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## DIGEST

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HB 143 Original

2019 Regular Session

White

**Abstract:** Prohibits discrimination against potential organ transplant recipients based on disability.

Proposed law presents legislative findings relative to organ transplantation and discrimination against persons with developmental, intellectual, or physical disabilities. Declares that La. residents in need of organ transplants shall be entitled to an assurance that they will not encounter discrimination on the basis of a disability.

Proposed law provides the following definitions for purposes of proposed law:

- (1) "Auxiliary aid or service" means an aid or service that is used to provide information to an individual with a cognitive, developmental, intellectual, neurological, or physical disability and is available in a format or manner that allows the individual to better understand the information. Proposed law provides an illustrative list of auxiliary aids and services.
- (2) "Covered entity" means any of the following entities:
  - (a) Any licensed provider of healthcare services, including licensed healthcare practitioners, hospitals, nursing facilities, laboratories, intermediate care facilities, psychiatric residential treatment facilities, institutions for individuals with intellectual or developmental disabilities, and prison health centers.
  - (b) Any entity responsible for matching anatomical gift donors to potential recipients.
- (3) "Qualified recipient" means an individual who has a disability and meets the essential eligibility requirements for the receipt of an anatomical gift.

Proposed law provides that it shall be unlawful for a covered entity to do any of the following solely on the basis of an individual having a disability:

- (1) Consider the individual ineligible to receive an anatomical gift or organ transplant.
- (2) Deny medical services or other services related to organ transplantation, including diagnostic services, evaluation, surgery, counseling, and post-operative treatment and services.
- (3) Refuse to refer the individual to a transplant center or other related specialist for the purpose of being evaluated for or receiving an organ transplant.

- (4) Refuse to place a qualified recipient on an organ transplant waiting list.
- (5) Place a qualified recipient on an organ transplant waiting list at a lower priority position than the position at which the individual would have been placed if the individual did not have a disability.
- (6) Refuse insurance coverage for any procedure associated with being evaluated for or receiving an anatomical gift or organ transplant, including post-transplantation and post-transfusion care.

Proposed law provides that notwithstanding any provisions of proposed law to the contrary, a covered entity may consider an individual's disability when making treatment or coverage recommendations or decisions, but only to the extent that the disability has been found by a physician or surgeon, following an individualized evaluation of the individual, to be medically significant to the provision of the anatomical gift.

Proposed law stipulates that if an individual has the necessary support system to assist him in complying with post-transplant medical requirements, a covered entity may not consider the individual's inability to independently comply with post-transplant medical requirements to be medically significant for the purposes of proposed law.

Proposed law requires each covered entity to make reasonable modifications to its policies, practices, or procedures to allow individuals with disabilities access to transplantation-related services unless the entity can demonstrate that making such modifications would fundamentally alter the nature of such services.

Proposed law requires that each covered entity shall take all such actions as are necessary to ensure that an individual with a disability is not denied medical services or other services related to organ transplantation due to the absence of auxiliary aids or services, except under either of the following conditions:

- (1) The entity demonstrates that taking the actions would fundamentally alter the nature of the medical services or other services related to organ transplantation.
- (2) The entity demonstrates that taking the actions would result in an undue burden for the covered entity.

Proposed law provides that nothing therein shall be deemed to require a covered entity to make a referral or recommendation for or to perform a medically inappropriate organ transplant.

Proposed law provides that whenever an individual believes a covered entity has violated the prohibition against discrimination established in proposed law, the affected individual may commence a civil action for injunctive and other equitable relief against the covered entity for purposes of enforcing compliance with proposed law. Provides that the action may be brought in the district court for the parish where the affected individual resides or resided or was denied the

organ transplant or referral.

Proposed law requires that in actions brought pursuant to proposed law, courts shall give those actions priority on their dockets and expedited review. Authorizes courts to grant injunctive or other equitable relief, including by any of the following means:

- (1) Requiring auxiliary aids or services to be made available for a qualified recipient.
- (2) Requiring the modification of a policy, practice, or procedure of a covered entity.
- (3) Requiring that facilities be made readily accessible to and usable by a qualified recipient.

Proposed law stipulates that it is not intended to limit or replace available remedies under the Americans with Disabilities Act or any other applicable law. Stipulates further that proposed law shall not be construed as creating a right to compensatory or punitive damages against a covered entity.

Present law, R.S. 22:1021 et seq., provides relative to state-mandated health insurance benefits and nondiscrimination in health insurance coverage. Proposed law retains present law and adds thereto provisions prohibiting health insurance issuers that provide coverage for anatomical gifts, organ transplants, or related treatment and services from doing any of the following:

- (1) Deny coverage to a covered person solely on the basis of the person having a disability.
- (2) Deny to a patient eligibility, or continued eligibility, to enroll or to renew coverage under the terms of the health benefit plan, solely for the purpose of avoiding the requirements of this Section.
- (3) Penalize or otherwise reduce or limit the reimbursement of an attending provider, or provide monetary or nonmonetary incentives to an attending provider, to induce such provider to furnish care to an insured or enrollee in a manner inconsistent with this Section.
- (4) Reduce or limit coverage benefits to a patient for the medical services or other services related to organ transplantation performed pursuant to this Section as determined in consultation with the attending physician and patient.

Proposed law stipulates that in the case of a health benefit plan maintained pursuant to a collective bargaining agreement between employee representatives and one or more employers, any plan amendment made solely to conform to a requirement of proposed law shall not be treated as a termination of the collective bargaining agreement.

Proposed law provides that nothing therein shall be construed as requiring a health insurance issuer to provide coverage for a medically inappropriate organ transplant.

Proposed law, R.S. 17:2351 et seq., establishes the Anatomical Gift Act governing the donation,

procurement, receipt, and uses of anatomical gifts in La. Proposed law retains present law and adds thereto an affirmation that potential anatomical gift recipients shall be entitled to the protections against discrimination based on disability provided in proposed law.

Proposed law provides that it shall be known and may be cited as "Evie's Law".

Effective upon signature of governor or lapse of time for gubernatorial action.

(Adds R.S. 17:2353(M), R.S. 22:1023.1, and R.S. 40:1170.1-1170.4)