

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 994

Introduced by Murman, 38; Cavanaugh, 6.

Read first time January 14, 2020

Committee: Judiciary

1 A BILL FOR AN ACT relating to health; to adopt the Organ Transplant

2 Fairness Act.

3 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 5 of this act shall be known and may be
2 cited as the Organ Transplant Fairness Act.

3 Sec. 2. The Legislature finds that:

4 (1) A mental or physical disability does not diminish a person's
5 right to health care;

6 (2) State and federal law prohibit discrimination against persons
7 with disabilities, yet many individuals with disabilities still
8 experience discrimination in accessing critical health care services;

9 (3) Individuals with mental and physical disabilities have
10 historically been denied life-saving organ transplants based on
11 assumptions that their lives are less worthy, that they are incapable of
12 complying with post-transplant medical regimens, or that they lack
13 adequate support systems to ensure such compliance;

14 (4) Although organ transplant centers must consider medical and
15 psychosocial criteria when determining if a patient is suitable to
16 receive an organ transplant, transplant centers that participate in
17 medicare, medicaid, and other federally funded programs are required to
18 use patient selection criteria that result in a fair and
19 nondiscriminatory distribution of organs; and

20 (5) Nebraska residents in need of organ transplants are entitled to
21 assurances that they will not encounter discrimination on the basis of a
22 disability.

23 Sec. 3. For purposes of the Organ Transplant Fairness Act:

24 (1) Auxiliary aids and services includes:

25 (a) Qualified interpreters or other effective methods of making
26 aurally delivered materials available to deaf or hard of hearing
27 individuals;

28 (b) Qualified readers, taped texts, or other effective methods of
29 making visually delivered materials available to individuals with visual
30 impairments;

31 (c) Provision of information in a format that is accessible for

1 individuals with cognitive, neurological, developmental, or intellectual
2 disabilities;

3 (d) Provision of aids and services to facilitate the individual's
4 ability to communicate and process health-related information;

5 (e) The use of assistive communication technology;

6 (f) Provision of supported decisionmaking services;

7 (g) Acquisition or modification of equipment or devices; and

8 (h) Other similar services and actions;

9 (2)(a) Covered entity means:

10 (i) A licensed provider of health care services, including, but not
11 limited to, a licensed health care practitioner, a hospital, a nursing
12 facility, a laboratory, an intermediate care facility, a psychiatric
13 residential treatment facility, an institution for individuals with
14 intellectual or developmental disabilities, or a prison health center; or

15 (ii) An entity responsible for matching organ transplants to
16 potential recipients.

17 (b) Covered entity includes any private or public entity, including
18 the state, a governmental agency created by the state, or a political
19 subdivision;

20 (3) Disability has the same meaning as in 42 U.S.C. 12102, as such
21 section existed on January 1, 2020;

22 (4) Organ transplant means the transplantation or transfusion of a
23 part of a human body into the body of another for the purpose of treating
24 or curing a medical condition;

25 (5) Qualified individual means an individual who has a disability
26 and meets the essential eligibility requirements for the receipt of an
27 organ transplant, with or without auxiliary aids and services or
28 reasonable modifications to policies or practices of a covered entity;

29 (6) Reasonable modifications to policies or practices may include
30 the following, in determining whether an individual is able to comply
31 with post-transplant medical requirements:

1 (a) Communication with persons responsible for supporting the
2 individual with post-surgical and post-transplantation care, including
3 medication; and

4 (b) Consideration of support networks available to the individual,
5 including family, friends, and home and community-based services,
6 including home and community-based services funded through medicaid,
7 medicare, another health plan in which the individual is enrolled, or any
8 program or source of funding available to the individual; and

9 (7) Supported decisionmaking services includes, but is not limited
10 to:

11 (a) The use of a support person or persons in order to assist the
12 individual in making medical decisions, communicate information to the
13 individual, or ascertain an individual's wishes;

