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MEMORANDUM

To: House Committee on Children and Seniors
From: Kyle Hamilton, Assistant Revisor of Statutes
Date: February 16, 2017
Subject: Bill Brief on HB 2343

HB 2343 would ensure that individuals with disabilities are not denied access to organ transplant procedures based solely on their disability.

The bill defines specified terms related to the anatomical gift and organ transplantation process and individuals with disabilities. A “covered entity” would be defined as (1) a licensed health care provider; (2) a medical care facility; (3) a laboratory; (4) a state psychiatric hospital; (5) an adult care home; (6) a group home; (7) an institutional medical unit in a correctional facility; or (8) any entity responsible for potential recipients of the anatomical gift. A “qualified individual” would be an individual who has a disability and meets the essential eligibility requirements for the receipt of an anatomical gift, with or without support networks available to the individual, the provision of auxiliary aids and services, or reasonable modifications to the policies or practices of a covered entity as specified.

Subsection (b) would prohibit a covered entity, solely on the basis of an individual’s disability, from (1) considering a qualified individual ineligible to receive an anatomical gift or organ transplant; (2) denying medical and other services related to organ transplantation, including evaluation, surgery, counseling, and post-transplantation treatment and services; (3) refusing to refer the individual to a transplant center or a related specialist; (4) refusing to place a qualified individual on an organ transplant waiting list; or (5) placing an otherwise qualified individual at a lower-priority position on an organ transplant waiting list.

Subsection (c) would provide that an individual's disability could be taken into account when making treatment or coverage decisions to the extent that a disability is found to be medically significant. However, if an individual has the necessary support system to assist in complying with post-transplantation medical requirements, an individual's inability to independently comply with such requirements could not be found to be medically significant.

Subsections (d) and (e) would provide that, with specified exceptions, reasonable modifications to services would be required and steps taken, when necessary, to allow an individual with a disability to have access to services.

Subsection (f) would clarify that a covered entity would not be required to make a referral or recommendation for, or perform, a medically inappropriate organ transplant.

Subsection (g) would provide that if a covered entity violates the provisions of the bill, the affected individual could bring an action in the appropriate district court for injunctive or other equitable relief. The court would be required to schedule a hearing as soon as possible and apply the same standards as would be applied in an action brought in federal court under the federal Americans with Disabilities Act.

HB 2343 would become effective upon publication in the statute book.