
SENATE BILL 5405

State of Washington

66th Legislature

2019 Regular Session

By Senators Padden, Randall, Zeiger, Fortunato, Billig, Wilson, C.,
Nguyen, and Kuderer

Read first time 01/21/19. Referred to Committee on Health & Long
Term Care.

1 AN ACT Relating to nondiscrimination in access to organ
2 transplants; adding a new chapter to Title 68 RCW; and prescribing
3 penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** FINDINGS. (1) The legislature finds that a
6 mental or physical disability does not diminish a person's right to
7 health care.

8 (2) The legislature finds that the Americans with disabilities
9 act of 1990 prohibits discrimination against persons with
10 disabilities, yet many individuals with disabilities still experience
11 discrimination in accessing critical health care services.

12 (3) The legislature finds that individuals with mental and
13 physical disabilities have historically been denied life-saving organ
14 transplants based on assumptions that their lives are less worthy,
15 that they are incapable of complying with posttransplant medical
16 regimens, or that they lack adequate support systems to ensure such
17 compliance.

18 (4) The legislature finds that although organ transplant centers
19 must consider medical and psychosocial criteria when determining if a
20 patient is suitable to receive an organ transplant, transplant
21 centers that participate in medicare, medicaid, and other federal

1 funding programs are required to use patient selection criteria that
2 result in a fair and nondiscriminatory distribution of organs.

3 (5) The legislature finds that Washington residents in need of
4 organ transplants are entitled to assurances that they will not
5 encounter discrimination on the basis of a disability.

6 NEW SECTION. **Sec. 2.** DEFINITIONS. The definitions in this
7 section apply throughout this chapter unless the context clearly
8 requires otherwise.

9 (1) "Anatomical gift" has the same meaning as provided in RCW
10 68.64.010.

11 (2) "Auxiliary aids and services" include, but are not limited
12 to:

13 (a) Qualified interpreters or other effective methods of making
14 aurally delivered materials available to individuals with hearing
15 impairments;

16 (b) Qualified readers, taped texts, or other effective methods of
17 making visually delivered materials available to individuals with
18 visual impairments;

19 (c) Provision of information in a format that is accessible for
20 individuals with cognitive, neurological, developmental, and/or
21 intellectual disabilities;

22 (d) Provision of supported decision-making services; and

23 (e) Acquisition or modification of equipment or devices.

24 (3) "Covered entity" means:

25 (a) Any licensed provider of health care services, including
26 licensed health care practitioners, hospitals, nursing facilities,
27 laboratories, intermediate care facilities, psychiatric residential
28 treatment facilities, institutions for individuals with intellectual
29 or developmental disabilities, and prison health centers; or

30 (b) Any entity responsible for matching anatomical gift donors to
31 potential recipients.

32 (4) "Disability" has the same meaning as provided in the
33 Americans with disabilities act of 1990, as amended by the Americans
34 with disabilities act amendments act of 2008, 42 U.S.C. Sec. 12102.

35 (5) "Qualified individual" means an individual who, with or
36 without the support networks available to them, provision of
37 auxiliary aids and services, and/or reasonable modifications to
38 policies or practices, meets the essential eligibility requirements
39 for the receipt of an anatomical gift.

1 (6) "Reasonable modifications to policies or practices" include,
2 but are not limited to:

3 (a) Communication with individuals responsible for supporting an
4 individual with postsurgical and posttransplantation care, including
5 medication; and

6 (b) Consideration of support networks available to the
7 individual, including family, friends, and home and community-based
8 services, including home and community-based services funded through
9 medicaid, medicare, another health plan in which the individual is
10 enrolled, or any program or source of funding available to the
11 individual, in determining whether the individual is able to comply
12 with posttransplant medical requirements.

