



January 18, 2019

SENATE BILL No. 112

DIGEST OF SB 112 (Updated January 16, 2019 12:12 pm - DI 104)

Citations Affected: IC 5-10; IC 16-18; IC 16-32; IC 27-8; IC 27-13.

Synopsis: Anatomical gifts and individuals with disabilities. Prohibits certain health care entities from discriminating against potential transplant recipients solely on the basis of disability, and authorizes an individual to seek injunctive relief against an entity believed to be in violation of the law. Defines "covered entity". Defines "qualified recipient". Prohibits a state employee health plan, insurer, or health maintenance program from denying coverage for anatomical gifts, transplantation, or related treatment and services solely on the basis of disability.

Effective: July 1, 2019.

Koch

January 3, 2019, read first time and referred to Committee on Health and Provider Services.

January 17, 2019, amended, reported favorably — Do Pass.

SB 112—LS 6012/DI 128



January 18, 2019

First Regular Session of the 121st General Assembly (2019)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2018 Regular and Special Session of the General Assembly.

SENATE BILL No. 112

A BILL FOR AN ACT to amend the Indiana Code concerning health.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 5-10-8-21 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2019]: **Sec. 21. (a) As used in this section, "covered individual"**
4 **means an individual who:**
5 (1) **is entitled to coverage under a state employee health plan;**
6 **and**
7 (2) **has a disability (as defined 42 U.S.C. 12102).**
8 (b) **As used in this section, "state employee health plan" means**
9 **either of the following that provides coverage for anatomical gifts,**
10 **transplantation, or related health care services:**
11 (1) **A self-insurance program established under section 7(b) of**
12 **this chapter to provide group health coverage.**
13 (2) **A contract with a prepaid health care delivery plan that is**
14 **entered into or renewed under section 7(c) of this chapter.**
15 **The term includes a person that administers coverage under a state**
16 **employee health plan.**
17 (c) **A state employee health plan shall not deny coverage for**

SB 112—LS 6012/DI 128



1 **anatomical gifts, transplantation, or related health care services**
2 **under the state employee health plan based solely on the disability**
3 **of the covered individual.**

4 SECTION 2. IC 16-18-2-14, AS AMENDED BY P.L.96-2005,
5 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
6 JULY 1, 2019]: Sec. 14. (a) "Ambulatory outpatient surgical center",
7 for purposes of IC 16-21, **IC 16-32-5**, and IC 16-38-2, means a public
8 or private institution that meets the following conditions:

9 (1) Is established, equipped, and operated primarily for the
10 purpose of performing surgical procedures and services.

11 (2) Is operated under the supervision of at least one (1) licensed
12 physician or under the supervision of the governing board of the
13 hospital if the center is affiliated with a hospital.

14 (3) Permits a surgical procedure to be performed only by a
15 physician, dentist, or podiatrist who meets the following
16 conditions:

17 (A) Is qualified by education and training to perform the
18 surgical procedure.

19 (B) Is legally authorized to perform the procedure.

20 (C) Is privileged to perform surgical procedures in at least one
21 (1) hospital within the county or an Indiana county adjacent to
22 the county in which the ambulatory outpatient surgical center
23 is located.

24 (D) Is admitted to the open staff of the ambulatory outpatient
25 surgical center.

26 (4) Requires that a licensed physician with specialized training or
27 experience in the administration of an anesthetic supervise the
28 administration of the anesthetic to a patient and remain present in
29 the facility during the surgical procedure, except when only a
30 local infiltration anesthetic is administered.

31 (5) Provides at least one (1) operating room and, if anesthetics
32 other than local infiltration anesthetics are administered, at least
33 one (1) postanesthesia recovery room.

34 (6) Is equipped to perform diagnostic x-ray and laboratory
35 examinations required in connection with any surgery performed.

36 (7) Does not provide accommodations for patient stays of longer
37 than twenty-four (24) hours.

38 (8) Provides full-time services of registered and licensed nurses
39 for the professional care of the patients in the postanesthesia
40 recovery room.

41 (9) Has available the necessary equipment and trained personnel
42 to handle foreseeable emergencies such as a defibrillator for



1 cardiac arrest, a tracheotomy set for airway obstructions, and a
2 blood bank or other blood supply.

3 (10) Maintains a written agreement with at least one (1) hospital
4 for immediate acceptance of patients who develop complications
5 or require postoperative confinement.

6 (11) Provides for the periodic review of the center and the center's
7 operations by a committee of at least three (3) licensed physicians
8 having no financial connections with the center.

9 (12) Maintains adequate medical records for each patient.

