

1 SENATE BILL NO. 155

2 INTRODUCED BY T. JACOBSON

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4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR NONDISCRIMINATION IN ACCESS TO
5 ANATOMICAL GIFTS AND ORGAN TRANSPLANTATION ON THE BASIS OF DISABILITY; PROVIDING A
6 CAUSE OF ACTION FOR ALLEGED VIOLATION OF NONDISCRIMINATION PROVISIONS; PROHIBITING
7 INSURERS FROM DENYING COVERAGE SOLELY ON THE BASIS OF DISABILITY; PROVIDING
8 DEFINITIONS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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12 NEW SECTION. Section 1. Legislative intent. The legislature finds that:

13 (1) an intellectual or physical disability does not diminish a person's right to health care;

14 (2) the "Americans with Disabilities Act of 1990", 42 U.S.C. 12101, prohibits discrimination against
15 persons with disabilities;16 (3) life-saving organ transplants should not be denied to persons with disabilities based on
17 assumptions that they are incapable of complying with posttransplant medical requirements or lack adequate
18 support systems to ensure compliance with posttransplant medical requirements;19 (4) although organ transplant centers must consider medical and psychosocial criteria when
20 determining if a patient is suitable to receive an organ transplant, transplant centers that participate in
21 medicare, medicaid, and other federally funded programs are required to use patient selection criteria that
22 result in a fair and nondiscriminatory distribution of organs; and23 (5) Montana residents in need of organ transplants are entitled to assurances that they will not
24 encounter discrimination on the basis of a disability.

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26 NEW SECTION. Section 2. Definitions. As used in [sections 1 through 4], unless the context clearly
27 indicates otherwise, the following definitions apply:

28 (1) "Anatomical gift" means a donation of all or part of a human body to take effect after the donor's

1 death for the purpose of transplantation or transfusion.

2 (2) "Auxiliary aids or services" means an aid or service that is used to provide information to a person
3 with a cognitive, developmental, intellectual, neurological, or physical disability and is available in a format or
4 manner that allows the person to better understand the information. An auxiliary aid or service may include:

5 (a) qualified interpreters or other effective methods of making aurally delivered materials available to
6 persons with hearing impairments;

7 (b) qualified readers, taped texts, texts in accessible electronic format, or other effective methods of
8 making visually delivered materials available to persons with visual impairments; and

9 (c) supported decisionmaking services, including:

10 (i) the use of a support individual to communicate information to the person with a disability, ascertain
11 the wishes of the person, or assist the person in making decisions;

12 (ii) the disclosure of information to a legal guardian, authorized representative, or another individual
13 designated by the person with a disability for that purpose, as long as the disclosure is consistent with state and
14 federal law, including the federal Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. 1320d,
15 et seq., and any regulations promulgated by the United States department of health and human services to
16 implement the act;

17 (iii) if a person who has a disability has a court-appointed guardian or other individual responsible for
18 making medical decisions on behalf of the person, any measures used to ensure that the person is included in
19 decisions involving the person's health care and that medical decisions are in accordance with the person's
20 own expressed interests; and

21 (iv) any other aid or service that is used to provide information in a format that is easily understandable
22 and accessible to people with cognitive, neurological, developmental, or intellectual disabilities, including
23 assistive communication technology.

24 (3) "Covered entity" means:

25 (a) a licensed provider of health care services, including licensed health care practitioners, hospitals,
26 nursing facilities, laboratories, intermediate care facilities, psychiatric residential treatment facilities, institutions
27 for individuals with intellectual or developmental disabilities, and prison health centers; or

28 (b) an entity responsible for matching anatomical gift donors to potential recipients.

1 (4) "Disability" means:

2 (a) a physical or intellectual impairment that substantially limits one or more of a person's major life
3 activities;

4 (b) a record of such an impairment; or

5 (c) being regarded as having such an impairment.

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

8 (6) "Qualified recipient" means a person who has a disability and meets the essential eligibility
9 requirements for the receipt of an anatomical gift with or without any of the following:

10 (a) individuals or entities available to support and assist the person with an anatomical gift or
11 transplantation;

12 (b) auxiliary aids or services; or

13 (c) reasonable modifications to the policies, practices, or procedures of a covered entity, including
14 modifications to allow for:

15 (i) communication with one or more individuals or entities available to support or assist with the
16 recipient's care and medication after surgery or transplantation; or

17 (ii) consideration of support networks available to the person, including family, friends, and home and
18 community-based services, including home and community-based services funded through medicaid,
19 medicare, another health plan in which the person is enrolled, or any program or source of funding available to
20 the person, when determining whether the person is able to comply with posttransplant medical requirements.

