

Chapter 383

(Senate Bill 792)

AN ACT concerning

Public Health – Nondiscrimination in Access to Anatomical Gifts and Organ Transplantation

FOR the purpose of prohibiting certain entities from taking certain actions regarding organ transplantation and anatomical gifts solely on the basis of an individual's disability; authorizing, under certain circumstances, certain entities to take an individual's disability into account when making certain recommendations or decisions; requiring, except under certain circumstances, certain entities to make certain modifications to policies, practices, and procedures to ~~make~~ allow an individual with a disability access to certain services available to an individual with a disability; requiring, except under certain circumstances, certain entities to take certain steps to ensure that an individual with a disability is not denied certain services; authorizing, under certain circumstances, a certain individual to bring a certain action in a certain court for certain relief; requiring a circuit court in a certain action to schedule a hearing as soon as possible and apply certain standards in rendering a judgment; prohibiting certain insurers, nonprofit health service plans, and health maintenance organizations from denying coverage for organ transplantations solely on the basis of an insured's or enrollee's disability; declaring the findings of the General Assembly; providing for the construction and application of this Act; defining certain terms; making this Act an emergency measure; and generally relating to nondiscrimination in access to anatomical gifts and organ transplantation.

BY adding to

Article – Health – General

Section 20–1601 through 20–1606 to be under the new subtitle “Subtitle 16.

Nondiscrimination in Access to Anatomical Gifts and Organ Transplantation”

Annotated Code of Maryland

(2009 Replacement Volume and 2014 Supplement)

BY adding toArticle – InsuranceSection 27–915Annotated Code of Maryland(2011 Replacement Volume and 2014 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
That the Laws of Maryland read as follows:

Article – Health – General

**SUBTITLE 16. NONDISCRIMINATION IN ACCESS TO ANATOMICAL GIFTS AND
ORGAN TRANSPLANTATION.**

20-1601.

(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) “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.

(C) “AUXILIARY AIDS AND SERVICES” INCLUDES:

(1) QUALIFIED INTERPRETERS OR OTHER EFFECTIVE METHODS OF MAKING AURALLY DELIVERED MATERIALS AVAILABLE TO INDIVIDUALS WITH HEARING IMPAIRMENTS;

(2) QUALIFIED READERS, TAPED TEXTS, TEXTS IN ACCESSIBLE ELECTRONIC FORMAT, OR OTHER EFFECTIVE METHODS OF MAKING VISUALLY DELIVERED MATERIALS AVAILABLE TO INDIVIDUALS WITH VISUAL IMPAIRMENTS;

(3) 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; AND

(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 ~~RESPONSIBLE~~ 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; AND

(4) 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.

(D) “COVERED ENTITY” MEANS:

- (1) A LICENSED HEALTH CARE PROVIDER;**
- (2) A HEALTH CARE FACILITY AS DEFINED IN § 19-114 OF THIS ARTICLE;**
- (3) A LABORATORY;**
- (4) A STATE PSYCHIATRIC HOSPITAL;**
- (5) A STATE RESIDENTIAL CENTER AS DEFINED IN § 7-101 OF THIS ARTICLE;**
- (6) AN ALTERNATIVE LIVING UNIT AS DEFINED IN § 7-101 OF THIS ARTICLE;**
- (7) A GROUP HOME AS DEFINED IN § 7-101 OF THIS ARTICLE;**
- (8) AN INSTITUTIONAL MEDICAL UNIT IN A CORRECTIONAL FACILITY;**
- OR**
- (9) ~~A HEALTH INSURANCE CARRIER; OR~~**
- ~~(10) ANY ENTITY RESPONSIBLE FOR MATCHING AN ANATOMICAL GIFT DONOR WITH~~ POTENTIAL RECIPIENTS OF THE ANATOMICAL GIFT.**

(E) “DISABILITY” HAS THE MEANING STATED IN THE FEDERAL AMERICANS WITH DISABILITIES ACT.

(F) “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.

(G) “QUALIFIED INDIVIDUAL” MEANS AN INDIVIDUAL WHO:

- (1) HAS A DISABILITY; AND**
- (2) 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:

1. COMMUNICATION WITH INDIVIDUALS RESPONSIBLE FOR SUPPORTING THE INDIVIDUAL WITH POSTSURGICAL AND POSTTRANSPLANTATION CARE, INCLUDING MEDICATION; AND

2. THE CONSIDERATION OF SUPPORT NETWORKS AVAILABLE TO THE INDIVIDUAL, INCLUDING FAMILY, FRIENDS, AND HOME- AND COMMUNITY-BASED SERVICES FUNDED THROUGH THE MARYLAND MEDICAL ASSISTANCE PROGRAM, MEDICARE, 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 POSTTRANSPLANTATION MEDICAL REQUIREMENTS.

20-1602.

THIS SUBTITLE MAY NOT BE CONSTRUED TO REQUIRE A COVERED ENTITY TO MAKE A REFERRAL OR RECOMMENDATION FOR OR PERFORM A MEDICALLY INAPPROPRIATE ORGAN TRANSPLANT.

20-1603.