13 (7) "Supported decision making" means the use of a support person
14 to assist an individual in making medical decisions, communicate
15 information to the individual, or ascertain an individual's wishes.
16 "Supported decision making" may include:

17 (a) The inclusion of the individual's attorney-in-fact, health
18 care proxy, or any person of the individual's choice in
19 communications about the individual's medical care;

20 (b) Permitting the individual to designate a person of their
21 choice for the purposes of supporting that individual in
22 communicating, processing information, or making medical decisions;

23 (c) Providing auxiliary aids and services to facilitate the
24 individual's ability to communicate and process health-related
25 information, including use of assistive communication technology;

26 (d) Providing information to persons designated by the
27 individual, consistent with the provisions of the health insurance
28 portability and accountability act of 1996, 42 U.S.C. Sec. 1301 et
29 seq., and other applicable laws and regulations governing disclosure
30 of health information;

31 (e) Providing health information in a format that is readily
32 understandable by the individual; and

33 (f) Working with a court-appointed guardian or other individual
34 responsible for making medical decisions on behalf of the individual,
35 to ensure that the individual is included in decisions involving his
36 or her own health care and that medical decisions are in accordance
37 with the individual's own expressed interests.

1 NEW SECTION. **Sec. 3.** PROHIBITION OF DISCRIMINATION. (1) A

2 covered entity may not, solely on the basis of a qualified
3 individual's mental or physical disability:

4 (a) Deem an individual ineligible to receive an anatomical gift
5 or organ transplant;

6 (b) Deny medical or related organ transplantation services,
7 including evaluation, surgery, counseling, and postoperative
8 treatment and care;

9 (c) Refuse to refer the individual to a transplant center or
10 other related specialist for the purpose of evaluation or receipt of
11 an organ transplant;

12 (d) Refuse to place an individual on an organ transplant waiting
13 list, or placement of the individual at a lower-priority position on
14 the list than the position at which he or she would have been placed
15 if not for his or her disability; or

16 (e) Decline insurance coverage for any procedure associated with
17 the receipt of the anatomical gift, including posttransplantation
18 care.

19 (2) Notwithstanding subsection (1) of this section, a covered
20 entity may take an individual's disability into account when making
21 treatment and/or coverage recommendations or decisions, solely to the
22 extent that the physical or mental disability has been found by a
23 physician, following an individualized evaluation of the potential
24 recipient, to be medically significant to the provision of the
25 anatomical gift. The provisions of this section may not be deemed to
26 require referrals or recommendations for, or the performance of,
27 medically inappropriate organ transplants.

28 (3) If an individual has the necessary support system to assist
29 the individual in complying with posttransplant medical requirements,
30 an individual's inability to independently comply with those
31 requirements may not be deemed to be medically significant for the
32 purposes of subsection (2) of this section.

33 (4) A covered entity must make reasonable modifications to
34 policies, practices, or procedures, when such modifications are
35 necessary to make services such as transplantation-related
36 counseling, information, coverage, or treatment available to
37 qualified individuals with disabilities, unless the entity can
38 demonstrate that making such modifications would fundamentally alter
39 the nature of such services.

1 (5) A covered entity must take such steps as may be necessary to
2 ensure that no qualified individual with a disability is denied
3 services such as transplantation-related counseling, information,
4 coverage, or treatment because of the absence of auxiliary aids and
5 services, unless the entity can demonstrate that taking such steps
6 would fundamentally alter the nature of the services being offered or
7 would result in an undue burden.

8 (6) A covered entity must otherwise comply with the requirements
9 of Titles II and III of the Americans with disabilities act of 1990
10 and the Americans with disabilities act amendments act of 2008.

11 (7) The provisions of this section apply to each part of the
12 organ transplant process.

13 NEW SECTION. **Sec. 4.** ENFORCEMENT. (1) Any individual who has
14 been subjected to discrimination in violation of this chapter may
15 initiate a civil action in a court of competent jurisdiction to
16 enjoin further violations and recover the cost of the suit including
17 reasonable attorneys' fees.

18 (2) The court must accord priority on its calendar and
19 expeditiously proceed with an action brought under this chapter.

20 (3) Nothing in this section is intended to limit or replace
21 available remedies under the Americans with disabilities act of 1990
22 and the Americans with disabilities act amendments act of 2008 or any
23 other applicable law.

24 NEW SECTION. **Sec. 5.** Sections 1 through 4 of this act
25 constitute a new chapter in Title 68 RCW.

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