

## **BILL ANALYSIS**

Senate Research Center  
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C.S.H.B. 119  
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Health & Human Services  
4/22/2021  
Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Organ transplants save lives. Persons with disabilities, however, have been denied organ transplants because of unfounded misconceptions about their quality of life and ability to comply with post-operative care. Although the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973 prohibit discrimination on the basis of disability, organ transplant centers and medical professionals often are unaware that this prohibition applies to the organ transplant process.

C.S.H.B. 119 would prohibit transplant discrimination based solely on a person's disability. What's more, it would require health care providers to make reasonable modifications to ensure that post-operative and recovery services are available to a person with a disability. Last, this bill would add an opportunity for a health care provider to correct a violation without penalty or reprimand. These changes would save lives of Texans with disabilities who need transplant operations and help end discriminatory health practices and assumptions.

C.S.H.B. 119 amends current law relating to prohibiting organ transplant recipient discrimination on the basis of certain disabilities.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 4 of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends the heading to Subchapter S, Chapter 161, Health and Safety Code, to read as follows:

#### **SUBCHAPTER S. ALLOCATION OF KIDNEYS AND OTHER ORGANS AVAILABLE FOR TRANSPLANT**

SECTION 2. Amends Section 161.471, Health and Safety Code, as follows:

Sec. 161.471. New heading: DEFINITIONS. Defines, in Subchapter S, "auxiliary aids and services," "disability," "health care facility," and "health care provider." Makes nonsubstantive changes.

SECTION 3. Amends Subchapter S, Chapter 161, Health and Safety Code, by adding Section 161.473, as follows:

Sec. 161.473. DISCRIMINATION ON BASIS OF DISABILITY PROHIBITED. (a) Prohibits a health care provider, solely on the basis of an individual's disability, from:

- (1) determining an individual is ineligible to receive an organ transplant;
- (2) denying medical or other services related to an organ transplant, including evaluation, surgery, counseling, and postoperative treatment;

(3) refusing to refer the individual to a transplant center or other related specialist for evaluation or receipt of an organ transplant; or

(4) refusing to place the individual on an organ transplant waiting list or placing the individual at a position lower in priority on the list than the position the individual would have been placed if not for the individual's disability.

(b) Authorizes a health care provider, notwithstanding Subsection (a), to consider an individual's disability when making a treatment recommendation or decision solely to the extent that a physician, following an individualized evaluation of the potential transplant recipient, determines the disability is medically significant to the organ transplant. Provides that this section does not require a referral or recommendation for, or the performance of, a medically inappropriate organ transplant.

(c) Prohibits a health care provider from considering an individual's inability to independently comply with post-transplant medical requirements as medically significant for the purposes of Subsection (b) if the individual has a known disability and the necessary support system to assist the individual in reasonably complying with the requirements.

(d) Requires a health care facility to make reasonable modifications in policies, practices, or procedures as necessary to allow individuals with a disability access to organ transplant-related services, including transplant-related counseling, information, or treatment, unless the health care facility can demonstrate that making the modifications would fundamentally alter the nature of the services or would impose an undue hardship on the facility. Authorizes reasonable modifications in policies, practices, and procedures to include:

(1) communicating with persons supporting or assisting with the individual's postsurgical and post-transplant care, including medication; and

(2) considering the support available to the individual in determining whether the individual is able to reasonably comply with post-transplant medical requirements, including support provided by:

(A) family;

(B) friends; or

(C) home and community-based services, including home and community-based services funded by Medicaid, by Medicare, by a health plan in which the individual is enrolled, or by any other program or source of funding available to the individual.

(e) Requires a health care provider to make reasonable efforts to comply with the policies, practices, and procedures as applicable, developed by a health care facility under Subsection (d), as necessary to allow an individual with a known disability access to organ transplant-related services, including transplant-related counseling, information, or treatment, unless the health care provider can demonstrate that compliance would fundamentally alter the nature of the services or would impose an undue hardship on the health care provider.

(f) Requires a health care provider to make reasonable efforts to provide auxiliary aids and services to an individual with a known disability seeking organ transplant-related services, including organ transplant-related counseling, information, or treatment, as necessary to allow the individual access to those services, unless the health care provider can demonstrate that providing the

transplant-related services with auxiliary aids and services present would fundamentally alter the transplant-related services provided or would impose an undue hardship on the health care provider.

(g) Requires a health care provider to comply with the requirements of the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.) to the extent that Act applies to a health care provider. Prohibits this subsection from being construed to require a health care provider to comply with that Act if the Act does not otherwise require compliance by the health care provider.

(h) Provides that this section applies to each stage of the organ transplant process.

(i) Provides that a violation of this section is grounds for disciplinary action by the regulatory agency that issued a license, certificate, or other authority to a health care provider who committed the violation. Requires the applicable regulatory agency, before a regulatory agency is authorized to take disciplinary action against a health care provider for a violation, to notify the health care provider of the agency's finding that the health care provider has violated or is violating this section or a rule adopted under this section, and provide the health care provider with an opportunity to correct the violation without penalty or reprimand.

(j) Provides that a physician who in good faith makes a determination that an individual's disability is medically significant to the organ transplant, as described by Subsection (b), does not violate this section.

(k) Provides that a health care provider who in good faith makes a treatment recommendation or decision on the basis of a physician's determination that an individual's disability is medically significant to the organ transplant, as described by Subsection (b), does not violate this section.

SECTION 4. Requires the executive commissioner of the Health and Human Services Commission, not later than January 1, 2022, to adopt any rules necessary to implement Subchapter S, Chapter 161, Health and Safety Code, as amended by this Act.

SECTION 5. Effective date: September 1, 2021.