10 (13) Meets all additional minimum requirements as established by
11 the state department for building and equipment requirements.

12 (14) Meets the rules and other requirements established by the
13 state department for the health, safety, and welfare of the patients.

14 (b) The term does not include a birthing center.

15 SECTION 3. IC 16-18-2-88.2 IS ADDED TO THE INDIANA
16 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
17 [EFFECTIVE JULY 1, 2019]: **Sec. 88.2. "Covered entity", for**
18 **purposes of IC 16-32-5, has the meaning set forth in IC 16-32-5-1.**

19 SECTION 4. IC 16-18-2-96.2 IS ADDED TO THE INDIANA
20 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
21 [EFFECTIVE JULY 1, 2019]: **Sec. 96.2. "Disability", for purposes of**
22 **IC 16-32-5, has the meaning set forth in 42 U.S.C. 12102.**

23 SECTION 5. IC 16-18-2-163, AS AMENDED BY P.L.129-2018,
24 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
25 JULY 1, 2019]: Sec. 163. (a) "Health care provider", for purposes of
26 IC 16-21 and IC 16-41, means any of the following:

27 (1) An individual, a partnership, a corporation, a professional
28 corporation, a facility, or an institution licensed or legally
29 authorized by this state to provide health care or professional
30 services as a licensed physician, a psychiatric hospital, a hospital,
31 a health facility, an emergency ambulance service (IC 16-31-3),
32 a dentist, a registered or licensed practical nurse, a midwife, an
33 optometrist, a pharmacist, a podiatrist, a chiropractor, a physical
34 therapist, a respiratory care practitioner, an occupational therapist,
35 a psychologist, a paramedic, an emergency medical technician, an
36 advanced emergency medical technician, an athletic trainer, or a
37 person who is an officer, employee, or agent of the individual,
38 partnership, corporation, professional corporation, facility, or
39 institution acting in the course and scope of the person's
40 employment.

41 (2) A college, university, or junior college that provides health
42 care to a student, a faculty member, or an employee, and the



- 1 governing board or a person who is an officer, employee, or agent
 2 of the college, university, or junior college acting in the course
 3 and scope of the person's employment.
- 4 (3) A blood bank, community mental health center, community
 5 intellectual disability center, community health center, or migrant
 6 health center.
- 7 (4) A home health agency (as defined in IC 16-27-1-2).
- 8 (5) A health maintenance organization (as defined in
 9 IC 27-13-1-19).
- 10 (6) A health care organization whose members, shareholders, or
 11 partners are health care providers under subdivision (1).
- 12 (7) A corporation, partnership, or professional corporation not
 13 otherwise qualified under this subsection that:
- 14 (A) provides health care as one (1) of the corporation's,
 15 partnership's, or professional corporation's functions;
 16 (B) is organized or registered under state law; and
 17 (C) is determined to be eligible for coverage as a health care
 18 provider under IC 34-18 for the corporation's, partnership's, or
 19 professional corporation's health care function.
- 20 Coverage for a health care provider qualified under this subdivision is
 21 limited to the health care provider's health care functions and does not
 22 extend to other causes of action.
- 23 (b) "Health care provider", for purposes of IC 16-35, has the
 24 meaning set forth in subsection (a). However, for purposes of IC 16-35,
 25 the term also includes a health facility (as defined in section 167 of this
 26 chapter).
- 27 (c) "Health care provider", for purposes of **IC 16-32-5**, IC 16-36-5,
 28 and IC 16-36-6, means an individual licensed or authorized by this
 29 state to provide health care or professional services as:
- 30 (1) a licensed physician;
 31 (2) a registered nurse;
 32 (3) a licensed practical nurse;
 33 (4) an advanced practice registered nurse;
 34 (5) a certified nurse midwife;
 35 (6) a paramedic;
 36 (7) an emergency medical technician;
 37 (8) an advanced emergency medical technician;
 38 (9) an emergency medical responder, as defined by section 109.8
 39 of this chapter;
 40 (10) a licensed dentist;
 41 (11) a home health aide, as defined by section 174 of this chapter;
 42 or



1 (12) a licensed physician assistant.
 2 The term includes an individual who is an employee or agent of a
 3 health care provider acting in the course and scope of the individual's
 4 employment.

