

1 **SENATE FLOOR VERSION**

2 February 18, 2021

3 SENATE BILL NO. 378

By: Rosino, Stanley and
Hamilton of the Senate

4 and

5 Bush, Martinez and Townley
6 of the House

7
8
9 An Act relating to organ donation and anatomical
10 gifts; creating Everett's Law; providing short title;
11 defining terms; specifying applicability of act;
12 prohibiting certain acts by covered entity; allowing
13 covered entity to take disability into account under
14 certain conditions; prohibiting covered entity from
15 considering certain factor under specified condition;
16 requiring covered entity to make certain
17 modifications to policies, practices or procedures;
18 requiring covered entity to ensure certain
19 protections related to medical services; construing
20 act; requiring certain compliance with federal law;
21 providing for certain civil action; requiring court
22 to give certain priority and expedited review;
23 authorizing court to grant certain relief; providing
24 intent; defining terms; prohibiting certain actions
by health carrier; specifying that certain amendment
to collective bargaining agreement does not
constitute termination; construing act; providing for
codification; and providing an effective date.

21 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

22 SECTION 1. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 2200.28 of Title 63, unless
24 there is created a duplication in numbering, reads as follows:

1 This act shall be known and may be cited as "Everett's Law".

2 SECTION 2. NEW LAW A new section of law to be codified
3 in the Oklahoma Statutes as Section 2200.29 of Title 63, unless
4 there is created a duplication in numbering, reads as follows:

5 As used in this act:

6 1. "Anatomical gift" means a donation of all or part of a human
7 body to take effect after the donor's death for the purpose of
8 transplantation or transfusion;

9 2. "Auxiliary aids or services" means an aid or service that is
10 used to provide information to an individual with a cognitive,
11 developmental, intellectual, neurological or physical disability and
12 is available in a format or manner that allows the individual to
13 better understand the information. An auxiliary aid or service may
14 include:

15 a. qualified interpreters or other effective methods of
16 making aurally delivered materials available to
17 persons with hearing impairments,

18 b. qualified readers, taped texts, texts in accessible
19 electronic format or other effective methods of making
20 visually delivered materials available to persons with
21 visual impairments,

22 c. supported decision-making services, including:

23 (1) the use of a support individual to communicate
24 information to the individual with a disability,

1 ascertain the wishes of the individual, or assist
2 the individual in making decisions,

3 (2) the disclosure of information to a legal
4 guardian, authorized representative or another
5 individual designated by the individual with a
6 disability for such purpose, as long as the
7 disclosure is consistent with state and federal
8 law including the Health Insurance Portability
9 and Accountability Act of 1996, 42 U.S.C. 1320d
10 et seq. and any regulations promulgated by the
11 United States Department of Health and Human
12 Services to implement the act,

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

21 (4) any other aid or service that is used to provide
22 information in a format that is easily
23 understandable and accessible to individuals with
24 cognitive, neurological, developmental or

1 intellectual disabilities, including assistive
2 communication technology;

3 3. "Covered entity" means:

- 4 a. any licensed provider of health care services
5 including licensed health care practitioners,
6 hospitals, nursing facilities, laboratories,
7 intermediate care facilities, psychiatric residential
8 treatment facilities, institutions for individuals
9 with intellectual or developmental disabilities and
10 prison health centers, or
11 b. any entity responsible for matching anatomical gift
12 donors to potential recipients;

13 4. "Disability" has the meaning stated in the Americans with
14 Disabilities Act of 1990, as amended by the ADA Amendments Act of
15 2008, 42 U.S.C. § 12102;

16 5. "Organ transplant" means the transplantation or transfusion
17 of a part of a human body into the body of another for the purpose
18 of treating or curing a medical condition; and

19 6. "Qualified recipient" means an individual who has a
20 disability and meets the essential eligibility requirements for the
21 receipt of an anatomical gift with or without any of the following:

- 22 a. individuals or entities available to support and
23 assist the individual with an anatomical gift or
24 transplantation,

1 b. auxiliary aids or services, or
2 c. reasonable modifications to the policies, practices or
3 procedures of a covered entity including modifications
4 to allow for either or both of the following:

5 (1) communication with one or more individuals or
6 entities available to support or assist with the
7 recipient's care and medication after surgery or
8 transplantation, or

9 (2) consideration of support networks available to
10 the individual including family, friends and home
11 and community-based services including home and
12 community-based services funded through Medicaid,
13 Medicare, another health plan in which the
14 individual is enrolled or any program or source
15 of funding available to the individual, when
16 determining whether the individual is able to
17 comply with post-transplant medical requirements.

18 SECTION 3. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 2200.30 of Title 63, unless
20 there is created a duplication in numbering, reads as follows:

21 A. The provisions of this section shall apply to all stages of
22 the organ transplant process.

23 B. A covered entity shall not, solely on the basis of an
24 individual's disability:

- 1 1. Consider the individual ineligible to receive an anatomical
2 gift or organ transplant;
- 3 2. Deny medical services or other services related to organ
4 transplantation including diagnostic services, evaluation, surgery,
5 counseling, post-operative treatment and services;
- 6 3. Refuse to refer the individual to a transplant center or
7 other related specialist for the purpose of being evaluated for or
8 receiving an organ transplant;
- 9 4. Refuse to place a qualified recipient on an organ transplant
10 waiting list;
- 11 5. Place a qualified recipient on an organ transplant waiting
12 list at a lower priority position than the position at which the
13 individual would have been placed if the individual did not have a
14 disability; or
- 15 6. Refuse to accept health insurance coverage for any procedure
16 associated with being evaluated for or receiving an anatomical gift
17 or organ transplant including post-transplantation and post-
18 transfusion care.
- 19 C. Notwithstanding subsection B of this section, a covered
20 entity may take an individual's disability into account when making
21 treatment or coverage recommendations or decisions, solely to the
22 extent that the disability has been found by a physician or surgeon,
23 following an individualized evaluation of the individual, to be
24 medically significant to the receipt of the anatomical gift.

