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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-SECOND SESSION

H. F. No. 3972

03/03/2022 Authored by Richardson; Xiong, J.; Noor; Hassan; Becker-Finn and others
The bill was read for the first time and referred to the Committee on Judiciary Finance and Civil Law

1.1 A bill for an act
1.2 relating to human rights; requiring nondiscrimination and equity in access to organ
1.3 transplants; prescribing penalties; proposing coding for new law in Minnesota
1.4 Statutes, chapter 363A.

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

1.6 Section 1. 363A.52 DEFINITIONS.

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

1.9 Subd. 2. Anatomical gift. "Anatomical gift" has the meaning given in section 525A.02,
1.10 subdivision 4.

1.11 Subd. 3. Auxiliary aids and services. "Auxiliary aids and services" include, but are not
1.12 limited to:

1.13 (1) qualified interpreters or other effective methods of making aurally delivered materials
1.14 available to non-English speaking individuals;

1.15 (2) qualified readers, taped texts, or other effective methods of making visually delivered
1.16 materials available to all individuals;

1.17 (3) the provision of information in a format that is accessible for individuals with various
1.18 racial and ethnic backgrounds; and

1.19 (4) the provision of supported decision-making services.

1.20 Subd. 4. Covered entity. "Covered entity" means:

2.1 (1) any licensed provider of health care services, including licensed health care
 2.2 practitioners, hospitals, nursing facilities, laboratories, intermediate care facilities, residential
 2.3 treatment facilities, and prison health centers;

2.4 (2) any entity responsible for matching anatomical gift donors to potential recipients;
 2.5 and

2.6 (3) an organ procurement organization.

2.7 **Subd. 5. Organ procurement organization.** Organ procurement organization" or "OPO"
 2.8 means a nonprofit organization responsible for recovering organs for transplantation in the
 2.9 United States. The OPO role is to assess donor potential and collect and convey accurate
 2.10 clinical information. OPOs work directly with the donor's family. OPOs facilitate
 2.11 authorization, testing, recovery of the organ, and delivery of the organ to the transplant
 2.12 hospital.

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

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

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

2.21 (2) consideration of support networks available to the individual, including family,
 2.22 friends, and home and community-based services, including home and community-based
 2.23 services funded through Medicaid, Medicare, another health plan in which the individual
 2.24 is enrolled, or any program or source of funding available to the individual, in determining
 2.25 whether the individual is able to comply with post-transplant medical requirements.

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

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

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

3.4 (3) providing auxiliary aids and services to facilitate the individual's ability to
 3.5 communicate and process health-related information;

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

3.10 (5) providing health information in a format that is readily understandable by the
 3.11 individual.

3.12 Sec. 2. **[363A.53] PROHIBITION OF DISCRIMINATION.**

3.13 (a) A covered entity may not, solely on the basis of a qualified individual's race or
 3.14 ethnicity:

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

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

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

3.20 (4) refuse to place an individual on an organ transplant waiting list or place the individual
 3.21 at a lower-priority position on the list than the position at which the individual would have
 3.22 been placed if not for the individual's race or ethnicity; or

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

3.25 (b) A covered entity may not take an individual's race or ethnicity into account when
 3.26 making treatment or coverage recommendations or decisions.

3.27 (c) If an individual has the necessary support system to assist the individual in complying
 3.28 with post-transplant medical requirements, an individual's race or ethnicity may not be
 3.29 deemed to be medically significant for the purposes of organ transplantation.

3.30 (d) A covered entity must make reasonable modifications to policies, practices, or
 3.31 procedures, when such modifications are necessary to make services such as

4.1 transplantation-related counseling, information, coverage, or treatment available to qualified
4.2 individuals.

4.3 (e) A covered entity must take such steps as may be necessary to ensure that no qualified
4.4 individual is denied services such as transplantation-related counseling, information,
4.5 coverage, or treatment because of the absence of auxiliary aids and services.

4.6 (f) A covered entity must otherwise comply with Title VII of the Civil Rights Act of
4.7 1964 and this chapter.

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

4.9 Sec. 3. **[363A.54] ENFORCEMENT.**

4.10 (a) Any individual who has been subjected to discrimination in violation of sections
4.11 363A.51 to 363A.53 may initiate a civil action in a court of competent jurisdiction to enjoin
4.12 further violations and recover the cost of the suit including reasonable attorney fees.

4.13 (b) The court must accord priority on its calendar and expeditiously proceed with an
4.14 action brought under sections 363A.51 to 363A.53.

4.15 (c) Nothing in this section is intended to limit or replace available remedies under Title
4.16 VII of the Civil Rights Act of 1964 or any other applicable law.