction; defining the term "organ transplant"; providing an effective date.

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

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:

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

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

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

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

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

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

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

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

1. A licensed health care practitioner as defined in s. 456.001.
2. A health care facility as defined in s. 408.07.
3. Any other entity responsible for potential recipients of anatomical gifts or organ transplants.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

627.64197 Coverage for organ transplants.—A health insurance policy issued, delivered, or renewed on or after July 1, 2020, in this state by an

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

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

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

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

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

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

Approved by the Governor June 29, 2020.

Filed in Office Secretary of State June 29, 2020.