

2023 Kansas Statutes

65-3276. Nondiscrimination in organ transplantation. (a) The following findings and purpose shall apply to this section:

- (1) A mental or physical disability does not diminish an individual's right to healthcare;
- (2) the federal Americans with disabilities act prohibits discrimination against individuals with disabilities, yet many individuals with disabilities still experience discrimination in accessing critical healthcare services;
- (3) in other states nationwide, individuals with mental and physical disabilities have historically been denied life-saving organ transplants based on assumptions that their lives are less worthy, that they are incapable of complying with post-transplantation medical requirements or that they lack adequate support systems to ensure compliance with post-transplantation medical requirements;
- (4) although organ transplant centers must consider medical and psychosocial criteria when determining if a patient is suitable to receive an organ transplant, transplant centers that participate in medicare, the state program for medical assistance and other federally funded programs are required to use patient selection criteria that result in a fair and nondiscriminatory distribution of organs; and
- (5) state residents in need of organ transplants are entitled to assurances that they will not encounter discrimination on the basis of a disability.

(b) A covered entity may not solely on the basis of an individual's disability:

- (1) Consider a qualified individual ineligible to receive an anatomical gift or organ transplant;
- (2) deny medical and other services related to organ transplantation, including evaluation, surgery, counseling, and post-transplantation treatment and services;
- (3) refuse to refer the individual to a transplant center or a related specialist for the purpose of evaluation or receipt of an organ transplant;
- (4) refuse to place a qualified individual on an organ transplant waiting list; or
- (5) place a qualified individual at a lower-priority position on an organ transplant waiting list than the position at which the qualified individual would have been placed if not for the disability.

(c) (1) Subject to paragraph (2), 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, following an individualized evaluation of the individual, to be medically significant to the provision of the anatomical gift.

(2) If an individual has the necessary support system to assist the individual in complying with post-transplantation medical requirements, a covered entity may not consider the individual's inability to independently comply with the post-transplantation medical requirements to be medically significant for the purposes of paragraph (1).

(d) A covered entity shall make reasonable modifications in policies, practices or procedures, when the modifications are necessary to allow an individual with a disability access to services, including transplantation-related counseling, information, coverage or treatment, unless the covered entity can demonstrate that making the modifications would fundamentally alter the nature of the services.

(e) A covered entity shall take such steps as may be necessary to ensure that an individual with a disability is not denied services, including transplantation-related counseling, information, coverage or treatment, due to the absence of auxiliary aids and services, unless the covered entity can demonstrate that taking the steps would fundamentally alter the nature of the services being offered or would result in an undue burden.

(f) Nothing in this section shall be construed to require a covered entity to make a referral or recommendation for or perform a medically inappropriate organ transplant.

(g) (1) If a covered entity violates this section, the affected individual may bring an action in the appropriate district court for injunctive or other equitable relief.

(2) In an action brought under paragraph (1), the district court shall:

- (A) Schedule a hearing as soon as possible; and
- (B) apply the same standards in rendering a judgment in the action as would be applied in an action brought in federal court under the federal Americans with disabilities act.
- (h) As used in this section:
 - (1) "Anatomical gift" means the donation of all or part of a human body to take effect after the donor's death for the purpose of transplantation or transfusion.
 - (2) "Auxiliary aids and services" includes:
 - (A) Qualified interpreters or other effective methods of making aurally delivered materials available to individuals who are deaf or hard of hearing;
 - (B) qualified readers, taped texts, texts in accessible electronic format or other effective methods of making visually delivered materials available to individuals with visual impairments; and
 - (C) supported decision-making services, including:
 - (i) The use of a support individual to assist in making medical decisions, communicating information to the individual or ascertaining an individual's wishes;
 - (ii) the provision of information to a person designated by the individual consistent with the federal health insurance portability and accountability act and other applicable laws and regulations governing the disclosure of health information;
 - (iii) if an individual has a court-appointed guardian or other individual responsible for making medical decisions on behalf of the individual, any measures used to ensure that the individual is included in decisions involving the individual's healthcare and that medical decisions are in accordance with the individual's own expressed interests; and
 - (iv) any other aid or service that is used to provide information in a format that is easily understandable and accessible to individuals with cognitive, neurological, developmental or intellectual disabilities.
 - (3) "Covered entity" means:
 - (A) A licensed healthcare provider, as defined in K.S.A. 40-3401, and amendments thereto;
 - (B) a medical care facility as defined in K.S.A. 65-425, and amendments thereto;
 - (C) a laboratory;
 - (D) a state psychiatric hospital, as defined in K.S.A. 59-2946, and amendments thereto;
 - (E) an adult care home, as defined in K.S.A. 65-3501, and amendments thereto;
 - (F) a group home as defined in K.S.A. 12-736, and amendments thereto;
 - (G) an institutional medical unit in a correctional facility; or
 - (H) any entity responsible for potential recipients of the anatomical gift.
 - (4) "Disability" has the meaning stated in the federal Americans with disabilities act.
 - (5) "Organ transplant" means the transplantation or transfusion of a part of a human body into the body of another individual for the purpose of treating or curing a medical condition.
 - (6) "Qualified individual" means an individual who:
 - (A) Has a disability; and
 - (B) meets the essential eligibility requirements for the receipt of an anatomical gift, with or without:
 - (i) The support networks available to the individual;
 - (ii) the provision of auxiliary aids and services; or
 - (iii) reasonable modifications to the policies or practices of a covered entity, including modifications to allow:
 - (a) Communication with individuals responsible for supporting the individual with post-surgical and post-transplantation care, including medication; and
 - (b) the consideration of support networks available to the individual, including family, friends, and home and community based services funded through the state program of medical assistance, or another health plan in which the individual is enrolled, or any program or source of funding available to the individual, in determining whether the individual is able to comply with post-transplantation medical requirements.

History: L. 2018, ch. 2, § 1; L. 2022, ch. 75, § 8; April 28.