

B-Engrossed
House Bill 2839

Ordered by the Senate May 31
Including House Amendments dated April 24 and Senate Amendments
dated May 31

Sponsored by COMMITTEE ON HEALTH CARE

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Prohibits entities providing health care services, practitioners practicing health care professions and insurers of health care services from, solely on basis that individual who meets eligibility requirements for receipt of organ transplant is disabled, discriminating against individual with respect to practices related to and coverage of organ transplant.

Creates exception.

Specifies process for judicial review of claim brought under Act and types of relief that court may grant.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to anatomical gifts; and declaring an emergency.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1. (1) As used in this section:**

5 (a) **“Auxiliary aids and services” means:**

6 (A) **Qualified interpreters or other effective methods of making aurally delivered material**
7 **available to individuals with hearing impairment;**

8 (B) **Qualified readers, audio recordings of texts or other effective methods of making**
9 **visually delivered material available to individuals with visual impairment;**

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

11 (D) **Other similar services or actions.**

12 (b) **“Covered entity” means:**

13 (A) **Any entity licensed under the laws of this state for the purpose of providing health**
14 **care services;**

15 (B) **Any practitioner licensed under the laws of this state for the purpose of practicing**
16 **a health care profession; or**

17 (C) **An insurer of health care services.**

18 (e) **“Disability” has the meaning described in ORS 659A.104.**

19 (d) **“Organ transplant” means the transplantation or transfusion of a part of a human**
20 **body into another human body for the purpose of treating or curing a medical condition.**

21 (e) **“Qualified individual” means an individual who, with or without the availability of**
22 **support networks, auxiliary aids and services or reasonable modifications to policies or**
23 **practices, meets the eligibility requirements for the receipt of an organ transplant.**

24 (f) **“Reasonable modifications to policies or practices” includes:**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 (A) Communication with individuals responsible for supporting an individual through
2 post-surgical, post-transplantation and post-transfusion care, including the administration
3 of medication; and

4 (B) Consideration of support networks available to an individual, including family, friends
5 and home- and community-based services funded through Medicaid, Medicare, a health ben-
6 efit plan as defined in ORS 743B.005 or any other source of funding available to the individual,
7 in determining whether the individual is able to comply with post-transplantation and post-
8 transfusion medical requirements.

9 (g) "Transplant hospital" has the meaning given that term in ORS 97.953.

10 (2) A covered entity may not, solely on the basis of a qualified individual's disability:

11 (a) Consider the individual ineligible to receive an organ transplant.

12 (b) Deny the individual medical services or other services related to organ transplanta-
13 tion, including diagnostic services, surgery, post-operative treatment and counseling.

14 (c) Refuse to refer the individual to a transplant hospital or an organ transplant spe-
15 cialist for the purpose of being evaluated for or receiving an organ transplant.

16 (d) Refuse to place the individual on an organ transplant waiting list.

17 (e) Place the individual on an organ transplant waiting list at a lower priority position
18 than the position at which the individual would have been placed if the individual did not have
19 a disability.

20 (f) Refuse the individual insurance coverage for any procedure associated with being
21 evaluated for or receiving an organ transplant, including post-transplantation and post-
22 transfusion care.

23 (3) Notwithstanding subsection (2) of this section, a covered entity may consider a qual-
24 ified individual's disability when making treatment or insurance coverage decisions or rec-
25 ommendations related to organ transplantation, to the extent that the disability has been
26 found by a physician licensed under ORS chapter 677, following an individualized evaluation
27 of the individual, to be medically significant to the receipt of the organ transplant.

28 (4) If a covered entity makes an objectively reasonable determination that a qualified
29 individual has the necessary support networks, including family, friends and home- and
30 community-based services funded through Medicaid, Medicare, a health benefit plan as de-
31 fined in ORS 743B.005 or any other source of funding available to the individual, to assist the
32 individual in complying with post-transplantation and post-transfusion medical requirements,
33 the covered entity may not consider the individual's inability to independently comply with
34 those orders to be medically significant for purposes of subsection (3) of this section.

35 (5) A covered entity must modify the covered entity's policies, practices or procedures
36 when modification is necessary to make medical services or other services related to organ
37 transplantation, including diagnostic services, surgery, post-operative treatment and coun-
38 seling, available to a qualified individual who has a disability unless the covered entity dem-
39 onstrates that making the modification would fundamentally alter the nature of the medical
40 services or other services related to organ transplantation.

41 (6) A covered entity must take steps necessary to ensure that a qualified individual who
42 has a disability is not denied medical services or other services related to organ transplan-
43 tation, including diagnostic services, surgery, post-operative treatment and counseling, un-
44 less the covered entity demonstrates that taking the steps would fundamentally alter the
45 nature of the medical services or other services related to organ transplantation or would

1 result in an undue burden for the covered entity.

2 (7) Judicial review of a claim brought under this section may be sought from the circuit
3 court for the county in which the potential recipient of the organ transplant resides or re-
4 sided or was denied the organ transplant. The circuit court shall give priority on its docket
5 and expedited review to a claim brought under this section.

6 (8) In an action brought under this section, the court may grant equitable relief, includ-
7 ing:

8 (a) Requiring auxiliary aids and services to be made available for a qualified individual
9 with a disability;

10 (b) Requiring the modification of a policy, practice or procedure of a covered entity; or

11 (c) Requiring facilities be made readily accessible to and usable by a qualified individual
12 with a disability.

13 (9)(a) Notwithstanding ORS 30.260 to 30.300, a person receiving services constituting pa-
14 tient care on an Oregon Health and Science University campus, in any Oregon Health and
15 Science University clinic or provided by any health care provider employed by or working on
16 behalf of Oregon Health and Science University, may bring a claim under this section for
17 equitable relief.

18 (b) This section does not create a right to damages against a public body, as defined in
19 ORS 30.260.

20 (c) This section does not prevent a person from bringing a claim against a covered entity
21 and seeking applicable relief from a covered entity for conduct described in this section un-
22 der any other provision of law.

23 **SECTION 2.** This 2017 Act being necessary for the immediate preservation of the public
24 peace, health and safety, an emergency is declared to exist, and this 2017 Act takes effect
25 on its passage.

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