
SUBSTITUTE SENATE BILL 5405

AS AMENDED BY THE HOUSE

Passed Legislature - 2019 Regular Session

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 provide
24 reasonable assurance that she or he will comply with posttransplant
25 medical requirements, an individual's inability to independently
26 comply with those requirements may not be deemed to be medically
27 significant for the 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.

--- END ---