WEST VIRGINIA CODE: §16-65-3

§16-65-3. Discrimination prohibited.

(a) A covered entity may not, solely on the basis of a qualified individual's mental or physical disability:

(1) Determine a qualified individual ineligible to receive an anatomical gift or organ transplant;

(2) Deny a qualified individual medical and associated services related to organ transplantation, including evaluation, surgery, counseling, post-operative treatment, and services;

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

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

(5) Decline insurance coverage to a qualified individual for any procedure associated with the receipt of the anatomical gift, including post-transplantation care.

(b) Notwithstanding subsection (a) of this section, a covered entity may take an individual's disability into account when making treatment or coverage recommendations or decisions, solely to the extent that the physical or mental disability has been found by a physician or surgeon, following an individualized evaluation of the potential recipient, to be medically significant to the provision of the anatomical gift. The provisions of this section shall not be considered to require referrals or recommendations for, or the performance of, medically inappropriate organ transplants.

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

(d) A covered entity shall make reasonable modifications in policies, practices, or procedures when such modifications are necessary to make services such as transplantation-related counseling, information, coverage, or treatment available to qualified individuals with disabilities, unless the entity can demonstrate that making the modifications would fundamentally alter the nature of the services.

(e) A covered entity shall take steps necessary to ensure that a qualified individual with a disability is not denied services such as transplantation-related counseling, information,

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coverage, or treatment because of the absence of auxiliary aids and services, unless the entity can demonstrate that taking those steps would fundamentally alter the nature of the services being offered or would result in an undue burden.

(f) A covered entity shall otherwise comply with the requirements of Titles II and III of the Americans with Disabilities Act of 1990, as amended by the Americans with Disabilities Act Amendments Act of 2008.

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

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