5 (d) "Health care provider", for purposes of section 1.5 of this
 6 chapter and IC 16-40-4, means any of the following:

7 (1) An individual, a partnership, a corporation, a professional
 8 corporation, a facility, or an institution licensed or authorized by
 9 the state to provide health care or professional services as a
 10 licensed physician, a psychiatric hospital, a hospital, a health
 11 facility, an emergency ambulance service (IC 16-31-3), an
 12 ambulatory outpatient surgical center, a dentist, an optometrist, a
 13 pharmacist, a podiatrist, a chiropractor, a psychologist, or a
 14 person who is an officer, employee, or agent of the individual,
 15 partnership, corporation, professional corporation, facility, or
 16 institution acting in the course and scope of the person's
 17 employment.

18 (2) A blood bank, laboratory, community mental health center,
 19 community intellectual disability center, community health
 20 center, or migrant health center.

21 (3) A home health agency (as defined in IC 16-27-1-2).

22 (4) A health maintenance organization (as defined in
 23 IC 27-13-1-19).

24 (5) A health care organization whose members, shareholders, or
 25 partners are health care providers under subdivision (1).

26 (6) A corporation, partnership, or professional corporation not
 27 otherwise specified in this subsection that:

28 (A) provides health care as one (1) of the corporation's,
 29 partnership's, or professional corporation's functions;

30 (B) is organized or registered under state law; and

31 (C) is determined to be eligible for coverage as a health care
 32 provider under IC 34-18 for the corporation's, partnership's, or
 33 professional corporation's health care function.

34 (7) A person that is designated to maintain the records of a person
 35 described in subdivisions (1) through (6).

36 (e) "Health care provider", for purposes of IC 16-45-4, has the
 37 meaning set forth in 47 CFR 54.601(a).

38 SECTION 6. IC 16-18-2-302.5 IS ADDED TO THE INDIANA
 39 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
 40 [EFFECTIVE JULY 1, 2019]: **Sec. 302.5. "Qualified recipient", for**
 41 **purposes of 16-32-5, has the meaning set forth in IC 16-32-5-2.**

42 SECTION 7. IC 16-18-2-317.7, AS ADDED BY P.L.224-2017,



1 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
2 JULY 1, 2019]: Sec. 317.7. "Residential care facility", for purposes of
3 IC 16-28-2 **and IC 16-32-5**, means an entity licensed under IC 16-28
4 and registered as a housing with services establishment under
5 IC 12-10-15.

6 SECTION 8. IC 16-32-5 IS ADDED TO THE INDIANA CODE AS
7 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
8 1, 2019]:

9 **Chapter 5. Anatomical Gifts and Transplantation**

10 **Sec. 1. As used in this chapter, "covered entity" means any of**
11 **the following:**

- 12 (1) A licensed health care provider.
- 13 (2) A hospital licensed under IC 16-21-2.
- 14 (3) An ambulatory outpatient surgical center.
- 15 (4) A hospice program licensed under IC 16-25-3.
- 16 (5) A residential care facility.
- 17 (6) A comprehensive care facility licensed under IC 16-28-2.
- 18 (7) A correctional medical center established by the
19 department of correction.
- 20 (8) Any entity responsible for matching anatomical gift
21 donors to potential recipients.

22 **Sec. 2. As used in this chapter, "qualified recipient" means a**
23 **recipient who has a disability and meets the eligibility**
24 **requirements for receipt of an anatomical gift regardless of the use**
25 **of the following:**

- 26 (1) Individuals or entities available to support and assist the
27 recipient with an anatomical gift or transplantation.
- 28 (2) Auxiliary aids and services (as defined in IC 22-9-5-1).
- 29 (3) Reasonable modifications to the policies, practices, or
30 procedures of a covered entity, including modifications that
31 allow for:
 - 32 (A) communication with one (1) or more individuals or
33 entities available to support or assist with the recipient's
34 care after surgery or transplantation; or
 - 35 (B) consideration of the availability of such individuals or
36 entities when determining whether the recipient is able to
37 comply with medical requirements following
38 transplantation.

39 **Sec. 3. A covered entity may not do any of the following solely**
40 **on the basis of the disability of a qualified recipient:**

- 41 (1) Consider a qualified recipient ineligible for
42 transplantation or to receive an anatomical gift.



