

SSB 5405 - H COMM AMD

By Committee on Health Care & Wellness

ADOPTED 04/09/2019

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** FINDINGS. (1) The legislature finds that
4 a mental or physical disability does not diminish a person's right to
5 health care including organ transplantation.

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

10 (3) The legislature finds that although organ transplant centers
11 must consider medical and psychosocial criteria when determining if a
12 patient is suitable to receive an organ transplant, transplant
13 centers that participate in medicare, medicaid, and other federal
14 funding programs are required to use patient selection criteria that
15 result in a fair and nondiscriminatory distribution of organs.

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

19 NEW SECTION. **Sec. 2.** DEFINITIONS. The definitions in this
20 section apply throughout this chapter unless the context clearly
21 requires otherwise.

22 (1) "Anatomical gift" has the same meaning as provided in RCW
23 68.64.010.

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

26 (a) Qualified interpreters or other effective methods of making
27 aurally delivered materials available to individuals with hearing
28 impairments;

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

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

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

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

9 (3) "Covered entity" means:

10 (a) Any licensed provider of health care services, including
11 licensed health care practitioners, hospitals, nursing facilities,
12 laboratories, intermediate care facilities, psychiatric residential
13 treatment facilities, institutions for individuals with intellectual
14 or developmental disabilities, and prison health centers; or

15 (b) Any entity responsible for matching anatomical gift donors to
16 potential recipients.

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

20 (5) "Qualified individual" means an individual who, with or
21 without the support networks available to them, provision of
22 auxiliary aids and services, and/or reasonable modifications to
23 policies or practices, meets the essential eligibility requirements
24 for the receipt of an anatomical gift.

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

27 (a) Communication with individuals responsible for supporting an
28 individual with postsurgical and posttransplantation care, including
29 medication; and

30 (b) Consideration of support networks available to the
31 individual, including family, friends, and home and community-based
32 services, including home and community-based services funded through
33 medicaid, medicare, another health plan in which the individual is
34 enrolled, or any program or source of funding available to the
35 individual, in determining whether the individual is able to comply
36 with posttransplant medical requirements.

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

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

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

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

10 (d) Providing information to persons designated by the
11 individual, consistent with the provisions of the health insurance
12 portability and accountability act of 1996, 42 U.S.C. Sec. 1301 et
13 seq., and other applicable laws and regulations governing disclosure
14 of health information;

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

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

22 NEW SECTION. **Sec. 3.** PROHIBITION OF DISCRIMINATION. (1) A
23 covered entity may not, solely on the basis of a qualified
24 individual's mental or physical disability:

25 (a) Deem an individual ineligible to receive an anatomical gift
26 or organ transplant;

27 (b) Deny medical or related organ transplantation services,
28 including evaluation, surgery, counseling, and postoperative
29 treatment and care;

30 (c) Refuse to refer the individual to a transplant center or
31 other related specialist for the purpose of evaluation or receipt of
32 an organ transplant;

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

37 (e) Decline insurance coverage for any procedure associated with
38 the receipt of the anatomical gift, including posttransplantation
39 care.

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

10 (3) If an individual has the necessary support system to provide
11 reasonable assurance that she or he will comply with posttransplant
12 medical requirements, an individual's inability to independently
13 comply with those requirements may not be deemed to be medically
14 significant for the purposes of subsection (2) of this section.

15 (4) A covered entity must make reasonable modifications to
16 policies, practices, or procedures, when such modifications are
17 necessary to make services such as transplantation-related
18 counseling, information, coverage, or treatment available to
19 qualified individuals with disabilities, unless the entity can
20 demonstrate that making such modifications would fundamentally alter
21 the nature of such services.

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

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

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

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

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

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

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

9 Correct the title.

EFFECT: Requires that an individual's support system provide reasonable assurance that he or she will comply with posttransplant medical requirements for purposes of determining the medical significance of his or her ability or inability to independently comply with posttransplant requirements.

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