

HOUSE BILL 2609

By Cochran

AN ACT to amend Tennessee Code Annotated, Title 8;  
Title 33; Title 56; Title 63; Title 68 and Title 71,  
relative to health care.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 68, is amended by adding the following  
as a new chapter:

**68-31-101. Chapter definitions.**

As used in this chapter:

(1) "Ambulatory outpatient surgical center" has the same meaning as  
defined in § 68-11-201;

(2) "Anatomical gift" means a donation of all or part of a human body to  
take effect after the donor's death for the purpose of transplantation, therapy,  
research, or education;

(3) "Auxiliary aids and services" means:

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

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

(C) Acquisition or modification of equipment or devices; or

(D) Other similar services and actions;

(4) "Covered entity" means:

- (A) A healthcare provider;
  - (B) A hospital;
  - (C) An ambulatory outpatient surgical center;
  - (D) A home care organization; or
  - (E) Any other entity responsible for matching anatomical gifts or organ donors to potential recipients;
- (5) "Disability" has the same meaning as defined in 42 U.S.C. § 12102;
- (6) "Healthcare provider" means a person licensed under title 63, chapter 6, 7, 9, or 19;
- (7) "Home care organization" has the same meaning as defined in § 68-11-201;
- (8) "Hospital" has the same meaning as defined in § 33-1-101 or § 68-11-201;
- (9) "Transplantation" means the transplantation or transfusion of a human body part into the body of another individual for the purpose of treating or curing a medical condition; and
- (10) "Qualified recipient" means a recipient who has a disability and meets the eligibility requirements for receipt of transplantation or anatomical gift regardless of the use of the following:
- (A) Individuals or entities available to support and assist the recipient of an anatomical gift or transplantation;
  - (B) Auxiliary aids and services; or
  - (C) Reasonable modifications to the policies, practices, or procedures of a covered entity, including modifications that allow for:
    - (i) Communication with one (1) or more individuals or entities available to support or assist with the recipient's care after surgery or transplantation; or

(ii) Consideration of the availability of those individuals or entities when determining whether the recipient is able to comply with medical requirements following surgery or transplantation.

**68-31-102. Discrimination on the basis of disability prohibited.**

(a) A covered entity shall not do any of the following solely on the basis of the disability of a qualified recipient:

(1) Consider a qualified recipient ineligible for transplantation or receipt of an anatomical gift;

(2) Deny medical or other services related to transplantation, including:

(A) Evaluation;

(B) Surgery; and

(C) Counseling and treatment following transplantation;

(3) Refuse to refer a qualified recipient to a transplant center or specialist;

(4) Refuse to place a qualified recipient on an organ or tissue waiting list;  
or

(5) Place a qualified recipient at a position on an organ or tissue waiting list that is lower than the position at which the qualified recipient would have been placed if not for the qualified recipient's disability.

(b) Subject to subsection (c), if a healthcare provider has examined an individual and determined that the individual has a disability, then a covered entity may consider, when making recommendations or decisions related to receipt of an anatomical gift or transplantation, the disability of the individual to be medically significant to the receipt of an anatomical gift or transplantation.

(c) A covered entity shall not consider a qualified recipient's inability to comply with medical requirements following transplantation to be medically significant if a qualified recipient has individuals or entities available to assist in complying with the medical requirements.

(d) A covered entity shall make reasonable modifications to its policies, practices, or procedures to allow individuals with disabilities access to transplantation-related treatment and services, except when the covered entity demonstrates that the modifications would fundamentally alter the nature of the transplantation-related treatment and services.

**68-31-103. Civil cause of action.**

(a) An individual who reasonably believes that a covered entity has violated this chapter may bring a civil action for injunctive or other equitable relief against the covered entity for the purpose of enforcing compliance with this chapter.

(b) In an action commenced under this section, the court must:

(1) Schedule a hearing as soon as practicable; and

(2) Apply the same standards when rendering judgment as would be applied in an action brought in federal court under 42 U.S.C. 12101 et seq.

(c) This section does not create a right to compensatory or punitive damages against a covered entity.

SECTION 2. Tennessee Code Annotated, Title 56, Chapter 7, Part 26, is amended by adding the following as a new section:

(a) As used in this section:

(1) "Covered person" means a person on whose behalf a health insurance entity is obligated to pay benefits or provide services, and who has a disability;

(2) "Disability" has the same meaning as defined in 42 U.S.C. § 12102;

(3) "Health insurance entity" has the same meaning as defined in § 56-7-109; and

(4) "Transplantation" means the transplantation or transfusion of a human body part into the body of another individual for the purpose of treating or curing a medical condition.

(b) A health insurance entity that offers plans in this state that provide coverage for transplantation to individuals or groups on an expense-incurred basis shall not deny coverage for transplantation solely on the basis of the covered person's disability.

(c) This section does not require a health insurance entity to provide coverage for transplantation if the transplantation is not medically necessary.

(d) This section applies to any state or local insurance program, under title 8, chapter 27, and any managed care organization contracting with the state to provide insurance through the TennCare program.

SECTION 3. The headings to sections in this act are for reference purposes only and do not constitute a part of the law enacted by this act. However, the Tennessee Code Commission is requested to include the headings in any compilation or publication containing this act.

SECTION 4. This act shall take effect July 1, 2020, the public welfare requiring it, and applies to plans entered into, issued, amended, or renewed on or after that date.