

CHAPTER 99

HEALTH AND ENVIRONMENT

HOUSE BILL 21-1169

BY REPRESENTATIVE(S) Van Beber and Ortiz, Bacon, Bernett, Bird, Bradfield, Cutter, Duran, Esgar, Exum, Gonzales-Gutierrez, Gray, Herod, Hooton, Jackson, Jodeh, Kennedy, Kipp, Lontine, McCluskie, McCormick, McLachlan, Michaelson Jenet, Ricks, Roberts, Tipper, Valdez A., Valdez D., Weissman, Young, Garnett; also SENATOR(S) Pettersen and Danielson, Buckner, Fields, Ginal, Hansen, Jaquez Lewis, Kolker, Lee, Moreno, Story, Winter, Zenzinger, Garcia.

AN ACT

CONCERNING THE PROHIBITION OF DISCRIMINATION AGAINST A POTENTIAL ORGAN TRANSPLANT RECIPIENT BASED SOLELY ON THE PERSON'S DISABILITY.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, **add** article 56 to title 25 as follows:

ARTICLE 56
Nondiscrimination Against Potential Organ
Transplant Recipients

25-56-101. Short title. THE SHORT TITLE OF THIS ARTICLE 56 IS "PRUITT'S LAW".

25-56-102. Legislative declaration. (1) THE GENERAL ASSEMBLY FINDS AND DECLARES THAT:

(a) A MENTAL OR PHYSICAL DISABILITY DOES NOT DIMINISH A PERSON'S RIGHT TO HEALTH CARE;

(b) THE FEDERAL "AMERICANS WITH DISABILITIES ACT OF 1990", 42 U.S.C. SEC. 12101 ET SEQ., AS AMENDED, PROHIBITS DISCRIMINATION AGAINST PERSONS WITH DISABILITIES, YET MANY PEOPLE STILL EXPERIENCE DISCRIMINATION IN ACCESSING CRITICAL HEALTH-CARE SERVICES BASED ON THEIR DISABILITY;

(c) IN OTHER STATES NATIONWIDE, PERSONS WITH DISABILITIES HAVE BEEN DENIED LIFE-SAVING ORGAN TRANSPLANTS BASED ON THE ASSUMPTION THAT THEIR

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LIVES ARE LESS WORTHY, THAT THEY ARE INCAPABLE OF COMPLYING WITH POST-TRANSPLANT MEDICAL REQUIREMENTS, OR THAT THEY LACK ADEQUATE SUPPORT SYSTEMS TO ENSURE COMPLIANCE WITH POST-TRANSPLANT MEDICAL REQUIREMENTS; AND

(d) ALTHOUGH ORGAN TRANSPLANT CENTERS MUST CONSIDER MEDICAL AND PSYCHOLOGICAL CRITERIA WHEN DETERMINING WHETHER A PATIENT IS SUITABLE TO RECEIVE AN ORGAN TRANSPLANT, TRANSPLANT CENTERS THAT PARTICIPATE IN MEDICARE, MEDICAID, AND OTHER FEDERALLY FUNDED PROGRAMS ARE REQUIRED TO USE PATIENT SELECTION CRITERIA THAT RESULT IN THE FAIR AND NONDISCRIMINATORY DISTRIBUTION OF ORGANS.

(2) THEREFORE, THE GENERAL ASSEMBLY DECLARES THAT THE LIFE OF A PERSON WITH A DISABILITY WHO NEEDS AN ORGAN TRANSPLANT IS AS WORTHY AND VALUABLE AS THE LIFE OF A PERSON WITHOUT A DISABILITY WHO NEEDS THE SAME MEDICAL SERVICE, AND COLORADO RESIDENTS IN NEED OF ORGAN TRANSPLANTS ARE ENTITLED TO ASSURANCES THAT THEY WILL NOT ENCOUNTER DISCRIMINATION ON THE BASIS OF A DISABILITY.

