

HB122 INTRODUCED



1 5L2V66-1

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6 RFD: Health

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SYNOPSIS:

This bill would prohibit discrimination against an individual from receiving an organ transplant based on the individual having a disability.

This bill would also require health care practitioners, hospitals and other health care facilities, and organ transplant centers to provide reasonable accommodations to an individual with a disability in medical need of an anatomical gift or organ transplant.

A BILL
TO BE ENTITLED
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; and 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.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. This act shall be known and may be cited as



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29 Exton's Law.

30 Section 2. The Legislature finds all of the following:

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

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

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

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

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

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

56 (1) ANATOMICAL GIFT. The donation of all or part of a



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57 human body to take effect after the donor's death for the
58 purpose of transplantation or transfusion.

59 (2) AUXILIARY AIDS AND SERVICES. Reasonable
60 accomodations that include the following:

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

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

67 c. Acquisition or modification of equipment or devices.

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

72 (3) COVERED ENTITY. Any of the following:

73 a. A health care provider licensed under Title 34, Code
74 of Alabama 1975.

75 b. A health care facility licensed under Chapter 21 of
76 Title 22, Code of Alabama 1975.

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

79 (4) DISABILITY. The definition as provided in 42 U.S.C.
80 § 12102.

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

84 (6) QUALIFIED INDIVIDUAL. An individual with a



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85 disability who meets the essential eligibility requirements
86 for the receipt of an anatomical gift, with or without any of
87 the following:

88 a. A support network available to the individual.

89 b. The provision of auxiliary aids and services.

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

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

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

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

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

111 b. Consistent with the Health Insurance Portability and
112 Accountability Act of 1996, and other applicable laws, rules,



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113 and regulations governing the disclosure of health
114 information:

115 1. A person selected by the individual.

116 2. A person provided by the covered entity.

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

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

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

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

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

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

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

136 (b) (1) Notwithstanding subsection (a), a covered entity
137 may take a qualified individual's disability into account when
138 making treatment or coverage recommendations or decisions,
139 solely to the extent that the disability has been found by a
140 physician, following an individualized evaluation of the



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141 individual, to be medically significant to the provision of
142 the anatomical gift or organ transplant.

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

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

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

165 Section 5. This act shall become effective on the first
166 day of the third month following its passage and approval by
167 the Governor, or its otherwise becoming law.