COMMITTEE REPORT

February 17, 2022

**H. 4597**

Introduced by Reps. Bustos, M.M. Smith, Huggins, Bennett, Hill, Matthews and Brawley

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Read the first time January 11, 2022.

**THE COMMITTEE ON MEDICAL,**

**MILITARY, PUBLIC AND MUNICIPAL AFFAIRS**

To whom was referred a Bill (H. 4597) to amend the Code of Laws of South Carolina, 1976, by adding Article 15 to Chapter 43, Title 44 so as to prohibit discrimination against individuals with disabilities in accessing, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass:

LEON HOWARD for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**Explanation of Fiscal Impact**

**State Expenditure**

This bill prohibits discrimination against disabled persons when prioritizing organ transplants. Additionally, insurers that provide coverage for organ transplants may not deny organ transplant coverage to an insured due solely to a disability. This bill does not operationally or fiscally alter the responsibilities of DDSN, DHEC, DHHS, or DOI. Therefore, this bill will have no fiscal impact for these agencies. Additionally, the State Health Plan is a self-funded insurance benefits program that is not defined as an insurer pursuant to State insurance laws.  Therefore, this bill will not operationally or fiscally impact PEBA and would not have an impact for the State Health Plan.

Also, DOI anticipates this bill does not create a new health care benefit. Therefore, this bill is not a health mandate under the ACA and is not anticipated to trigger defrayment by the State.

Additionally, this bill creates a civil cause of action for purposes of enforcing coverage for those individuals who were denied the organ transplant. This bill may alter the number of cases or the duration of cases heard in court. However, the department intends to use existing general fund resources to manage any modification in caseloads. Therefore, this bill will have no expenditure impact for the Judicial Department.

**State Revenue**

The bill specifies that insurers that provide coverage for organ transplants may not deny organ transplant coverage to an insured due solely to a disability. DOI anticipates this bill may result in a shift of persons covered, assuming that discrimination is currently occurring. However, as this bill does not alter insurance coverage, DOI anticipates there will be no increase in premiums. Therefore, this bill will have no impact on insurance premium tax revenue.

Additionally, this bill creates a civil cause of action for purposes of enforcing coverage for those individuals who were denied the organ transplant. This bill may result in a change in the fines and fees collected in court. Court fines and fees are distributed to the general fund, other funds, and local funds. Therefore, the Revenue and Fiscal Affairs Office (RFA) anticipates this bill may result in an undetermined impact to general fund revenue, other funds revenue, and local revenue due to the modifications in fines and fees collections in court.

**Local Revenue**

This bill creates a civil cause of action for purposes of enforcing coverage for those individuals who were denied the organ transplant. This bill may result in a change in the fines and fees collected in court. Court fines and fees are distributed to the general fund, other funds, and local funds. Therefore, RFA anticipates this bill may result in an undetermined impact to general fund revenue, other funds revenue, and local revenue due to the modifications in fines and fees collections in court.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 15 TO CHAPTER 43, TITLE 44 SO AS TO PROHIBIT DISCRIMINATION AGAINST INDIVIDUALS WITH DISABILITIES IN ACCESSING ANATOMICAL GIFTS AND ORGAN TRANSPLANTS; TO DEFINE CERTAIN TERMS; TO ESTABLISH REQUIREMENTS AND PROHIBITED CONDUCT FOR COVERED ENTITIES, INCLUDING HOSPITALS AND ORGAN PROCUREMENT ORGANIZATIONS, WITH REGARD TO THE ORGAN TRANSPLANT PROCESS; TO CREATE CIVIL REMEDIES FOR VIOLATION OF THE PROVISIONS OF THE ARTICLE; TO ESTABLISH REQUIREMENTS APPLICABLE TO HEALTH INSURERS THAT PROVIDE COVERAGE FOR ANATOMICAL GIFTS AND ORGAN TRANSPLANTS; AND FOR OTHER PURPOSES.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 43, Title 44 of the 1976 Code is amended by adding:

“Article 15

Nondiscrimination in Access to Anatomical Gift and Organ Transplants

Section 44‑43‑1510. (A) The General Assembly finds that:

(1) A mental or physical disability does not diminish a person’s right to health care.

(2) The Americans with Disabilities Act of 1990, 42 U.S.C. Section 12101, prohibits discrimination against persons with disabilities, yet many individuals with disabilities still experience discrimination in accessing critical health care services.

(3) Nationwide, individuals with mental and physical disabilities have been denied life‑saving organ transplants based on assumptions that their lives are less worthy, that they are incapable of complying with posttransplant medical requirements, or that they lack adequate support systems to ensure compliance with posttransplant 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, Medicaid, and other federally funded programs are required to use patient selection criteria that result in a fair and nondiscriminatory distribution of organs.

(5) South Carolina residents in need of organ transplants are entitled to assurances that they will not encounter discrimination on the basis of a disability.

(B) 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 with no disability who needs the same medical service.

Section 44‑43‑1520. For purposes of this article:

(1) ‘Anatomical gift’ means a 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 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. An auxiliary aid or service may include:

(a) qualified interpreters or other effective methods of making aurally delivered materials available to persons with hearing impairments;

(b) qualified readers, taped texts, texts in accessible electronic format, or other effective methods of making visually delivered materials available to persons with visual impairments;

(c) supported decision‑making services, including:

(i) the use of a support individual to communicate information to the individual with a disability, ascertain the wishes of the individual, or assist the individual in making decisions;

(ii) the disclosure of information to a legal guardian, authorized representative, or another individual designated by the individual with a disability for such purpose, as long as the disclosure is consistent with state and federal law, including the federal Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. 1320d, et seq., and any regulations promulgated by the United States Department of Health and Human Services to implement the act;

(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 health care and that medical decisions are in accordance with the individual’s own expressed interests;

(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, including assistive communication technology.

