

SENATE No. 753

The Commonwealth of Massachusetts

PRESENTED BY:

Adam Gomez

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

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

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Adam Gomez</i>	<i>Hampden</i>	
<i>Michael O. Moore</i>	<i>Second Worcester</i>	<i>4/4/2023</i>
<i>John F. Keenan</i>	<i>Norfolk and Plymouth</i>	<i>4/26/2023</i>

SENATE No. 753

By Mr. Gomez, a petition (accompanied by bill, Senate, No. 753) of Adam Gomez for legislation to prevent discrimination against persons with disabilities in the provision of health care. Health Care Financing.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 2921 OF 2021-2022.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Third General Court
(2023-2024)**

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.