THE GENERAL ASSEMBLY FINDS THAT:

(1) A MENTAL OR PHYSICAL DISABILITY DOES NOT DIMINISH AN INDIVIDUAL'S RIGHT TO HEALTH CARE;

(2) THE FEDERAL AMERICANS WITH DISABILITIES ACT PROHIBITS DISCRIMINATION AGAINST INDIVIDUALS WITH DISABILITIES, YET MANY INDIVIDUALS WITH DISABILITIES STILL EXPERIENCE DISCRIMINATION IN ACCESSING CRITICAL HEALTH CARE SERVICES;

(3) ~~INDIVIDUALS~~ INDIVIDUALS 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 POSTTRANSPLANTATION MEDICAL REQUIREMENTS, OR THAT THEY LACK ADEQUATE

SUPPORT SYSTEMS TO ENSURE COMPLIANCE WITH POSTTRANSPLANTATION 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 MARYLAND MEDICAL ASSISTANCE PROGRAM, 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.

20-1604.

THIS SUBTITLE APPLIES TO EACH PART OF THE ORGAN TRANSPLANT PROCESS.

20-1605.

(A) 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 POSTTRANSPLANTATION 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; ~~OR~~

~~(6) DECLINE HEALTH INSURANCE COVERAGE FOR ANY PROCEDURE ASSOCIATED WITH THE RECEIPT OF AN ANATOMICAL GIFT, INCLUDING POSTTRANSPLANTATION CARE.~~

(B) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, 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 POSTTRANSPLANTATION MEDICAL REQUIREMENTS, A COVERED ENTITY MAY NOT CONSIDER THE INDIVIDUAL'S INABILITY TO INDEPENDENTLY COMPLY WITH THE POSTTRANSPLANTATION MEDICAL REQUIREMENTS TO BE MEDICALLY SIGNIFICANT FOR THE PURPOSES OF PARAGRAPH (1) OF THIS SUBSECTION.

(C) A COVERED ENTITY SHALL MAKE REASONABLE MODIFICATIONS IN POLICIES, PRACTICES, OR PROCEDURES, WHEN THE MODIFICATIONS ARE NECESSARY TO ~~MAKE~~ ALLOW AN INDIVIDUAL WITH A DISABILITY ACCESS TO SERVICES, INCLUDING TRANSPLANTATION-RELATED COUNSELING, INFORMATION, COVERAGE, OR TREATMENT, AVAILABLE TO AN INDIVIDUAL WITH A DISABILITY, UNLESS THE COVERED ENTITY CAN DEMONSTRATE THAT MAKING THE MODIFICATIONS WOULD FUNDAMENTALLY ~~WOULD~~ ALTER THE NATURE OF THE SERVICES.

(D) A COVERED ENTITY SHALL TAKE ~~ANY~~ 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 ~~WOULD~~ ALTER THE NATURE OF THE SERVICES BEING OFFERED OR WOULD RESULT IN AN UNDUE BURDEN.

20-1606.

(A) IF A COVERED ENTITY VIOLATES THIS SUBTITLE, THE AFFECTED INDIVIDUAL MAY BRING AN ACTION IN THE APPROPRIATE CIRCUIT COURT FOR INJUNCTIVE OR OTHER EQUITABLE RELIEF.

(B) IN AN ACTION BROUGHT UNDER SUBSECTION (A) OF THIS SECTION, THE CIRCUIT COURT SHALL:

(1) SCHEDULE A HEARING AS SOON AS POSSIBLE; AND

(2) 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.

Article – Insurance

27-915.

(A) IN THIS SECTION, “ORGAN TRANSPLANTATION” MEANS THE TRANSPLANTATION OR TRANSFUSION OF A HUMAN BODY PART INTO THE BODY OF ANOTHER INDIVIDUAL FOR THE PURPOSE OF TREATING OR CURING A MEDICAL CONDITION.

(B) THIS SECTION APPLIES TO:

(1) INSURERS AND NONPROFIT HEALTH SERVICE PLANS THAT PROVIDE COVERAGE FOR ORGAN TRANSPLANTATION TO INDIVIDUALS OR GROUPS ON AN EXPENSE-INCURRED BASIS UNDER HEALTH INSURANCE POLICIES OR CONTRACTS THAT ARE ISSUED OR DELIVERED IN THE STATE; AND

(2) HEALTH MAINTENANCE ORGANIZATIONS THAT PROVIDE COVERAGE FOR ORGAN TRANSPLANTATION TO INDIVIDUALS OR GROUPS UNDER CONTRACTS THAT ARE ISSUED OR DELIVERED IN THE STATE.

(C) AN ENTITY SUBJECT TO THIS SECTION MAY NOT DENY COVERAGE FOR AN ORGAN TRANSPLANTATION SOLELY ON THE BASIS OF AN INSURED’S OR ENROLLEE’S DISABILITY.

(D) THIS SECTION MAY NOT BE CONSTRUED TO REQUIRE AN ENTITY SUBJECT TO THIS SECTION TO PROVIDE COVERAGE FOR AN ORGAN TRANSPLANTATION THAT IS NOT MEDICALLY NECESSARY.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act is an emergency measure, is necessary for the immediate preservation of the public health or safety, has been passed by a yea and nay vote supported by three-fifths of all the members elected to each of the two Houses of the General Assembly, and shall take effect from the date it is enacted.

Approved by the Governor, May 12, 2015.