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**SUBSTITUTE SENATE BILL 5405**

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**State of Washington**

**66th Legislature**

**2019 Regular Session**

**By** Senate Health & Long Term Care (originally sponsored by Senators Padden, Randall, Zeiger, Fortunato, Billig, Wilson, C., Nguyen, and Kuderer)

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 including organ transplantation.

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

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

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

4        (1) "Anatomical gift" has the same meaning as provided in RCW  
5 68.64.010.

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

8        (a) Qualified interpreters or other effective methods of making  
9 aurally delivered materials available to individuals with hearing  
10 impairments;

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

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

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

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

19        (3) "Covered entity" means:

20        (a) Any licensed provider of health care services, including  
21 licensed health care practitioners, hospitals, nursing facilities,  
22 laboratories, intermediate care facilities, psychiatric residential  
23 treatment facilities, institutions for individuals with intellectual  
24 or developmental disabilities, and prison health centers; or

25        (b) Any entity responsible for matching anatomical gift donors to  
26 potential recipients.

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

30        (5) "Qualified individual" means an individual who, with or  
31 without the support networks available to them, provision of  
32 auxiliary aids and services, and/or reasonable modifications to  
33 policies or practices, meets the essential eligibility requirements  
34 for the receipt of an anatomical gift.

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

37        (a) Communication with individuals responsible for supporting an  
38 individual with postsurgical and posttransplantation care, including  
39 medication; and

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

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

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

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

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

21 (d) Providing information to persons designated by the  
22 individual, consistent with the provisions of the health insurance  
23 portability and accountability act of 1996, 42 U.S.C. Sec. 1301 et  
24 seq., and other applicable laws and regulations governing disclosure  
25 of health information;

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

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

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

36 (a) Deem an individual ineligible to receive an anatomical gift  
37 or organ transplant;

1 (b) Deny medical or related organ transplantation services,  
2 including evaluation, surgery, counseling, and postoperative  
3 treatment and care;

4 (c) Refuse to refer the individual to a transplant center or  
5 other related specialist for the purpose of evaluation or receipt of  
6 an organ transplant;

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

11 (e) Decline insurance coverage for any procedure associated with  
12 the receipt of the anatomical gift, including posttransplantation  
13 care.

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

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

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

35 (5) A covered entity must take such steps as may be necessary to  
36 ensure that no qualified individual with a disability is denied  
37 services such as transplantation-related counseling, information,  
38 coverage, or treatment because of the absence of auxiliary aids and  
39 services, unless the entity can demonstrate that taking such steps

1 would fundamentally alter the nature of the services being offered or  
2 would result in an undue burden.

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

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

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

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

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

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

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