

State of Minnesota

H. F. No. 3078

1.1 A bill for an act

1.2 relating to human rights; requiring nondiscrimination in access to transplants;

1.3 prescribing penalties; proposing coding for new law in Minnesota Statutes, chapter

1.4 363A.

1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6 Section 1. **[363A.50] PUBLIC POLICY.**

1.7 The legislature finds that:

1.8 (1) a mental or physical disability does not diminish a person's right to health care;

1.9 (2) the Americans with Disabilities Act of 1990 prohibits discrimination against persons

1.10 with disabilities, yet many individuals with disabilities still experience discrimination in

1.11 accessing critical health care services;

1.12 (3) individuals with mental and physical disabilities have historically been denied

1.13 life-saving organ transplants based on assumptions that their lives are less worthy, that they

1.14 are incapable of complying with post-transplant medical regimens, or that they lack adequate

1.15 support systems to ensure such compliance;

1.16 (4) although organ transplant centers must consider medical and psychosocial criteria

1.17 when determining if a patient is suitable to receive an organ transplant, transplant centers

1.18 that participate in Medicare, Medicaid, and other federally funded programs are required

1.19 to use patient selection criteria that result in a fair and nondiscriminatory distribution of

1.20 organs; and

1.21 (5) Minnesota residents in need of organ transplants are entitled to assurances that they

1.22 will not encounter discrimination on the basis of a disability.

2.1 Sec. 2. **[363A.51] DEFINITIONS.**

2.2 Subdivision 1. **Terms.** For purposes of this section, the following terms have the
2.3 meanings given unless the context clearly requires otherwise.

2.4 Subd. 2. **Anatomical gift.** "Anatomical gift" has the meaning given in section 525A.02,
2.5 subdivision 4.

2.6 Subd. 3. **Auxiliary aids and services.** "Auxiliary aids and services" include, but are not
2.7 limited to:

2.8 (1) qualified interpreters or other effective methods of making aurally delivered materials
2.9 available to individuals with hearing impairments;

2.10 (2) qualified readers, taped texts, or other effective methods of making visually delivered
2.11 materials available to individuals with visual impairments;

2.12 (3) the provision of information in a format that is accessible for individuals with
2.13 cognitive, neurological, developmental, or intellectual disabilities;

2.14 (4) the provision of supported decision-making services; and

2.15 (5) the acquisition or modification of equipment or devices.

2.16 Subd. 4. **Covered entity.** "Covered entity" means:

2.17 (1) any licensed provider of health care services, including licensed health care
2.18 practitioners, hospitals, nursing facilities, laboratories, intermediate care facilities, psychiatric
2.19 residential treatment facilities, institutions for individuals with intellectual or developmental
2.20 disabilities, and prison health centers; or

2.21 (2) any entity responsible for matching anatomical gift donors to potential recipients.

2.22 Subd. 5. **Disability.** "Disability" has the meaning given in the Americans with Disabilities
2.23 Act of 1990, as amended by the Americans with Disabilities Act Amendments Act of 2008,
2.24 United States Code, title 42, section 12102.

2.25 Subd. 6. **Qualified individual.** "Qualified individual" means an individual who, with
2.26 or without available support networks, the provision of auxiliary aids and services, or
2.27 reasonable modifications to policies or practices, meets the essential eligibility requirements
2.28 for the receipt of an anatomical gift.

2.29 Subd. 7. **Reasonable modifications to policies or practices.** "Reasonable modifications
2.30 to policies or practices" include, but are not limited to:

(1) communication with individuals responsible for supporting an individual with postsurgical and post-transplantation care, including medication; and

(2) 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, in determining whether the individual is able to comply with post-transplant medical requirements.