25-56-103. Definitions. AS USED IN THIS ARTICLE 56, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "ANATOMICAL GIFT" MEANS THE DONATION OF PART OF A HUMAN BODY FOR THE PURPOSE OF TRANSPLANTATION TO ANOTHER PERSON.

(2) "AUXILIARY AIDS OR SERVICES" 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.

(3) "COVERED ENTITY" MEANS A HEALTH-CARE PRACTITIONER, AS DEFINED IN SECTION 12-30-103 (4)(a); A HEALTH FACILITY LICENSED PURSUANT TO SECTION 25-1.5-103; AND A CORRECTIONAL FACILITY, AS DEFINED IN SECTION 24-4.1-302 (1.3).

(4) "DISABILITY" HAS THE SAME MEANING AS SET FORTH IN THE FEDERAL "AMERICANS WITH DISABILITIES ACT OF 1990", 42 U.S.C. SEC. 12102 (1), AS AMENDED.

(5) "ORGAN TRANSPLANT" MEANS THE TRANSPLANTATION OR TRANSFUSION OF AN ANATOMICAL GIFT INTO THE BODY OF ANOTHER PERSON FOR THE PURPOSE OF TREATING OR CURING A MEDICAL CONDITION.

(6) "QUALIFIED RECIPIENT" MEANS AN INDIVIDUAL WHO HAS A DISABILITY AND MEETS THE ESSENTIAL ELIGIBILITY REQUIREMENTS FOR THE RECEIPT OF AN ANATOMICAL GIFT WITH OR WITHOUT ANY OF THE FOLLOWING:

(a) INDIVIDUALS OR ENTITIES AVAILABLE TO SUPPORT AND ASSIST THE INDIVIDUAL WITH AN ANATOMICAL GIFT OR TRANSPLANTATION;

(b) AUXILIARY AIDS OR SERVICES;

(c) REASONABLE MODIFICATIONS TO THE POLICIES, PRACTICES, OR PROCEDURES OF A COVERED ENTITY, INCLUDING MODIFICATIONS TO ALLOW FOR:

(I) COMMUNICATION WITH ONE OR MORE INDIVIDUALS OR ENTITIES AVAILABLE TO SUPPORT OR ASSIST WITH THE RECIPIENT'S CARE AND MEDICATION AFTER SURGERY OR TRANSPLANTATION; OR

(II) CONSIDERATION OF SUPPORT NETWORKS AVAILABLE TO THE INDIVIDUAL, INCLUDING FAMILY MEMBERS, FRIENDS, HOME AND COMMUNITY-BASED SERVICES THE INDIVIDUAL IS ENROLLED IN, 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.

25-56-104. Prohibition on discrimination for organ transplants based solely on disability - applicability. (1) THIS ARTICLE 56 APPLIES TO ALL STAGES OF THE ORGAN TRANSPLANT PROCESS.

(2) A COVERED ENTITY SHALL NOT, SOLELY ON THE BASIS OF AN INDIVIDUAL'S DISABILITY:

(a) CONSIDER THE INDIVIDUAL INELIGIBLE TO RECEIVE AN ANATOMICAL GIFT OR ORGAN TRANSPLANT;

(b) DENY MEDICAL SERVICES OR OTHER SERVICES RELATED TO ORGAN TRANSPLANTATION, INCLUDING DIAGNOSTIC SERVICES, EVALUATION, SURGERY, COUNSELING, AND POST-OPERATIVE TREATMENT AND SERVICES;

(c) 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;

(d) REFUSE TO PLACE A QUALIFIED RECIPIENT ON AN ORGAN TRANSPLANT WAITING LIST; OR

(e) 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.

(3) NOTWITHSTANDING SUBSECTION (2) OF THIS SECTION, A COVERED ENTITY MAY TAKE AN INDIVIDUAL'S DISABILITY INTO ACCOUNT WHEN MAKING TREATMENT OR COVERAGE RECOMMENDATIONS OR DECISIONS, SOLELY 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 OR ORGAN TRANSPLANT.

