

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 96 (Delegate Shetty)
Health and Government Operations

Public Health - Nondiscrimination in Access to Anatomical Gifts and Organ
Transplantation - Financial Status

This bill prohibits discrimination against a potential recipient of any anatomical gift or organ transplant solely based on an individual’s financial status, in addition to existing prohibitions under statute.

Fiscal Summary

State Effect: None. The bill reflects national organ transplant nondiscrimination policy. Further, the State Anatomy Board advises it has a nondiscrimination policy; thus, there is no fiscal or operational impact.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary/Current Law: Chapter 383 of 2015 prohibited discrimination against a potential recipient of any anatomical gift or organ transplant solely based on an individual’s disability. Under current law, a “covered entity” is defined as (1) a licensed health care provider; (2) a health care facility; (3) a laboratory; (4) a State psychiatric hospital; (5) a State residential center; (6) an alternative living unit; (7) a group home; (8) an institutional medical unit in a correctional facility; or (9) any entity responsible for potential recipients of the anatomical gift. A “qualified individual” is an individual who has a disability and meets the essential eligibility requirements for the receipt of an anatomical gift, with or without support networks available to the individual, the provision of auxiliary aids and

services, or reasonable modifications to the policies or practices of a covered entity as specified. The bill makes no changes to the above definitions.

Current law prohibits a covered entity, solely on the basis of an individual's disability, from (1) considering a qualified individual ineligible to receive an anatomical gift or organ transplant; (2) denying medical and other services related to organ transplantation, including evaluation, surgery, counseling, and posttransplantation treatment and services; (3) refusing to refer the individual to a transplant center or a related specialist; (4) refusing to place a qualified individual on an organ transplant waiting list; or (5) placing an otherwise qualified individual at a lower-priority position on an organ transplant waiting list. Insurers, nonprofit health service plans, and health maintenance organizations (collectively known as carriers) are also prohibited from denying coverage for an organ transplantation solely on the basis of an individual's disability.

The bill additionally prohibits a covered entity, solely based on an individual's *financial status* from doing any of (1) through (5) above. The bill also adds that the prohibitions also apply for *any other individual* rather than only a "qualified individual," where applicable. Provisions related to carriers are not altered.

Current law further states that an individual's disability may be considered when making treatment or coverage decisions to the extent that a disability is found to be medically significant. However, if an individual has the necessary support system to assist in complying with posttransplantation medical requirements, an individual's inability to independently comply with such requirements may not be found to be medically significant. Reasonable modifications must be made to policies, practices, and procedures, when necessary to allow an individual with a disability access to services, including transplantation-related counseling, information, coverage, or treatment, unless the covered entity can demonstrate that making the modifications would fundamentally alter the nature of the services. However, Title 20, Subtitle 16 of the Health-General Article may not be construed to require a covered entity to make a referral or recommendation for, or perform, a medically inappropriate organ transplant. Likewise, under § 27-915 of the Insurance Article, the provisions of Title 20, Subtitle 16 may not be construed to require a carrier to provide coverage for an organ transplantation that is not medically necessary.

The bill specifies that a covered entity must also make reasonable modifications in policies, practices, or procedures, when necessary to allow an individual with *financial issues* to access services, as specified.

Under § 20-1606 of the Health-General Article, if a covered entity violates Title 20, Subtitle 16, the affected individual can bring an action in the appropriate circuit court for injunctive or other equitable relief. The court must schedule a hearing as soon as possible for an action related to enforcement of the above provisions and apply the same standards

as would be applied in an action brought in federal court under the federal Americans with Disabilities Act. The bill does not alter these requirements.

Additional Comments: The United Network for Organ Sharing (UNOS) is the private, nonprofit organization that manages the nation's organ transplantation system under contract with the federal government. The UNOS Organ Procurement and Transplantation Network Nondiscrimination in Organ Allocation policy specifies that "a candidate's citizenship or residency status in the United States must not be considered when allocating deceased donor organs to candidates for transplantation. Allocation of deceased donor organs must not be influenced positively or negatively by political influence, national origin, ethnicity, sex, religion, or financial status.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Maryland Department of Health; Department of Legislative Services

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