

## **BILL ANALYSIS**

Senate Research Center

H.B. 119  
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Health & Human Services  
4/19/2021  
Engrossed

### **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.

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 post-operative and recovery services are available to a person with a disability. These changes would save lives of Texans with disabilities who need transplant operations and help end discriminatory health practices and assumptions.

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 5 of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Provides that this Act may be cited as Daniel's Law.

SECTION 2. 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 3. 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 provider," and "supported decision making." Makes nonsubstantive changes.

SECTION 4. 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 an organ transplant;

(4) refusing to place an 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; or

(5) declining insurance coverage for any procedure associated with the organ transplant, including post-transplant care.

(b) Authorizes a health care provider, notwithstanding Subsection (a), to consider an individual's disability when making a treatment or coverage recommendation or decision solely to the extent that a physician or surgeon, following an individualized evaluation of the potential 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 the necessary support system to assist the individual in complying with the requirements.

(d) Requires a health care provider to make reasonable modifications in policies, practices, or procedures as necessary to make services, including transplant-related counseling, information, coverage, or treatment, available to an individual with a disability, unless the health care provider can demonstrate that making the modifications would fundamentally alter the nature of the services. Authorizes reasonable modifications to include:

(1) communicating with persons responsible for supporting an individual with postsurgical and post-transplant care, including medication; and

(2) considering the support available to the individual in determining whether the individual is able to 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 the medical assistance program established under Chapter 32 (Medical Assistance Program), Human Resources Code, 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 ensure that an individual with a disability is not denied services, including transplant-related counseling, information, coverage, or treatment, because auxiliary aids and services are absent unless the health care provider can demonstrate that providing the services with auxiliary aids and services present would fundamentally alter the services provided or would impose an undue burden on the health care provider.

(f) Requires a health care provider to comply with the requirements of Titles II and III of the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12131 et seq.).

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

(h) 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.

SECTION 5. 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 6. Effective date: September 1, 2021.