



LIBBY'S LAW

NONDISCRIMINATION IN ACCESS TO ANATOMICAL GIFTS AND ORGAN TRANSPLANTATION

Brief Description: Prohibits discrimination against a potential organ transplant recipient based solely on the person's physical or mental disability.

Background: Organ transplants are surgical procedures in which functioning human organs are transferred to persons experiencing organ failure. Donated organs (otherwise known as "anatomical gifts") are matched with persons needing organs through the Live on Nebraska.

Health care providers refer individuals at risk or experiencing organ failure to an organ transplant center. Prior to a transplant, an organ transplant center evaluates the patient to ensure the patient is suitable for the transplant. Criteria used by transplant centers can include medical history, physical examination, psychological examination, and compatibility tests.

Health care providers are prohibited from discriminating against patients on the basis of disability by the federal Americans with Disabilities Act and the federal Rehabilitation Act.

Summary of Bill:

Discrimination Prohibitions

A health care provider or entity responsible for matching anatomical gift donors and recipients may not, solely based on a qualified individual's mental or physical disability:

- ⌘ deem the person ineligible to receive an anatomical gift or organ transplant;
- ⌘ deny medical or related organ transplantation services;
- ⌘ refuse to refer the person to a transplant center or other related specialist for evaluation or organ transplantation;
- ⌘ refuse to place a person on an organ transplant waiting list;
- ⌘ place a person at a lower position on an organ transplant waiting list; or
- ⌘ decline insurance coverage for any procedure associated with the receipt of the anatomical gift.

An entity may take a person's disability into account when making treatment or coverage recommendations or decisions to the extent that a physician has evaluated the person and found that his or her physical or mental disability is medically significant to the provision of the anatomical gift. A person's inability to comply with post-transplant medical requirements is not



medically significant if he or she has the necessary support system to comply with those requirements.

A health care provider or entity responsible for matching anatomical gift donors and recipients must make reasonable modifications to policies, practices, or procedures, when necessary to make transplant-related services available to qualified recipients with disabilities, unless doing so would fundamentally alter the nature of the services. The provider or entity must also take necessary steps to ensure that no qualified recipient with a disability is denied transplant-related services because of the absence of auxiliary aids and services, unless doing so would fundamentally alter the nature of the services being offered or would result in an undue burden.

The requirements imposed on health care providers and entities responsible for matching anatomical gift donors and recipients do not require referrals or recommendations for, or the performance of, medically inappropriate organ transplants.

Enforcement

A person who has been subjected to prohibited discrimination may bring a civil action in a court of competent jurisdiction to enjoin further violations and to obtain a court order for the provision of auxiliary aids or services; the modification of a policy, practice or procedure; or the use of accessible facilities by the qualified recipient. The court must give such action priority and proceed expeditiously with review of the action.

A person who has proven discrimination, in a court of law, may be awarded legal fees and costs.

If denial occurs, a written letter explain reason for denial must be provided within 2 days

Definitions

A *qualified recipient* is defined as a person who meets the essential eligibility requirements for the receipt of an anatomical gift with or without available support networks, auxiliary aids and services, or reasonable modifications to policies or practices.

Disability has the same meaning as in the federal Americans with Disabilities Act.

Auxiliary aids and services include effective methods of delivering materials to persons with hearing or vision impairments, provision of information in a format that is accessible for persons with cognitive, neurological, developmental, or intellectual disabilities, provision of supported decision-making services, and acquisition or modification of equipment or devices.

Supported decision making means the use of a support person chosen by the qualified recipient (including an attorney or health care proxy) to assist a qualified recipient in making decisions, communicating information to the individual, providing auxiliary aids and services to facilitate the individual's ability to communicate and process health-related information, providing information to persons designated by the individual, providing health information that is readily understandable by the individual, and working with court-appointed guardians or other



individuals responsible for making medical decisions on behalf of the individual to ensure that he or she is included in health care decisions and that medical decisions are in accordance with his or her expressed interests.



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