



Legislative Endorsement

Bill No. and Title: Bill 1256 An Act relative to preventing discrimination against persons with disabilities in the provision of health care

Sponsor(s) and Committee: Rep. Cutler, Health Care Financing

Legislative History: Hearing: November 9th, 2021

Legislation Text: SECTION 1. Definitions

As specified in chapter 151 b) section 1, the term “disability” (previously “handicap”) means (a) a physical or mental impairment which substantially limits one or more major life activities of a person; (b) a record of having such impairment; or (c) being regarded as having such impairment, but such term shall not include current, illegal use of a controlled substance as defined in section one of chapter ninety-four C.

“Short-term survival” means an individual’s assessed probability of surviving an acute illness from which they are presently suffering and being successfully discharged from a hospital or other inpatient medical facility.

SECTION 2. Section 4 of chapter 151B of the general laws (unlawful practices) is hereby amended by adding after the words “ (8) otherwise seek, receive, or maintain genetic information for non-medical purposes” the following:

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i) For any public or private entity, or agency of the commonwealth, to approve or implement a plan for the distribution of scarce healthcare resources during a crisis, including but not limited to Crisis Standards of Care implemented during a public health emergency, to either deny an individual lifesaving treatment or place an individual at reduced priority for lifesaving treatment if such a determination is based on a presumption that that individual has a reduced quality of life due to a disability or chronic health condition, that their life is less worth saving due to a disability or chronic health condition, or based on any measure, metric, or third party analysis which has the effect of setting a value for the life of a person or persons with a specific disability or medical diagnosis that is less than the value given to the life of a person or 2 persons without a disability; provided however that this section shall not prohibit such a plan from considering an individual’s prospects for short-term survival in determining whether they are prioritized for care.

ii) For any public or private entity, or agency of the commonwealth, to withhold any medical treatment to an individual based on that individual having a disability or chronic health condition, or based on a presumption that that individual has a reduced quality of life due to a disability or chronic health condition, that their life is less worth saving due to a disability or chronic health condition, or

based on any measure, metric, or third party analysis which has the effect of setting a value for the life of a person or persons with a specific disability or medical diagnosis that is less than the value given to the life of a person or persons without a disability.

iii) For any public or private entity, or agency of the commonwealth, when determining whether a healthcare treatment should be available within a formulary, or determining the value of a healthcare treatment, to assume in such a determination that individuals who use or would use that treatment have a reduced quality of life due to a disability or chronic health condition, that their life is less worth saving due to a disability or chronic health condition, or based on any measure, metric, or third party analysis which has the effect of setting a value for the life of a person or persons with a specific disability or medical diagnosis that is less than the value given to the life of a person or persons without a disability.

iv) For a hospital or other entity engaged in the provision of healthcare to a) condition the provision of treatment on a patient having a Do Not Resuscitate Order, advance directive or any instruction relating to the administration, withholding or withdrawing of life-sustaining procedures or artificially administered nutrition and hydration; (b) Communicate to any individual or person acting on behalf of the individual, before or after admission to the hospital, that treatment is conditioned on the individual's having a Do Not Resuscitate Order, an advance directive or any instruction relating to the administration, withholding or withdrawing of life-sustaining procedures or artificially administered nutrition and hydration; (c) Suggest to any individual, or person acting on behalf of the individual, who contacts the hospital regarding treatment for the individual that admission or treatment is conditioned on the individual's having a Do Not Resuscitate Order, an advance directive or any instruction relating to the administration, withholding or withdrawing of life-sustaining procedures or artificially administered nutrition and hydration; or (d) Discriminate in any other way against an individual based on whether the individual has a Do Not Resuscitate Order, an advance directive or any instruction relating to the administration, withholding or withdrawing of life-sustaining procedures or artificially administered nutrition and hydration. This section does not prohibit a hospital from providing written materials and information about advance directives, prohibit a licensed health care professional from engaging in a discussion with a patient about the written materials and information, so long as the provider does not disproportionately advise individuals to sign an advanced directive based on the race, ethnicity, gender, sexuality, or disability status of said individuals.

(v) Nothing under this subsection shall be deemed to prevent healthcare practitioners, hospitals, or other healthcare entities from providing a medically appropriate course of treatment to an individual that they believe will extend that individual's life, improve their symptoms, or alleviate pain and suffering.

SECTION 3. The Executive Office of Health and Human Services shall develop regulations for the implementation of this act with 60 days of passage.

<https://malegislature.gov/Bills/192/H1256>

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