

HOUSE BILL NO. HB0111

Access to anatomical gifts and organ transplants.

Sponsored by: Representative(s) Washut, Blackburn, O'Hearn,
Rodriguez-Williams and Sommers and
Senator(s) Landen and Salazar

A BILL

for

1 AN ACT relating to health care; prohibiting discrimination
2 in the provision of health care services and insurance for
3 organ transplants and related procedures based on a
4 person's disability; providing definitions; providing for
5 enforcement and authorizing a civil action; and providing
6 for an effective date.

7

8 *Be It Enacted by the Legislature of the State of Wyoming:*

9

10 **Section 1.** W.S. 26-20-801, 26-20-802 and 35-5-301
11 through 35-5-303 are created to read:

12

13

ARTICLE 8

14

ANATOMICAL GIFTS AND ORGAN TRANSPLANTATION

15

1 **26-20-801. Definitions.**

2

3 (a) As used in this article:

4

5 (i) "Covered person" means a policyholder,
6 subscriber, enrollee, member or individual covered by any
7 policy, contract or certificate listed in W.S.
8 26-20-802(a);

9

10 (ii) "Health insurance issuer" means an entity
11 subject to the insurance laws and regulations of this
12 state, or subject to the jurisdiction of the commissioner,
13 that contracts or offers to contract to provide, deliver,
14 arrange for, pay for or reimburse any of the costs of
15 health care services, including through a policy, contract
16 or certificate listed in W.S. 26-20-802(a), and shall
17 include a sickness and accident insurance company, a
18 nonprofit corporation, a health maintenance organization, a
19 preferred provider organization, or any similar entity, or
20 any other entity providing a plan of health insurance or
21 health benefits.

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1 (b) The definitions in W.S. 35-5-301 shall apply to
2 this article.

3

4 **26-20-802. Discrimination prohibited.**

5

6 (a) No individual or group health insurance policy
7 providing coverage on an expense incurred basis, individual
8 or group service or indemnity type health insurance
9 contract or certificate issued by any health insurance
10 issuer that provides coverage for anatomical gifts, organ
11 transplants or related treatment and services shall:

12

13 (i) Deny coverage of an anatomical gift, organ
14 transplant or related treatment or service to a covered
15 person solely on the basis of the person's disability;

16

17 (ii) Deny to a covered person eligibility, or
18 continued eligibility, to enroll or to renew coverage under
19 the terms of the policy, contract or certificate, solely
20 for the purpose of avoiding the requirements of this
21 section or W.S. 35-5-301 through 35-5-303;

22

1 (iii) Penalize or otherwise reduce or limit the
2 reimbursement of an attending provider, or provide monetary
3 or nonmonetary incentives to an attending provider, to
4 induce the provider to provide care to a covered person in
5 a manner inconsistent with this section or W.S. 35-5-301
6 through 35-5-303; or

7
8 (iv) Reduce or limit coverage benefits to a
9 covered person for the medical services or other services
10 related to organ transplantation performed pursuant to this
11 section and W.S. 35-5-301 through 35-5-303 as determined in
12 consultation with the attending physician and covered
13 person.

14
15 (b) In the case of any policy, contract or
16 certificate listed in subsection (a) of this section that
17 is maintained pursuant to one (1) or more collective
18 bargaining agreements between employee representatives and
19 one (1) or more employers, any policy, contract or
20 certificate amendment made pursuant to a collective
21 bargaining agreement relating to the policy and made solely
22 to conform to any requirement under this section shall not

1 be treated as a termination of the collective bargaining
2 agreement.

3

4 (c) Nothing in this section shall require a health
5 insurance issuer to provide coverage for a medically
6 inappropriate organ transplant.

7

8

CHAPTER 5

9

ANATOMICAL GIFTS AND ORGAN TRANSPLANTATION

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ARTICLE 3

12

NONDISCRIMINATION IN ACCESS TO ANATOMICAL GIFTS AND ORGAN

13

TRANSPLANTATION

14

15 **35-5-301. Definitions.**

16

17 (a) As used in this article:

18

19 (i) "Anatomical gift" means a donation of all or
20 part of a human body to take effect after the donor's death
21 for the purpose of transplantation or transfusion;

22

1 (ii) "Auxiliary aid or service" means an aid or
2 service that is used to provide information to an
3 individual with a cognitive, developmental, intellectual,
4 neurological or physical disability and is available in a
5 format or manner that allows the individual to better
6 understand the information. An auxiliary aid or service
7 includes any of the following:

8

9 (A) Qualified interpreters or other
10 effective methods of making aurally delivered materials
11 available to persons with hearing impairments;

12

13 (B) Qualified readers, taped texts, texts
14 in accessible electronic format or other effective methods
15 of making visually delivered materials available to persons
16 with visual impairments;

17

18 (C) Supported decision making services,
19 including:

20

21 (I) The use of a support individual to
22 communicate information to the individual with a

1 disability, ascertain the wishes of the individual or
2 assist the individual in making decisions;

3

4 (II) The disclosure of information to
5 a legal guardian, authorized representative or another
6 individual designated by the individual with a disability
7 for decision making purposes, as long as the disclosure is
8 consistent with state and federal law, including the
9 federal Health Insurance Portability and Accountability Act
10 of 1996, 42 U.S.C. § 1320d et seq., and any regulations
11 promulgated by the United States department of health and
12 human services to implement the act;

13

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

21

22 (IV) Any other aid or service that is
23 used to provide information in a format that is easily

1 understandable and accessible to individuals with
2 cognitive, neurological, developmental or intellectual
3 disabilities, including assistive communication technology.
4

