

**HOUSE . . . . . No. 1256**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

*Josh S. Cutler*

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to preventing discrimination against persons with disabilities in the provision of health care.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Josh S. Cutler</i>	<i>6th Plymouth</i>	<i>2/18/2021</i>
<i>Lindsay N. Sabadosa</i>	<i>1st Hampshire</i>	<i>2/22/2021</i>
<i>Tram T. Nguyen</i>	<i>18th Essex</i>	<i>2/26/2021</i>
<i>Susan L. Moran</i>	<i>Plymouth and Barnstable</i>	<i>2/26/2021</i>
<i>Danillo A. Sena</i>	<i>37th Middlesex</i>	<i>3/8/2021</i>
<i>Elizabeth A. Malia</i>	<i>11th Suffolk</i>	<i>3/19/2021</i>
<i>Patrick M. O'Connor</i>	<i>Plymouth and Norfolk</i>	<i>3/19/2021</i>

**HOUSE . . . . . No. 1256**

By Mr. Cutler of Pembroke, a petition (accompanied by bill, House, No. 1256) of Josh S. Cutler and others relative to preventing discrimination against persons with disabilities in the provision of health care. Health Care Financing.

**The Commonwealth of Massachusetts**

**In the One Hundred and Ninety-Second General Court  
(2021-2022)**

An Act relative to preventing discrimination against persons with disabilities in the provision of health care.

*Whereas*, The deferred operation of this act would tend to defeat its purpose, which is to provide equity in the healthcare system during the CVOID-19 pandemic, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public health.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 SECTION 1. Definitions

2 As specified in chapter 151 b) section 1, the term “disability” (previously “handicap”)  
3 means (a) a physical or mental impairment which substantially limits one or more major life  
4 activities of a person; (b) a record of having such impairment; or (c) being regarded as having  
5 such impairment, but such term shall not include current, illegal use of a controlled substance as  
6 defined in section one of chapter ninety-four C.

7 “Short-term survival” means an individual’s assessed probability of surviving an acute  
8 illness from which they are presently suffering and being successfully discharged from a hospital  
9 or other inpatient medical facility.

10 SECTION 2. Section 4 of chapter 151B of the general laws (unlawful practices) is hereby  
11 amended by adding after the words “ (8) otherwise seek, receive, or maintain genetic information  
12 for non-medical purposes” the following:

13 20.

14 i) For any public or private entity, or agency of the commonwealth, to approve or  
15 implement a plan for the distribution of scarce healthcare resources during a crisis, including but  
16 not limited to Crisis Standards of Care implemented during a public health emergency, to either  
17 deny an individual lifesaving treatment or place an individual at reduced priority for lifesaving  
18 treatment if such a determination is based on a presumption that that individual has a reduced  
19 quality of life due to a disability or chronic health condition, that their life is less worth saving  
20 due to a disability or chronic health condition, or based on any measure, metric, or third party  
21 analysis which has the effect of setting a value for the life of a person or persons with a specific  
22 disability or medical diagnosis that is less than the value given to the life of a person or persons  
23 without a disability; provided however that this section shall not prohibit such a plan from  
24 considering an individual’s prospects for short-term survival in determining whether they are  
25 prioritized for care.

26 ii) For any public or private entity, or agency of the commonwealth, to withhold any  
27 medical treatment to an individual based on that individual having a disability or chronic health  
28 condition, or based on a presumption that that individual has a reduced quality of life due to a  
29 disability or chronic health condition, that their life is less worth saving due to a disability or  
30 chronic health condition, or based on any measure, metric, or third party analysis which has the

31 effect of setting a value for the life of a person or persons with a specific disability or medical  
32 diagnosis that is less than the value given to the life of a person or persons without a disability.

33         iii) For any public or private entity, or agency of the commonwealth, when determining  
34 whether a healthcare treatment should be available within a formulary, or determining the value  
35 of a healthcare treatment, to assume in such a determination that individuals who use or would  
36 use that treatment have a reduced quality of life due to a disability or chronic health condition,  
37 that their life is less worth saving due to a disability or chronic health condition, or based on any  
38 measure, metric, or third party analysis which has the effect of setting a value for the life of a  
39 person or persons with a specific disability or medical diagnosis that is less than the value given  
40 to the life of a person or persons without a disability.

41         iv) For a hospital or other entity engaged in the provision of healthcare to a) condition  
42 the provision of treatment on a patient having a Do Not Resuscitate Order, advance directive or  
43 any instruction relating to the administration, withholding or withdrawing of life-sustaining  
44 procedures or artificially administered nutrition and hydration; (b) Communicate to any  
45 individual or person acting on behalf of the individual, before or after admission to the hospital,  
46 that treatment is conditioned on the individual's having a Do Not Resuscitate Order, an advance  
47 directive or any instruction relating to the administration, withholding or withdrawing of life-  
48 sustaining procedures or artificially administered nutrition and hydration; (c) Suggest to any  
49 individual, or person acting on behalf of the individual, who contacts the hospital regarding  
50 treatment for the individual that admission or treatment is conditioned on the individual's having  
51 a Do Not Resuscitate Order, an advance directive or any instruction relating to the  
52 administration, withholding or withdrawing of life-sustaining procedures or artificially  
53 administered nutrition and hydration; or (d) Discriminate in any other way against an individual

54 based on whether the individual has a Do Not Resuscitate Order, an advance directive or any  
55 instruction relating to the administration, withholding or withdrawing of life-sustaining  
56 procedures or artificially administered nutrition and hydration. This section does not prohibit a  
57 hospital from providing written materials and information about advance directives, prohibit a  
58 licensed health care professional from engaging in a discussion with a patient about the written  
59 materials and information, so long as the provider does not disproportionately advise individuals  
60 to sign an advanced directive based on the race, ethnicity, gender, sexuality, or disability status  
61 of said individuals.

62 (v) Nothing under this subsection shall be deemed to prevent healthcare practitioners,  
63 hospitals, or other healthcare entities from providing a medically appropriate course of treatment  
64 to an individual that they believe will extend that individual's life, improve their symptoms, or  
65 alleviate pain and suffering.

66 SECTION 3. The Executive Office of Health and Human Services shall develop  
67 regulations for the implementation of this act with 60 days of passage.