(4) IF AN INDIVIDUAL HAS THE NECESSARY SUPPORT SYSTEM TO ASSIST THE INDIVIDUAL 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 SUBSECTION (3) OF THIS SECTION.

(5) A COVERED ENTITY SHALL:

(a) MAKE REASONABLE MODIFICATIONS TO ITS POLICIES, PRACTICES, AND PROCEDURES TO ALLOW INDIVIDUALS WITH DISABILITIES ACCESS TO TRANSPLANTATION-RELATED SERVICES, INCLUDING DIAGNOSTIC SERVICES, SURGERY, COVERAGE, POST-OPERATIVE TREATMENT, AND COUNSELING, UNLESS THE COVERED ENTITY DEMONSTRATES THAT MAKING SUCH MODIFICATIONS WOULD FUNDAMENTALLY ALTER THE NATURE OF THE SERVICES PROVIDED; AND

(b) TAKE STEPS REASONABLE AND NECESSARY TO ENSURE THAT AN INDIVIDUAL WITH A DISABILITY IS NOT DENIED MEDICAL SERVICES OR OTHER SERVICES RELATED TO ORGAN TRANSPLANTATION, INCLUDING DIAGNOSTIC SERVICES, SURGERY, POST-OPERATIVE TREATMENT, OR COUNSELING, DUE TO THE ABSENCE OF AUXILIARY AIDS OR SERVICES, UNLESS THE COVERED ENTITY DEMONSTRATES THAT TAKING SUCH STEPS WOULD FUNDAMENTALLY ALTER THE NATURE OF THE MEDICAL SERVICES OR OTHER SERVICES RELATED TO ORGAN TRANSPLANTATION OR WOULD RESULT IN AN UNDUE BURDEN FOR THE COVERED ENTITY.

(6) NOTHING IN THIS ARTICLE 56 REQUIRES A COVERED ENTITY TO MAKE A REFERRAL OR RECOMMENDATION FOR OR PERFORM A MEDICALLY INAPPROPRIATE ORGAN TRANSPLANT.

25-56-105. Injunctive and equitable relief - expedited judicial review - limitations. (1) WHENEVER IT APPEARS THAT A COVERED ENTITY HAS VIOLATED OR IS VIOLATING ANY OF THE PROVISIONS OF THIS ARTICLE 56, THE AFFECTED INDIVIDUAL MAY COMMENCE A CIVIL ACTION FOR INJUNCTIVE OR EQUITABLE RELIEF AGAINST THE COVERED ENTITY FOR PURPOSES OF ENFORCING COMPLIANCE. THE ACTION MAY BE BROUGHT IN DISTRICT COURT FOR THE COUNTY WHERE THE AFFECTED INDIVIDUAL RESIDES OR RESIDED OR THE DISTRICT COURT FOR THE COUNTY WHERE THE AFFECTED INDIVIDUAL WAS DENIED THE ORGAN TRANSPLANT OR REFERRAL.

(2) IN AN ACTION BROUGHT UNDER THIS ARTICLE 56, THE COURT MUST GIVE PRIORITY ON ITS DOCKET AND EXPEDITED REVIEW AND MAY GRANT INJUNCTIVE OR OTHER EQUITABLE RELIEF, INCLUDING:

(a) REQUIRING AUXILIARY AIDS OR SERVICES TO BE MADE AVAILABLE FOR A QUALIFIED RECIPIENT;

(b) REQUIRING THE MODIFICATION OF A POLICY, PRACTICE, OR PROCEDURE OF A COVERED ENTITY; OR

(c) REQUIRING HEALTH-CARE FACILITIES BE MADE READILY ACCESSIBLE TO AND USABLE BY A QUALIFIED RECIPIENT.