Subd. 8. Supported decision making. "Supported decision making" means the use of a support person to assist an individual in making medical decisions, to communicate information to the individual, or to ascertain an individual's wishes. Supported decision making may include:

(1) including the individual's attorney-in-fact, health care proxy, or any person of the individual's choice in communications about the individual's medical care;

(2) permitting the individual to designate a person of their choice for the purposes of supporting that individual in communicating, processing information, or making medical decisions;

(3) providing auxiliary aids and services to facilitate the individual's ability to communicate and process health-related information, including the use of assistive communication technology;

(4) providing information to persons designated by the individual, consistent with the provisions of the Health Insurance Portability and Accountability Act of 1996, United States Code, title 42, section 1301 et seq., and other applicable laws and regulations governing disclosure of health information;

(5) providing health information in a format that is readily understandable by the individual; and

(6) working with a court-appointed guardian or other individual responsible for making medical decisions on behalf of the individual to ensure that the individual is included in decisions involving the individual's own health care and that medical decisions are in accordance with the individual's own expressed interests.

Sec. 3. [363A.52] PROHIBITION OF DISCRIMINATION.

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

4.1 (1) deem an individual ineligible to receive an anatomical gift or organ transplant;

4.2 (2) deny medical or related organ transplantation services, including evaluation, surgery,
4.3 counseling, and postoperative treatment and care;

4.4 (3) refuse to refer the individual to a transplant center or other related specialist for the
4.5 purpose of evaluation or receipt of an organ transplant;

4.6 (4) refuse to place an individual on an organ transplant waiting list or place the individual
4.7 at a lower-priority position on the list than the position at which the individual would have
4.8 been placed if not for the individual's disability; or

4.9 (5) decline insurance coverage for any procedure associated with the receipt of the
4.10 anatomical gift, including post-transplantation care.

4.11 (b) Notwithstanding paragraph (a), a covered entity may take an individual's disability
4.12 into account when making treatment or coverage recommendations or decisions, solely to
4.13 the extent that the physical or mental disability has been found by a physician, following
4.14 an individualized evaluation of the potential recipient to be medically significant to the
4.15 provision of the anatomical gift. The provisions of this section may not be deemed to require
4.16 referrals or recommendations for, or the performance of, medically inappropriate organ
4.17 transplants.

4.18 (c) If an individual has the necessary support system to assist the individual in complying
4.19 with post-transplant medical requirements, an individual's inability to independently comply
4.20 with those requirements may not be deemed to be medically significant for the purposes of
4.21 paragraph (b).

4.22 (d) A covered entity must make reasonable modifications to policies, practices, or
4.23 procedures, when such modifications are necessary to make services such as
4.24 transplantation-related counseling, information, coverage, or treatment available to qualified
4.25 individuals with disabilities, unless the entity can demonstrate that making such modifications
4.26 would fundamentally alter the nature of such services.

4.27 (e) A covered entity must take such steps as may be necessary to ensure that no qualified
4.28 individual with a disability is denied services such as transplantation-related counseling,
4.29 information, coverage, or treatment because of the absence of auxiliary aids and services,
4.30 unless the entity can demonstrate that taking such steps would fundamentally alter the nature
4.31 of the services being offered or result in an undue burden.

5.1 (f) A covered entity must otherwise comply with the requirements of Titles II and III of
5.2 the Americans with Disabilities Act of 1990 and the Americans with Disabilities Act
5.3 Amendments Act of 2008.

5.4 (g) The provisions of this section apply to each part of the organ transplant process.

5.5 Sec. 4. **[363A.53] ENFORCEMENT.**

5.6 (a) Any individual who has been subjected to discrimination in violation of sections
5.7 363A.50 to 363A.52 may initiate a civil action in a court of competent jurisdiction to enjoin
5.8 further violations and recover the cost of the suit including reasonable attorney fees.

5.9 (b) The court must accord priority on its calendar and expeditiously proceed with an
5.10 action brought under sections 363A.50 to 363A.52.

5.11 (c) Nothing in this section is intended to limit or replace available remedies under the
5.12 Americans with Disabilities Act of 1990 and the Americans with Disabilities Act
5.13 Amendments Act of 2008 or any other applicable law.