1 D. If an individual has the necessary support system to assist
2 the individual in complying with post-transplant medical
3 requirements, a covered entity shall not consider the individual's
4 inability to independently comply with post-transplant medical
5 requirements to be medically significant for the purposes of
6 subsection C of this section.

7 E. A covered entity shall make reasonable modifications to its
8 policies, practices or procedures to allow individuals with
9 disabilities access to transplantation-related services including
10 diagnostic services, surgery, coverage, post-operative treatment and
11 counseling, unless the entity can demonstrate that making such
12 modifications would fundamentally alter the nature of such services.

13 F. A covered entity shall take steps necessary to ensure that
14 an individual with a disability is not denied medical services or
15 other services related to organ transplantation including diagnostic
16 services, surgery, post-operative treatment or counseling, due to
17 the absence of auxiliary aids or services, unless the covered entity
18 demonstrates that taking the steps would fundamentally alter the
19 nature of the medical services or other services related to organ
20 transplantation or would result in an undue burden for the covered
21 entity.

22 G. Nothing in this section shall be construed to require a
23 covered entity to make a referral or recommendation for or perform a
24 medically inappropriate organ transplant.

1 H. A covered entity shall otherwise comply with the
2 requirements of Titles II and III of the Americans with Disabilities
3 Act of 1990, as amended by the ADA Amendments Act of 2008.

4 SECTION 4. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 2200.31 of Title 63, unless
6 there is created a duplication in numbering, reads as follows:

7 A. Whenever it appears that a covered entity has violated or is
8 in violation of any of the provisions of this act, the affected
9 individual may commence a civil action for injunctive and other
10 equitable relief against the covered entity for purposes of
11 enforcing compliance with this act. The action may be brought in
12 the district court for the county where the affected individual
13 resides or resided or was denied the organ transplant or referral.

14 B. In an action brought under this act, the court shall give
15 priority on its docket and expedited review, and may grant
16 injunctive or other equitable relief including:

17 1. Requiring auxiliary aids or services to be made available
18 for a qualified recipient;

19 2. Requiring the modification of a policy, practice or
20 procedure of a covered entity; or

21 3. Requiring facilities be made readily accessible to and
22 usable by a qualified recipient.

1 C. Nothing in this act is intended to limit or replace
2 available remedies under the Americans with Disabilities Act or any
3 other applicable law.

4 D. This act does not create a right to compensatory or punitive
5 damages against a covered entity.

6 SECTION 5. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 2200.32 of Title 63, unless
8 there is created a duplication in numbering, reads as follows:

9 A. For purposes of this section:

10 1. "Covered person" means a policyholder, subscriber, enrollee,
11 member or individual covered by a health benefit plan;

12 2. "Health benefit plan" means a policy, contract, certificate,
13 or agreement entered into, offered or issued by a health carrier to
14 provide, deliver, arrange for, pay for or reimburse any of the costs
15 of health care services. Health benefit plan shall not include a
16 plan providing coverage for excepted benefits and short term
17 policies that have a term of less than twelve (12) months; and

18 3. "Health carrier" means an entity subject to the insurance
19 laws and regulations of this state, or subject to the jurisdiction
20 of the Insurance Commissioner, that contracts or offers to contract
21 to provide, deliver, arrange for, pay for or reimburse any of the
22 costs of health care services including through a health benefit
23 plan as defined in this section, and shall include a sickness and
24 accident insurance company, a health maintenance organization, a

1 preferred provider organization or any similar entity, or any other
2 entity providing a plan of health insurance or health benefits.

3 B. A health carrier that provides coverage for anatomical
4 gifts, organ transplants or related treatment and services shall
5 not:

6 1. Deny coverage to a covered person solely on the basis of the
7 person's disability;

8 2. Deny to a patient eligibility, or continued eligibility, to
9 enroll or to renew coverage under the terms of the health benefit
10 plan, solely for the purpose of avoiding the requirements of this
11 section;

12 3. Penalize or otherwise reduce or limit the reimbursement of
13 an attending provider, or provide monetary or nonmonetary incentives
14 to an attending provider, to induce such provider to provide care to
15 an insured or enrollee in a manner inconsistent with this section;
16 or

17 4. Reduce or limit coverage benefits to a patient for the
18 medical services or other services related to organ transplantation
19 performed pursuant to this section as determined in consultation
20 with the attending physician and patient.

21 C. In the case of a health benefit plan maintained pursuant to
22 one or more collective bargaining agreements between employee
23 representatives and one or more employers, any plan amendment made
24 pursuant to a collective bargaining agreement relating to the plan

1 which amends the plan solely to conform to any requirement imposed
2 pursuant to this section shall not be treated as a termination of
3 the collective bargaining agreement.

4 D. Nothing in this section shall be construed to require a
5 health carrier to provide coverage for a medically inappropriate
6 organ transplant.

7 E. The Insurance Commissioner shall promulgate rules to
8 implement the provisions of this section.

9 SECTION 6. This act shall become effective November 1, 2021.

10 COMMITTEE REPORT BY: COMMITTEE ON RETIREMENT AND INSURANCE
11 February 18, 2021 - DO PASS
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