(3) ‘Covered entity’ means:

(a) any licensed provider of health care services, including licensed health care practitioners, hospitals, nursing facilities, laboratories, intermediate care facilities, psychiatric residential treatment facilities, institutions for individuals with intellectual or developmental disabilities, and prison health centers;

(b) any entity responsible for matching anatomical gift donors to potential recipients, including an eye bank, organ procurement organization, or tissue bank, as those terms are defined in Section 44‑43‑305.

(4) ‘Disability’ has the meaning stated in the Americans with Disabilities Act of 1990, as amended.

(5) ‘Organ transplant’ means the transplantation or transfusion of a part of a human body into the body of another 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 either or both of the following:

(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;

(ii) consideration of support networks available to the individual, including family, friends, and home‑ and community‑based services, including home‑ and community‑based services funded through Medicaid, Medicare, another health plan in which the individual is enrolled, or any program or source of funding available to the individual, when determining whether the individual is able to comply with posttransplant medical requirements.

Section 44‑43‑1530. (A) The provisions of this section apply to all stages of the organ transplant process.

(B) A covered entity must not, solely on the basis of an individual’s disability:

(1) consider the individual ineligible to receive an anatomical gift or organ transplant;

(2) deny medical services or other services related to organ transplantation, including diagnostic services, evaluation, surgery, counseling, and postoperative treatment and services;

(3) 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;

(4) refuse to place a qualified recipient on an organ transplant waiting list;

(5) 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; or

(6) refuse insurance coverage for any procedure associated with being evaluated for or receiving an anatomical gift or organ transplant, including posttransplantation and posttransfusion care.

(C) Notwithstanding subsection (B), 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.

(D) If an individual has the necessary support system to assist the individual in complying with posttransplant medical requirements, a covered entity may not consider the individual’s inability to independently comply with posttransplant medical requirements to be medically significant for the purposes of subsection (C).

(E) A covered entity must make reasonable modifications to its policies, practices, or procedures to allow individuals with disabilities access to transplantation‑related services, including diagnostic services, surgery, coverage, postoperative treatment, and counseling, unless the entity can demonstrate that making such modifications would fundamentally alter the nature of such services.

(F) A covered entity must take steps 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, postoperative treatment, or counseling, due to the absence of auxiliary aids or services, unless the covered entity demonstrates that taking the 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.

(G) Nothing in this section may be deemed to require a covered entity to make a referral or recommendation for or perform a medically inappropriate organ transplant.

(H) A covered entity must otherwise comply with the requirements of Titles II and III of the Americans with Disabilities Act of 1990, as amended.

Section 44‑43‑1540. (A) Whenever it appears that a covered entity has violated or is violating any of the provisions of this article, the affected individual may commence a civil action for injunctive and other equitable relief against the covered entity for purposes of enforcing compliance with this article. The action may be brought in the circuit court for the county where the affected individual resides or resided or was denied the organ transplant or referral.

(B) In an action brought under this article, the court shall give priority on its docket and expedited review, and may grant injunctive or other equitable relief, including:

(1) requiring auxiliary aids or services to be made available for a qualified recipient;

(2) requiring the modification of a policy, practice, or procedure of a covered entity; or

(3) requiring facilities be made readily accessible to and usable by a qualified recipient.

(C) Nothing in this article is intended to limit or replace available remedies under the Americans with Disabilities Act or any other applicable law.

(D) This article does not create a right to compensatory or punitive damages against a covered entity.

Section 44‑43‑1550. (A) A health insurer that provides coverage for anatomical gifts, organ transplants, or related treatment and services must not:

(1) deny coverage to a covered person solely on the basis of the person’s disability;

(2) deny to a patient eligibility, or continued eligibility, to enroll or to renew coverage under the terms of the health benefit plan, solely for the purpose of avoiding the requirements of this section;

(3) penalize or otherwise reduce or limit the reimbursement of an attending provider, or provide monetary or nonmonetary incentives to an attending provider, to induce such provider to provide care to an insured or enrollee in a manner inconsistent with this section; or

(4) reduce or limit coverage benefits to a patient for the medical services or other services related to organ transplantation performed pursuant to this section as determined in consultation with the attending physician and patient.

(B) In the case of a health benefit plan maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers, any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement imposed pursuant to this section must not be treated as a termination of the collective bargaining agreement.

(C) Nothing in this section may be deemed to require a health insurer to provide coverage for a medically inappropriate organ transplant.

(D) For purposes of this section:

(1) ‘Covered person’ means a policyholder, subscriber, enrollee, member, or individual covered by a health benefit plan.

(2) ‘Health benefit plan’ means a policy, contract, certificate, or agreement entered into, offered, or issued by a health insurer to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services and does not include a plan providing coverage for excepted benefits and short‑term policies that have a term of less than twelve months.

(3) ‘Health insurer’ means an entity subject to the insurance laws and regulations of this State, including Chapter 71, Title 38, or subject to the jurisdiction of the commissioner, that contracts or offers to contract to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services, including through a health benefit plan as defined in this section, and includes a sickness and accident insurance company, a health maintenance organization, a preferred provider organization, or any similar entity, or any other entity providing a plan of health insurance or health benefits.”

SECTION 2. This act takes effect upon approval by the Governor.

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