

An Act

ENROLLED SENATE
BILL NO. 378

By: Rosino, Stanley and
Hamilton of the Senate

and

Bush, Martinez, Townley,
Munson and Lepak of the
House

An Act relating to organ donation and anatomical gifts; creating Everett's Law; providing short title; defining terms; specifying applicability of act; prohibiting certain acts by covered entity; allowing covered entity to take disability into account under certain conditions; prohibiting covered entity from considering certain factor under specified condition; requiring covered entity to make certain modifications to policies, practices or procedures; requiring covered entity to ensure certain protections related to medical services; construing act; requiring certain compliance with federal law; providing for certain civil action; requiring court to give certain priority and expedited review; authorizing court to grant certain relief; providing 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.

SUBJECT: Organ donation and anatomical gifts

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

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

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

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

As used in this act:

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

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

- a. qualified interpreters or other effective methods of making aurally delivered materials available to persons with hearing impairments,
- b. qualified readers, taped texts, texts in accessible electronic format or other effective methods of making visually delivered materials available to persons with visual impairments,
- c. supported decision-making services, including:
 - (1) the use of a support individual to communicate information to the individual with a disability, ascertain the wishes of the individual, or assist the individual in making decisions,
 - (2) the disclosure of information to a legal guardian, authorized representative or another individual designated by the individual with a

disability for such purpose, as long as the disclosure is consistent with state and federal law including the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. 1320d et seq. and any regulations promulgated by the United States Department of Health and Human Services to implement the act,

- (3) if an individual has a court-appointed guardian or other individual responsible for making medical decisions on behalf of the individual, any measures used to ensure that the individual is included in decisions involving the individual's health care and that medical decisions are in accordance with the individual's own expressed interests, or
- (4) any other aid or service that is used to provide information in a format that is easily understandable and accessible to individuals with cognitive, neurological, developmental or intellectual disabilities, including assistive communication technology;

3. "Covered entity" means:

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

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

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

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

- a. individuals or entities available to support and assist the individual with an anatomical gift or transplantation,
- b. auxiliary aids or services, or
- c. reasonable modifications to the policies, practices or procedures of a covered entity including modifications to allow for either or both of the following:
 - (1) communication with one or more individuals or entities available to support or assist with the recipient's care and medication after surgery or transplantation, or
 - (2) consideration of support networks available to the individual including family, friends and home and community-based services including home and community-based services funded through Medicaid, Medicare, another health plan in which the individual is enrolled or any program or source of funding available to the individual, when determining whether the individual is able to comply with post-transplant medical requirements.

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

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

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

1. Consider the individual ineligible to receive an anatomical gift or organ transplant;

2. Deny medical services or other services related to organ transplantation including diagnostic services, evaluation, surgery, counseling, post-operative treatment and services;

3. Refuse to refer the individual to a transplant center or other related specialist for the purpose of being evaluated for or receiving an organ transplant;

4. Refuse to place a qualified recipient on an organ transplant waiting list;

5. Place a qualified recipient on an organ transplant waiting list at a lower priority position than the position at which the individual would have been placed if the individual did not have a disability; or

6. Refuse to accept health insurance coverage for any procedure associated with being evaluated for or receiving an anatomical gift or organ transplant including post-transplantation and post-transfusion care.

C. Notwithstanding subsection B of this section, a covered entity may take an individual's disability into account when making treatment or coverage recommendations or decisions, solely to the extent that the disability has been found by a physician or surgeon, following an individualized evaluation of the individual, to be medically significant to the receipt of the anatomical gift.

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

E. A covered entity shall make reasonable modifications to its policies, practices or procedures to allow individuals with disabilities access to transplantation-related services including

diagnostic services, surgery, coverage, post-operative treatment and counseling, unless the entity can demonstrate that making such modifications would fundamentally alter the nature of such services.

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

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

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

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

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

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

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

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

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

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

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

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

A. For purposes of this section:

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

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

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

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

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

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

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

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

C. In the case of a health benefit plan maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers, any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement imposed pursuant to this section shall not be treated as a termination of the collective bargaining agreement.

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

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

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

Passed the Senate the 10th day of March, 2021.

Presiding Officer of the Senate

Passed the House of Representatives the 13th day of April, 2021.

Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma this _____

day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____