
RFD: Health

First Read: 21-Mar-23

2023 Regular Session
Enrolled, An Act,

Relating to health care; to prohibit discrimination against an individual with a disability in receiving an anatomical gift or organ transplant based on his or her disability; to require health care providers and organ transplant centers to provide reasonable accommodations to individuals with a disability in medical need of an anatomical gift or organ transplant; and to provide disabled individuals the right to equitable relief.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. This act shall be known and may be cited as Exton's Law.

Section 2. The Legislature finds all of the following:

(1) A mental or physical disability does not diminish an individual's right to health care.

(2) The Americans with Disabilities Act of 1990 prohibits discrimination against individuals with disabilities, yet many individuals with disabilities still experience discrimination in accessing critical health care services.

(3) Historically, individuals with mental and physical disabilities have been denied life-saving organ transplants based on assumptions their lives are less worthy, they are incapable of complying with post-transplant medical regimens, or they lack adequate support systems to ensure compliance.

(4) Although organ transplant centers must consider
medical and psychosocial criteria when determining if a patient is suitable to receive an organ transplant, transplant centers that participate in Medicare, Medicaid, and other federal funding programs are required to use patient selection criteria that result in a fair and nondiscriminatory distribution of organs.

(5) Alabama residents in need of organ transplants are entitled to assurances that they will not encounter discrimination on the basis of a disability.

Section 3. As used in this act, the following terms have the following meanings:

(1) ANATOMICAL GIFT. The donation of all or part of a human body to take effect after the donor's death for the purpose of transplantation or transfusion.

(2) AUXILIARY AIDS AND SERVICES. Reasonable accommodations that include the following:

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

   b. Qualified readers, taped texts, or other effective methods of making visually delivered material available to individuals with visual impairments.

   c. Acquisition or modification of equipment or devices.

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

(3) COVERED ENTITY. Any of the following:


c. An entity responsible for matching anatomical gift donors to potential recipients.

(4) DISABILITY. The definition as provided in 42 U.S.C. § 12102.

(5) ORGAN TRANSPLANT. The transplantation or transfusion of a part of a human body into the body of another for the purpose of treating or curing a medical condition.

(6) QUALIFIED INDIVIDUAL. An individual with a disability who meets the essential eligibility requirements for the receipt of an anatomical gift, with or without any of the following:

a. A support network available to the individual.

b. The provision of auxiliary aids and services.

c. Access to a covered entity that has made reasonable modifications to its policies or practices, including modifications to allow both of the following:

1. Communication with individuals responsible for supporting the individual with post-surgical and post-transplantation care, including medication.

2. The consideration of a support network available to the individual, including family, friends, and home-based and community-based services funded through Medicaid, Medicare, or another health plan in which the individual is enrolled, or any program or source of funding available to the individual.
in determining whether the individual is able to comply with post-transplantation medical requirements.

(7) SUPPORTED DECISION-MAKING. The reasonable accommodation of a support person or persons to assist an individual in making medical decisions, communicate information to the individual, or ascertain an individual's wishes, including the following:

a. The individual's parent, court-appointed guardian, legal custodian, attorney-in-fact, or designated health care proxy.

b. A person designated in writing by the individual.

Section 4. (a) A covered entity may not do any of the following based solely on a qualified individual's disability:

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

(2) Deny medical and other services related to transplantation, including evaluation, surgery, counseling, and post-transplantation treatment and services.

(3) Refuse to refer the individual to a transplant center or other related specialist for the purpose of evaluation or receipt of an anatomical gift or organ transplant.

(4) Refuse to place an individual on an organ transplant waiting list.

(5) Place the individual at a lower priority position on the list than the position at which he or she would have been placed if not for his or her disability.

(6) Decline insurance coverage for any procedure
associated with the receipt of the anatomical gift or organ transplant, including post-transplantation care.

(b)(1) Notwithstanding subsection (a), a covered entity may take a qualified individual's disability into account when making treatment or coverage recommendations or decisions, solely to the extent that the disability has been found by a physician, following an individualized evaluation of the individual, to be medically significant to the provision of the anatomical gift or organ transplant.

(2) If a qualified individual has the necessary support system to assist the individual in complying with post-transplantation medical requirements, a covered entity may not consider the individual's inability to independently comply with the post-transplantation medical requirements to be medically significant for the purposes of subdivision (1).

(c) A covered entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to allow a qualified individual access to services, including transplantation-related counseling, information, coverage, or treatment, unless the covered entity can demonstrate that making the modifications would fundamentally alter the nature of the services being offered or result in an undue burden.

(d) A covered entity shall implement auxiliary aids and services and supported decision-making services as necessary to ensure that a qualified individual is not denied services, including transplantation-related counseling, information, coverage, or treatment, unless the covered entity can
demonstrate that implementation of the accommodations would
fundamentally alter the nature of the services being offered
or would result in an undue burden.

(e) Nothing in this section shall require a covered
entity to refer or recommend, or to perform, a medically
inappropriate organ transplant based on medical review.

Section 5. (a) When it appears that a covered entity
has violated or is violating this act, the affected individual
may commence a civil action, limited to injunctive and other
equitable relief, against the covered entity for purposes of
enforcing compliance with this act. The action shall be
brought in the circuit court for the county in which the
individual resides or was denied the organ transplant or
referral.

(b) The court shall give priority on its docket and
expedited review to an action brought under subsection (a) and
may grant injunctive or other equitable relief only.

(c) Nothing in this act is intended to limit or replace
available remedies under the Americans with Disabilities Act
of 1990, as amended, or any other applicable law.

(d) In an action under this section, the Court, in its
discretion, may allow the prevailing party a reasonable
attorney fee as part of the costs of the proceeding.

Section 6. This act shall become effective on the first
day of the third month following its passage and approval by
the Governor, or its otherwise becoming law.
Speaker of the House of Representatives

President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in and was passed by the House 09-MAY-23 as amended.

John Treadwell
Clerk

Senate 25-May-23  Passed

House 25-May-23  Concurred in Senate Amendment