

SENATE
STATE OF MINNESOTA
NINETY-SECOND SESSION

S.F. No. 875

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Introduction and first reading
Referred to Civil Law and Data Practices Policy

OFFICIAL STATUS

1.1 A bill for an act
1.2 relating to human rights; requiring nondiscrimination in access to transplants;
1.3 prescribing penalties; proposing coding for new law in Minnesota Statutes, chapters
1.4 62A; 363A.

1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6 Section 1. 62A.082 **NONDISCRIMINATION IN ACCESS TO TRANSPLANTS.**

1.7 Subdivision 1. **Definitions.** (a) For the purposes of this section, the following terms have
1.8 the meanings given unless the context clearly requires otherwise.

1.9 (b) "Covered person" means a policyholder, subscriber, enrollee, member, or individual
1.10 covered by a health plan, group health plan, or individual health plan.

1.11 (c) "Disability" has the meaning given in the Americans with Disabilities Act of 1990,
1.12 as amended by the ADA Amendments Act of 2008, United States Code, title 42, section
1.13 12102.

1.14 (d) "Group health plan" has the meaning given in section 62A.011, subdivision 1c.

1.15 (e) "Health carrier" has the meaning given in section 62A.011, subdivision 2.

1.16 (f) "Health plan" has the meaning given in section 62A.011, subdivision 3.

1.17 (g) "Individual health plan" has the meaning given in section 62A.011, subdivision 4.

1.18 (h) "Organ transplant" means the transplantation or transfusion of a part of a human
1.19 body into the body of another for the purpose of treating or curing a medical condition.

1.20 Subd. 2. **Transplant discrimination prohibited.** A health carrier that provides coverage
1.21 for anatomical gifts, organ transplants, or related treatment and services shall not:

2.1 (1) deny coverage to a covered person based solely on the person's disability;

2.2 (2) deny to a patient eligibility, or continued eligibility, to enroll or to renew coverage
 2.3 under the terms of the health plan, group health plan, or individual health plan solely for
 2.4 the purpose of avoiding the requirements of this section;

2.5 (3) penalize or otherwise reduce or limit the reimbursement of an attending provider, or
 2.6 provide monetary or nonmonetary incentives to an attending provider, to induce such
 2.7 provider to provide care to an insured or enrollee in a manner inconsistent with this section;
 2.8 or

2.9 (4) reduce or limit coverage benefits to a patient for the medical services or other services
 2.10 related to organ transplantation performed pursuant to this section as determined in
 2.11 consultation with the attending physician and patient.

2.12 Subd. 3. **Collective bargaining.** In the case of a group health plan maintained pursuant
 2.13 to one or more collective bargaining agreements between employee representatives and one
 2.14 or more employers, any plan amendment made pursuant to a collective bargaining agreement
 2.15 relating to the plan which amends the plan solely to conform to any requirement imposed
 2.16 pursuant to this section shall not be treated as a termination of the collective bargaining
 2.17 agreement.

2.18 Subd. 4. **Coverage limitation.** Nothing in this section shall be deemed to require a health
 2.19 carrier to provide coverage for a medically inappropriate organ transplant.

2.20 **Sec. 2. [363A.50] NONDISCRIMINATION IN ACCESS TO TRANSPLANTS.**

2.21 Subdivision 1. **Public policy.** The legislature finds that:

2.22 (1) a mental or physical disability does not diminish a person's right to health care;

2.23 (2) the Americans with Disabilities Act of 1990 prohibits discrimination against persons
 2.24 with disabilities, yet many individuals with disabilities still experience discrimination in
 2.25 accessing critical health care services;

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

2.30 (4) although organ transplant centers must consider medical and psychosocial criteria
 2.31 when determining if a patient is suitable to receive an organ transplant, transplant centers
 2.32 that participate in Medicare, Medicaid, and other federally funded programs are required

3.1 to use patient selection criteria that result in a fair and nondiscriminatory distribution of
3.2 organs; and

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

3.5 Subd. 2. **Definitions.** (a) For purposes of this section, the following terms have the
3.6 meanings given unless the context clearly requires otherwise.

3.7 (b) "Anatomical gift" has the meaning given in section 525A.02, subdivision 4.

3.8 (c) "Auxiliary aids and services" include, but are not limited to:

3.9 (1) qualified interpreters or other effective methods of making aurally delivered materials
3.10 available to individuals with hearing impairments;

3.11 (2) qualified readers, taped texts, texts in accessible electronic format, or other effective
3.12 methods of making visually delivered materials available to individuals with visual
3.13 impairments;

3.14 (3) the provision of information in a format that is accessible for individuals with
3.15 cognitive, neurological, developmental, intellectual, or physical disabilities;

3.16 (4) the provision of supported decision-making services; and

3.17 (5) the acquisition or modification of equipment or devices.

