

SENATE No. 745

The Commonwealth of Massachusetts

PRESENTED BY:

Sonia Chang-Diaz

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:	
<i>Sonia Chang-Diaz</i>	<i>Second Suffolk</i>	
<i>Patrick M. O'Connor</i>	<i>Plymouth and Norfolk</i>	<i>3/15/2021</i>

SENATE No. 745

By Ms. Chang-Diaz, a petition (accompanied by bill, Senate, No. 745) of Sonia Chang-Diaz and Patrick M. O'Connor for legislation 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.

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.