

# SENATE . . . . . No. 2921

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## The Commonwealth of Massachusetts

In the One Hundred and Ninety-Second General Court  
(2021-2022)

SENATE, June 9, 2022.

The committee on Health Care Financing, to whom was referred the petitions (accompanied by bill, Senate, No. 745) of Sonia Chang-Diaz and Patrick M. O'Connor for legislation relative to preventing discrimination against persons with disabilities in the provision of health care; and (accompanied by bill, House, No. 1256) of Josh S. Cutler and others relative to preventing discrimination against persons with disabilities in the provision of health care, reports the accompanying bill (Senate, No. 2921).

For the committee,  
Cindy F. Friedman

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**The Commonwealth of Massachusetts**

**In the One Hundred and Ninety-Second General Court  
(2021-2022)**

An Act relative to preventing discrimination against persons with disabilities in the provision of health care.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1           SECTION 1. Section 1 of chapter 151B of the General Laws, as appearing in the 2020  
2 Official Edition, is hereby amended by striking out, in line 138, the word “handicap” and  
3 inserting in place thereof the following word:- disability.

4           SECTION 2. Section 4 of said chapter 151B, as so appearing, is hereby amended by  
5 adding the following subsection:-

6           20. (a) As used in this subsection, the following words shall have the following meaning  
7 unless the context clearly requires others:

8           “Disability”, shall have the same meaning as defined in section 1 of chapter 151B.

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

12           (b) It shall be an unlawful practice:

13 (i) For any public or private entity or agency of the commonwealth, to approve or  
14 implement a plan for the distribution of scarce healthcare resources during a crisis, including, but  
15 not limited to, crisis standards of care implemented during a public health emergency, that deny  
16 an individual lifesaving treatment or place an individual at reduced priority for lifesaving  
17 treatment if such a determination is based on: (A) a presumption that an individual has a reduced  
18 quality of life due to a disability or chronic health condition; (B) a presumption that an  
19 individual's life is less worth saving due to a disability or chronic health condition; or (C) any  
20 measure, metric, or third party analysis which has the effect of setting a value for the life of an  
21 individual or individuals with a specific disability or medical diagnosis that is less than the value  
22 given to the life of an individual or individuals without a disability; provided however that this  
23 subsection shall not prohibit such a plan from considering an individual's prospects for short-  
24 term survival in determining whether they are prioritized for care.

25 (ii) For any public or private entity or agency of the commonwealth, to withhold any  
26 medical treatment to an individual based on: (A) a presumption that an individual has a reduced  
27 quality of life due to a disability or chronic health condition; (B) a presumption that an  
28 individual's life is less worth saving due to a disability or chronic health condition; or (C) any  
29 measure, metric, or third party analysis which has the effect of setting a value for the life of an  
30 individual or individuals with a specific disability or medical diagnosis that is less than the value  
31 given to the life of an individual or individuals without a disability.

32 (iii) For any public or private entity or agency of the commonwealth, when determining  
33 whether a healthcare treatment should be available within a formulary, or determining the value  
34 of a healthcare treatment, to employ a measure or metric which assigns a reduced value to the

35 life extension provided by a treatment based on a pre-existing disability or chronic health  
36 condition of the individuals whom the treatment would benefit.

37 (iv) For a hospital or other entity engaged in the provision of healthcare to: (A) condition  
38 the provision of treatment on an individual having an order to not resuscitate, advance directive  
39 or any instruction relating to the administration, withholding or withdrawing of life-sustaining  
40 procedures or artificially administered nutrition and hydration; (B) communicate to any  
41 individual or person acting on behalf of the individual, before or after admission to the hospital,  
42 that treatment is conditioned on the individual having an order to not resuscitate, an advance  
43 directive or any instruction relating to the administration, withholding or withdrawing of life-  
44 sustaining procedures or artificially administered nutrition and hydration; (C) suggest to any  
45 individual, or person acting on behalf of the individual, who contacts the hospital regarding  
46 treatment for the individual that admission or treatment is conditioned on the individual having  
47 an order to not resuscitate, an advance directive or any instruction relating to the administration,  
48 withholding or withdrawing of life-sustaining procedures or artificially administered nutrition  
49 and hydration; or (D) discriminate in any other way against an individual based on whether the  
50 individual has an order to not resuscitate, an advance directive or any instruction relating to the  
51 administration, withholding or withdrawing of life-sustaining procedures or artificially  
52 administered nutrition and hydration.

53 (c) This subsection shall not prohibit a hospital from providing written materials and  
54 information about advance directives to an individual or prohibit a licensed health care  
55 professional from engaging in a discussion with an individual about the written materials and  
56 information, so long as the professional does not disproportionately advise an individual to sign

57 an advanced directive based on the race, ethnicity, gender, sexuality, or disability status of said  
58 individual.

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

63 (e) The secretary of health and human services shall promulgate regulations to implement  
64 this subsection.

65 SECTION 3. The secretary of health and human services shall promulgate regulations for  
66 the implementation of subsection 20 of section 4 of chapter 151B not later than 60 days after the  
67 effective date of this act.