



## 2022 South Dakota Legislature

# House Bill 1129

Introduced by: **Representative Chaffee**

1 **An Act to prohibit forms of discrimination in access to organ transplantation.**

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 **Section 1. That a NEW SECTION be added to title 20:**

4 Terms used in this chapter mean:

5 (1) "Auxiliary aids and services,":

6 (a) Qualified interpreters or other effective methods of making aurally delivered  
7 materials available to individuals with hearing impairments;

8 (b) Qualified readers, taped texts, or other effective methods of making visually  
9 delivered materials available to individuals with visual impairments;

10 (c) Provision of information in a format that is accessible for individuals with  
11 cognitive, neurological, developmental, or intellectual disabilities;

12 (d) Provision of supported decision making services;

13 (e) Acquisition or modification of equipment or devices; and

14 (f) Other similar services and actions;

15 (2) "Anatomical gift," a donation of all or part of a human body, to take effect after  
16 the donor's death, for the purpose of transplantation or transfusion;

17 (3) "Covered entity,":

18 (a) Any licensed health care practitioners, hospitals, nursing facilities,  
19 laboratories, intermediate care facilities, psychiatric residential treatment  
20 facilities, institutions for individuals with intellectual or developmental  
21 disabilities, prison health centers, and any other licensed providers of health  
22 care services, as that term is defined in § 21-68-1; or

23 (b) Any entity responsible for matching anatomical gift donors to potential  
24 recipients;

25 (4) "Disability," as defined in 42 U.S.C. § 12102 (2021);

- 1       (5) "Organ transplant," the transplantation or transfusion of a part of a human body  
2       into the body of another for the purpose of treating or curing a medical condition;
- 3       (6) "Qualified individual," a person who, with or without a support network, provision  
4       of auxiliary aids and services, or reasonable modifications to policies or practices,  
5       meets the essential eligibility requirements for the receipt of an anatomical gift;
- 6       (7) "Reasonable modification to policies or practices":  
7       (a) Communication with individuals responsible for supporting an individual  
8       with post-surgical and post-transplantation care, including medication; and  
9       (b) Consideration of support networks available to the individual in determining  
10       whether the individual can comply with post-transplant medical  
11       requirements;
- 12       (8) "Supported decisionmaking," use of a support person to assist an individual in  
13       making medical decisions, communicate information to the individual, or ascertain  
14       an individual's wishes by:  
15       (a) Including the individual's attorney-in-fact, health care proxy, or any person  
16       of the individual's choice in communications about the individual's medical  
17       care;  
18       (b) Permitting the individual to assign a person of their choice for the purposes  
19       of supporting that individual in communicating, processing information, or  
20       making medical decisions;  
21       (c) Providing of auxiliary aids and services to facilitate the individual's ability to  
22       communicate and process health-related information, including use of  
23       assistive communication technology;  
24       (d) Providing information to persons designated by the individual, consistent  
25       with the provisions of the Health Insurance Portability and Accountability  
26       Act of 1996 (HIPAA), 42 U.S.C. § 1301 et seq., as effective January 1, 2022,  
27       and other applicable laws and regulations governing disclosure of health  
28       information;  
29       (e) Providing health information in a format that is readily understandable by  
30       the individual;  
31       (f) If the individual has a court-appointed guardian or other individual  
32       responsible for making medical decisions on behalf of the individual, taking  
33       measures to ensure that the individual is included in decisions involving the  
34       individual's health care and that medical decisions are in accordance with  
35       the individual's own expressed interests.

1 **Section 2. That a NEW SECTION be added to title 20:**

2 With the exception of section 3 of this Act, a covered entity may not, solely on the  
3 basis of a qualified individual's mental or physical disability:

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

5 (2) Deny evaluation, surgery, counseling, post-operative treatment and services, or  
6 any other medical services related to organ transplantation;

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

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

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

14 **Section 3. That a NEW SECTION be added to title 20:**

15 Notwithstanding section 2 of this Act, a covered entity may take an individual's  
16 disability into account when making treatment or coverage recommendations or decisions,  
17 to the extent that the physical or mental disability has been found by a physician or  
18 surgeon, following an individualized evaluation of the potential recipient, to be medically  
19 significant to the provision of the anatomical gift. The provisions of this section may not  
20 be deemed to require referrals or recommendations for, or the performance of, medically  
21 inappropriate organ transplants.

22 If an individual has the necessary support system to assist the individual in  
23 complying with post-transplant medical requirements, an individual's inability to  
24 independently comply with those requirements is not medically significant for the purposes  
25 of this section.

26 **Section 4. That a NEW SECTION be added to title 20:**

27 A covered entity shall:

28 (1) Make reasonable modifications in policies, practices, or procedures, when  
29 necessary to make services available to qualified individuals with disabilities, unless  
30 the entity can demonstrate that making the modifications would fundamentally  
31 alter the nature of such services; and

1        (2) Ensure that no qualified individual with a disability is denied service, unless the  
2                    entity can demonstrate that the qualified individual's request would fundamentally  
3                    alter the nature of the services offered or would result in an undue burden.

4        **Section 5. That a NEW SECTION be added to title 20:**

5                    A violation of this chapter is an unfair or discriminatory practice and is enforced  
6                    against under chapter 20-13. In addition to the relief provided in § 20-13-42,  
7                    compensatory, punitive, and liquidated damages may be assessed against the respondent,  
8                    in the manner remedies are authorized in 42 U.S.C. §§ 12131 et seq., effective January  
9                    1, 2022.