

Enrolled
House Bill 2839

Sponsored by COMMITTEE ON HEALTH CARE

CHAPTER

AN ACT

Relating to anatomical gifts; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. (1) As used in this section:

(a) "Auxiliary aids and services" means:

(A) Qualified interpreters or other effective methods of making aurally delivered material available to individuals with hearing impairment;

(B) Qualified readers, audio recordings of texts or other effective methods of making visually delivered material available to individuals with visual impairment;

(C) Acquisition or modification of equipment or devices; or

(D) Other similar services or actions.

(b) "Covered entity" means:

(A) Any entity licensed under the laws of this state for the purpose of providing health care services;

(B) Any practitioner licensed under the laws of this state for the purpose of practicing a health care profession; or

(C) An insurer of health care services.

(c) "Disability" has the meaning described in ORS 659A.104.

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

(e) "Qualified individual" means an individual who, with or without the availability of support networks, auxiliary aids and services or reasonable modifications to policies or practices, meets the eligibility requirements for the receipt of an organ transplant.

(f) "Reasonable modifications to policies or practices" includes:

(A) Communication with individuals responsible for supporting an individual through post-surgical, post-transplantation and post-transfusion care, including the administration of medication; and

(B) Consideration of support networks available to an individual, including family, friends and home- and community-based services funded through Medicaid, Medicare, a health benefit plan as defined in ORS 743B.005 or any other source of funding available to the individual, in determining whether the individual is able to comply with post-transplantation and post-transfusion medical requirements.

(g) "Transplant hospital" has the meaning given that term in ORS 97.953.

(2) A covered entity may not, solely on the basis of a qualified individual's disability:

(a) Consider the individual ineligible to receive an organ transplant.

(b) Deny the individual medical services or other services related to organ transplantation, including diagnostic services, surgery, post-operative treatment and counseling.

(c) Refuse to refer the individual to a transplant hospital or an organ transplant specialist for the purpose of being evaluated for or receiving an organ transplant.

(d) Refuse to place the individual on an organ transplant waiting list.

(e) Place the individual 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.

(f) Refuse the individual insurance coverage for any procedure associated with being evaluated for or receiving an organ transplant, including post-transplantation and post-transfusion care.

(3) Notwithstanding subsection (2) of this section, a covered entity may consider a qualified individual's disability when making treatment or insurance coverage decisions or recommendations related to organ transplantation, to the extent that the disability has been found by a physician licensed under ORS chapter 677, following an individualized evaluation of the individual, to be medically significant to the receipt of the organ transplant.

(4) If a covered entity makes an objectively reasonable determination that a qualified individual has the necessary support networks, including family, friends and home- and community-based services funded through Medicaid, Medicare, a health benefit plan as defined in ORS 743B.005 or any other source of funding available to the individual, to assist the individual in complying with post-transplantation and post-transfusion medical requirements, the covered entity may not consider the individual's inability to independently comply with those orders to be medically significant for purposes of subsection (3) of this section.

(5) A covered entity must modify the covered entity's policies, practices or procedures when modification is necessary to make medical services or other services related to organ transplantation, including diagnostic services, surgery, post-operative treatment and counseling, available to a qualified individual who has a disability unless the covered entity demonstrates that making the modification would fundamentally alter the nature of the medical services or other services related to organ transplantation.

(6) A covered entity must take steps necessary to ensure that a qualified individual who has a disability is not denied medical services or other services related to organ transplantation, including diagnostic services, surgery, post-operative treatment and counseling, 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.

(7) Judicial review of a claim brought under this section may be sought from the circuit court for the county in which the potential recipient of the organ transplant resides or resided or was denied the organ transplant. The circuit court shall give priority on its docket and expedited review to a claim brought under this section.

(8) In an action brought under this section, the court may grant equitable relief, including:

(a) Requiring auxiliary aids and services to be made available for a qualified individual with a disability;

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

(c) Requiring facilities be made readily accessible to and usable by a qualified individual with a disability.

(9)(a) Notwithstanding ORS 30.260 to 30.300, a person receiving services constituting patient care on an Oregon Health and Science University campus, in any Oregon Health and Science University clinic or provided by any health care provider employed by or working on behalf of Oregon Health and Science University, may bring a claim under this section for equitable relief.

(b) This section does not create a right to damages against a public body, as defined in ORS 30.260.

(c) This section does not prevent a person from bringing a claim against a covered entity and seeking applicable relief from a covered entity for conduct described in this section under any other provision of law.

SECTION 2. This 2017 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2017 Act takes effect on its passage.

Passed by House April 27, 2017

Received by Governor:

Repassed by House June 7, 2017

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Approved:

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Timothy G. Sekerak, Chief Clerk of House

.....M.,....., 2017

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Tina Kotek, Speaker of House

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Kate Brown, Governor

Passed by Senate June 5, 2017

Filed in Office of Secretary of State:

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Peter Courtney, President of Senate

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Dennis Richardson, Secretary of State