

1 State of Arkansas
2 92nd General Assembly
3 Regular Session, 2019
4

A Bill

SENATE BILL 317

5 By: Senator B. Davis
6

For An Act To Be Entitled

8 AN ACT TO PROHIBIT DISCRIMINATION AGAINST INDIVIDUALS
9 WITH DISABILITIES REGARDING ACCESS TO ORGAN
10 TRANSPLANTATION; TO REQUIRE COVERED ENTITIES TO MAKE
11 REASONABLE MODIFICATIONS TO POLICIES, PRACTICES, AND
12 PROCEDURES; TO PROVIDE AUXILIARY AIDS AND SERVICES
13 DURING THE ORGAN TRANSPLANTATION PROCESS; AND FOR
14 OTHER PURPOSES.
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Subtitle

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18 TO PROHIBIT DISCRIMINATION AGAINST
19 INDIVIDUALS WITH DISABILITIES REGARDING
20 ACCESS TO ORGAN TRANSPLANTATION; TO
21 REQUIRE COVERED ENTITIES TO MAKE
22 REASONABLE MODIFICATIONS; AND TO PROVIDE
23 AUXILIARY AIDS AND SERVICES.
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26 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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28 SECTION 1. Arkansas Code Title 20, Chapter 14, is amended to add an
29 additional subchapter to read as follows:

30 Subchapter 9 – Nondiscrimination in Access to Organ Transplantation

31
32 20-14-901. Legislative intent.

33 The General Assembly finds that:

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

36 (2) The Americans with Disabilities Act of 1990, 42 U.S.C. §



1 12101 et. seq., prohibits discrimination against individuals with
 2 disabilities, yet many individuals with disabilities still experience
 3 discrimination in accessing critical healthcare services;

4 (3) Individuals with disabilities have historically been denied
 5 lifesaving organ transplants based on assumptions that their lives are less
 6 worthy, that they are incapable of complying with post-transplant medical
 7 regimens, or that they lack adequate support systems to ensure compliance;

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

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

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 18 20-14-902. Definitions.

19 As used in this subchapter:

20 (1) "Anatomical gift" means a donation of all or part of a
 21 donor's body after his or her death for transplantation or transfusion
 22 purposes;

23 (2) "Auxiliary aids and services" includes without limitation:

24 (A) Qualified interpreters and other effective methods of
 25 making aurally delivered materials available to individuals with hearing
 26 impairments;

27 (B) Qualified readers, taped texts, and other effective
 28 methods of making visually delivered materials available to individuals with
 29 visual impairments;

30 (C) The provision of information in an accessible format
 31 for individuals with cognitive, neurological, developmental, or intellectual
 32 disabilities;

33 (D) The provision of supported decision-making services;

34 (E) The acquisition or modification of equipment or
 35 devices; and

36 (F) Other similar services and actions;

1 (3) “Covered entity” means:

2 (A) A licensed provider of healthcare services, including
3 without limitation licensed healthcare practitioners, hospitals, nursing
4 facilities, laboratories, intermediate care facilities, psychiatric
5 residential treatment facilities, institutions for individuals with
6 intellectual or developmental disabilities, and prison health centers; and

7 (B) An entity responsible for matching anatomical gift
8 donors to potential recipients;

9 (4) “Disability” means the same as stated in 42 U.S.C. § 12102,
10 as it existed on January 1, 2019;

11 (5) “Organ transplant” means the transplantation or transfusion
12 of a part of a human body into another human body to treat or cure a medical
13 condition;

14 (6) “Qualified individual” means an individual who:

15 (A) Has a disability; and

16 (B) Meets the essential eligibility requirements for the
17 receipt of an anatomical gift with or without:

18 (i) Support networks available to the individual;

19 (ii) The provision of auxiliary aids and services;

20 and

21 (iii) Reasonable modifications to policies,
22 practices, or procedures of a covered entity;

23 (7) “Reasonable modification” means:

24 (A) Communication with individuals responsible for
25 supporting a qualified individual with post-surgical and post-transplantation
26 care, including without limitation the administration of medication; and

27 (B) Consideration of support networks available to a
28 qualified individual to determine the qualified individual’s ability to
29 comply with post-transplant medical requirements, including without
30 limitation consideration of:

31 (i) Family, friends, and home- and community-based
32 services funded through Medicaid, Medicare, or an other healthcare plan; and