14 (b) Inclusion of the individual's power of attorney, power of
15 attorney for health care, or any person of the individual's choice in
16 communications about the individual's medical care;

17 (c) Permitting the individual to designate a person of their choice
18 for the purposes of supporting that individual in communicating,
19 processing information, or making medical decisions;

20 (d) Provision of information to persons designated by the
21 individual, consistent with the provisions of the Health Insurance
22 Portability and Accountability Act of 1996, 42 U.S.C. 1301 et seq., and
23 any other applicable laws and regulations governing disclosure of health
24 information;

25 (e) Provision of health information in a format that is readily
26 understandable by the individual; and

27 (f) If the individual has a court-appointed guardian or other person
28 responsible for making medical decisions on behalf of the individual, any
29 measures to ensure that the individual is included in decisions involving
30 the individual's own health care and that medical decisions are in
31 accordance with the individual's own expressed interests.

1 Sec. 4. (1) Except as provided in subsection (2) of this section, a
2 covered entity shall not, solely on the basis of a qualified individual's
3 mental or physical disability:

4 (a) Deem the individual ineligible to receive an organ transplant;

5 (b) Deny services related to organ transplantation, including, but
6 not limited to, evaluation, surgery, counseling, and post-operative
7 treatment and services;

8 (c) Refuse to refer the individual to a transplant center or other
9 related specialist for the purpose of evaluation or receipt of an organ
10 transplant;

11 (d) Refuse to place the individual on an organ transplant waiting
12 list;

13 (e) Place an individual at a lower-priority position on an organ
14 transplant waiting list than the position at which the individual would
15 have been placed if not for the individual's disability; or

16 (f) Decline insurance coverage for any procedure associated with the
17 receipt of an organ transplant, including post-transplantation care.

18 (2) A covered entity may take an individual's disability into
19 account when making treatment or coverage recommendations or decisions,
20 solely to the extent that the physical or mental disability has been
21 found by a physician or surgeon, following an individualized evaluation
22 of the individual, to be medically significant to the organ transplant.

23 (3) This section shall not be construed to require referrals or
24 recommendations for, or the performance of, medically inappropriate organ
25 transplants.

26 (4) If an individual has the necessary support system to assist the
27 individual in complying with post-transplant medical requirements, an
28 individual's inability to independently comply with those requirements
29 shall not be deemed to be medically significant for the purposes of
30 subsection (2) of this section.

31 (5) A covered entity shall make reasonable modifications to its

1 policies, practices, or procedures, when such modifications are necessary
2 to make services such as transplantation-related counseling, information,
3 coverage, or treatment available to qualified individuals, unless the
4 covered entity can demonstrate that making such modifications would
5 fundamentally alter the nature of such services.

6 (6) A covered entity shall take such steps as may be necessary to
7 ensure that no qualified individual is denied services such as
8 transplantation-related counseling, information, coverage, or treatment
9 because of the absence of auxiliary aids and services, unless the entity
10 can demonstrate that taking such steps would fundamentally alter the
11 nature of the services being offered or would result in an undue burden.

12 (7) A covered entity shall otherwise comply with the requirements of
13 Titles II and III of the federal Americans with Disabilities Act of 1990
14 and the federal ADA Amendments Act of 2008.

15 (8) This section applies to each phase of the organ transplant
16 process.

17 Sec. 5. (1) A person aggrieved by a violation of the Organ
18 Transplant Fairness Act may bring a civil action against a covered
19 entity. A successful plaintiff shall be entitled to appropriate relief,
20 including temporary or permanent injunctive relief, general and special
21 damages, reasonable attorney's fees, and costs.

22 (2) The state, governmental agencies created by the state, and
23 political subdivisions of the state may be sued upon claims arising under
24 the Organ Transplant Fairness Act in the same manner as provided by such
25 law for suits against other covered entities.

26 (3) All proceedings pursuant to the Organ Transplant Fairness Act
27 have the highest priority and shall be advanced on the court docket to
28 provide for the earliest practical disposition.