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22 **NEW SECTION. Section 3. Discrimination in organ transplantation.** (1) A covered entity may not,
23 solely on the basis of a person's disability:

24 (a) consider the person ineligible to receive an anatomical gift or organ transplant;

25 (b) deny medical services or other services related to organ transplantation, including diagnostic
26 services, evaluation, surgery, counseling, or postoperative treatment and services;

27 (c) refuse to refer the person to a transplant center or other related specialist for the purpose of being
28 evaluated for or receiving an organ transplant;

1 (d) refuse to place a qualified recipient on an organ transplant waiting list;

2 (e) place a qualified recipient on an organ transplant waiting list at a lower priority position than the
3 position at which the person would have been placed if the person did not have a disability; or

4 (f) refuse insurance coverage for any procedure associated with being evaluated for or receiving an
5 anatomical gift or organ transplant, including posttransplantation and posttransfusion care.

6 (2) It is not a violation of subsection (1) for a covered entity to take a person's disability into account
7 when making treatment or coverage recommendations or decisions, solely to the extent that the disability has
8 been found by a physician or surgeon to be medically significant to the provision of the anatomical gift after
9 completing an individualized evaluation of the person.

10 (3) If a person has the necessary support system to assist the person in complying with
11 posttransplant medical requirements, a covered entity may not consider the person's inability to independently
12 comply with posttransplant medical requirements to be medically significant for the purposes of subsection (2).

13 (4) A covered entity must make reasonable modifications to its policies, practices, or procedures to
14 allow people with disabilities access to transplantation-related services, including diagnostic services, surgery,
15 postoperative treatment, and counseling, unless the covered entity can demonstrate that making the
16 modifications would fundamentally alter the nature of such services.

17 (5) A covered entity must take steps necessary to ensure that a person with a disability is not denied
18 medical services or other services related to organ transplantation, including diagnostic services, surgery,
19 postoperative treatment, or counseling due to the absence of auxiliary aids or services, unless the covered
20 entity can demonstrate that taking the steps would fundamentally alter the nature of the medical services or
21 other services related to organ transplantation or would result in an undue burden for the covered entity.

22 (6) This section applies to all stages of the organ transplant process.

23 (7) Nothing in this section may be construed to:

24 (a) require a covered entity to make a referral or recommendation for or perform a medically
25 inappropriate organ transplant; or

26 (b) affect a covered entity's obligation to comply with the requirements of Titles II and III of the
27 Americans with Disabilities Act of 1990, as amended by the ADA Amendments Act of 2008.

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1 **NEW SECTION. Section 4. Enforcement.** (1) A person claiming to be aggrieved by a violation of any
2 provision of [sections 1 through 4] may file a civil action for injunctive and other equitable relief against the
3 covered entity in the district court for the county where the affected person resides or the county where the
4 alleged violation occurred.

5 (2) In an action brought under [sections 1 through 4], the court may grant injunctive or other equitable
6 relief, including:

7 (a) requiring auxiliary aids or services to be made available for the recipient;

8 (b) requiring the modification of a policy, practice, or procedure of a covered entity; or

9 (c) requiring facilities to be made accessible to and usable by a qualified recipient.

10 (3) The court shall give priority on its docket and an expedited review.

11 (4) Nothing in [sections 1 through 4] is intended to limit or replace other remedies available under
12 federal or other law.

13 (5) [Sections 1 through 4] do not create a right to compensatory or punitive damages against a
14 covered entity.

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16 **NEW SECTION. Section 5. Unfair discrimination prohibited -- anatomical gifts, organ**

17 **transplants, and related treatment.** (1) An insurer that provides coverage for anatomical gifts, organ
18 transplants, or related treatment and services may not:

19 (a) deny coverage under an insurance policy to a covered person solely on the basis of the person's
20 disability;

21 (b) deny to a patient eligibility, or continued eligibility, to enroll or to renew coverage under an
22 insurance policy, solely for the purpose of avoiding the requirements of this section;

23 (c) penalize or otherwise reduce or limit the reimbursement of an attending provider or provide
24 monetary or nonmonetary incentives to an attending provider to induce the provider to provide care to an
25 insured or enrollee in a manner inconsistent with this section; or

26 (d) reduce or limit coverage benefits to a patient for the medical services or other services related to
27 organ transplantation performed pursuant to this section as determined in consultation with the attending
28 physician and patient.

1 (2) In the case of an insurance policy maintained pursuant to one or more collective bargaining
2 agreements between employee representatives and one or more employers, any plan amendment made
3 pursuant to a collective bargaining agreement that amends the plan solely to conform to a requirement imposed
4 pursuant to this section may not be treated as a termination of the collective bargaining agreement.

5 (3) Nothing in this section may be construed to require a health insurance issuer to provide coverage
6 for a medically inappropriate organ transplant.

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8 NEW SECTION. Section 6. Codification instruction. (1) [Sections 1 through 4] are intended to be
9 codified as a new part in Title 49, chapter 4, and the provisions of Title 49, chapter 4, apply to [sections 1
10 through 4].

11 (2) [Section 5] is intended to be codified as an integral part of Title 33, chapter 18, part 2, and the
12 provisions of Title 33, chapter 18, part 2, apply to [section 5].

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14 NEW SECTION. Section 7. Effective date. [This act] is effective on passage and approval.

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