33 (ii) Any program or source of funding available to
34 the qualified individual; and

35 (8) “Supported decision-making” means the use of a support
36 person to:

1 (A) Assist a qualified individual in making medical
2 decisions;

3 (B) Communicate information to a qualified individual;

4 (C) Ascertain a qualified individual's wishes, including
5 without limitation:

6 (i) Including the qualified individual's attorney-
7 in-fact, healthcare proxy, or any person of the qualified individual's choice
8 in communications about his or her medical care;

9 (ii) Permitting the qualified individual access to a
10 person of his or her choice for support in communicating, processing
11 information, or making medical decisions;

12 (iii) Providing auxiliary aids and services to
13 facilitate the qualified individual's ability to communicate and process
14 health-related information, including without limitation the use of assistive
15 technology;

16 (iv) Providing information to persons designated by
17 the qualified individual, consistent with the provisions of the Health
18 Insurance Portability and Accountability Act of 1996, 42 U.S.C. § 1301 et
19 seq., as it existed on January 1, 2019, and other applicable laws and
20 regulations governing disclosure of health information;

21 (v) Providing health information in a format that is
22 readily understandable by the qualified individual; and

23 (vi) Ensuring that the qualified individual is
24 included in decisions involving his or her own health care and that medical
25 decisions are in accordance with the qualified individual's own expressed
26 interests when he or she has a court-appointed guardian or other individual
27 responsible for medical decisions on his or her behalf; or

28 (D) Any combination of the activities described in
29 subdivisions (8)(A)-(C) of this section.

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31 20-14-903. Discrimination prohibited.

32 (a) A covered entity shall not do any of the following based solely on
33 a qualified individual's mental or physical disability:

34 (1) Determine that a qualified individual is ineligible to
35 receive an anatomical gift or organ transplant;

36 (2) Deny medical or other services related to an organ

1 transplant, including without limitation evaluation, surgery, counseling, or
2 post-operative treatment and services;

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

6 (4) Refuse to place a qualified individual on an organ
7 transplant waiting list;

8 (5) Place a qualified individual at a lower priority position on
9 an organ transplant waiting list rather than the position at which he or she
10 would have been placed if not for his or her disability; or

11 (6) Decline insurance coverage for a procedure associated with
12 the receipt of the anatomical gift, including without limitation post-
13 transplantation care.

14 (b)(1) A covered entity may take a qualified individual's disability
15 into account when making treatment or coverage recommendations or decisions
16 only when the physician or surgeon:

17 (A) Conducts an individualized evaluation of the qualified
18 individual; and

19 (B) Finds the physical or mental disability of the
20 qualified individual to be medically significant to the provision of the
21 organ transplant.

22 (2) A qualified individual's inability to independently comply
23 with post-transplant medical requirements is not medically significant if the
24 qualified individual has the necessary support network to assist him or her
25 in complying with the requirements.

26 (c) This section does not require the referral, recommendation, or
27 performance of a medically inappropriate organ transplant.

28 (d) A covered entity shall:

29 (1) Make reasonable modifications in policies, practices, and
30 procedures when necessary to make services, including without limitation
31 transplantation-related counseling, information, coverage, and treatment,
32 available to qualified individuals unless the covered entity demonstrates
33 that making the reasonable modifications would fundamentally alter the nature
34 of the services or would result in an undue burden;

35 (2) Ensure that a qualified individual is not denied services,
36 including without limitation transplantation-related counseling, information,

1 coverage, or treatment, because of the absence of auxiliary aids and services
2 unless the covered entity demonstrates that providing auxiliary aids and
3 services would fundamentally alter the nature of the services being offered
4 or would result in an undue burden; and

5 (3) Comply with the requirements of Titles II and III of the
6 Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 et seq., as it
7 existed on January 1, 2019.

8 (e) This section applies to each part of the organ transplantation
9 process.

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11 20-14-904. Remedies.

12 (a) A qualified individual alleging a violation of this subchapter may
13 bring an action in the appropriate circuit court for injunctive or other
14 equitable relief.

15 (b) Unless otherwise prohibited by Arkansas Constitution, Amendment
16 80, the court shall:

17 (1) Schedule a hearing as soon as possible; and

18 (2) Proceed expeditiously with an action alleging a violation of
19 this subchapter.

20 (c) This section does not limit or replace remedies available under
21 the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 et seq., or
22 any other applicable law.

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