



Health Care Regulation Guidance Letter

Number: GL 21-0001
Title: Organ Transplant Recipient Discrimination Based on an Individual’s Disability Prohibited (HB 119-87R)
Provider Types: Ambulatory Surgical Centers, Abortion Facilities, Birthing Centers, Chemical Dependency Treatment Facilities, Crisis Stabilization Units, End Stage Renal Disease Facilities, General Hospitals, Narcotic Treatment Programs, Licensed Chemical Dependency Counselors, Psychiatric Hospitals, Special Care Facilities, and Special Hospitals
Date Issued: November 5, 2021

1.0 Subject and Purpose

The Texas Health and Human Services Commission (HHSC) provides guidance to licensed providers on legislation passed during the 87th Legislature, Regular Session (2021). [House Bill \(HB\) 119](#), relating to prohibiting organ transplant recipient discrimination based on certain disabilities, took effect September 1, 2021.

This letter provides instruction to licensed acute health care providers on the passage of HB 119 and outlines provider responsibilities and expectations.

2.0 Legislation Details & Provider Responsibilities

HB 119 amended Texas Health and Safety Code (HSC) Chapter 161, Subchapter S by adding [§161.473](#) to prohibit a health care provider¹, at any stage of the organ transplant process, from using an individual's disability as the sole basis for:

- Determining an individual is ineligible to receive an organ transplant,²

¹ Defined at HSC §161.471(4).

² HSC §161.473(a)(1).

- Denying medical or other services related to an organ transplant, including evaluations, surgeries, counseling, and postoperative treatments,³
- Refusing to refer an individual to a transplant center or other related specialist for evaluation or receipt of an organ transplant,⁴ or
- Refusing to place an individual on an organ transplant waiting list or place the individual at a position lower in priority on the list than the position the individual would have been placed if not for the individual's disability.⁵

2.1 Physician Evaluations and Medical Significance Determinations

A health care provider may only consider an individual's disability when making a treatment recommendation or decision that is based solely on a physician's determination that a potential transplant recipient has a disability that is medically significant to the organ transplant.⁶ In this situation, the physician's determination must be based on their individualized evaluation of the potential transplant recipient.⁶

When determining whether an individual's disability is medically significant to the organ transplant, a health care provider may not consider the individual's inability to independently comply with post-transplant medical requirements when the individual has a known disability and the necessary support system to assist them in reasonably complying with the requirements.⁷

Note 1: A physician who in good faith determines that an individual's disability is medically significant to the organ transplant does not violate [HSC §161.473](#).⁸

Note 2: A health care provider who in good faith makes a treatment recommendation or decision based on a physician's determination that an individual's disability is medically significant to an organ transplant does not violate [HSC §161.473](#).⁹

³ HSC §161.473(a)(2).

⁴ HSC §161.473(a)(3).

⁵ HSC §161.473(a)(4).

⁶ HSC §161.473(b).

⁷ HSC §161.473(c).

⁸ HSC §161.473(j).

⁹ HSC §161.473(k).

Note 3: [HSC §161.473](#) does not require a health care provider to refer, recommend, or perform a medically inappropriate organ transplant.⁶

2.2 Health Care Provider Policies, Procedures, and Compliance

Under [HSC §161.473](#), a health care facility¹⁰ must modify its policies, practices, and procedures as necessary to allow individuals with a disability access to organ transplant-related services, including transplant-related counseling, information, or treatment.¹¹

The modifications a facility makes to its policies, practices, and procedures may include:

- Communicating with people supporting or assisting with the individual's postsurgical and post-transplant care, which includes medication; and¹²
- Considering the support available to the individual in determining whether the individual can reasonably comply with post-transplant medical requirements, which includes support provided by:¹³
 - Family;¹⁴
 - Friends; or¹⁵
 - Home and community-based services, including those funded by:¹⁶
 - Medicaid;¹⁷
 - Medicare;¹⁸
 - A health plan in which the individual is enrolled; or¹⁹

¹⁰ Defined at HSC §161.471(3).

¹¹ HSC §161.473(d).

¹² HSC §161.473(d)(1).

¹³ HSC §161.473(d)(2).

¹⁴ HSC §161.473(d)(2)(A).

¹⁵ HSC §161.473(d)(2)(B).

¹⁶ HSC §161.473(d)(2)(C).

¹⁷ HSC §161.473(d)(2)(C)(i).

¹⁸ HSC §161.473(d)(2)(C)(ii).

¹⁹ HSC §161.473(d)(2)(C)(iii).

- Any other program or source of funding available to the individual.²⁰

Note: A health care facility is not required to make these policy, practice, and procedure modifications if it demonstrates doing so would fundamentally alter the nature of the services the facility provides or impose an undue hardship on the facility.¹¹

Unless a health care provider demonstrates compliance with the following would fundamentally alter the nature of the services provided or impose an undue hardship, the health care provider must make reasonable efforts to:

- Comply with applicable health care facility policies, practices, and procedures, as necessary to allow an individual with a known disability access to organ transplant-related services, including transplant-related counseling, information, or treatment.²¹
- Provide auxiliary aids and services²² to an individual with a known disability seeking organ transplant-related services, including organ transplant-related counseling, information, or treatment, as necessary to allow the individual access to these services.²³

A health care provider must comply with the requirements of the Americans with Disabilities Act of 1990 (ADA) to the extent the ADA applies to them.²⁴

Note: HB 119 only requires a health care provider to comply with the ADA if the ADA requires the health care provider to comply with its requirements.²⁴

2.3 Enforcement Authority

HHSC may take enforcement action against a licensed acute health care provider for violating [HSC §161.473](#).²⁵ Before HHSC takes an enforcement action, HHSC will:

- Notify the health care provider HHSC found the facility violated or is violating [HSC §161.473](#) or a rule adopted under [HSC §161.473](#); and²⁶

²⁰ HSC §161.473(d)(2)(C)(iv).

²¹ HSC §161.473(e).

²² Defined at HSC §161.471(1).

²³ HSC §161.473(f).

²⁴ HSC §161.473(g).

²⁵ HSC §161.473(i).

²⁶ HSC §161.473(i)(1).

- Provide the health care provider an opportunity to correct the violation without imposing a penalty or reprimand.²⁷

3.0 Background/History

Licensed acute health care providers must comply with [HSC Chapter 161, Subchapter S](#), including new [HSC §161.473](#), which prohibits health care providers from discriminating against an organ transplant recipient solely on the basis of an individual's disability.

4.0 Resources

View House Bill 119 (87th Legislature, Regular Session, 2021) at:
<https://capitol.texas.gov/tlodocs/87R/billtext/html/HB00119F.htm>

View HSC Chapter 161, Subchapter S at:
<https://statutes.capitol.texas.gov/Docs/HS/htm/HS.161.htm#S>.

To receive future updates, sign up for GovDelivery at:
<https://service.govdelivery.com/accounts/TXHHSC/subscriber/new>.

5.0 Contact Information

If you have any questions about this letter, please contact the Policy, Rules, and Training unit by email at: HCR_PRT@hhs.texas.gov.

²⁷ HSC §161.473(i)(2).