5 (iii) "Covered entity" means:

6
7 (A) Any licensed provider of health care
8 services, including licensed health care practitioners,
9 hospitals, nursing facilities, laboratories, intermediate
10 care facilities, psychiatric residential treatment
11 facilities, institutions for individuals with intellectual
12 or developmental disabilities and prison health centers;
13

14 (B) Any entity responsible for matching
15 anatomical gift donors to potential recipients.
16

17 (iv) "Disability" has the meaning stated in the
18 Americans with Disabilities Act of 1990, as amended by the
19 Americans with Disabilities Amendments Act of 2008, at 42
20 U.S.C. § 12102;
21

22 (v) "Organ transplant" means the transplantation
23 or transfusion of a part of a human body into the body of

1 another for the purpose of treating or curing a medical
2 condition;

3

4 (vi) "Qualified recipient" means an individual
5 who has a disability and meets the essential eligibility
6 requirements for the receipt of an anatomical gift with or
7 without any of the following:

8

9 (A) Individuals or entities available to
10 support and assist the individual with an anatomical gift
11 or transplantation;

12

13 (B) Auxiliary aids or services;

14

15 (C) Reasonable modifications to the
16 policies, practices or procedures of a covered entity,
17 including modifications to allow for either or both of the
18 following:

19

20 (I) Communication with one (1) or more
21 individuals or entities available to support or assist with
22 the recipient's care and medication after surgery or
23 transplantation;

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35-5-302. Discrimination prohibited.

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(II) Consideration of support networks available to the individual, including family, friends and home and community based services, including home and community based services funded through Medicaid, Medicare, another health plan in which the individual is enrolled or any program or source of funding available to the individual, when determining whether the individual is able to comply with post-transplant medical requirements.

(a) A covered entity shall not, solely on the basis of an individual's disability:

(i) Consider the individual ineligible to receive an anatomical gift or organ transplant;

(ii) Deny medical services or other services related to organ transplantation, including diagnostic services, evaluation, surgery, counseling or post-operative treatment and services;

1 (iii) Refuse to refer the individual to a
2 transplant center or other related specialist for the
3 purpose of being evaluated for or receiving an organ
4 transplant;

5

6 (iv) Refuse to place a qualified recipient on an
7 organ transplant waiting list;

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9 (v) Place a qualified recipient on an organ
10 transplant waiting list at a lower priority position than
11 the position at which the individual would have been placed
12 if the individual did not have a disability;

13

14 (vi) Refuse insurance coverage for any procedure
15 associated with being evaluated for or receiving an
16 anatomical gift or organ transplant, including
17 post-transplantation and post-transfusion care.

18

19 (b) A covered entity may take an individual's
20 disability into account when making treatment or coverage
21 recommendations or decisions, solely to the extent that the
22 disability has been found by a physician or surgeon,
23 following an individualized evaluation of the individual,

1 to be medically significant to the provision of the
2 anatomical gift.

3

4 (c) If an individual has the necessary support system
5 to assist the individual in complying with post-transplant
6 medical requirements, a covered entity may not consider the
7 individual's inability to independently comply with
8 post-transplant medical requirements to be medically
9 significant for the purposes of subsection (b) of this
10 section.

11

12 (d) A covered entity shall make reasonable
13 modifications to its policies, practices or procedures to
14 allow individuals with disabilities access to
15 transplantation related services, including diagnostic
16 services, surgery, coverage, post-operative treatment and
17 counseling, unless the entity can demonstrate that making
18 such modifications would fundamentally alter the nature of
19 those services.

20

21 (e) A covered entity shall take steps necessary to
22 ensure that an individual with a disability is not denied
23 medical services or other services related to organ

1 transplantation, including diagnostic services, surgery,
2 post-operative treatment or counseling, due to the absence
3 of auxiliary aids or services, unless the covered entity
4 demonstrates that taking the steps would fundamentally
5 alter the nature of the medical services or other services
6 related to organ transplantation or would result in an
7 undue burden for the covered entity.

8

9 (f) Nothing in this section shall require a covered
10 entity to make a referral or recommendation for or perform
11 a medically inappropriate organ transplant.

12

13 (g) A covered entity shall otherwise comply with the
14 requirements of titles II and III of the Americans with
15 Disabilities Act, as amended.

16

17 (h) The provisions of this article shall apply to all
18 stages of the organ transplant process.

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20 **35-5-303. Enforcement.**

21

22 (a) Whenever it appears that a covered entity has
23 violated or is violating any of the provisions of this

1 article, the affected individual may commence a civil
2 action for injunctive and other equitable relief against
3 the covered entity for purposes of enforcing compliance
4 with this article. The action may be brought in the
5 district court for the county where the affected individual
6 resides or resided or was denied the organ transplant or
7 referral.

8

9 (b) In an action brought under this article, the
10 court shall give priority on its docket and expedited
11 review, and may grant injunctive or other equitable relief,
12 including:

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14 (i) Requiring auxiliary aids or services to be
15 made available for a qualified recipient;

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17 (ii) Requiring the modification of a policy,
18 practice or procedure of a covered entity; or

19

20 (iii) Requiring facilities be made readily
21 accessible to and usable by a qualified recipient.

22

1 (c) Nothing in this article is intended to limit or
2 replace available remedies under the Americans With
3 Disabilities Act, as amended, or any other applicable law.

4

5 (d) This article shall not create a right to
6 compensatory or punitive damages against a covered entity.

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8 **Section 2.** This act is effective immediately upon
9 completion of all acts necessary for a bill to become law
10 as provided by Article 4, Section 8 of the Wyoming
11 Constitution.

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(END)