

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Introduced

House Bill 4767

BY DELEGATE CONLEY

[Introduced February 15, 2022; Referred to the
Committee on Health and Human Resources then the
Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §16-20-1, §16-20-2, and §16-20-3, all relating to prohibiting discrimination in
 3 eligibility for organ transplantation based upon an individual’s COVID-19 vaccine status.

Be it enacted by the Legislature of West Virginia:

ARTICLE 20. NONDISCRIMINATION IN ACCESS TO ORGAN TRANSPLANTATION.

§16-20-1. Findings and assurances.

1 (1) Organ transplant centers must consider medical and psychosocial criteria when
 2 determining if a patient is suitable to receive an organ transplant. Organ transplant centers that
 3 participate in Medicare, Medicaid, and other federal funding programs are required to use patient
 4 selection criteria that result in a fair and nondiscriminatory distribution of organs; and

5 (2) West Virginia residents in need of organ transplants are entitled to assurances that
 6 they will not encounter discrimination on the basis on their COVID-19 vaccine status.

§16-20-2. Definitions.

1 As used in this article:

2 (1) “Anatomical gift” means a donation of all or part of a human body to take effect after
 3 the donor’s death for the purpose of transplantation or transfusion.

4 (2) “Covered entity” means:

5 (A) Any licensed provider of health care services, including licensed health care
 6 practitioners, hospitals, nursing facilities, laboratories, intermediate care facilities, psychiatric
 7 residential treatment facilities, institutions for individuals with intellectual or developmental
 8 disabilities, and prison health centers; or

9 (B) Any entity responsible for matching anatomical gift donors to potential recipients.

10 “Organ transplant” means the transplantation or transfusion of a part of a human body into the
 11 body of another for the purpose of treating or curing a medical condition.

12 (3) “Qualified individual” means an individual who, notwithstanding his or her decision to
 13 receive the COVID-19 vaccine, meets the essential eligibility requirements for the receipt of an

14 anatomical gift.

§16-20-3. Discrimination prohibited.

1 (a) A covered entity may not, solely on the basis of a qualified individual's choice to receive
2 the COVID-19 vaccine:

3 (1) Deem an individual ineligible to receive an anatomical gift or organ transplant;

4 (2) Deny medical and related services related to organ transplantation, including
5 evaluation, surgery, counseling, post-operative treatment and services;

6 (3) Refuse to refer the individual to a transplant center or other related specialist for the
7 purpose of evaluation or receipt of an organ transplant;

8 (4) Refuse to place an individual on an organ transplant waiting list, or placement of the
9 individual at a lower-priority position on the list than the position at which he or she would have
10 been placed if not for his or her disability; or

11 (5) Decline insurance coverage for any procedure associated with the receipt of the
12 anatomical gift, including post-transplantation care;

13 (b) Notwithstanding subsection (a) of this section, a covered entity may take an individual's
14 vaccine status into account when making treatment and/or coverage recommendations or
15 decisions, solely to the extent that the COVID-19 vaccine has been found by a physician or
16 surgeon, following an individualized evaluation of the potential recipient, to be medically
17 significant to the provision of the anatomical gift. The provisions of this section shall not be
18 deemed to require referrals or recommendations for, or the performance of, medically
19 inappropriate organ transplants.

20 (c) If an individual has the necessary support system to assist the individual in complying
21 with post-transplant medical requirements, an individual's inability to independently comply with
22 those requirements shall not be deemed to be medically significant for the purposes of subsection
23 (b) of this section.

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

NOTE: The purpose of this bill is to prohibit discrimination, based on an individual's mental or physical disability, in access to organ transplantation.

Strike-throughs indicate language that would be stricken from a heading or the present law, and underscoring indicates new language that would be added.