- 1 **(2) Deny medical or other services related to transplantation,**
 2 **including:**
 3 **(A) evaluation;**
 4 **(B) surgery; and**
 5 **(C) counseling and treatment following transplantation.**
 6 **(3) Refuse to refer a qualified recipient to a transplant center**
 7 **or specialist.**
 8 **(4) Refuse to place a qualified recipient on an organ or tissue**
 9 **waiting list.**
 10 **(5) Place a qualified recipient at a position on an organ or**
 11 **tissue waiting list that is lower than the position at which the**
 12 **qualified recipient would have been placed if not for the**
 13 **qualified recipient's disability.**
- 14 **Sec. 4. Subject to section 5 of this chapter, if a health care**
 15 **provider has examined an individual and determined that the**
 16 **individual has a disability, a covered entity may consider, when**
 17 **making recommendations or decisions related to an anatomical gift**
 18 **or transplantation, the disability of the individual to be medically**
 19 **significant to the provision of the anatomical gift or**
 20 **transplantation.**
- 21 **Sec. 5. A covered entity may not consider a qualified recipient's**
 22 **inability to comply with medical requirements following**
 23 **transplantation to be medically significant if a qualified recipient**
 24 **has individuals or entities available to assist in complying with the**
 25 **requirements.**
- 26 **Sec. 6. A covered entity must make reasonable modifications to**
 27 **its policies, practices, or procedures to allow individuals with**
 28 **disabilities access to transplantation related treatment and**
 29 **services, except when the covered entity can demonstrate that the**
 30 **modifications would fundamentally alter the nature of the**
 31 **transplantation related treatment and services.**
- 32 **Sec. 7. (a) An individual who reasonably believes that a covered**
 33 **entity has violated this chapter may bring a civil action for**
 34 **injunctive or other equitable relief against the covered entity for**
 35 **the purpose of enforcing compliance with this chapter.**
- 36 **(b) In an action commenced under this section, the court must:**
 37 **(1) schedule a hearing as soon as practicable; and**
 38 **(2) apply the same standards when rendering judgment as**
 39 **would be applied in an action brought in federal court under**
 40 **42 U.S.C. 12101 et seq.**
- 41 **(c) This section does not create a right to compensatory or**
 42 **punitive damages against a covered entity.**



1 SECTION 9. IC 27-8-35 IS ADDED TO THE INDIANA CODE AS
 2 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
 3 1, 2019]:

4 **Chapter 35. Coverage for Anatomical Gifts and Transplantation**

5 **Sec. 1. As used in this chapter, "covered individual" means an**
 6 **individual who:**

- 7 (1) is entitled to coverage under a policy of accident and
 8 sickness insurance; and
 9 (2) has a disability.

10 **Sec. 2. As used in this chapter, "disability" has the meaning set**
 11 **forth in 42 U.S.C. 12102.**

12 **Sec. 3. As used in this chapter, "insurer" means an insurance**
 13 **company that issues a policy of accident and sickness insurance.**
 14 **The term includes an administrator that is licensed under**
 15 **IC 27-1-25 and administers a policy of accident and sickness**
 16 **insurance.**

17 **Sec. 4. As used in this chapter, "policy of accident and sickness**
 18 **insurance" refers to a policy of accident and sickness insurance (as**
 19 **defined in IC 27-8-5-1) that provides coverage for anatomical gifts,**
 20 **transplantation, or related health care services.**

21 **Sec. 5. An insurer shall not deny coverage for anatomical gifts,**
 22 **transplantation, or related health care services under a policy of**
 23 **accident and sickness insurance based solely on the disability of the**
 24 **covered individual.**

25 SECTION 10. IC 27-13-7-24 IS ADDED TO THE INDIANA
 26 CODE AS A NEW SECTION TO READ AS FOLLOWS
 27 [EFFECTIVE JULY 1, 2019]: **Sec. 24. (a) As used in this section,**
 28 **"disability" has the meaning set forth in 42 U.S.C. 12102.**

29 **(b) As used in this section, "enrollee" means an enrollee who has**
 30 **a disability.**

31 **(c) As used in this section, "group contract" means a group**
 32 **contract that provides coverage for anatomical gifts,**
 33 **transplantation, or related health care services.**

34 **(d) As used in this section, "health maintenance organization"**
 35 **includes an administrator that is licensed under IC 27-1-25 and**
 36 **administers an individual contract or a group contract.**

37 **(e) As used in this section, "individual contract" means an**
 38 **individual contract that provides coverage for anatomical gifts,**
 39 **transplantation, or related health care services.**

40 **(f) A health maintenance organization shall not deny coverage**
 41 **for anatomical gifts, transplantation, or related health care**
 42 **services under an individual contract or a group contract based**



1 **solely on the disability of the enrollee.**



COMMITTEE REPORT

Madam President: The Senate Committee on Health and Provider Services, to which was referred Senate Bill No. 112, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 7, line 40, delete "42 U.S.C. 12101." and insert "**42 U.S.C. 12101 et seq.**".

and when so amended that said bill do pass.

(Reference is to SB 112 as introduced.)

CHARBONNEAU, Chairperson

Committee Vote: Yeas 9, Nays 0.

