

HOUSE BILL No. 2343

By Committee on Federal and State Affairs

2-9

1 AN ACT concerning health and health care; relating to organ transplants;
2 ensuring nondiscrimination in access to organ transplants.

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4 *Be it enacted by the Legislature of the State of Kansas:*

5 Section 1. (a) The following findings and purpose shall apply to this
6 section:

7 (1) A mental or physical disability does not diminish an individual's
8 right to health care;

9 (2) the federal Americans with disabilities act prohibits discrimination
10 against individuals with disabilities, yet many individuals with disabilities
11 still experience discrimination in accessing critical health care services;

12 (3) in other states nationwide, individuals with mental and physical
13 disabilities have historically been denied life-saving organ transplants
14 based on assumptions that their lives are less worthy, that they are
15 incapable of complying with post-transplantation medical requirements or
16 that they lack adequate support systems to ensure compliance with post-
17 transplantation medical requirements;

18 (4) although organ transplant centers must consider medical and
19 psychosocial criteria when determining if a patient is suitable to receive an
20 organ transplant, transplant centers that participate in medicare, the state
21 program for medical assistance and other federally funded programs are
22 required to use patient selection criteria that result in a fair and
23 nondiscriminatory distribution of organs; and

24 (5) state residents in need of organ transplants are entitled to
25 assurances that they will not encounter discrimination on the basis of a
26 disability.

27 (b) A covered entity may not solely on the basis of an individual's
28 disability:

29 (1) Consider a qualified individual ineligible to receive an anatomical
30 gift or organ transplant;

31 (2) deny medical and other services related to organ transplantation,
32 including evaluation, surgery, counseling, and post-transplantation
33 treatment and services;

34 (3) refuse to refer the individual to a transplant center or a related
35 specialist for the purpose of evaluation or receipt of an organ transplant;

36 (4) refuse to place a qualified individual on an organ transplant

1 waiting list; or

2 (5) place a qualified individual at a lower-priority position on an
3 organ transplant waiting list than the position at which the qualified
4 individual would have been placed if not for the disability.

5 (c) (1) Subject to paragraph (2) of this subsection, a covered entity
6 may take an individual's disability into account when making treatment or
7 coverage recommendations or decisions, solely to the extent that the
8 disability has been found by a physician, following an individualized
9 evaluation of the individual, to be medically significant to the provision of
10 the anatomical gift.

11 (2) If an individual has the necessary support system to assist the
12 individual in complying with post-transplantation medical requirements, a
13 covered entity may not consider the individual's inability to independently
14 comply with the post-transplantation medical requirements to be medically
15 significant for the purposes of paragraph (1) of this subsection.

16 (d) A covered entity shall make reasonable modifications in policies,
17 practices or procedures, when the modifications are necessary to allow an
18 individual with a disability access to services, including transplantation-
19 related counseling, information, coverage or treatment, unless the covered
20 entity can demonstrate that making the modifications would fundamentally
21 alter the nature of the services.

22 (e) A covered entity shall take such steps as may be necessary to
23 ensure that an individual with a disability is not denied services, including
24 transplantation-related counseling, information, coverage or treatment, due
25 to the absence of auxiliary aids and services, unless the covered entity can
26 demonstrate that taking the steps would fundamentally alter the nature of
27 the services being offered or would result in an undue burden.

28 (f) Nothing in this section shall be construed to require a covered
29 entity to make a referral or recommendation for or perform a medically
30 inappropriate organ transplant.

31 (g) (1) If a covered entity violates this section, the affected individual
32 may bring an action in the appropriate district court for injunctive or other
33 equitable relief.

34 (2) In an action brought under paragraph (1) of this subsection, the
35 district court shall:

36 (A) Schedule a hearing as soon as possible; and

37 (B) apply the same standards in rendering a judgment in the action as
38 would be applied in an action brought in federal court under the federal
39 Americans with disabilities act.

40 (h) As used in this section:

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

1 (2) "Auxiliary aids and services" includes:

2 (A) Qualified interpreters or other effective methods of making
3 aurally delivered materials available to individuals with hearing
4 impairments;

5 (B) qualified readers, taped texts, texts in accessible electronic format
6 or other effective methods of making visually delivered materials available
7 to individuals with visual impairments; and

8 (C) supported decision-making services, including:

9 (i) The use of a support individual to assist in making medical
10 decisions, communicating information to the individual or ascertaining an
11 individual's wishes;

12 (ii) the provision of information to a person designated by the
13 individual consistent with the federal health insurance portability and
14 accountability act and other applicable laws and regulations governing the
15 disclosure of health information;

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

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

24 (3) "Covered entity" means:

25 (A) A licensed health care provider, as defined in K.S.A. 40-3401,
26 and amendments thereto;

27 (B) a medical care facility as defined in K.S.A. 65-425, and
28 amendments thereto;

29 (C) a laboratory;

30 (D) a state psychiatric hospital, as defined in K.S.A. 59-2946, and
31 amendments thereto;

32 (E) an adult care home, as defined in K.S.A. 65-3501, and
33 amendments thereto;

34 (F) a group home as defined in K.S.A. 12-736, and amendments
35 thereto;

36 (G) an institutional medical unit in a correctional facility; or

37 (I) any entity responsible for potential recipients of the anatomical
38 gift.

39 (4) "Disability" has the meaning stated in the federal Americans with
40 disabilities act.

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

- 1 (6) "Qualified individual" means an individual who:
2 (A) Has a disability; and
3 (B) meets the essential eligibility requirements for the receipt of an
4 anatomical gift, with or without:
5 (i) The support networks available to the individual;
6 (ii) the provision of auxiliary aids and services; or
7 (iii) reasonable modifications to the policies or practices of a covered
8 entity, including modifications to allow:
9 (a) Communication with individuals responsible for supporting the
10 individual with post-surgical and post-transplantation care, including
11 medication; and
12 (b) the consideration of support networks available to the individual,
13 including family, friends, and home and community based services funded
14 through the state program of medical assistance, or another health plan in
15 which the individual is enrolled, or any program or source of funding
16 available to the individual, in determining whether the individual is able to
17 comply with post-transplantation medical requirements.
- 18 Sec. 2. This act shall take effect and be in force from and after its
19 publication in the statute book.