3.18 (d) "Covered entity" means:

3.19 (1) any licensed provider of health care services, including licensed health care
3.20 practitioners, hospitals, nursing facilities, laboratories, intermediate care facilities, psychiatric
3.21 residential treatment facilities, institutions for individuals with intellectual or developmental
3.22 disabilities, and prison health centers; or

3.23 (2) any entity responsible for matching anatomical gift donors to potential recipients.

3.24 (e) "Disability" has the meaning given in the Americans with Disabilities Act of 1990,
3.25 as amended by the Americans with Disabilities Act Amendments Act of 2008, United States
3.26 Code, title 42, section 12102.

3.27 (f) "Organ transplant" means the transplantation or infusion of a part of a human body
3.28 into the body of another for the purpose of treating or curing a medical condition.

3.29 (g) "Qualified individual" means an individual who, with or without available support
3.30 networks, the provision of auxiliary aids and services, or reasonable modifications to policies

4.1 or practices, meets the essential eligibility requirements for the receipt of an anatomical
4.2 gift.

4.3 (h) "Reasonable modifications to policies or practices" include, but are not limited to:

4.4 (1) communication with individuals responsible for supporting an individual with
4.5 postsurgical and post-transplantation care, including medication; and

4.6 (2) consideration of support networks available to the individual, including family,
4.7 friends, and home and community-based services, including home and community-based
4.8 services funded through Medicaid, Medicare, another health plan in which the individual
4.9 is enrolled, or any program or source of funding available to the individual, in determining
4.10 whether the individual is able to comply with post-transplant medical requirements.

4.11 (i) "Supported decision making" has the meaning given in section 524.5-102, subdivision
4.12 16a.

4.13 Subd. 3. **Prohibition of discrimination.** (a) A covered entity may not, solely on the
4.14 basis of a qualified individual's mental or physical disability:

4.15 (1) deem an individual ineligible to receive an anatomical gift or organ transplant;

4.16 (2) deny medical or related organ transplantation services, including evaluation, surgery,
4.17 counseling, and postoperative treatment and care;

4.18 (3) refuse to refer the individual to a transplant center or other related specialist for the
4.19 purpose of evaluation or receipt of an anatomical gift or organ transplant;

4.20 (4) refuse to place an individual on an organ transplant waiting list or place the individual
4.21 at a lower-priority position on the list than the position at which the individual would have
4.22 been placed if not for the individual's disability; or

4.23 (5) decline insurance coverage for any procedure associated with the receipt of the
4.24 anatomical gift or organ transplant, including post-transplantation and postinfusion care.

4.25 (b) Notwithstanding paragraph (a), a covered entity may take an individual's disability
4.26 into account when making treatment or coverage recommendations or decisions, solely to
4.27 the extent that the physical or mental disability has been found by a physician, following
4.28 an individualized evaluation of the potential recipient to be medically significant to the
4.29 provision of the anatomical gift or organ transplant. The provisions of this section may not
4.30 be deemed to require referrals or recommendations for, or the performance of, medically
4.31 inappropriate organ transplants.

5.1 (c) If an individual has the necessary support system to assist the individual in complying
5.2 with post-transplant medical requirements, an individual's inability to independently comply
5.3 with those requirements may not be deemed to be medically significant for the purposes of
5.4 paragraph (b).

5.5 (d) A covered entity must make reasonable modifications to policies, practices, or
5.6 procedures, when such modifications are necessary to make services such as
5.7 transplantation-related counseling, information, coverage, or treatment available to qualified
5.8 individuals with disabilities, unless the entity can demonstrate that making such modifications
5.9 would fundamentally alter the nature of such services.

5.10 (e) A covered entity must take such steps as may be necessary to ensure that no qualified
5.11 individual with a disability is denied services such as transplantation-related counseling,
5.12 information, coverage, or treatment because of the absence of auxiliary aids and services,
5.13 unless the entity can demonstrate that taking such steps would fundamentally alter the nature
5.14 of the services being offered or result in an undue burden.

5.15 (f) A covered entity must otherwise comply with the requirements of Titles II and III of
5.16 the Americans with Disabilities Act of 1990 and the Americans with Disabilities Act
5.17 Amendments Act of 2008.

5.18 (g) The provisions of this section apply to each part of the organ transplant process.

5.19 Subd. 4. **Enforcement.** (a) Any individual who has been subjected to discrimination in
5.20 violation of sections 363A.50 to 363A.52 may initiate a civil action in a court of competent
5.21 jurisdiction to enjoin further violations and recover the cost of the suit.

5.22 (b) The court must accord priority on its calendar and expeditiously proceed with an
5.23 action brought under this section by requiring:

5.24 (1) auxiliary aids or services be made available to qualified individuals;

5.25 (2) the modifications of a policy, practice, or procedure of a covered entity; and

5.26 (3) facilities be made readily accessible and usable by a qualified individual.

5.27 (c) Nothing in this section is intended to limit or replace available remedies under the
5.28 Americans with Disabilities Act of 1990 and the Americans with Disabilities Act
5.29 Amendments Act of 2008 or any other applicable law.

5.30 (d) This section does not create a right to compensatory or punitive damages against a
5.31 covered entity.