(3) NOTHING IN THIS ARTICLE 56 IS INTENDED TO LIMIT OR REPLACE AVAILABLE REMEDIES UNDER THE FEDERAL "AMERICANS WITH DISABILITIES ACT OF 1990", 42 U.S.C. SEC. 12101 ET SEQ., AS AMENDED, OR ANY OTHER APPLICABLE LAW.

(4) THIS ARTICLE 56 DOES NOT CREATE A RIGHT TO COMPENSATORY OR PUNITIVE DAMAGES AGAINST A COVERED ENTITY.

25-56-106. Enforcement. (1) AN AGGRIEVED PERSON MAY COMMENCE A CIVIL ACTION IN THE APPROPRIATE DISTRICT COURT FOR INJUNCTIVE OR EQUITABLE RELIEF AGAINST A COVERED ENTITY FOR THE PURPOSE OF ENFORCING COMPLIANCE WITH THIS ARTICLE 56. THE AGGRIEVED PERSON MAY COMMENCE THE CIVIL ACTION IN THE DISTRICT COURT FOR THE COUNTY IN WHICH THE PERSON RESIDES OR RESIDED OR THE DISTRICT COURT FOR THE COUNTY IN WHICH THE ORGAN TRANSPLANT OR RELATED TREATMENT OR SERVICES WERE DENIED.

(2) THE DISTRICT COURT SHALL GIVE PRIORITY AND EXPEDITED REVIEW TO THE CIVIL ACTION COMMENCED PURSUANT TO THIS SECTION AND MAY GRANT INJUNCTIVE OR OTHER EQUITABLE RELIEF THAT:

(a) REQUIRES AUXILIARY AIDS OR SERVICES BE MADE AVAILABLE TO THE AGGRIEVED PERSON;

(b) REQUIRES THE COVERED ENTITY TO MODIFY A POLICY, PRACTICE, OR PROCEDURE;

(c) REQUIRES A COVERED ENTITY TO MAKE ITS HEALTH-CARE FACILITY READILY ACCESSIBLE TO AND AVAILABLE TO THE AGGRIEVED PERSON; AND

(d) IS DEEMED APPROPRIATE BY THE COURT.

SECTION 2. In Colorado Revised Statutes, **add** 10-16-104.1 as follows:

10-16-104.1. Prohibition on discrimination for organ transplants based solely on disability - definition. (1) A CARRIER THAT OFFERS, ISSUES, OR RENEWS A HEALTH BENEFIT PLAN THAT PROVIDES COVERAGE FOR ANATOMICAL GIFTS, ORGAN TRANSPLANTS, OR RELATED TREATMENTS OR SERVICES SHALL NOT, SOLELY ON THE BASIS OF A COVERED PERSON'S DISABILITY:

(a) DENY COVERAGE TO A COVERED PERSON FOR AN ORGAN TRANSPLANT OR RELATED TREATMENT OR SERVICES;

(b) DECLINE OR LIMIT COVERAGE OF A COVERED PERSON SOLELY FOR THE PURPOSE OF AVOIDING THE REQUIREMENTS OF THIS SECTION; OR

(c) PENALIZE A COVERED PERSON OR REDUCE OR LIMIT COVERAGE FOR A COVERED PERSON FOR HEALTH-CARE SERVICES RELATED TO ORGAN TRANSPLANTATION, AS DETERMINED IN CONSULTATION WITH THE ATTENDING PHYSICIAN AND THE COVERED PERSON OR THE COVERED PERSON'S REPRESENTATIVE.

(2) THIS SECTION DOES NOT REQUIRE A HEALTH BENEFIT PLAN TO PROVIDE COVERAGE FOR THE DONATION OF AN ANATOMICAL GIFT, AN ORGAN TRANSPLANT, OR RELATED TREATMENT OR SERVICES.

(3) FOR THE PURPOSES OF THIS SECTION, "ANATOMICAL GIFT" MEANS THE DONATION OF PART OF A HUMAN BODY FOR THE PURPOSE OF TRANSPLANTATION TO

ANOTHER PERSON.

SECTION 3. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety.

Approved: May 6, 2021